

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii

February 12, 2016

Board of Land and Natural Resources
State of Hawaii
Honolulu, HI

Administrative Enforcement Action Against Mr. Clayton C. White for
Engaging in Illegal Commercial Operation on
Hanalei Bay Ocean Waters and Lands Adjacent Thereto

Summary: This submittal requests that the Board find Mr. White in violation of Hawaii Administrative Rules (HAR) § 13-256-39: Business or commercial activity within Hanalei Bay Ocean Waters and lands adjacent thereto, without prior approval of the department, and recommends that the Board assess an administrative fine of ten thousand dollars (\$10,000.00) pursuant to Hawaii Revised Statutes (HRS) § 200-14.5.

Date of Incident: May 6, 2015

Against: Mr. Clayton C. White
1701 Huli Road
Kilauea, HI 96754

Location of Incident(s): Hanalei River, Kauai

I. INTRODUCTION:

Mr. White's illegal commercial activity in and around Hanalei Bay ocean waters has been observed by Division of Boating and Ocean Recreation (DOBOR) staff on two occasions. Mr. White was notified that his commercial activities required a permit for the area, he therefore had full knowledge of the existing permit requirements before being cited for a second violation of DOBOR rules. As exemplified below, Mr. White repeatedly conducted illegal commercial activity despite being on notice of existing permitting regulations in the area in order to conduct commercial operations in Hanalei Bay. Based on the analysis below, DOBOR staff recommends that an administrative fine of ten thousand dollars (\$10,000.00) be levied against Mr. White.

II. FACTUAL BACKGROUND

Mr. White was positively identified as the violator by his social security number and Hawaii driver's license by Division of Conservation and Resources Enforcement (DOCARE) staff, and

witness statements as well as photographic evidence was obtained of his unlawful activity and is contained the DOCARE citation report attached hereto as Exhibit "A."

The following timeline is presented to summarize the incident that took place on May 6, 2015 pertaining to the alleged violation of HAR § 13-256-39 by Mr. White as well as the subsequent event in which Mr. White was witnessed and cited for illegally conducting commercial operations without a permit.

May 6, 2015:

Mr. White was conducting commercial vessel operations under the name "Hanalei Na Pali Adventures", vessel HA 1960 CP ("Sea Fox"), without a valid commercial use permit issued by the department and was cited by DOCARE, Kauai Branch.

May 14, 2015:

Mr. White was conducting commercial vessel operations under the name "Hanalei Na Pali Adventures", vessel HA 1960 CP ("Sea Fox"), without a valid commercial use permit issued by the department and was cited by DOCARE, Kauai Branch.

III. REGULATORY AUTHORITY FOR ENFORCEMENT

A. Applicable Hawaii Administrative Rules

1. Rule Violated:

HAR § 13-256-39(b)(5) prohibits unpermitted commercial activity: No commercial vessel shall load or unload passengers in Hanalei Bay ocean waters or the lands adjacent thereto without a permit issued by the department and approval by the County of Kauai. All vessels authorized to load and unload passengers in Hanalei Bay ocean waters or the lands adjacent thereto shall travel to and from the beach only through a designated ingress/egress zone.

2. Relevant Definitions:

HAR § 13-230-8 defines "Business" as: "all professions, trades, occupations, and callings carried on for a profit or livelihood, every kind of commercial enterprise, and the operation of games, machines, or mechanical devices."

HAR § 13-230-8 defines "Commercial activity" as "the use of or activity for which compensation is received by any person for goods or services or both rendered to customers or participants in that use or activity. Display of merchandise or demanding or requesting gifts, money, or services, shall be considered a commercial activity."

HAR § 13-230-8 "Vessel carrying passengers for hire" means any vessel which is used for the carriage of any person or persons for a valuable consideration whether directly or indirectly flowing to the owner, charterer, operator, agent, or any person who has a lien on the vessel.

B. Administrative fines authorized for violations of HAR § 13-256-39

HAR § 13-230-4(b) provides that “the board is authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney’s fees and costs, or bring legal action to recover administrative fines, fees and costs, including attorney’s fees and costs, or payment for damages or for the cost to correct damages resulting from violation of subtitle 8 of title 12 or any rule adopted thereunder in accordance with section 200-14.5, Hawaii Revised Statutes. Each day or instance of violation shall constitute a separate offense.”

HRS § 200-14.5(a) General administrative penalties, also affirms the Board’s discretion to levy administrative fines: “Except as otherwise provided by law, the board is authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney’s fees and costs, or bring legal action to recover administrative fines and fees and costs, including attorney’s fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of subtitle 8 of title 12 or any rule adopted thereunder. Each day or instance of violation shall constitute a separate offense.”

HRS § 200-14.5(c) sets the fine limits for all violations not involving pollution of the waters of the State as follows:

- (1) For a first violation or a violation beyond five years of a previous violation, a fine of not more than \$5,000;
- (2) For a second violation within five years of a previous violation, by a fine of not more than \$10,000; and
- (3) For a third or subsequent violation within five years of the last violation, by a fine of not more than \$15,000.

IV. APPLICATION OF LAW AND RECOMMENDED FINE

A. Mr. White’s actions fall under HAR definitions and are therefore subject to administrative action.

Based on the definitions in DOBOR administrative rules, Mr. White was clearly engaged in “commercial activity” when loading and unloading passengers in Hanalei Bay. Additionally, witness statements taken by DOCARE in Exhibit “A” further establish that Mr. White was unlawfully operating a vessel in a commercial capacity and acknowledge that Mr. White was paid for the service of providing a tour, which clearly falls within the regulatory definitions of “business”, “commercial activity”, and “vessel carrying passengers for hire” as described above.

B. Mr. White did not comply with HAR requirements and restrictions.

Mr. White did not receive prior written approval from the department nor did he execute an agreement with the department to operate commercially within Hanalei Bay waters. Mr. White was witnessed by DOCARE staff unloading passengers without a valid commercial use permit in Hanalei Bay on two occasions and therefore violated HAR § 13-256-39.

C. Criminal action against Mr. White for violation of HAR § 13-256-39 does not preclude administrative action.

Mr. White was tried in a criminal suit, which was settled on November 12, 2015. Mr. White agreed to a deal with the Prosecuting Attorney to accept a “Disorderly Conduct” charge with a three hundred dollar (\$300.00) fine. HRS § 200-14.5(d) states that “Any criminal action against a person for any violation of subtitle 8 of title 12 or any rule adopted thereunder shall not preclude the State from pursuing civil legal action to recover administrative fines, fees and costs, or damages against that person. Any civil legal action to recover administrative fines, fees and costs, or damages for any violation of subtitle 8 of title 12 or any rule adopted thereunder shall not preclude the State from pursuing any appropriate criminal action against that person. All fines, fees and costs, or damages recovered by the department under this section shall be deposited in the boating special fund.” Therefore, the existence and outcome of Mr. White’s criminal trial does not preclude or influence the Board’s ability to levy civil administrative fines against Mr. White.

D. Maximum fine authorized by Statute

Pursuant to HAR § 13-230-4(b), “[e]ach day or instance of violation shall constitute a separate offense.” As evidenced by the attached DOCARE report, Mr. White was observed and cited on two occasions conducting unauthorized commercial activity in violation of HAR § 13-256-39. The maximum fine for Mr. White’s violations, as authorized by HRS § 200-14.5(c), can therefore be no more than ten thousand dollars (\$10,000.00). DOBOR staff recommends that the maximum fine for Mr. White’s two violations, as set by HRS § 200-14.5(c), be levied at this time.

There are no mitigating factors that DOBOR staff believes would justify a lesser fine than the maximum fine for the two violations. Mr. White had full notice of the applicable regulations and chose to violate them on an additional occasion even after he was initially cited for unpermitted commercial activity. DOBOR staff believes that unless there are consequences for violating HRS and HAR provisions, people do not have an incentive to abide by the rules and directions of Harbor Staff. In order to send a strong message and curb present and future violations of the rules, the recommendation from DOBOR staff is to issue a ten thousand dollar (\$10,000.00) penalty to Mr. White.

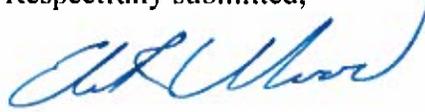
RECOMMENDATIONS:

DOBOR respectfully requests that the board:

1. Find that Mr. Clayton C. White committed an administrative violation of HAR § 13-256-39.

2. Issue a ten thousand dollar (\$10,000.00) fine, in accordance with HRS § 200-14.5(c), to Mr. Clayton C. White for violation of HAR §13-256-39.

Respectfully submitted,



Edward R. Underwood
Administrator

Attachment: Exhibit A – Citations dated 5/6/2015 and 5/14/2015

APPROVED FOR SUBMITTAL



Suzanne D. Case
Chairperson

State of Hawaii | Department of Land and Natural Resources | Division of Conservation and Resources Enforcement

INVESTIGATION # 15-0237-KA	District Hanalei	Lead Investigator Akana, Brad	Report Status In Progress	Key Report <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Date/Time Reported 05/06/2015 07:34AM	Location Hanalei River	Classification NO COMMERCIAL USE PERMIT		Connecting Reports

Incident & Report Control Form

DOCARE-5 (Rev. 8/03)

A. COMPLAINT

Taken By: Brad Akana
How Taken: Phone

Reported Date/Time: 05/06/2015 07:34AM

Complainant: Francis MISSION
Home Work Cell
Phone: 808-346-3363
Address: 3060 Liwa St Rm 205, HI, 96766

COPY

Incident Summary Description: Reported vessel without Commercial use permits launching from Hanalei River
Suspect

Vehicle/Vessel

Location: Hanalei River
Location Notes:

Occured From: 05/06/2015 11:30AM
Occured To:

B. REPORT CONTROL

Branch: Kauai
District: Hanalei
Lead Investigator: Brad Akana
Date Assigned: 05/12/2015 07:28AM

C. NOTES/DISPOSITION/OTHER INFO

COPY

White

State of Hawaii | Department of Land and Natural Resources | Division of Conservation and Resources Enforcement

INVESTIGATION # 15-0237-KA	District Hanalei	Lead Investigator Akana, Brad	Report Status In Progress	Key Report <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Date/Time Reported 05/06/2015 07:34AM	Location Hanalei River	Classification NO COMMERCIAL USE PERMIT	Connecting Reports	

Investigation Report

BASIC	1. CLASSIFICATION NO COMMERCIAL USE PERMIT						2. SOURCE Phone		
	3. COMPLAINANT'S NAME Francis MISSION			4. SEX Male	5. RACE	6. AGE	7. BIRTH DATE	8. OCCUPATION DOCARE	
	9. ADDRESS 3060 Ewa St. Rm. 205, HI, 96766			10. PLACE EMPLOYED/SCHOOL ATTENDING DLNR			11. HOME	12. WORK	13. CELL 808-346-3363
	14. LOCATION OF INCIDENT/INTERSECTING STREET					15. DATE/TIME OCCURRED		16. DATE/TIME REPORTED 05/06/2015 07:34AM	

VEHICLES	17. TYPE Boat	18. YEAR 2008	19. MAKE	20. MODEL	21. COLOR white	22. LICENSE / HA No. HA1960CP	23. LENGTH 26' 6"	24. STOLEN No
	25. REGISTERED OWNER Eric BAPTISTE		26. ADDRESS 625 Kupulau St, Hilo, HI, 96720			27. HOME	28. WORK	29. CELL 808-895-6093
	30. NOTES							
	31. TYPE	32. YEAR	33. MAKE	34. MODEL	35. COLOR	36. LICENSE / HA No.	37. LENGTH	38. STOLEN
39. REGISTERED OWNER		40. ADDRESS			41. HOME	42. WORK	43. CELL	
44. NOTES								

PEOPLE	45. NAME Clayton WHITE			46. SEX Male	47. RACE	48. AGE 33	49. BIRTH DATE 05/30/1981	50. OCCUPATION	
	51. CATEGORY Suspect		52. ADDRESS 1701 Huli Rd., Kilauea, HI, 96754			53. HOME	54. WORK	55. CELL 843-860-0403	
	56. NAME			57. SEX	58. RACE	59. AGE	60. BIRTH DATE	61. OCCUPATION	
	62. CATEGORY		63. ADDRESS			64. HOME	65. WORK	66. CELL	
67. NAME			68. SEX	69. RACE	70. AGE	71. BIRTH DATE	72. OCCUPATION		
73. CATEGORY		74. ADDRESS			75. HOME	76. WORK	77. CELL		

SYNOPSIS	78. SYNOPSIS SYNOPSIS: Reported unpermitted Commercial Tour Boats. SCENE: Hanalei River. PHOTOS: Refer to attached. OTHER STATEMENTS : Refer to attached. INVESTIGATION: Investigation revealed the following: 1. Upon arrival I observed the boat named the "Sea Fox" entering the Hanalei River. 2. I observed the "Sea Fox" stop in the river and start unloading passengers. 3. I made contact with the operator/Captain WHITE, Clayton and asked for his Commercial Use Permit to launch out of Hanalei. 4. WHITE did not have a Commercial Use Permit to launch out of Hanalei, and was cited for stated offense. 5. I made a check with Joe BORDEN of Kauai DLNR/DOBAR, BORDEN confirmed that the "Sea Fox" does not have a Commercial Use Permit to launch out of Hanalei.								
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WRITER	79. REPORT WRITTEN BY Akana, Brad	80. BADGE No. 124	81. DATE/TIME WRITTEN 05/12/2015 08:25AM	82. SUPERVISOR APPROVING Gonsalves, Lionel	83. DATE/TIME APPROVED 05/12/15	84. BADGE No. 14
	85. DISPOSITION					

In the DISTRICT/FAMILY COURT

of the 5TH JUDICIAL CIRCUIT, STATE OF HAWAII

STATE HI JUVENILE

Driver Lic /SS# 251-67-7142 HT

NAME WHITE
CLAYTON C

Current/Mailing Address 1701 Hali Rd.

City, State, Zip Kilauea HI 96754

Hgt. 163 Wt. 5'10" Sex M Date of Birth 05/30/81 Age 33 Complexion Fair

Place of Employment School or Branch of Service Hanalei Natl. Adv. Job Title, Yr. in school or Military Rank

Parent's name if juvenile or Registered owner of Vehicle/Vessel: BOAH

Phone number (Days): 843-860-0403 (Eves):

Did on/or about this 06 day of May 2015 at about 11:30 AM

did operate Command Vehicle/Vessel#: HA 1960 CP

Vehicle/Vessel Make/Name SEA FOX Type COMM. Color WT. Yr. 2008

at (location): Hanalei River

and did commit the offense of: comm. Use Permit

13-256-3 (a)

SECTION: THIS OTHER

EVIDENCE TAKEN: Yes No

DESCRIPTION OF EVIDENCE

Receipt of this citation is acknowledged (Your signature is not an admission of guilt)
X R/S Signature

The undersigned alleges that the person named above committed the offense herein set forth, contrary to law.

Date of Issue 05/06/2015 Time 11:32 Hrs.

Print Rank, First Initial & Last Name Ofc. Brad Akana

Signature [Signature] 153 Badge/ID No.

Bail Forfeiture by Mail Permitted: Yes No

A Postmarked BEFORE court date Payment Amount **B** Postmarked ON court date Payment Amount

SUMMONS

Your court appearance date is:

DATE: 06/24/15 TIME 8:00 AM COURTROOM:

District Court Family Court of LIHUE

DISTRICT COURT

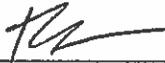
DATE / TIME: 050615 / 11:30 Am

LOCATION: HANALEI RIVER

INVESTIGATION: OBSERVED VESSEL
HI. REGISTRATION # HA1960 CF
(SEA FOX) UNLOADING PASSENGERS
IN THE HANALEI RIVER W/O
A / VALID COMMERCIAL USE
PERMIT AS REQUIRED BY LAW
13-256-3(a) - OPERATOR / CAPT.
OF VESSEL WHITE, CLAYTON
WAS CITED FOR STATED
OFFENSE.

DISPOSITION: Petty Mis.

The undersigned alleges that the person named herein committed the offense set forth, contrary to law.



Complainant's Signature

153

Badge Number

Subscribed and sworn before me on _____ date

Signed _____

STATE OF HAWAII, Land and Natural Resources

REMOVE AND DISCARD ALL CARBONS
BEFORE WRITING REPORT

INVESTIGATION #	DISTRICT Hanalei	LEAD INVESTIGATOR Glenn Tanaka	KEY REPORT <input type="checkbox"/> Yes <input type="checkbox"/> No
DATE / TIME REPORTED	LOCATION Hanalei	CLASSIFICATION	CONNECTING REPORT(S)

Report Type: Continuation of Report Supplemental Follow Up
 Date/Time Written:
 Written By: Tanaka, Glenn

Report

SYNOPSIS:

- Obtained statement from Ellen Mary LOWE.

ASSIGNMENT:

- I was assigned to obtain a statement from passenger.

PASSENGER:

Ellen Mary LOWE
 Dob: 10-22-1957
 ADDRESS: 802 Caren Dr. Sykesville Car Dr. 21784
 PH: 443-812-5355

STATEMENT OF Ellen Mary LOWE

On 03/06/15 (Wednesday) at approximately 1145 hrs. LOWE stated the following.

- That she paid for the tour.
- She heard about this tour from Craig the rental scooter person.
- They got on the boat here (Hanalei).

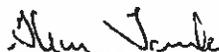
INVESTIGATION:

- On 03/06/15 (Wednesday) at approximately 1145 hrs, I obtained the above information from Ellen Mary LOWE.
- Refer to Main report submitted by Officer AKANA for full investigation.

DISPOSITION:

- Cited.

Tanaka, Glenn
 Officer



252
 Badge No.

03/10/15 1722hs
 Date / Time

INVESTIGATION #
15-0237-KA

DISTRICT
East District

LEAD INVESTIGATOR
Brad Akana

KEY REPORT
 Yes No

DATE / TIME REPORTED
05-06-15

LOCATION
Hanalei Bay

CLASSIFICATION
No Commercial Use Permit

CONNECTING REPORT(S)

Report Type: Continuation of Report Supplemental Follow Up

Date/Time Written: 051615/1200 hours

Written By: P. Llanfo

Report

SYNOPSIS: Passenger statement.

ASSIGNMENT: Obtain statement from passenger per T/A Supervisor B. AKANA.

PASSENGER: Identified via Maryland Drivers License #L-000-429-067-116 .
Name: John Aderson Lowe
DOB: 02-13-1955
ADDRESS: 802 Caren Dr. Sykeville Car MD, 21784.
PH: 301-351-0763

Statement: Obtained on 050615 at 1145 hours
- Met at 7:00 a.m. on Hanalei for the Napali Tour.
- Tour Napali Coast and went to a place called "Poka"
- Operator Craig and Clayton were very professional.
- Paid with C/Card.

DISPOSITION: Cited. Refer to report #15-0237-KA.

P. LLANFO

Officer

253

Badge No.

051615/1200 hours

Date / Time

INVESTIGATION #
15-0233-KA

DISTRICT
East District

LEAD INVESTIGATOR
Otis Ingram, Jr.

KEY REPORT
 Yes No

DATE / TIME REPORTED
5/6/2015 12:05:00 PM

LOCATION
Hanalei Bay

CLASSIFICATION
Commercial Use Permit

CONNECTING REPORT(S)

Report (Continued)

Officer

Badge No.

Date / Time

Report# 15-0237-KA

DOCARE
PHOTOGRAPHIC REPORT

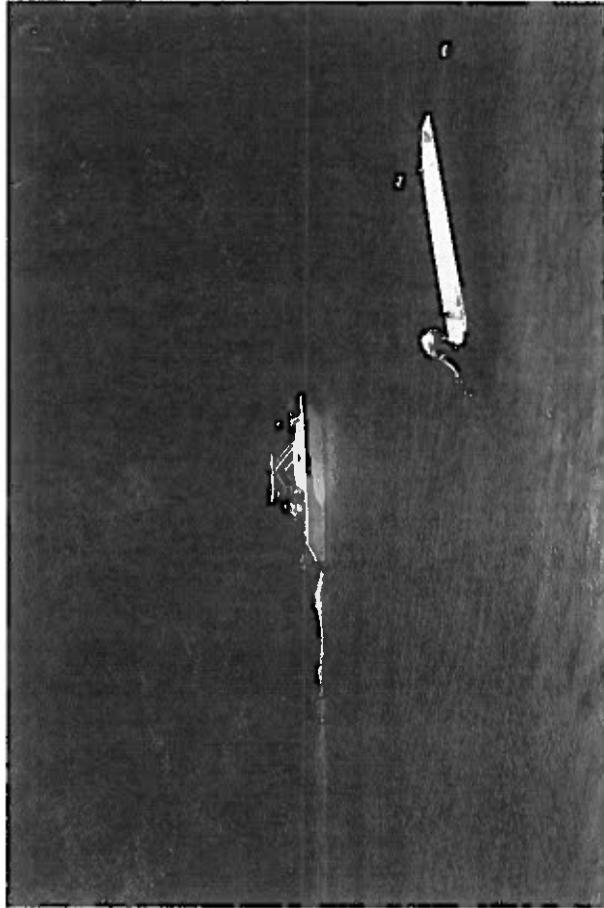
Classification: Commercial Use Permit
Taken by: Robert Rushforth
Equipment: Fujifilm X-E2 with 18mm - 55mm lens
Photo Description: Vessel HA-1960-CP entering Hanalei River from the sea.

Date & Time Taken: May 6, 2015 / 11:34 hrs
Date & Time Taken: May 6, 2015 / 11:37 hrs
Photo Description: Vessel HA-1960-CP offloading passengers. Officers Akana and Donohue on the right, meeting passengers.

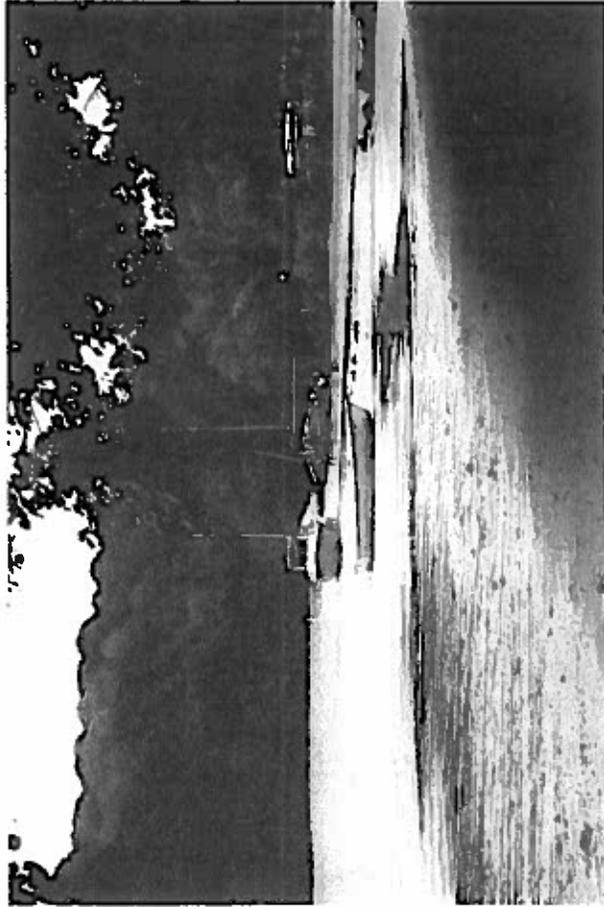
Rushforth, Robert
83
Badge No.

5-13-15 / 0930 HRS
Date / Time

Photo# 1 of 4



Photo# 2 of 4



Report# 15-0237-KA

DOCARE
PHOTOGRAPHIC REPORT

Classification: Commercial Use Permit
Taken by: Robert Rushforth
Equipment: Fujifilm X-E2 with 18mm 55mm lens
Photo Description: Vessel HA-1960-CP offloading passengers Officers Akana and Donohue meeting
of loading passengers.

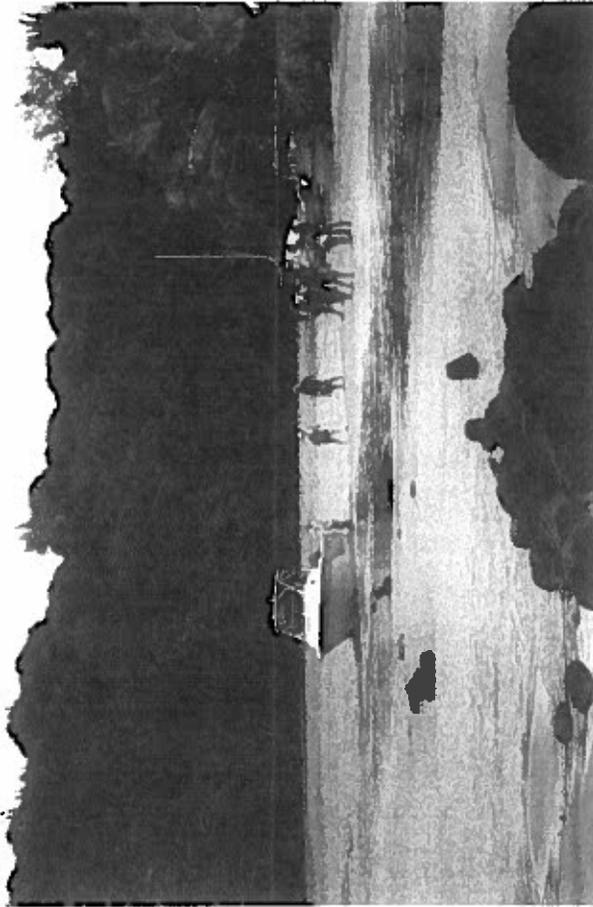
Date & Time Taken: May 6, 2015 / 11:38 hrs

Rushforth, Robert
Officer

BO
Boat No.

5-13-15 / 0930 HRS
Date / Time

Photo# 3 of 4



Report# 15-0237-KA

DOCARE
PHOTOGRAPHIC REPORT

Classification: Commercial Use Permit
Taken by: Robert Rushforth
Equipment: Fujifilm X-E2 with 18mm 55mm lens
Photo Description: Passengers from the vessel HA-1960-CP walking with officer Donohue who is on the far
right.

Date & Time Taken: May 6, 2015 / 11:38 hrs

Rushforth, Robert
Officer

BO
Boat No.

5-13-15 / 0930 HRS
Date / Time

Photo# 4 of 4



INVESTIGATION # 15-0237-KA	DISTRICT East	LEAD INVESTIGATOR Brad Akama	KEY REPORT <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
DATE / TIME REPORTED 05-06-15/0900	LOCATION Hanalei	CLASSIFICATION Commercial Use Permit	CONNECTING REPORT(S)

Report Type: Continuation of Report Supplemental Follow Up
 Date/Time Written: May 06, 2015 @ 1500 hours
 Written By: Donohue, Kim

Report

SYNOPSIS: Supplemental Report (15-0237-KA)

OBSERVATIONS:

- Observed vessel "Seafox" (HA 1960 CP) in Hanalei Bay heading toward Hanalei river mouth
- Observed vessel (HA 1960 CP) enter mouth of Hanalei River
- Observed vessel (HA 1960 CP) stop on the south bank of Hanalei River
- Observed passengers disembark from vessel (HA 1960 CP)

WITNESS (PASSENGER) INFORMATION:

- *Name:* WILSON, Morgan Laine, Sr.
- *California Driver's License:* N6139622
- *Address:* 898 Senate St. Costa Mesa, CA 92627
- *Date of Birth:* 10-28-59
- Male, 5'10", 185 lbs, Brn hair, Brn eyes

WITNESS (PASSENGER) STATEMENTS: WILSON told me the following:

- He was referred to the Seafox (HA 1960 CP) by the "Scooter Man" in Hanalei town
- He paid \$170 per person to go on the boat tour
- He arrived at the Hanalei River at 0700 hours and departed from the river at about 0730 hours
- The boat tour cruised along the Na Pali coast to the open ceiling cave and returned back along the Na Pali coast to the same location up the Hanalei river at about 1130-1200 hours
- WILSON's telephone number: (714) 713-6857

Donohue, Kim
Officer



JSP

114
Badge No.

05-06-15/1500 hours
Date / Time

STATE OF HAWAII
Department of Land and Natural Resources
Division of Conservation and Resources Enforcement

Classification
Supplementary Report

Report #
15-0237-KA

SYNOPSIS:
Supplementary Report

OBSERVATIONS:

- Observed vessel bearing the registration number (HA 1960 CP) enter Hanalei Bay.
- Observed vessel traverse through the bay and into the mouth of Hanalei River.
- Observed the vessel stop on the bank of Hanalei River.
- Observed passengers disembarking from the vessel.

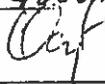
PASSENGERS INFORMATION:

Ruth Josephine WILSON
Drivers License Number: CA. N3486237
Address: 898 Senate St. Costa Mesa CA. 92627
Contact Number: (714) 713-6859

PASSENGERS STATEMENT: (Ruth Josephine WILSON)

WILSON related the following to me:

- Stated that the tour was advertised in Hanalei Town.
- Stated that the tours price was \$170.00 per person.
- Stated that the tour started at 0700hrs and ended at 1100hrs.
- Stated that the tour went from Hanalei Bay to the Open Ceiling Cave on the Na Pali Coast.

Report written by  Badge # 232
Date/Time 5/13/15 - 9000hrs
Supervisor Approving  Badge # 18

INVESTIGATION # 15-0239-11A	District Hanalei	Lead Investigator Donohue, Kim <i>MD</i>	Report Status In Progress	Key Report <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Date/Time Reported 05/14/2015 08:00AM	Location Hanalei River	Classification Commercial Use Permit	Connecting Reports	

Incident & Report Control Form DOCARE-5 (Rev. 8/03)

A. COMPLAINT

COPY

Reported Date/Time: 05/14/2015 08:00AM

Taken By: Kim Donohue
How Taken: Phone

Complainant: Anonymous
Phone: Home Work Cell

Address: HI

Incident Summary Description: Anonymous complainant reported a vessel conducting "Boat Tours" out of Hanalei River without a Commercial Use Permit on the morning of 05-14-15

Suspect

Vehicle: HA 160 CP, Seafox, 23', 2-Open Motorboat

Location: Vehicle/Vessel
Hanalei River

Location Notes:

Occurred From: 05/14/2015 07:30AM
Occurred To:

B. REPORT CONTROL

Branch: Kauai
District: Hanalei
Lead Investigator: Kim Donohue
Date Assigned: 05/14/2015 02:35PM

C. NOTES/DISPOSITION/OTHER INFO

Cited

COPY

Wright

INVESTIGATION # 15-0230-KA	District Hanalei	Lead Investigator Donohue, Kim	Report Status In Progress	Key Report <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Date/Time Reported 05/14/2015 08:00AM	Location Hanalei River	Classification Commercial Use Permit	Connecting Reports	

Investigation Report

BASIC	1. CLASSIFICATION Commercial Use Permit						2. SOURCE Phone			
	3. COMPLAINANT'S NAME Anonymous			4. SEX	5. RACE	6. AGE	7. BIRTH DATE	8. OCCUPATION		
	9. ADDRESS			10. PLACE EMPLOYED/SCHOOL ATTENDING			11. HOME	12. WORK	13. CELL	
	14. LOCATION OF INCIDENT/INTERSECTING STREET						15. DATE/TIME OCCURRED 05/14/2015 07:30AM		16. DATE/TIME REPORTED 05/14/2015 08:00AM	
VEHICLES	17. TYPE	18. YEAR	19. MAKE	20. MODEL	21. COLOR	22. LICENSE / HA No.		23. LENGTH	24. STOLEN	
	25. REGISTERED OWNER			26. ADDRESS			27. HOME	28. WORK	29. CELL	
	30. NOTES									
	31. TYPE	32. YEAR	33. MAKE	34. MODEL	35. COLOR	36. LICENSE / HA No.		37. LENGTH	38. STOLEN	
39. REGISTERED OWNER			40. ADDRESS			41. HOME	42. WORK	43. CELL		
44. NOTES										
PEOPLE	45. NAME			46. SEX	47. RACE	48. AGE	49. BIRTH DATE	50. OCCUPATION		
	51. CATEGORY			52. ADDRESS			53. HOME	54. WORK	55. CELL	
	56. NAME			57. SEX	58. RACE	59. AGE	60. BIRTH DATE	61. OCCUPATION		
	62. CATEGORY			63. ADDRESS			64. HOME	65. WORK	66. CELL	
67. NAME			68. SEX	69. RACE	70. AGE	71. BIRTH DATE	72. OCCUPATION			
73. CATEGORY			74. ADDRESS			75. HOME	76. WORK	77. CELL		
SYNOPSIS	78. SYNOPSIS Anonymous complainant reported the Captain of vessel (HA 160 CP) was conducting "Boat Tours" out of Hanalei River without a Commercial Use Permit on the morning of 05-14-15.									
WRITER	79. REPORT WRITTEN BY Donohue, Kim <i>K.D.</i>			80. BADGE No. 114	81. DATE/TIME WRITTEN 05/14/2015 03:00PM	82. SUPERVISOR APPROVING <i>ADDISON KALANI</i>		83. DATE/TIME APPROVED 5/20/2015-1200	84. BADGE No. 18	
	85. DISPOSITION									

INVESTIGATION # 15-0239-KA	DISTRICT Hanalei	LEAD INVESTIGATOR Kim Donohue	KEY REPORT <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
DATE / TIME REPORTED 5/14/2015 8:00:00 AM	LOCATION Hanalei River	CLASSIFICATION Commercial Use Permit	CONNECTING REPORT(S)

Report Type: Continuation of Report Supplemental Follow Up
 Date/Time Written: 05-15-15/1000 hours
 Written By: Donohue, Kim

Report

SYNOPSIS: An anonymous complainant reported that on the morning of 05-14-15, a vessel (HA 1960 CP) was conducting commercial tours out of Hanalei River without a Commercial Use Permit.

ASSIGNMENT/ARRIVAL: On Thursday, May 14, 2015 at about 1000 hours, Officer R. RUSHFORTH and I arrived at Hanalei Bay to investigate this complaint.

SCENE/CONDITIONS: I arrived during daylight hours, the skies were cloudy and it rained periodically throughout the morning. Vessel traffic was light in Hanalei Bay and the seas were calm and glassy. Hanalei river was uncrowded and vessel traffic was light in the river.

INVESTIGATION:

STATEMENTS FROM D.O.B.O.R. KAUAI DISTRICT MANAGER, JOE BORDEN:

- BORDEN confirmed HA 1960 CP (Hanalei Na Pali Adventures, LLC) does not have a Commercial Use Permit to operate out of Hanalei
- On Friday, May 1, 2015, BORDEN verbally told the owner of *Hanalei Na Pali Adventures, LLC*, Jeremy FUNK, that his company is not authorized to operate out of Hanalei.
- On Friday, May 1, 2015, BORDEN sent a letter via certified mail to the owner of *Hanalei Na Pali Adventures, LLC*, Jeremy FUNK, informing him that his company is not authorized to operate out of Hanalei.
- On Wednesday, May 13, 2015 BORDEN sent a letter via certified mail to the owner of *Hanalei Na Pali Adventures, LLC*, Jeremy FUNK, informing him that his company is not authorized to operate out of Hanalei.
- There are currently 5 DOBOR Commercial Use Permits authorized to operate out of Hanalei; thru attrition, the number of permits will drop to 3 permits.
- BORDEN has no knowledge of HA 1960 CP (*Hanalei Na Pali Adventures LLC*) currently in the permit application process.
- BORDEN stated that if Hanalei Na Pali Adventures, LLC submits a permit application to DOBOR, they will be placed on a waiting list until one of the permits opens; this is the case for any company that applies for a DOBOR Commercial Use Permit for Hanalei.

OBSERVATIONS:

- Upon arrival, Officer RUSHFORTH and I staged near the lifeguard tower at Pine Trees to get an unobstructed view of the bay to observe the incoming vessels.
- At about 1130 hours, using our binoculars, we saw a white vessel entering Hanalei bay from Na Pali coast.
- Officer RUSHFORTH and I drove to Hanalei River where we continued to observe the white boat traverse across the bay toward the river mouth.
- At about 1140 hours, I observed the vessel, Hawaii registration # HA 1960 CP with the name "Seafox", enter the Hanalei River and stop at the bank on south side of Hanalei River.
- I observed 8 people on the vessel as it landed at the river bank.
- I observed a man, later identified as the deck hand, assist passengers off the boat.
- I observed and recognized the vessel (HA 1960 CP) as the *Hanalei Na Pali Adventures* tour company vessel that was involved in the issued citation from May 6, 2015.
- I observed and recognized the vessel Captain, Christopher Clayton WHITE, as the same Captain who was cited by DOCARE on May 6, 2015 for not having a Commercial Use Permit to operate out of Hanalei.

Donohue, Kim
Officer

K. Donohue

114
Badge No.

05-20-15/1400 HOURS
Date / Time

INVESTIGATION # 15-0239-KA	DISTRICT Hanalei	LEAD INVESTIGATOR Kim Donohue	KEY REPORT <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
DATE / TIME REPORTED 5/14/2015 8:00:00 AM	LOCATION Hanalei River	CLASSIFICATION Commercial Use Permit	CONNECTING REPORT(S)

Report (Continued)

INITIAL CONTACT: As the passengers were disembarking from the vessel, Supervisor K. ADDINGTON asked the deck hand to confirm the number of crew and passengers. The deck hand said there was one crew member, one Captain and six passengers on the vessel. Supervisor ADDINGTON and Officer C. GANDEZA escorted the passengers to an area away from the vessel to interview them.

OFFICER'S ACTIONS: I approached the Captain (Christopher Clayton WHITE) of the vessel (HA 1960 CP) and identified myself as a DOCARE Officer. WHITE said he remembered me from the incident the week prior, for which he was issued a citation from DOCARE. I told WHITE I was issuing him a citation for not having a "Commercial Use Permit" to operate tours out of Hanalei, the same citation he was issued on May 6, 2015. WHITE told me that his boss spoke with their lawyers, who told him the company could continue to operate the tours. WHITE told me that *Hanalei Na Pali Adventures* is working on getting a permit, but were having problems obtaining one. I heard WHITE tell his boss that he could not Captain the vessel until he sorted out the permit issue.

I cited WHITE for H.A.R.13-256-3(a) - Commercial Use Permit.

VESSEL INFORMATION:

- *Hawaii Vessel registration and certificate of number:* HA 1960 CP
- *Vessel Description:* 2008 Sea Fox, white/lan, 2-open motorboat
- *Principal Owner/Business:* Hanalei Na Pali Adventures LLC., Jeremy FUNK
- *Mailing Address:* P.O. Box 223419 Princeville, HI 96722

WITNESS STATEMENTS:

- See attached supplemental report written by Supervisor K. ADDINGTON
- See attached supplemental report written by Officer C. GANDEZA.

DISPOSITION: Cited

ATTACHMENTS:

- Photo report
- A copy of H.A.R.13-256-3(a) – Commercial Use Permit
- A copy of the Bill for an Act 289 (12)- Relating to Commercial Activities on Ocean Waters

Donohue, Kim
Officer

K. Donohue

114
Badge No.

05-20-15/1400 HOURS
Date / Time

ON THURSDAY, MAY 14, 2015 AT ABOUT 1145 HOURS, I OBSERVED VESSEL, HAWAII REGISTRATION # HA 1960 CP, UNLOADING PASSENGERS IN THE HANAIEI RIVER WITHOUT A COMMERCIAL USE PERMIT TO OPERATE OUT OF HANAIEI.

I CITED THE VESSEL CAPTAIN, CHRISTOPHER CLAYTON WHITE, FOR H.A.R. 13-256-3(a), COMMERCIAL USE PERMIT.

REFER TO REPORT #15-0239-KA FOR FURTHER FACTS.

In the DISTRICT/TA RT
 5
 JUDICIAL CIRCUIT, STATE OF HAWAII
 STATE JUVENILE
 Dvr Lic /ISS# H00963437 H I
 NAME WHITE
 CHRISTOPHER CLAYTON
 Current/Mailing Address 1701 HULL RD #H
 City, State, Zip KILAUEA, HI 96754
 Hgt 5 10 Wt 165 Sex M Date of Birth 05/30/81 Age 33 Complexion MEDIUM
 Place of Employment School or Branch of Service HANAIEI NA PAHI ADVENTURES
 Job Title, If in a School or Military Rank

Parent's name if juvenile or Registered owner of vehicle/vessel
 Home number (Days) (843) 860-0103 (Eves)
 Did on/for about this 14 day of MAY Yr. 15 at about 11 45 AM PM
 and operate/command Vehicle/Vessel# HA 1960 CP
 Vehicle/Vessel Make/Name SEAFox Type 23.6 Color WHITE Yr. 2007
 at (location) HANAIEI
 and did commit the offense of COMMERCIAL USE PERMIT

SECTION: 13-256-3(a) HRS HAB OTHER
 EVIDENCE TAKEN: Yes No
 DESCRIPTION OF EVIDENCE

Receipt of this citation is acknowledged (Your signature is not an admission of guilt)
 X REFUSE TO SIGN
 The undersigned alleges that the person named above committed the offense herein set forth, contrary to law.
 Date of Issue MAY 14, 2015 Time 11 50 Hrs.
 Print Rank, First Initial & Last Name K. DONOHUE CREW #
 Complainant's Signature [Signature] Badge/ID No 114

Bail Forfeiture by Mail Permitted: Yes No
 A Postmarked BEFORE court date Payment Amount COURT B Postmarked ON court date Payment Amount
 SUMMONS

Your court appearance date is
 DATE JUNE 24, 2015 TIME 8:00 AM COURTROOM:
 District Court Family Court of LIHUE 9/03

The undersigned alleges that the person named herein committed the offense set forth, contrary to law
 [Signature] 114
 Complainant's Signature Badge Number
 Subscribed and sworn before me on 5/15/2015 date
 [Signature]
 Signed STATE OF HAWAII Land and Natural Resources

COURT

INVESTIGATION #
15-0239-KA

DISTRICT
Hanalei

LEAD INVESTIGATOR
Kim Donohue

KEY REPORT
 Yes No

DATE / TIME REPORTED
5/14/2015 8:00:00 AM

LOCATION
Hanalei River

CLASSIFICATION
Commercial Use Permit

CONNECTING REPORT(S)

Report Type: Continuation of Report Supplemental Follow Up

Date/Time Written: 05-31-15/1000 hours

Written By: Donohue, Kim

Follow Up Report

REQUEST FOR AN AMENDED CHARGE: I am requesting the original charge, H.A.R. 13-256-3(a) Commercial Use Permit, to be amended to H.A.R.13-256-39(a)(5) Hanalei Bay Ocean Waters, General Restrictions. I attached a copy of the H.A.R. 13-256-39(a)(5) section. Per telephone conversation with Deputy Prosecuting Attorney, Jenna Tatsey, the case information is as follows:

LNR citation number: 056996

Name of person cited: Christopher Clayton WHITE

Court Date: June 24, 2015

Original charge: H.A.R. 13-256-3(a) Commercial Use Permit

New Charge: H.A.R.13-256-39(a)(5) Hanalei Bay Ocean Waters, General Restrictions

Donohue, Kim
Officer



114

Badge No.

05-31-15 / 1000 hours

Date / Time

INVESTIGATION #
15-0239-KA

DISTRICT
Hanalei

LEAD INVESTIGATOR
Kim Donohue

KEY REPORT
 Yes No

DATE / TIME REPORTED
5/14/2015 8:00:00 AM

LOCATION
Hanalei River

CLASSIFICATION
Commercial Use Permit

CONNECTING REPORT(S)

Report Type: Continuation of Report Supplemental Follow Up
Date/Time Written: 5/17/2015-1300 hrs.
Written By: Addington, Kalani

Report

ASSIGNMENT

: Currently assigned as Enforcement Supervisor for the State of Hawaii DLNR/DOCARE. Assisted CREO's with Commercial Use Permit investigations.

SCENE

: Hanalei (Bay) Ocean waters.

WITNESS STATEMENTS

KAELIN, Teresa DOB: 01/22/62 - 53
22616 90th St. East
Buckley, WA 98321 (253)720-9163

Staying at the Waipouli Beach Resort and Spa, DOD: 05/21/15

States (her family) booked a tour through FOX car rental company to do a tour on the Na Pali Coast with Hanalei Na Pali Adventures. They paid \$140.00 per head plus tax and a \$75.00 Harbor fee.

States Boat tour was approximately 4 hours long and consisted of sightseeing and snorkeling the Na Pali Coast.

KAELIN, Kurt DOB: 11/06/61 - 53
Same information as Teresa. Kurt is her husband

Stated basically the same as his wife did. That he booked through Fox rental car. Paid \$140.00 per head plus the \$75.00 dock fee. The tour was about 4 hours long and it consisted of sightseeing and snorkeling.

SMITH, Brent DOB: 11/25/91 - 23
315 125th st. South
Dalewood, WA (253) 754-7825

Stated "no comment. You have my information that's all you need".


Addington, Kalani
Officer

18
Badge No.

05/17/15 -- 1330 hrs
Date / Time

Report (Continued)

INVESTIGATION : Upon arrival, assisted CREO's with investigation by separating, identifying, and questioning passengers. See attached for witness statements.

DISPOSITION : Cited


Addington, Kalani
Officer

18
Badge No.

05/17/15 -1330 hrs.
Date / Time

STATE OF HAWAII
Department of Land and Natural Resources
Division of Conservation and Resources Enforcement

Classification
Supplementary Report

Report #
15-0239-KA

SYNOPSIS:
Supplementary Report

OBSERVATIONS:

- Observed vessel bearing registration number (HA 1960 CP) traversing through Hanalei Bay.
- Observed vessel enter Hanalei river mouth.
- Observed Vessel Park on the bank of Hanalei River.
- Observed passengers disembark the vessel.

PASSENGERS INFORMATION:

Tammy CLEVINGER

Address: 33413 192 Ave. South East Auburn Wa. 98012

Contact Number: (253) 561-4487

Kohl KAELIN

Address: 22616 90H East Buckley Wa. 98321

Contact Number: (258) 720-9163

Kyla KAELIN

Address: 22616 90H East Buckley Wa. 98321

Contact Number: (258) 720-9163

PASSENGERS STATEMENTS:

Tammy CLEVINGER related the following to me:

- Stated that her nephew related to her that they found out about the tour from a Car Rental Agency.
- Stated that the tour cost \$140.00 per person.
- Stated that the tour started from Hanalei Bay and toured the Na Pali Coast.
- Stated that the tour started at 0700hrs and ended at 1130hrs.

Report written by  Badge # 232

Date/Time 5/15/15 1100hrs

Supervisor Approving  Badge # 5

STATE OF HAWAII
Department of Land and Natural Resources
Division of Conservation and Resources Enforcement

Classification
Supplementary Report

Report #
15-0239-KA

Kohl KAELIN related the following to me:

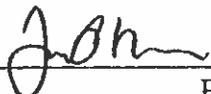
- Stated that he found out about the tour at Fox Rent A Car.
- Stated that the tour cost \$140.00 per person.
- Stated that the tour left from Hanalei River and went along the Na Pali.
- Stated that the tour lasted a little over 4 hours.

Kyla KAELIN related the following to me:

- Stated that she found out about the tour through the Rent A Car Company.
- Stated that for her 5 family members the tour cost \$140.00 each.
- Stated that the tour began in Hanalei and toured the Na Pali Coast.
- Stated that the tour started at 0700hrs and ended at 1130hrs.

Report written by  Badge # 232

Date/Time 5/15/15 11:00hrs

Supervisor Approving  Badge # 5

DOCARE
PHOTOGRAPHIC REPORT

Classification: Commercial Use Permit
Taken by: Robert Rushforth
Equipment: Fujifilm X-E2 with 18mm 55mm lens
Photo Description: The vessel HA-1960 CP preparing to offload passengers, along the bank of Hanalei River

Classification: Commercial Use Permit
Taken by: Robert Rushforth
Equipment: Fujifilm X-E2 with 18mm 55mm lens
Photo Description: Vessel HA-1960 CP entering Hanalei River from Hanalei Bay

Date & Time Taken: 05-14-2015 / 11:46 hrs

Date & Time Taken: 5-14-2015 / 11:42 hrs

RR
Rushforth, Robert

RR
Rushforth, Robert

83
5-15-15 / 0935 MFS

83
5-15-15 / 0935 MFS

Photo# 2 of 2



Photo# 1 of 2

