UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

- against -

JONATHAN K. SMITH,

Defendant.
----------X

13-CV-0428 (ADS) (GRB)

NOTICE OF MOTION TO REMAND

PLEASE TAKE NOTICE THAT, upon the accompanying Memorandum of Law dated February 21, 2013, and all prior pleadings and proceedings herein, the People of the State of New York move this Court for an order remanding this action to its original forum, the Criminal Court of the Town of East Hampton, Suffolk County, New York.

DATED: February 22, 2013
Long Island City, New York

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Attorneys for Defendant

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
PEOPLE OF THE STATE OF NEW YORK,

Plaintiff, 13-CV-0428 (ADS) (GRB)

- against -

JONATHAN K. SMITH,

Defendant.
----------X

MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO REMAND

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
Region 2
Office of General Counsel
47-40 21st Street
Long Island City, New York 11101

John K. Urda
Assistant Regional Attorney
(718) 482-4089

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PRELIMINARY STATEMENT

This Memorandum of Law is submitted in support of plaintiff's motion to remand this matter to its original forum, the Criminal Court of the Town of East Hampton, Suffolk County, New York. The State of New York commenced the underlying action when law enforcement officers of the New York State Department of Environmental Conservation (the "Department") served the defendant, Jonathan K. Smith, with a criminal summons for illegal possession of 87 undersized bay scallops in violation of the New York State Environmental Conservation Law ("ECL") and regulations enacted thereunder at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR").

The summons was returnable at the Criminal Court of the Town of East Hampton, Suffolk County, on January 30, 2013, where the matter was adjourned prior to arraignment. In a Notice of Removal filed January 24, 2013 with this Court, Smith claimed that: (1) the Department's action constitutes a denial of civil rights which cannot be litigated in state court because New York State regulates the Shinnecock Indian Nation illegally; and (2) the Department interfered by force, or threat of force, with Smith in violation of 18 U.S.C. §§ 1982, 1985 (3) and 1986, referencing various statutes and treaties. The Department received the Notice of Removal by regular mail on January 28, 2013. [1]

Because Smith has not shown that the criminal action is removable under 28 U.S.C. § 1443 (1), and because the doctrine of collateral estoppel applies, plaintiff hereby moves to remand the matter to the court of origin.

[1] The summons attached to the Notice of Removal, while providing sufficient notice of the offense, references ECL § 13-0327 (2) (a), which is the statutory analogue and enabling provision for 6 NYCRR 49.1 (c), the applicable Department regulation. Department law enforcement personnel therefore included 6 NYCRR 49.1 (c), discussed further below, in a second summons that was filed with the East Hampton criminal court. A copy of this clarified summons is attached at Exhibit A.

ARGUMENT

I. DEFENDANT FAILED TO ESTABLISH A BASIS FOR REMOVAL.

Smith's removal petition is substantively flawed.

Removal of a state action to federal court under 28 U.S.C. § 1443 (1) is rare. The Supreme Court of the United States, in *Georgia v. Rachel*, 384 U.S. 780 (1966), set forth a narrow basis upon which removal may be granted. The party seeking removal must satisfy a two-prong test: (1) the right allegedly denied must be protected under a federal law providing for specific civil rights stated in terms of racial equality, and (2) the party seeking removal must be denied from enforcing, or cannot enforce, the federal civil right in state court because of state constitutional or legislative impediments. *Id*. at 792, 803. Smith has failed to establish protection under 18 U.S.C. §§ 1982, 1985 (3) and 1986, and has not alleged sufficient facts to show that he cannot enforce his rights in state court.

"Out of respect for the independence of state courts, and in order to control the federal docket, federal courts construe the removal statute narrowly, resolving any doubts against removability." *Stan Winston Creatures, Inc. v. Toys "R" Us, Inc.*, 314 F. Supp. 2d 177, 179 (S.D.N.Y. 2003). As such, the removal petition, on its face, must establish the right of the party seeking removal to have the matter proceed in federal court sufficient to withstand the *Georgia v. Rachel* test. In other words, "removal of a criminal case is appropriate only where 'defendant is charged with exactly that conduct which a federal law explicitly makes legal.'" *Negron v. People of the State of New York*, No. 02-CV-1688 (RR), 2002 WL 1268001 (E.D.N.Y. April 1, 2002), citing *People of the State of New York v. Foster*, 1987 WL 5356 (S.D.N.Y. Jan. 7, 1987).

Smith's petition fails the first prong of the *Rachel* test since he fails to establish that possessing undersized scallops is a federally-protected civil right.

The Supreme Court has construed 28 U.S.C. § 1443 (1) as referring to racial equality.

Georgia v. Rachel at 792; *Chestnut v. People of the State of New York*, 370 F.2d 1, 3 (2d Cir. 1966); *People of the State of New York v. Leslie*, No. 07-CV-2484 (NG) (LB) at 2 (E.D.N.Y. June 27, 2007); *Negron* at 1. Smith has failed to allege that his prosecution is based on any provision of New York law that would deny him a civil right, and removal is not appropriate simply because the state has brought criminal charges against a defendant. *Leslie* at 2, citing *Johnson v. Mississippi*, 421 U.S. 213, 222 (1975).

Smith's Notice of Removal refers to various treaties and federal statutes, but there are no specifics as to where within those treaties and statutes Smith has been given the right to possess undersized scallops without restriction. No cases are cited by Smith in support of this argument and, indeed, none of the treaties or statutes referred to are applicable to individual Native American claims.

A. Sovereign Immunity

With regard to Smith's claim of sovereign immunity from prosecution, he has the burden of showing that he is entitled to this right as an individual member of the tribe. Sovereign immunity is not applicable to individual tribal members who are not acting on behalf of the tribe. *Puyallup Tribe, Inc. v. Dept. of Game of State of Wash.*, 433 U.S. 165, 172 (1977); *City of New York v. Golden Feather Smoke Shop*, 2009 WL 705815 at 3 (E.D.N.Y. 2009). The Notice of Removal does nothing more than assert that Smith is a member of the Shinnecock Indian Nation. As Smith fails to prove that he was acting as an arm of the tribe, he fails to prove his right to claim sovereign immunity. *Cf. Chayoon v. Chao*, 355 F.3d 141, 143 (2d Cir. 2004) (applying tribal immunity to official acts); *State of New York v. Shinnecock Indian Nation*, 523 F. Supp. 2d 185, 298 (E.D.N.Y. 2007) (holding that removal waives tribal immunity). Moreover, the crime at issue here occurred off reservation lands.

B. Tribal Treaties

The applicability of the Fort Albany Treaty of 1664 and the Wyandanch Deed of 1659 have already been reviewed and denied in state and federal courts (including, as set forth further below, with regard to Smith). *See Bess v. Spitzer*, 459 F. Supp. 2d 191, 196 (E.D.N.Y. 2006) (recognizing decision by New York State Supreme Court, Albany County, which held that individual tribe member may not raise defense of Fort Albany Treaty). Further, in *State of New York v. Shinnecock Indian Nation*, this Court reviewed the Wyandanch Deed, a/k/a Ogden Deed, and determined that the treaty that transferred the land had the "clear and unambiguous intention to extinguish aboriginal rights in the lands involved in the Ogden and Topping Deeds." 523 F. Supp. 2d at 269; *see South Dakota v. Bourland*, 508 U.S. 679, 689 (1993) ("When an Indian tribe conveys ownership of its tribal lands to non-Indians, it loses any former right of absolute and exclusive use and occupation of the conveyed lands.")

C. Federal Statutes

As to the implication of the federal Contracts Clause, the Indian Commerce Clause, the Supremacy Clause, and the Common Law and Acts of the Colonial and State Legislatures Section of the Constitution of the State of New York, Smith's removal petition is again flawed since he fails to delineate which sections are applicable or how they are applicable, and fails to support his claims by citing cases holding that individual Native Americans have the unrestricted right to possess undersized scallops illegally. *See* 28 U.S.C. § 1443; *see Johnson v. Mississippi*, 421 U.S. 213, 222 (1975).

D. There is no evidence that a state official interfered with a federally-protected activity.

Since there is no evidence that Smith was engaged in a federally-protected activity under 18 U.S.C. §§ 1982, 1985 (3) and 1986 – let alone one implicating racial equality – his argument

that Department law enforcement officers unlawfully interfered with his right to enjoy such activity fails. Broad assertions are insufficient to support a claim of removal. *Alabama v. Conley*, 245 F.3d 1292, 1295 (11th Cir. 2001). Additionally, the Second Circuit held that the statute "is aimed only at intimidation 'by force or threat of force,' and that denotes violent activity, not the ordered functioning of state legal processes, whatever the motivation." *People v. Horelick*, 424 F.2d 697, 703 (2d Cir. 1970).

Here, Smith has not shown that a Department officer used force or a threat of force to prevent him from engaging in a federally-protected civil right. Sections 1982, 1985 (3) and 1986 are therefore inapplicable. This same conclusion was reached in analogous circumstances by this Court in *People of the State of New York v. Gerrod T. Smith*, No. 08-CV-4422 (JS) (MLO), 2009 WL 2390809 (E.D.N.Y. July 31, 2009) (hereinafter, "*Smith I*"), and a more recent case involving the same defendant in this matter, *People of the State of New York v. Jonathan K. Smith*, No. 09-CV-2221 (DRH) (HRL), 2011 WL 2470065 (E.D.N.Y. June 17, 2011), *aff'd* No. 11-2901-cv, 2012 WL 3765012 (2d Cir. 2012), *cert. denied*, 2013 WL 141214 (Jan. 14, 2013) (hereinafter, "*Smith II*"). A copy of this Court's Memorandum and Order in *Smith I* is attached at Exhibit B. Copies of this Court's Memorandum and Order, the Second Circuit's Summary Order and the Supreme Court's denial of certiorari in *Smith II* are attached at Exhibit C. Notably, in both cases, defendants were represented by present defense counsel.

Although in this case Smith attempts to allege force or a threat of force on the part of the Department officers, this attempt is irrelevant, regardless of the credibility of those allegations, because his possession of numerous undersized scallops is not a federally-protected right.[2]

[2] Nevertheless, Smith's allegations of force, or threats of force, are inapposite. For example, Smith claims that on June 11, 2012, Department Officer Maggio approached fishing captain Theodore S. Lester and admonished him. *See* Notice at ¶ 10. Not only was Smith not present at the alleged incident, neither was Officer Maggio who, on that day, was at a "SAFE boat" Department training session in Pulaski, New York, four hundred miles away. A copy of

Smith's petition fails to establish the second prong of the *Rachel* test for removal because he does not establish that he is precluded from proceeding in state court.

As to the second prong of the *Georgia v. Rachel* test of the sufficiency of a removal petition, Smith fails to submit any fact to support his argument that state regulation of Native Americans would prevent him from asserting his rights in a state forum. A state is to be given the opportunity to correct any alleged civil rights violation when possible without federal interference. *Moeller v. Rodriguez*, 113 F.3d 1246 (10th Cir. 1997). Where a moving party, such as Smith, only has an apprehension that his rights will not be recognized in state court, he fails to show that the rights will not actually be denied and removal will not be granted. *Emigrant Savings Bank v. Elan Management Corp.*, 668 F.2d 671, 673-74 (2d Cir. 1982). "Removal is warranted only if it can be predicted by reference to a law of general application that the [defendant] will be denied or cannot enforce the specified federal rights in the state courts." *Georgia v. Rachel*, 384 U.S. at 800.

The case was properly before a state court.

The federal government gave the states power to regulate hunting and fishing. *Lacoste v. Department of Conservation of La.*, 263 U.S. 545, 549 (1924); *Melby v. Duffy*, 304 A.D. 2d 33 (2d Dep't 2003). Under the ECL, the Department has the power to "create and maintain conditions under which man and nature can thrive in harmony with each other, and achieve social, economic and technological progress for present and future generations." ECL §§ 1-0101

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the class roster is attached as Exhibit D. Moreover, Officer Maggio was not present when Smith was given the summons at issue in this matter. Smith also alleges that in issuing the summons on December 10, 2012, Lieutenant Billotto "unsnapped his holster" and rested his hand on his sidearm. *See id.* at ¶ 12. However, neither of the officers present wore a snap holster, and during the entire encounter both officers wore rain ponchos covering their sidearms, making it impossible for either to have his "hand resting on his handgun." *Id.* Smith also claims – without explanation or apparent reason – that on January 11, 2013, "an unknown person or persons" shot Mr. Lester in the foot. *See id.* at ¶ 13. Even if one were to infer that Smith is attempting to use this as evidence of a "threat of force" pursuant to *Horelick*, Smith was again not present at this alleged shooting which, in any event, occurred four weeks after Smith was issued the summons – it simply has no relation to the conduct of the Department law enforcement officers who issued the summons and in no way satisfies the bar set by the Second Circuit in *Horelick*.

(1), 0101 (3).

To that end, 6 NYCRR section 49, derived from ECL Article 13, and whose purpose is "to establish conservation and management measures necessary to promote and restore the viability of sustainable bay scallop populations" in waters including Peconic Bay, 6 NYCRR 49.1 (a), provides that,

> . . . no person shall take bay scallops that do not have an annual growth line or that measure less than two and one-quarter inches from the middle of the hinge to the middle of the bill.

6 NYCRR 49.1 (c) (2).

Smith was found in violation of this regulation for possessing 87 Peconic Bay scallops less than two and one-quarter inches long. Because the federal government, under 25 U.S.C. §§ 232, 233, granted broad concurrent jurisdiction to New York State for prosecution of Native Americans who violate state laws, the Criminal Court of the Town of East Hampton, Suffolk County, is the proper forum for this matter. *See Williams v. Lee*, 358 U.S. 217, 221 (1959).

II. REMOVAL IS BARRED BY COLLATERAL ETSOPPEL.

The same case for removal has been brought by the same litigant and decided with full opportunity for appeal.

The doctrine of collateral estoppel applies when (1) the issues in two proceedings are identical, (2) the issue in the prior proceeding was actually litigated and decided, (3) there was a full and fair opportunity for litigation in the prior proceeding, and (4) the issue previously litigated was necessary to support a valid and final judgment on the merits. *Gelb v. Royal Globe Insurance Company*, 798 F.2d 38 (2d Cir. 1986). The doctrine operates to prevent parties from contesting matters that they have had a full and fair opportunity to litigate, thereby conserving judicial resources and protecting parties from the expense and vexation of multiple lawsuits. *Montana v. United States*, 440 U.S. 147, 153-154 (1979).

All four factors for applying collateral estoppel are met in this case: Smith raises identical issues that were raised in *Smith II* (and that were raised by defense counsel in *Smith I*): whether the State of New York violated Smith's "federally-protected" fishing rights, and whether such violation could be litigated in state court. *See, e.g.*, *Smith II*, Memorandum & Order at pp. 2-3. These issues were fully litigated and decided, Smith had a full and fair opportunity for litigation, and the issues were necessary to support this Court's judgment on the merits. In *Smith II* this Court decided that removal was not appropriate, and granted the State's motion to remand, and the Second Circuit affirmed. *See, e.g.*, at Exhibit C, the Second Circuit's decision affirming this Court in *Smith II*, 2012 WL 3765012 (2d Cir. 2012) at p. 4 ("Smith identifies no federal law conferring upon him an absolute right to ignore shellfish tagging requirements off-reservation. Nor does Smith offer any reason for us to conclude that the New York State courts cannot protect whatever federal rights he may assert in his criminal proceeding . . . .").

Including *Smith I* and *Smith II*, this case is at least the third removal brought by defense counsel before this Court based on similar facts and legal arguments – and the second case involving this defendant. In all three attempts, defense counsel has sought removal based on substantially identical grounds including alleged civil rights violations, sovereign immunity, the Fort Albany Treaty of 1664, Wyandanch's Deed, the Contracts Clause, and similar federal and state constitutional claims. Because this removal attempt is based on the same claims that were raised, decided, and were essential to the Orders of this Court in both *Smith I* and *Smith II*, and because the litigants have had a full and fair opportunity to litigate these issues, this matter should be remanded to the proper court.

An award of costs and fees to the State is appropriate.

28 U.S.C. § 1447 (c) provides that, "An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." An award for fees may be appropriate, as "the process of removing a case to federal court and then having it remanded back to state court delays resolution of the case, imposes additional costs on both parties, and wastes judicial resources." *Martin v. Franklin Capital Corporation*, 546 U.S. 132, 140, 126 S.Ct. 704, 711, 163 L. Ed. 2d 547 (2005).

The Supreme Court has held that fee awards in removal cases may be made at the district court's discretion, and that the key factor in deciding whether to award fees is the propriety of removal – and that where no objectively reasonable basis exists for the removal, fees should be awarded. *Id.*, at 139, 141, 126 S.Ct. 710, 711.

There is no objectively reasonable basis for the Notice of Removal in this case. The bases set forth in this action were fully and decisively litigated to Smith's disadvantage in *Smith II*, and for this Court, and potentially the Second Circuit and Supreme Court, to re-produce the prior rulings, while Smith gains a delay in his prosecution, is precisely the kind of waste that Congress and the Supreme Court have found reason to deter. Smith, a repeat violator of New York environmental law, should not be allowed to re-litigate these issues at the expense of the federal judiciary and the Department. The Notice of Removal is not simply without basic merit, does not simply invoke estoppel – it is frivolous. As such, the Department requests an award of this Court of reasonable costs incurred in addressing this matter.

CONCLUSION

Smith has failed to satisfy the two-prong *Georgia v. Rachel* test for removal of an action to federal court. No federal law conferred on Smith an absolute right to possess undersized

scallops in violation of New York law, and "no federal law confers immunity from state prosecution on such charges." *Emigrant Savings Bank v. Elan Management Corp.*, 668 F.2d at 674, citing *Georgia v. Rachel*. Smith not only fails to identify a federally-protected right at issue, without such right, he cannot establish interference by force or threat of force – notwithstanding the allegations in the Notice of Removal, all of which are either irrelevant to Smith's summons, or simply did not happen.

Furthermore, under the four-prong analysis set forth in *Gelb v. Royal Globe Insurance Company*, the removal of this matter to federal court is barred by collateral estoppel. The case should be remanded to the Criminal Court of the Town of East Hampton, Suffolk County.

Smith's prior attempt to remove his criminal summons to federal court, in *Smith II*, was litigated through the Supreme Court's denial of his petition for a writ of certiorari. In bringing the same issues again before the federal bench and Department counsel, Smith is expending public resources without cause or justification. This Court should not only grant the State's motion to remand this matter to local court, it should award the State its costs and reasonable attorney fees incurred on this motion.

DATED: February 22, 2013
Long Island City, New York

JOHN K. URDA (JU-1875)
Assistant Regional Attorney
New York State Department
of Environmental Conservation
47-40 21st Street
Long Island City, New York 11101
(718) 482-4089

EXHIBIT A

WRITE HARD - YOU ARE MAKING 6 COPIES

AAN6862494

New York State - Department of Motor Vehicles
SIMPLIFIED INFORMATION / COMPLAINT
The People of The State of New York VS.

POLICE AGENCY: DEC DLE

LAST NAME: Smith | FIRST NAME: Jonathan | M.I.: K | LOCAL POLICE CODE: 12-023258

NUMBER & STREET ADDRESS: Old Pt Rd Po Box 5036 | APT. NO. | PHOTO LIC SHOWN

CITY: Southampton | STATE: NY | ZIP CODE: 11969 | OWNER IS OPER. | LIC CLASS/ID TYPE: DM

I. D. NUMBER: 549648670 | SEX: M | DATE OF BIRTH (MMDDYY): 030160

STATE: NY | LICENSE EXPIRES (MMDDYY): 030118 | VEH. TYPE: W | VEH. YR.: 1986 | VEH. MAKE: BR/PO | VEH. COLOR:

PLATE #: NY6307FJ | REG. STATE: NY | REGISTRATION EXPIRES (MMDDYY): 053115

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

TIME (24hour HHMM): 1730 | DATE OF OFFENSE (MMDDYY): 121012

VTL | TRAFF RULES | ADMIN CODE | PRHPL | ECL

NAV LAW | TAX LAW | TRANS LAW | NYCRR TITLE: 6

IN VIOLATION OF: (SECTION AND SUBDIVISION): 49.1(c)(z) | TR INF | MISD

OTHER LAW

306B | 319-1 | 509-1 | 1110A | 1111D1 | 1225C2A | 1229C3A | 1180 B C D F

DESCRIPTION / NARRATIVE:
Possess undersize bay scallops
to wit: 87 out of 200 - 43.5%

MPH | IN MPH ZONE

CDL VEH | BUS | HAZ MAT

US DOT#

PLACE OF OCCURRENCE: Montauk Marine Basin | HWY # | LOCATION CODE: 5252 | HWY TYPE | NCIC: 15601

IN THE City Town Village
OF: E. Hampton | COUNTY OF: Suffolk | PRECINCT:

COMPLAINANT SIGN AND PRINT NAME/RANK Affirmed under penalty of perjury.
ECO B. Farrish

RADAR OPERATOR NAME (Print)

DATE AFFIRMED: 121012 | ARREST TYPE: 21 | OFFICER ID #: 512 | OFFICER'S COMMAND: M366

THIS MATTER IS SCHEDULED TO BE HANDLED ON THE APPEARANCE DATE BELOW IN EITHER THE:
TRAFF. VIOL. BUREAU IN: OR THE City Town Village Criminal District

COURT OF: East Hampton | COUNTY OF: Suffolk | SUMMONS PART

ADDRESS: 159 Pantigo Rd

CITY: E. Hampton | STATE: NY | ZIP CODE: 11937

RETURN BY MAIL BEFORE, OR IN PERSON ON: 1 30 13 at 9:30 AM
MUST APPEAR IN PERSON ON:

FOR COURT USE ONLY

COURT CODE | JUSTICE CODE | DATE ADJUDICATED | DATE SENTENCE IMPOSED

CHARGE CONVICTED OF: AS ABOVE VTL OTHER | DISPOSITION / SENTENCE | FINE | SURCHARGE

AMT | BAIL FORFEITURE DATE | LIC REV SUSP MAND PERM | DAYS / MONTHS / YEAR

AAN6862494

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
People of the State of New York,

Plaintiff,

MEMORANDUM & ORDER
08-CV-4422 (JS)(MLO)

-against-

Gerrod T. Smith,

Defendant.
----------X
APPEARANCES:
For Plaintiffs: Glenn D. Green, Esq.
Karla L. Lato, Esq.
Suffolk County District Attorney's Office
200 Center Drive
Riverhead, NY 11901

For Defendants: Scott Michael Moore, Esq.
Moore International Law Offices
45 Rockefeller Plaza, Suite 2000
New York, NY 10111

SEYBERT, District Judge:

The State of New York ("Plaintiff") commenced this criminal action against Defendant Gerrod T. Smith ("Defendant") in the Town Court of Southampton ("the Town Court"), County of Suffolk, with the issuance of citations on October 6, 2008. The citations were returnable in the Town Court on November 3, 2008. Defendant timely removed the case on October 31, 2008 to this Court pursuant to 28 U.S.C. § 1443(1). Pending before the Court is Plaintiff's motion to remand this action to the Town Court of Southampton, County of Suffolk. For the reasons set forth herein, Plaintiff's motion to remand is GRANTED.

BACKGROUND

Defendant is a member of the Shinnecock Indian Nation

("Shinnecock") and resides on the Shinnecock Indian Nation Reservation ("Reservation") in Southampton, New York. (Notice of Removal [hereinafter "Notice"] ¶ 1.) On October 6, 2008, Police Officer Brian Farrish ("Farrish") of the New York State Department of Environmental Quality boarded Defendant's vessel, which was located at the entrance to Heady Creek in Shinnecock Bay. (Id.) Farrish searched the vessel and seized out-of-season and undersized fish that were in violation of New York state fishing regulations. See 6 N.Y. A.D.C. 40.1(b)(1)(i), (ii); (Notice ¶ 3.) Farrish issued Defendant three citations for illegal possession of eighteen out-of-season summer flounder, sixteen out-of-season porgy, and two undersized blackfish. (Notice ¶ 3.)

Defendant alleges that New York State illegally regulates the Shinnecock and therefore Defendant cannot litigate his civil rights in state court. Defendant also claims that Farrish, by force or threat of force, interfered with Defendant in violation of 18 U.S.C. § 245(b)(1)(B).[1] (Notice 5). Within this section, Defendant claims that his protected rights were violated because of (1) Sovereign Immunity; (2) The Fort Albany Treaty of 1664; (3) Wyandanch's Deed; (4) the Contract Clause; (5) the Indian Commerce Clause; (6) Congressional Indian Policy; (7) Federal Trust and; (8)

[1] The Court notes that Defendant cites to 18 U.S.C. § 245(a)(2)(b)(1)(B) in his Notice of Removal. However, this section does not exist; the Court assumes, based on the remainder of the Notice of Removal, that Defendant is referring to 18 U.S.C. § 245(b)(1)(B).

United Nations' International Convention on the Elimination of All Forms of Racial Discrimination ("CERD"). (Id. at 5a-h).

Plaintiff argues that the case should be remanded to state court because Defendant has not shown that his criminal action is removable under 28 U.S.C. § 1443(1). The Court agrees.

DISCUSSION

I. Removal of a Criminal Case[2]

A defendant may remove a criminal action from the state court "not later than thirty days after the arraignment in the State court, or at any time before trial, whichever is earlier." 28 U.S.C. § 1446(c)(1). Upon removal of a criminal matter, the district court is required to "examine the notice promptly" and remand the criminal matter "[i]f it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted." 28 U.S.C. § 1446(c)(4). The Court has reviewed Defendant's notice of removal, as well as the various exhibits submitted, and finds that removal was not proper in this matter.

II. Removal was Improper

Defendant removed this case from the Town Court under 28

[2] Defendant claims that Plaintiff's motion to remand was untimely, relying on 28 U.S.C. § 1447(c). This section states "[a] motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a)." 28 U.S.C. § 1447(c) (2006) (emphasis added). Here, the main issue is whether there is a lack of subject matter jurisdiction; therefore, Defendant's argument is unfounded.

U.S.C. § 1443(1). Section 1443(1) provides for the removal of criminal prosecutions "[a]gainst any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof." 28 U.S.C § 1443(1) (2006).

"[A] removal petition under 28 U.S.C. § 1443 (1) must satisfy a two-pronged test. First, it must appear that the right allegedly denied the removal petitioner arises under a federal law 'providing for specific civil rights stated in terms of racial equality.'" Johnson v. Mississippi, 421 U.S. 213, 219, 95 S. Ct. 1591, 44 L. Ed. 2d 121 (1975) (quoting Georgia v. Rachel, 384 U.S. 780, 792, 86 S. Ct. 1783, 16 L. Ed. 2d 925 (1966). Next, "it must appear, in accordance with the provisions of § 1443 (1), that the removal petitioner is 'denied or cannot enforce' the specified federal rights 'in the courts of [the] State.'" Id. Defendant has not satisfied either of the two prongs required for removal under Section 1443.

Defendant first maintains that Plaintiff violated his rights under 18 U.S.C. § 245. However, Defendant has not shown that this section applies to his case, and has not alleged sufficient facts to indicate that Defendant cannot enforce his rights under this statute in the state court.

Title 18 of the United States Code § 245 "is solely a

criminal statute permitting federal prosecution for interference with a long list of activities." People v. Horelick, 424 F.2d 697, 702 (2d Cir. 1970). Subdivision (b) states, "Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate, or interfere with" any person from participating in certain federally-protected activities is subject to criminal penalties. 18 U.S.C. § 245(b). This statute, "relied upon by [Defendant] . . . to show that he will be denied a right in the New York state court cannot be read to prevent state prosecution." Horelick, 424 F.2d at 703. Section 245(b) "is aimed only at intimidation 'by force or threat of force,' and that denotes violent activity, not the ordered functioning of state legal processes, whatever the motivation." Id. Defendant has not shown that Farrish utilized intimidation by force or threat of force to prevent Defendant from engaging in a federally-protected right. Rather, it appears that Farrish merely gave Defendant a summons to appear in court in accordance with state law. Thus, Section 245 is inapplicable here. See Johnson v. Mississippi, 421 U.S. 213, 227, 95 S. Ct. 1591, 44 L. Ed. 2d 121 (""[I]t seems quite evident that a state prosecution, proceeding as it does in a court of law, cannot be characterized as an application of 'force or threat of force' within the meaning of § 245.").

Moreover, Defendant has not shown that he would be

precluded from proceeding in state court. Removal is available under § 1443 "only if it can be predicted by reference to a law of general application that the defendant will be denied or cannot enforce the specified federal rights in the state courts." Rachel, 384 U.S. at 800; see also Emigrant Savings Bank v. Elam Mgmt. Corp., 668 F.2d 671, 674 (2d Cir. 1982). It is also insufficient for the removing party to have a mere apprehension that he will be denied or unable to enforce his rights in state court. Emigrant Savings Bank, 668 F.2d at 673-74.

Defendant has not shown that he cannot litigate his rights in state court, and the Court has found no independent basis for finding that Defendant cannot argue the alleged deprivation of his federal rights in state court. In fact, the Court of Appeals for the State of New York recently decided a case involving the off-reservation fishing rights of Native Americans, and whether those rights were reserved by treaty and federally protected. See People v. Patterson, 5 N.Y.3d 91, 833 N.E.2d 223 (2005). The defendant in Patterson made similar arguments as Defendant now does, albeit on behalf of a different Indian Nation. There is no indication that Defendant cannot raise his arguments regarding whether the Shinnecocks enjoy federally-protected fishing rights in state court, as the defendant in Patterson did. Thus, removal is inappropriate and the motion to remand is GRANTED.

CONCLUSION

For the reasons set forth above, Plaintiffs' motion to remand is GRANTED. The Clerk of the Court is directed to mark this matter CLOSED.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: July 31, 2009
Central Islip, New York

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

JONATHAN K. SMITH,

Defendant.
----------X

MEMORANDUM & ORDER
09 CV 2221 (DRH) (ARL)

APPEARANCES:

New York State Department of Environmental Conservation
Division of Legal Affairs, Region 2
Attorneys for Plaintiff
47-40 21st Street
Long Island City, New York 11101
By: John Karl Urda, Assistant Regional Attorney

MOORE INTERNATIONAL LAW OFFICE
Attorneys for Defendant
45 Rockefeller Plaza
Suite 2000
New York, New York 10111
By: Scott M. Moore, Esq.

HURLEY, Senior District Judge:

On May 27, 2009, defendant Jonathan K. Smith ("Defendant") removed this action from the Criminal Court of the City of New York, Bronx County to this Court pursuant to 28 U.S.C. § 1443(1). Presently pending before the Court is a motion by plaintiff, the People of the State of New York, ("Plaintiff") seeking to remand this action to its original forum. For the reasons set forth below, Plaintiff's motion is granted.

BACKGROUND

Defendant is a member of the Shinnecock Indian Nation and resides on the Shinnecock Indian Nation Reservation in Southampton, New York. (Notice of Removal ¶ 1 & Ex. A.) On

January 14, 2009, at the request of the New York State Department of Environmental Quality,[1] Defendant attended an "off reservation" meeting at that agency's offices located in Setaukat, New York. During the meeting, Defendant was served with two New York State citations: (1) Civil Infraction Ticket No. BA8767264 (the "Civil Infraction Ticket"), and (2) Criminal Summons No. 431162287-9 (the "Criminal Summons"). (*Id.* ¶ 3.)

The Civil Infraction Ticket alleged that on December 23, 2008, Defendant operated an "unpermitted acquaculture facility" in Shinnecock Bay in violation of the New York Environmental Conservation Law ("ECL") § 13-0316(2), and was returnable to Southampton Town Court. (*Id.* ¶ 4.) On January 11, 2009, that action was removed from the Southampton Town Court to this Court under Civil Docket No. 09-571 before Judge Leonard D. Wexler. (*Id.*) The case was subsequently dismissed based upon the State's failure to prosecute the action, and judgment was entered in favor of Defendant. (*Id.*)[2]

The Criminal Summons, the subject of this case, alleges that on December 24, 2008, the Defendant used "improper shellfish tags" in violation of ECL § 13-0319. (*Id.*, Ex. C.) Defendant removed the action from the Bronx County Criminal Court to this Court on May 27, 2009. The removal was based upon allegations that Defendant has been denied his civil rights, and that such denial could not be litigated in State Court because New York State regulates the

---

[1] Plaintiff asserts that the proper name of the agency is the "New York State Department of Environmental Conservation." (Pl.'s Mem. at 1 & n.1.) For purposes of this Memorandum & Order, the Court will refer to the agency name as it is listed in the Notice of Removal.

[2] Despite Defendant's assertions to the contrary (*see* Def.'s Opp'n at 1, 9), Judge Wexler's dismissal of the Civil Infraction Ticket action based on the plaintiff's failure to prosecute has no bearing on the Court's determination of this matter.

Indian Nation illegally. (*Id.* ¶ 2.) Defendant further alleged that the Department of Environmental Quality willfully interfered, by force or threat of force, with Defendant "in order to intimidate" him and to prevent him "from participating in and enjoying a privilege and/or activity provided or administered by the United States" in violation of 18 U.S.C. § 245(b)(1)(B).[3] (*Id.* ¶ 7.) Specifically, Defendant alleges that Plaintiff violated his "federally protected" fishing rights under the following: (1) the doctrine of sovereign immunity, (2) the Fort Albany Treaty of 1664, (3) Wyandanch's Deed, (4) the Contract Clause, (5) the Indian Commerce Clause, (6) Congressional Indian Policy, (7) Federal Trust, (8) United Nations' International Convention on the Elimination of All Forms of Racial Discrimination ("CERD"), and (9) the United Nations Declaration on the Rights of Indigenous Peoples. (*Id.*)

Plaintiff argues that the case should be remanded because Defendant "has not shown that this criminal action is removable under 28 U.S.C. § 1443(1)." (Pl.'s Mem. at 2.) For the reasons set forth below, the Court agrees.

DISCUSSION

I. Legal Standard

"An effective petition for the removal of a state action to federal court must allege a proper basis for the removal under sections 1441 through 1445 of Title 28." *Negron v. People of New York*, 2002 WL 1268001, at *1 (E.D.N.Y. Apr. 1, 2002). Section 1443(1) provides for removal of civil actions or criminal prosecutions commenced in a State court if the defendant "is denied or cannot enforce in the courts of such State a right under any law providing for the equal

[3] Although the Notice of Removal cites 18 U.S.C. § 245(a)(2)(b)(1)(B), which does not exist, Defendant has clarified that this reference contained a typographical error and should read 18 U.S.C. § 245(b)(1)(B). (Def.'s Opp'n at 6 n.1.)

civil rights of citizens of the United States." 28 U.S.C. § 1443(1). "If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand." 28 U.S.C. § 1446(c)(4).

A removal petition under Section 1443(1) "must satisfy a two-pronged test." *Johnson v. Mississippi*, 421 U.S. 213, 219 (1975). "First, it must appear that the right allegedly denied the removal petitioner arises under a federal law 'providing for specific civil rights stated in terms of racial equality.'" *Id.* (quoting *Georgia v. Rachel*, 384 U.S. 780, 792 (1966)). "Claims that prosecution and conviction will violate rights under constitutional or statutory provisions of general applicability or under statutes not protecting against racial discrimination, will not suffice." *Id.*

Second, it must appear on the face of the notice "that the removal petitioner is 'denied or cannot enforce' the specified federal rights 'in the courts of (the) State.' This provision normally requires that the 'denial be manifest in a formal expression of state law,' such as a state legislative or constitutional provision, 'rather than a denial first made manifest in the trial of the case.'" *Id.* (quoting *Rachel*, 384 U.S. at 799, 803).

II. The Motion to Remand is Timely

Defendant asserts that Plaintiff's motion to remand is untimely. (*See* Def.'s Opp'n at 3-4.) Section 1447(c) provides: "A motion to remand the case on the basis of any defect *other than lack of subject matter jurisdiction* must be made within 30 days after the filing of the notice of removal under section 1446(a)." 28 U.S.C. § 1447(c) (emphasis added). Defendant contends that Plaintiff "attacks an alleged defect in removal, not subject matter jurisdiction" and, therefore, is untimely since the motion was filed more than 30 days after the notice of removal was filed.

(Def.'s Opp'n at 3.) The main thrust of Plaintiff's remand argument is that Defendant did not have an adequate basis to remove the action from State to Federal court; thus, the central question here is the existence of subject matter jurisdiction. The Court finds, therefore, that Plaintiff's motion is timely filed.

III. Defendant has Failed to Allege a Proper Basis for Removal Under Section 1443(1)

Defendant has not shown, and it is not at all evident from the face of the notice of removal, that the rights allegedly denied Defendant – "federally protected Indian fishing rights" (*see* Def.'s Opp'n at 11) – arise under a federal law "providing for specific civil rights stated in terms of racial equality." *See Rachel*, 384 U.S. at 792. The removal of a criminal case "is appropriate only where 'defendant is charged with exactly that conduct which a federal law explicitly makes legal.'" *Negron*, 2002 WL 1268001 at *1 (quoting *People of New York v. Foster*, 1987 WL 5356, at *2 (S.D.N.Y. Jan. 7, 1987)). Here, Defendant has not shown that any of the various treaties and federal statutes cited make legal the use of "improper shellfish tags" in violation of ECL § 13-0319. *See id.*

Defendant asserts that "[s]ince the issuance of the tickets by the State, the Shinnecock Indian Nation has become 'federally recognized'" (Def.'s Opp'n at 2), but does not explain how such a fact would affect the Court's analysis. Indeed, Defendant would not be able to benefit from any tribal sovereign immunity that a "federally recognized" status might afford the Shinnecock Indian Nation; "[i]t is 'well-settled that tribal sovereign immunity does not extend to individual members of a tribe.'" *City of New York v. Golden Feather Smoke Shop, Inc.*, 2009 WL 705815, at *7 (E.D.N.Y. Mar. 16, 2009) (quoting *Catskill Dev., L.L.C. v. Park Place Entm't Corp.*, 206 F.R.D. 78, 86 (S.D.N.Y. 2002)).

Moreover, Defendant cannot meet the second prong of the *Rachel* test because he has not sufficiently alleged that he would be unable to enforce any federally protected fishing rights in state court. It is "insufficient for the removing party to have a mere apprehension that he will be denied or unable to enforce his rights in state court." *People of New York v. Smith*, 2009 WL 2390809, at *2 (E.D.N.Y. July 31, 2009) (citing *Emigrant Sav. Bank v. Elam Mgmt. Corp.*, 668 F.2d 671, 674 (2d Cir. 1982)). Indeed, as noted by the court in *Smith*, the New York Court of Appeals "recently decided a case involving the off-reservation fishing rights of Native Americans, and whether those rights were reserved by treaty and federally protected." *Id.* at *3 (citing *People v. Patterson*, 5 N.Y.3d 91 (2005)). Thus, the Court has no reason to conclude that Defendant could not raise any arguments regarding his asserted federally protected fishing rights in state court.

IV. Removal Under Section 1443(1) is not Supported by 18 U.S.C. § 245

Defendant also alleges that 18 U.S.C. § 245 provides an adequate basis for removal pursuant to Section 1443(1). Title 18 U.S.C. § 245 is a federal criminal statute that provides, in relevant part:

> Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with –
>
> (1) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from –
>
> . . .
>
> (B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States; . . .

> shall be fined under this title, or imprisoned not more than one year, or both . . . .

18 U.S.C. § 245(b)(1)(B). This statute "does not in terms confer substantive rights," but is "solely a criminal statute permitting federal prosecution for interference with a long list of activities." *People of New York v. Horelick*, 424 F.2d 697, 702 (2d Cir. 1970).

The Supreme Court has specifically held that 18 U.S.C. § 245 cannot provide an adequate basis of removal pursuant to Section 1443(1) because "it evinces no intention to interfere in any manner with state criminal prosecutions of those who seek to have their cases removed to the federal courts." *Johnson*, 421 U.S. at 223-24. In fact, the statute itself explicitly provides that "[n]othing in this section shall be construed as indicating an intent on the part of Congress to prevent any State . . . from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section." 18 U.S.C. § 245(a)(1). Moreover, the statute "focuses on the use of force." *See Johnson*, 421 U.S. at 224. "[A] state prosecution, proceeding as it does in a court of law, cannot be characterized as an application of 'force or threat of force' within the meaning of s 245." *Id.* at 227; *see also Horelick*, 424 F.2d at 703 (finding that 18 U.S.C. § 245 "cannot be read to prevent state prosecution"). Thus, Defendant cannot base removal pursuant to Section 1443(1) on this statute.

CONCLUSION

For the reasons set forth above, Plaintiff's motion to remand is granted. The Clerk of the Court is respectfully directed to close this case.

SO ORDERED.

Dated: Central Islip, New York
June 17, 2011

/s/
Denis R. Hurley
United States District Judge

11-2901-cv
People v. Smith

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 29th day of August, two thousand twelve.

PRESENT: REENA RAGGI,
GERARD E. LYNCH,
DENNY CHIN,
Circuit Judges.

PEOPLE OF THE STATE OF NEW YORK,
Plaintiff-Appellee,

v. No. 11-2901-cv

JONATHAN K. SMITH,
Defendant-Appellant.

FOR APPELLANT: Scott Michael Moore, Esq., New York, New York.

FOR APPELLEE: Matthew W. Grieco, Steven C. Wu, Assistant Solicitors General, of Counsel, Barbara D. Underwood, Solicitor General, *for* Eric T. Schneiderman, Attorney General of the State of New York, New York, New York.

Appeal from an order of the United States District Court for the Eastern District of New York (Denis R. Hurley, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the final order entered on June 17, 2011, is AFFIRMED.

Defendant Jonathan Smith, who faces criminal charges in New York for using "improper shellfish tags," see N.Y. Envtl. Conserv. Law § 13-0319, appeals from an order remanding this removed criminal case to the New York Criminal Court, Bronx County. We have jurisdiction under 28 U.S.C. § 1447(d) to hear this appeal from an order of remand, which we review de novo. See Shapiro v. Logistec USA Inc., 412 F.3d 307, 310 (2d Cir. 2005). We assume the parties' familiarity with the facts and record of prior proceedings, which we reference only as necessary to explain our decision to affirm.

On appeal, Smith does not contend that he properly removed this criminal case to federal court pursuant to 28 U.S.C. § 1443(1) (providing for removal of civil actions or criminal prosecutions in circumstances where state will not protect equal rights as expressly provided by federal law). Rather, Smith argues only that a failure to comply with § 1443(1) is a purely procedural defect, which can be waived, as opposed to a defect in subject matter jurisdiction, which cannot. He maintains that the State of New York waived any § 1443(1) defect in removal by failing to seek remand "within 30 days after the filing of the notice of removal." 28 U.S.C. § 1447©.

Smith's arguments are unavailing. In the absence of § 1443(1), the district court could not exercise subject matter jurisdiction over a state criminal prosecution. "Where a federal court lacks jurisdiction independent of the removal statute, a substantive defect in removal is not waiv[able] under § 1447(c) because a substantive challenge to removal may be an implicit challenge to the court's subject matter jurisdiction." Orange Cnty. Water Dist. v. Unocal Corp., 584 F.3d 43, 50 (2d Cir. 2009) (emphasis omitted) (concerning removal under 28 U.S.C. § 1452(a)). Thus, because § 1443(1) "provides both a procedural mechanism and subject matter jurisdiction," id., the State did not waive its ability to challenge Smith's reliance on that statute to support the removal of his case by failing timely to move for a remand under § 1447(c). Cf. Mignogna v. Sair Aviation, Inc., 937 F.2d 37, 40–43 (2d Cir. 1991) (concluding sua sponte that defect in removal pursuant to § 1442(a)(1) created nonwaivable defect in subject matter jurisdiction).

Because Smith does not challenge the district court's determination that he failed to satisfy § 1443(1)'s requirements for removal, any such argument is abandoned. See, e.g., Jackler v. Byrne, 658 F.3d 225, 233 (2d Cir. 2011) (stating that issues about which "brief on appeal contains no argument" are deemed abandoned). Even were we to reach the merits of his invocation of federal jurisdiction, however, we would afford Smith no relief. Insofar as Smith removed this criminal action and then sought its dismissal "on the basis of federally protected Indian fishing rights" arising under various non-specific laws, documents, and constitutional provisions, Moore Letter to Judge Hurley at 5 (Oct. 6, 2010), that is the type

of broad contention not based on a "law providing for specific civil rights stated in terms of racial equality," Georgia v. Rachel, 384 U.S. 780, 792 (1966), that the Supreme Court has declared does not meet the strictures of § 1443(1). Smith identifies no federal law conferring upon him an absolute right to ignore shellfish tagging requirements off-reservation. Nor does Smith offer any reason for us to conclude that the New York State courts cannot protect whatever federal rights he may assert in his criminal proceeding or "that those rights will inevitably be denied." City of Greenwood v. Peacock, 384 U.S. 808, 828 (1966); accord Emigrant Sav. Bank v. Elan Mgmt. Corp., 668 F.2d 671, 676 (2d Cir. 1982) (holding mere apprehension that state court will fail to uphold federal civil right insufficient for removal under § 1443(1)).

Accordingly, the remand order is AFFIRMED.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, Clerk of Court

Supreme Court of the United States

Jonathan K. SMITH, petitioner,

v.

NEW YORK.

No. 12–655. | Jan. 14, 2013.

Case below, —— Fed.Appx. ——, 2012 WL 3765012.

Opinion

*1 Petition for writ of certiorari to the United States Court of Appeals for the Second Circuit denied.

Parallel Citations

81 USLW 3348, 81 USLW 3385, 81 USLW 3388

End of Document

EXHIBIT D

CLASS ROSTER / NOTIFICATION OF COMPLETION

To School Director: TYPE the name, social security number, date of birth, sex, employing agency, rank, and status code of each student. **Have each student verify the spelling and accuracy** all sections as indicated with the exception of those designated for "OPS USE." Indicate if an employing agency is a town (T/O), village (V/O), city (C/O), or county (CO/O) department. Do not use roster to OPS at the address listed below within 10 days after the completion of any course. For the Basic Course for Police Officers, also see Part 6020.5(a). Retain one copy of this roster in you note the performance of each student in the section entitled "completion" (S=satisfactory, U=unsatisfactory). Sign, date, and forward to OPS.

NAME OF SCHOOL/ACADEMY: New York State Department of Environmental Conservation

ADDRESS OF SCHOOL/ACADEMY: P.O. Box 470, 24 County Route 2A, Pulaski, NY 14142

COURSE DIRECTOR: Captain Samuel Servadio

COURSE NAME: SAFE Boat (A-Platform) Operator's Course

DATE(S) OF COURSE: June 11th - 22nd. 2012

FOR OPS USE		SCHOOL
IN	OUT	COURSE CODE

	Name of Trainee (Last, First, Middle Initial)	Social Security #	Date of Birth	Sex	Employing Agency	Status*	Rank	Appoint. Date***	Completion S/U**	Permit #	C P Exp
1.	Cordell, Daniel S.	3219	10/15/71	M	NYSDEC DFP Region 8	PO	FR	01/15/02			
2.	Crain, Joshua J.	4232	07/28/80	M	NYSDEC DLE Region 8	PO	ECO	12/6/04			
3.	Dorrett, Matthew M.	4547	01/11/74	M	NYSDEC DLE Region 7	PO	ECO	3/17/00			
4.	Favreau, Nathan P.	1527	12/26/71	M	NYSDEC DLE Region 2	PO	ECO	3/31/08			
5.	Hovey, Jeffrey P.	3940	08/05/76	M	NYSDEC DLE Region 5	PO	ECO	01/17/02			
6.	Lohr, Charles E.	0843	02/27/64	M	NYSDEC DLE Region 9	PO	ECO	2/14/99			
7.	Maggio, Richard J.	7691	7/19/54	M	NYSDEC MEU	POL/F	ECO	3/17/88			
8.	Malone, Daniel T.	5905	09/11/54	M	NYSDEC DLE Region 5	POL/F	ECO	11/16/02			
9.	Murphy, John J.	5361	10/8/71	M	NYSDEC DLE Region 6	PO	ECO	12/01/03			
10.	Okonuk, Jennifer J.	6635	9/10/73	F	NYSDEC DLE Region 2	PO	ECO	1/29/07			

* Status Code: POL/F=Police Officer Full Time; POL/P=Police Officer Part Time; PEA/F=Peace Officer Full Time; PEA/P=Peace Officer Part Time; CIV=Civilian

** Complete this section at the conclusion of a course if student performance is known.

*** This date should reflect the date appointed to the listed employing agency. For the Course in Police Supervision, the date of promotion.

I hereby certify that the above named students have, where indicated, successfully completed all aspects of this course and have not missed a greater number of hours than that permitted by rule or stat this course has not been substantially altered in either content or duration from that which was approved. I hereby attach a description of alterations made, if any, to the approved curriculum. I further c standards set forth by rule or statute. I affirm under penalty of perjury that the statements made on this form, including all attachments, are true.

Captain Samuel Servadio

Director Printed Name

Director Signature

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2013, the foregoing document was served in accordance with the Federal Rules of Civil Procedure and/or the Eastern District's Local Rules and/or the Eastern District's Rules on Electronic Service, upon the following parties and participants:

Scott Michael Moore, Esq.
Moore International Law PLLC
45 Rockefeller Plaza, Suite 2000
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