

NEWS

ABALONE ADVISER WILL STAND TRIALHE AND A PARTNER ARE ACCUSED OF DIVING AT NIGHT, DIVING OUT OF SEASON, EXCEEDING LIMITS

By **RANDI ROSSMANN**

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A man who was a member of a state abalone advisory committee recommending

ways to save the disappearing shellfish will stand trial on charges he and a partner poached abalone off the Sonoma Coast.

Joel Roberts, 37, of Santa Cruz and John Funkey, 28, of Capitola face a felony conspiracy charge, as well as several misdemeanor charges involving

determined there was enough evidence to proceed with a trial.

Since 1994, Roberts was a member of the Commercial Abalone Advisory Committee, according to Fish and Game officials. The statewide appointed body

advises Fish and Game on tax-funded projects to save abalone from being harvested into scarcity or even extinction.

Following their arrests in December, prosecutors said that Roberts had used his inside information to try to avoid game wardens on the lookout for poachers.

While no testimony was offered Monday on whether Roberts had special knowledge, game wardens testified about a three-day surveillance effort in December that led to the men's arrests and the discovery of 129 abalone in a van rented by Funkey.

Tipped by an informant, six wardens followed the pair's trail beginning Dec. 5.

It began in Santa Cruz, where the men left home for a dive shop in Novato and then a Petaluma motel. That night, the wardens followed them on a coast drive as far north as Salt Point State Park, said Warden Scott Melvin.

The pair acted suspiciously, stopping briefly at particularly hot abalone diving sites, but apparently didn't take any abalone the first night, Melvin said.

The second night, they were seen leaving the motel again. Wardens, fearing the tail would be spotted, stationed themselves at northern and southern

Later that day, when the men drove into San Francisco, the wardens stopped the van and arrested them.

In the back of the van were 129 mollusks, most out of the shell, which is also illegal, wardens testified. Roberts also will be tried for allegedly carrying about three-quarters of a gram of cocaine.

The legal limit for abalone is four per diver per day. SCUBA gear is not allowed, as the unsportsmanlike advantage allows a diver to stay underwater at length and wipe out an area with little effort.

Warden Kathy Ponting, the lead investigator on the case, said that the pair's oxygen tanks were almost completely depleted of air, indicating they had stayed underwater longer than is considered safe. Prosecutor Bruce Enos said that showed they had stayed under as long as possible to take as many abalone as they could get.

Abalone is considered a culinary delicacy and can bring a high price on the black market. Wardens had estimated the haul was worth about \$10,000.

Defense attorneys questioned the wardens, who acknowledged that SCUBA diving at night for certain fish isn't illegal, and that no one saw the two men wearing wetsuits.

The attorneys also argued that rather than being suspicious, the pair's activity the first night might be a normal response for innocent men who were wondering why someone was following them.

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