

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

ROBERT SWEENEY,

Petitioner,

vs.

Case No. 21-0627

FLORIDA FISH AND WILDLIFE  
CONSERVATION COMMISSION,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice to all parties, Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (“DOAH”) conducted an evidentiary hearing by Zoom conference from Tallahassee, Florida, on April 6, 2021.

APPEARANCES

For Petitioner:      No Appearance

For Respondent:    Brandy Elanie Elliot, Esquire  
Florida Fish and Wildlife  
Conservation Commission  
620 South Meridian Street  
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Whether the Florida Fish and Wildlife Conservation Commission (“Respondent” or “the Commission”) correctly determined that a vessel owned by Robert Sweeney (“Petitioner”) was a “derelict vessel” or an “abandoned vessel” within the meaning of section 823.11, Florida Statutes (2020), and, therefore, subject to the provisions of sections 823.11, 705.101(3), 376.15(3)(a), and 705.103, Florida Statutes (2020).

PRELIMINARY STATEMENT

On November 17, 2020, Respondent, via Lieutenant George McCorkle from the Commission’s Division of Law Enforcement, handed Mr. Sweeney notice of his “derelict vessel, a 1968 Islander Yacht, 37-foot white sailboat #FL4412SK.” Petitioner acknowledged receipt of the documents related to a derelict vessel determination that same day.

Through an Election of Rights (“EOR”) form and a Petition for Administrative Proceeding, each dated December 7, 2020, Mr. Sweeney requested an administrative hearing, disputing that:

The boat was not aground due to storm but due to someone cutting my anchor line.

Mr. Sweeney further alleged:

Due to criminal action against boat setting her adrift by cutting anchor line on or about 9/21/20 this well cared for vessel should not be considered derelict [sic]

On February 17, 2021, Respondent referred the matter to DOAH. An Initial Order was issued on February 17, 2021, seeking input from both parties to facilitate a hearing. On February 22, 2021, a joint response to the Initial Order was filed. On February 23, 2021, a Notice of Hearing by Zoom Conference (“Hearing Notice”) and an Order of Pre-hearing Instructions (“OPI”) were issued to both parties.<sup>1</sup> The case was transferred to the undersigned on March 17, 2021.

The final hearing was scheduled for and completed on April 6, 2021.

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<sup>1</sup> Neither the Hearing Notice nor the OPI were returned to DOAH as undeliverable.

At the beginning of the hearing, Respondent's counsel moved for the dismissal of the hearing. The motion was denied.

Mr. Sweeney did not appear. The Commission presented the testimony of Lieutenant McCorkle and Major Robert Rowe. Respondent's Exhibits 1 through 5 were accepted into evidence.

A court reporter was in attendance to preserve the hearing; however, no transcript was ordered. At the close of the hearing, the ten-day deadline by which to file proposed recommended orders ("PROs") was announced.

The Commission timely submitted its PRO which has been considered in the preparation of this Recommended Order. To date, Mr. Sweeney has not submitted a PRO. To the extent the Commission's PRO contained hearsay evidence not supported by direct testimony or evidence, that information has not been considered.

Any references to Florida Statutes, administrative rules, or the Commission's rules are to the versions in effect at the time of the allegations, unless otherwise indicated.

#### FINDINGS OF FACT

Based on the competent substantial evidence adduced at the final hearing, and the record as a whole, the following Findings of Fact are made:

1. Mr. Sweeney is the registered owner of a 37-foot sailboat, Islander 37, registration number FL4412SK ("sailboat"), found in the public waters of Manatee County, Florida.

2. The Commission is empowered to remove, or cause to be removed, derelict vessels from the waters of Florida. §§ 376.15(3)(a) and 823.11(3), Fla. Stat. A vessel is considered to be "derelict" if it is left, stored, or abandoned

“[i]n a wrecked, junked, or substantially dismantled condition upon any public waters of Florida.” § 823.11(3), Fla. Stat.

3. Lieutenant McCorkle is a sworn law enforcement officer (“LEO”) with 14+ years of experience with the Commission. His training in derelict vessel investigations includes over 50 hours of derelict vessel identification and investigation.

4. Major Rowe is a sworn LEO and 22-year employee of the Commission. He began his career as a water patrol officer and worked his way through the ranks of lieutenant, captain, and is now a major. He developed and fine-tuned the Commission’s derelict vessel training program, and is now in the Commission’s mentoring program to become a lieutenant colonel.

5. In mid-November 2020 (after Tropical Storm Eta passed through Florida), Lieutenant McCorkle saw the sailboat in the Manatee River in Manatee County, Florida. He initiated a derelict vessel investigation.

6. Lieutenant McCorkle observed the sailboat to be in a wrecked condition, grounded on submerged lands, and listing (leaning) to the port (left) side. He observed the keel, the elongated protrusion on the bottom of the sailboat that provides stability to the vessel, to be “imbedded” (or stuck) in submerged land. Because the sailboat was stuck on submerged land, it could not be moved “without some kind of mechanical assistance.”

7. Lieutenant McCorkle located the sailboat’s registered owner, Mr. Sweeney, at his residence. Mr. Sweeney acknowledged he was the owner of the sailboat.

8. On November 17, 2020, Lieutenant McCorkle hand-delivered a “derelict vessel packet” to Mr. Sweeney. This packet provided that the Commission had determined that the sailboat was in a derelict condition and provided the following description:

The above vessel is being stored, left or abandoned in a wrecked condition upon public waters of this state. The vessel is currently aground as a result of TS Eta at N 27° 31.9771 W 082°38.4427.

9. In Lieutenant McCorkle's presence, Mr. Sweeney acknowledged receipt for the "derelict vessel packet." Lieutenant McCorkle understood that Mr. Sweeney did not have the financial resources to remove the sailboat at that time.

10. In November 2020, Lieutenant McCorkle took a series of three pictures of the sailboat. These pictures confirmed that Mr. Sweeney's sailboat was on the public waters of Florida in Manatee County. The pictures showed the sailboat's registration number, its rudder was partially submerged, the keel was imbedded in submerged lands, and the sailboat was listing to the port side, with the starboard side hull exposed to the air. The lines to the sails appeared to be connected to the mast or appropriate cleats. At that time, Lieutenant McCorkle placed the Commission's notice of derelict vessel on the sailboat's starboard bow, such that it was visible from the navigable waterway.

11. Approximately two weeks before the hearing, Lieutenant McCorkle again observed the sailboat in the same location and in a similar condition, listing to the port side. Lieutenant McCorkle took two more photographs of the sailboat which remained in the location where it was first observed, stuck in the submerged lands, and listing to the port side. Additionally, the sailboat appeared to be deteriorating, in that some of the lines were no longer connected to cleats, but were hanging from the mast and now dangling down towards the water.

12. Lieutenant McCorkle found the sailboat to be in a wrecked condition, and considered it a derelict vessel.

13. Major Rowe did not participate in the investigation of this sailboat. Further, he did not discuss the sailboat investigation with any of the LEOs involved. Major Rowe did review the two sets of pictures taken, and based on his years of experience and training testified that this sailboat was a "classic example of a wrecked vessel," and thus a derelict vessel.

14. The testimony of Lieutenant McCorkle and Major Rowe was unrefuted.

CONCLUSIONS OF LAW

15. DOAH has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

16. Section 376.15 provides in pertinent part:

(1) As used in this section, the term:

(a) “Commission” means the Fish and Wildlife Conservation Commission.

\* \* \*

(2) It is unlawful for any person, firm, or corporation to store, leave, or abandon any derelict vessel as defined in s. 823.11 in this state.

(3)(a) The commission, officers of the commission, and any law enforcement agency or officer specified in s. 327.70 are authorized and empowered to relocate, remove, or cause to be relocated or removed any derelict vessel as defined in s. 823.11 from public waters. All costs, including costs owed to a third party, incurred by the commission or other law enforcement agency in the relocation or removal of any abandoned or derelict vessel are recoverable against the owner of the vessel. The Department of Legal Affairs shall represent the commission in actions to recover such costs.

17. Section 823.11 provides in pertinent part:

(1)(b) “Derelict vessel” means a vessel, as defined in s. 327.02, that is left, stored, or abandoned:

1. In a wrecked, junked, or substantially dismantled condition upon any public waters of this state.

\* \* \*

(2) It is unlawful for a person, firm, or corporation to store, leave, or abandon any derelict vessel in this state.

(3) The commission, officers of the commission, and any law enforcement agency or officer specified in s. 327.70 are authorized and empowered to relocate, remove, or cause to be relocated or removed a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons. The commission, officers of the commission, or any other law enforcement agency or officer acting under this subsection to relocate, remove, or cause to be relocated or removed a derelict vessel from public waters shall be held harmless for all damages to the derelict vessel resulting from such relocation or removal unless the damage results from gross negligence or willful misconduct.

18. Section 327.02, Florida Statutes, provides in pertinent part:

(43) "Sailboat" means a vessel whose sole source of propulsion is the wind.

\* \* \*

(46) "Vessel" is synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(47) "Waters of this state" means any navigable waters of the United States within the territorial limits of this state, the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from the shore of this state, and all the inland lakes, rivers, and canals under the jurisdiction of this state.

19. Section 705.101(3) provides in pertinent part:

“Abandoned property” means ... includes derelict vessels as defined in s. 823.11.

20. Section 705.103(4) provides:

The owner of any abandoned or lost property who, after notice as provided in this section, does not remove such property within the specified period shall be liable to the law enforcement agency for all costs of removal, storage, and destruction of such property, less any salvage value obtained by disposal of the property. Upon final disposition of the property, the law enforcement officer shall notify the owner, if known, of the amount owed. In the case of an abandoned vessel or motor vehicle, any person who neglects or refuses to pay such amount is not entitled to be issued a certificate of registration for such vessel or motor vehicle, or any other vessel or motor vehicle, until such costs have been paid. The law enforcement officer shall supply the Department of Highway Safety and Motor Vehicles with a list of persons whose vessel registration privileges or whose motor vehicle privileges have been revoked under this subsection. Neither the department nor any other person acting as agent thereof shall issue a certificate of registration to a person whose vessel or motor vehicle registration privileges have been revoked, as provided by this subsection, until such costs have been paid.

21. The above listed statutes do not define some of the terms used therein, and therefore one can refer to a dictionary to ascertain the intended meaning. *See L.B. v. State*, 700 So. 2d 370, 372 (Fla. 1997) (stating that “a court may refer to a dictionary to ascertain the plain and ordinary meaning which the legislature intended to ascribe to the term.”)



22. The online edition of Merriam-Webster’s Dictionary defines the following terms:

“left” – past tense of the word “leave”;

“wreck” – in pertinent part, “something cast up on the land by the sea” or “a hulk or ruins of a wrecked ship.”

See <https://meriam-webster.com> (last searched April 21, 2021).

23. Because the Commission is asserting that Mr. Sweeney’s sailboat was a “derelict vessel” within the meaning of section 823.11(1)(b)1., the Commission bears the burden of proof. *Fla. Dep’t of Transp. v. J.W.C. Co.*, 396 So 2d 778, 788 (Fla. 1st DCA 1981) (stating that “[i]n accordance with the general rule, applicable in court proceedings, ‘the burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal.’”) (quoting *Balino v. Dep’t of HRS*, 348 So. 2d 349 (Fla. 1st DCA 1977)).

24. Section 823.11(1)(b)1. does not provide a standard of proof in proceedings such as the instant case. Section 120.57(1)(j), Florida Statutes, provides the following:

Findings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute, and shall be based exclusively on the evidence of record and on matters officially recognized.

25. The unrefuted and credible evidence presented at hearing demonstrates that the higher, clear and convincing, standard of proof has been met: the sailboat was and is a “derelict vessel” within the meaning of section 823.11(1)(b)1.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Fish and Wildlife Conservation Commission

issue a Final Order deeming the sailboat to have been a “derelict vessel” within the meaning of section 823.11(1)(b)1. and that the Commission is authorized under section 376.15(3)(a) to relocate or remove it.

DONE AND ENTERED this 27th day of April, 2021, in Tallahassee, Leon County, Florida.



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LYNNE A. QUIMBY-PENNOCK  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of April, 2021.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.