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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Hugh Carberry,  
Department of Environmental  
Protection

Classification Appeal

CSC Docket Nos. 2016-603

ISSUED: **OCT 09 2015** (SLK)

Hugh Carberry appeals the attached decision of the Division of Agency Services (Agency Services) that the proper classification of his position with the Department of Environmental Protection is Principal Biologist, Fisheries. The appellant seeks a classification of Supervising Biologist, Fisheries.

The record in the present matter establishes that Mr. Carberry's permanent title is Principal Biologist, Fisheries. The appellant is assigned to the Bureau of Marine Fisheries, Division of Fish and Wildlife, Natural and Historic Resources and reports to Russell Allen, Manager 4, Natural Resources Fisheries. He directly supervises Peter Clarke, Senior Biologist, Fisheries, William Maxwell, Technician 2, Fish, Game, and Wildlife, and Anthony Mazzarella, Technician 1, Fish, Game, and Wildlife. Mr. Carberry sought a reclassification of his position, alleging that his duties are more closely aligned with the duties of a Supervising Biologist, Fisheries. In support of his request, the appellant submitted a Position Classification Questionnaire (PCQ) detailing the different duties he performs as a Principal Biologist Fisheries. Agency Services reviewed and analyzed the PCQ completed by the appellant. On June 3, 2015, Agency Services conducted a telephone audit. In its decision, Agency Services determined that the duties performed by the appellant were consistent with the definition and examples of work included in the job specification for Principal Biologist, Fisheries.

On appeal, Mr. Carberry presents that within the Bureau of Marine Fisheries (Bureau), there is only one Supervising Biologist whose primary responsibility is to attend various fisheries management meetings and serve as proxy for the Division of Fish and Wildlife's Director. The appellant indicates that this Supervising

Biologist does not supervise staff who supervise subordinates. Therefore, in order to avoid inconsistency within the Bureau, the appellant asserts that this criterion should not be utilized in determining the classification of his position. However, he states that he supervises a Senior Biologist, Mr. Clarke, who supervises two Federal government employees who work for the Bureau through a Federal program. The appellant indicates that Mr. Clarke is responsible for these individuals' performance evaluations and therefore he is supervising a staff member who supervises subordinates.

Mr. Carberry also states that he previously worked as a Supervising Biologist for the Bureau of Freshwater Fisheries where he did supervise staff who supervised subordinate staff. However, many of his current administrative tasks are higher level duties than he performed in that position. For example, he recently attended a meeting with the appointing authority's Commissioner where he was asked to perform tasks that he claims should have been performed by either the Bureau Chief or the Marine Fisheries Administrator. Therefore, the appellant contends that these duties are higher level duties that are inconsistent with a Principal Biologist, Fisheries classification. Additionally, the appellant asks what recourse is available to him as he is continually asked to perform administrative tasks that are normally reserved for a Bureau Chief or the Marine Fisheries Administrator. Moreover, the appellant contends that there is a Senior Biologist employed by the Bureau who will be promoted to Principal Biologist because she will be supervising two new full-time federal employees. As proof, the appellant submits a vacancy announcement indicating that the federal government is hiring staff that will report to a State Principal Biologist. This announcement indicates that a State Principal Biologist will conduct employee performance evaluations, with review and final approval by the federal government manager.

## CONCLUSION

The definition section of the job specification Principal Biologist, Fisheries states:

Under direction of a supervisory officer, supervises and coordinates on a Statewide basis surveys of streams and lakes, samplings of fish populations and fish foods, and disease treatment, and generally supervises fish cultural operations and other technical biological work within the fisheries management programs of the State; does other related duties as required.

The definition section of the job specification for Supervising Biologist, Fisheries states:

Under general direction, in the Division of Fish and Wildlife, Department of Environmental Protection, has responsibility for coordinating and implementing Statewide programs related to fisheries management; supervises staff involved in biological research and data analysis related to fisheries management; does related work as required.

The Commission agrees with Agency Services' determination that the appellant's position is properly classified as Principal Biologist Fisheries. The appellant supervises a Senior Biologist, Fisheries, a Technician 2, Fish, Game, and Wildlife, and a Technician 1, Fish, Game, and Wildlife which are non-supervisory titles. The Principal Biologist, Fisheries title is a primary level supervisory title. Therefore, Mr. Carberry's supervision of three non-supervisory staff members does not evidence that his position is misclassified. Notwithstanding the fact that a Senior Biologist, Fisheries is responsible for the performance evaluations for two federal employees, it is clear that the federal government has final approval authority for these evaluations. *See In the Matter of Robert Barry* (CSC, decided May 7, 2014) (Supervision or leading of staff from other bureaus not considered supervisory or lead worker position because there is no ultimate authority to enforce completion of assignments or to remedy staff's failure to meet work standards). This point is further reiterated by the federal job vacancy announcement for a position that will report to a State Principal Biologist that the appellant submits. This announcement indicates that a State Principal Biologist will conduct performance evaluation, "*with review and approval*" by the federal Program Manager. Additionally, as the Senior Biologist, Fisheries title is a lead worker title and not a supervisory title, the appellant's responsibilities are consistent with the Principal Biologist Fisheries title.

In regard to the appellant's arguments that there will be "inconsistency" within the Bureau since there is a Supervising Biologist within it who is not a supervisor of supervisors and that there is an individual who is being promoted to Principal Biologist based on her being deemed a supervisor due to her new responsibility of preparing performance evaluations of two federal employees, a classification appeal cannot be based solely on a comparison to the duties of another position, especially if that position is misclassified. *See In the Matter of Carol Maita, Department of Labor* (Commissioner of Personnel, decided March 16, 1995); *In the Matter of Dennis Stover, Middletown Township* (Commissioner of Personnel, decided March 28, 1996). *See also, In the Matter of Lorraine Davis, Office of the Public Defender* (Commissioner of Personnel, decided February 20, 1997), *affirmed*, Docket No. A-5011-96T1 (App. Div. October 3, 1998). With respect to the appellant's assertions that he is performing higher level administrative duties than when he was a Supervising Biologist for the Bureau of Freshwater Fisheries and that he is performing administrative duties that are at such a high level that these duties should be performed by either the Bureau Chief or the Marine Fisheries

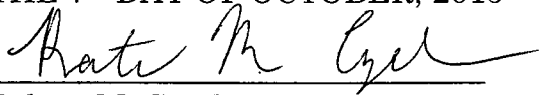
Administrator, the fact that some of an employee's assigned duties may compare favorably with some examples of work found in a given job specification is not determinative for classification purposes, since, by nature, examples of work are utilized for illustrative purposes only. Moreover, it is not uncommon for an employee to perform some duties which are above or below the level of work which is ordinarily performed. For purposes of determining the appropriate level within a given class, and for overall job specification purposes, the definition portion of the job specification is appropriately utilized. However, if the appellant believes he is being assigned duties that are inappropriate for his permanent title, he may request another classification review.

### ORDER

Therefore, the Civil Service Commission concludes that the position of Hugh Carberry is properly classified as a Principal Biologist Fisheries.

This is the final administrative determination in this matter. Any further review is to be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 7<sup>th</sup> DAY OF OCTOBER, 2015



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals  
and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

### Attachment

c: Hugh Carberry  
Deni Gaskill  
Kenneth Connolly  
Joseph Gambino



STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION  
Division of Agency Services  
P. O. Box 313  
Trenton, New Jersey 08625-0313

CHRIS CHRISTIE  
*Governor*  
KIM GUADAGNO  
*Lt. Governor*

ROBERT M. CZECH  
*Chair/Chief Executive Officer*

July 2, 2015

Mr. Hugh Carberry  
[REDACTED]

Re: Classification Appeal  
Principal Biologist, Fisheries  
Position #051097  
CPM # [REDACTED]  
Employee ID # [REDACTED]

Dear Mr. Carberry:

This is to inform you, and the Department of Environmental Protection, of our determination concerning the classification appeal referenced above. Our review involved a detailed analysis of the Position Classification Questionnaire you completed, which was reviewed and signed by Russell Allen, Manager 4, Natural Resources Fisheries (&32), and a telephone audit that was conducted on June 3, 2015.

**Issue:**

You are appealing the current classification of your position, (051097) Principal Biologist, Fisheries (01754D, R25). You contend that the title Supervising Biologist, Fisheries (01758G, S27) more accurately classifies the current duties and responsibilities assigned to your position.

**Organization:**

Your position is located in Nacote Creek, Bureau of Marine Fisheries, Division of Fish and Wildlife, Natural and Historic Resources, Department of Environmental Protection. You are supervised by Russell Allen, Manager 4, Natural Resources Fisheries (&32) and you have no direct supervisory responsibility. Your unit is responsible for the effective management of marine fisheries resources designed to conserve and enhance various fishery resources and their habitat, and provide for the wise and equitable utilization of the fishery resources by the various user groups. Also, your unit is responsible for the education of the public so that they appreciate and understand the current status of fishery resources and management strategies.

**Finding of Fact:**

The primary responsibilities of the position include, but are not limited to, the following:

- Serves as the main representative for the New Jersey Artificial Reef Program.
- Performs sediment analysis, bathymetric surveys, and scan sonar surveys of all 15 artificial reefs located within New Jersey's network.
- Ensures precision deployments for artificial reef materials such as ships, reef balls, demolition concrete, bridge rubble, and dredge rock.
- Assists in drafting rule changes related to artificial reefs.
- Prepares amendments for "New Jersey's Artificial Reef Management Plan for New Jersey" as needed.
- Collaborates with the US EPA and the US Coast Guard to ensure that all vessels deployed as reefs meet the Best Management Protocols for contaminants and cleanliness.
- Collects appropriate asbestos, PCB, and hydrocarbon samples when required for vessel donation.
- Oversees the funding for three federal aid projects pertaining to New Jersey's Artificial Reef Program.
- Aids in developing the annual newsletter "Reef News" that is sent to more than 1,500 anglers within the state.
- Submits State waterfront development permits and Federal reef construction permits for renewal as they expire.
- Serves as New Jersey's representative to the Atlantic States Marine Fisheries Commission's (ASMFC) Technical Committee for river herring, American shad, and hickory shad, the Delaware River Basin Fish & Wildlife Management Co-op.

**Review and Analysis:**

The duties and responsibilities of the position were compared to those described within the class specification for the Principal Biologist, Fisheries and Supervising Biologist, Fisheries titles.

The definition section of the specification for the title, Principal Biologist, Fisheries (01754D, R25), states:

“Under direction of a supervisory officer, supervises and coordinates on a state-wide basis surveys of streams and lakes, samplings of fish populations and fish foods, and disease treatment, and generally supervises fish cultural operations and other technical biological work within the fisheries management programs of the State; does other related duties as required.”

A Principal Biologist, Fisheries supervises the use of federal aid-to-fisheries funds and the personnel assigned to such projects. A Principal Biologist, Fisheries recommends manipulations of season, size, bag limits, and changes in environment designed to ensure better fishing. Incumbents in this position may use biometrics in obtaining samples and in applying scientific knowledge derived from sampling activities to the problems of the whole fisheries population. In addition, incumbents in this title supervise work operations and/or functional programs and have responsibility for effectively recommending the hiring, firing, promoting, demoting, and/or disciplining of employees.

The definition section of the specification for the title, Supervising Biologist, Fisheries (01758G, S27) states:

“Under general direction, in the Division of Fish and Wildlife, Department of Environmental Protection, has responsibility for coordinating and implementing Statewide programs related to fisheries management; supervises staff involved in biological research and data analysis related to fisheries management; does related work as required.”

A Supervising Biologist, Fisheries may coordinate scientific research, propagation, and other programs relating to fisheries management. A Supervising Biologist, Fisheries may organize assigned technical and supervisory work, analyze problems and the possible impacts of activities outside the program or installation, and develop appropriate and coordinated work schedules and procedures for staff. In addition, the title Supervising Biologist, Fisheries is assigned to the “S” bargaining unit. Titles assigned to the “S” bargaining unit are considered second-level supervisors with the responsibility for supervising primary-level supervisors.

Your position serves as the coordinator for the New Jersey Artificial Reef Program. In this capacity, you secure grant funding for projects related to the growth and maintenance of the artificial reefs and/or fish population health and reproduction. You coordinate the donations of reef materials and ensure that they meet the strict standards set by both federal and state agencies. You coordinate research programs to evaluate the health of the River Herring population within New Jersey’s waterways and compile annual reports and findings. You serve as a representative for the Artificial Reef Program by serving on technical committees and speaking at high-profile events. You ensure that reef materials are sunken in the proper way to ensure an optimal outcome for both the fish populations and New Jersey’s anglers.

Name: Hugh Carberry  
Date: July 2, 2015

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In addition, you supervise professional and technical staff. Your staff has no direct supervisory responsibility. Incumbents in the Supervising Biologist, Fisheries title are typically required to both lead staff as well as supervise employees who supervise subordinate staff. Your position does not function as a second level supervisor. The Principal Biologist, Fisheries title is assigned to the "R" bargaining unit, or primary level supervisory title.

Your duties fall within the scope of a Principal Biologist, Fisheries (01754D, R25).

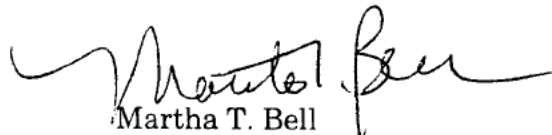
**Determination:**

By copy of this letter, the Appointing Authority is advised that your position is properly classified as Principal Biologist, Fisheries (01754D, R25).

The class specification for the Principal Biologist, Fisheries title is descriptive of the general nature and scope of the functions that may be performed by the incumbent in this position. However, the examples of work are for illustrative purposes and are not intended to restrict or limit performance of the related tasks not specifically listed.

Please be advised that in accordance with N.J.A.C. 4A:3-3.9, you may appeal this decision within twenty (20) days of receipt of this letter. The appeal should be addressed to the Written Records Appeals Unit, Division of Appeals and Regulatory Affairs, P.O. Box 312, Trenton, New Jersey 08625-0312. Please note that the submission of an appeal must include a copy of the determination being appealed as well as written documentation and/or argument substantiating the portions of the determination being disputed and the basis for the appeal.

Sincerely,



Martha T. Bell  
Human Resource Consultant 5  
Agency Services

MTB/rdd  
C: Robin Liebeskind  
Veronica Kirkham  
CPM # [REDACTED]