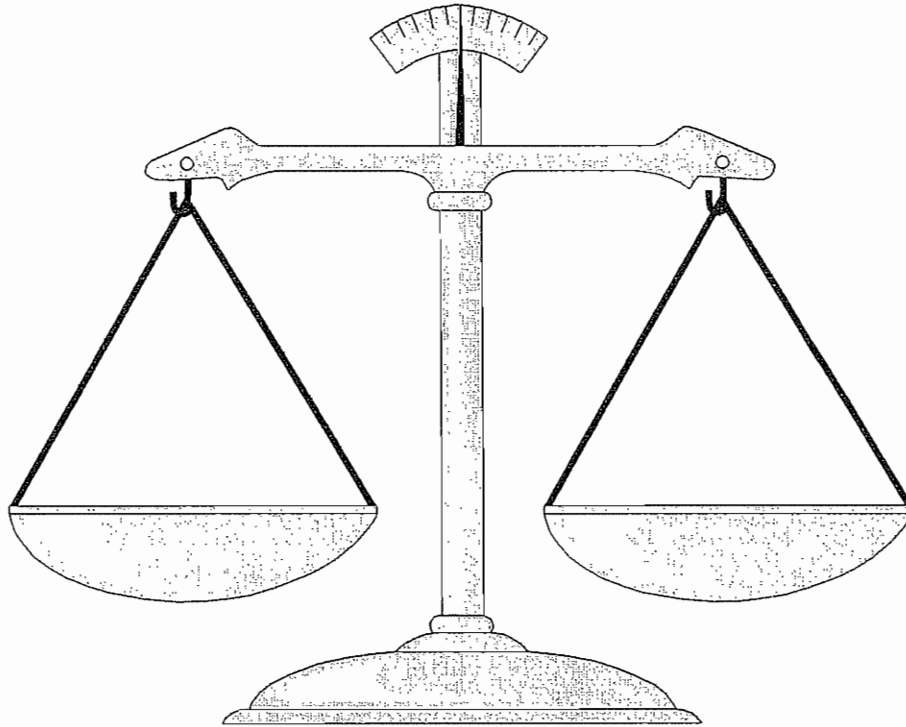


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COMMISSION ON MARINE RESOURCES

COMMISSION MEETING

February 15, 2011

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1 COMMISSION ON MARINE RESOURCES
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3 MEETING OF COMMISSION ON MARINE RESOURCES
4 February 15, 2011
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7 TRANSCRIPT OF MEETING OF COMMISSION ON MARINE RESOURCES AT
8 BOLTON STATE BUILDING, PUBLIC MEETING ROOM, 1141 BAYVIEW
9 AVENUE, BILOXI, MISSISSIPPI, ON THE 15TH DAY OF FEBRUARY 2011
10 COMMENCING AT 9:00 A.M. AND REPORTED BY NORMA JEAN LADNER
11 SOROE, CERTIFIED SHORTHAND REPORTER.
12 *****
13
14 COMMISSION MEMBERS PRESENT:
15
16 SHELBY DRUMMOND, Acting Chairman
17 RICHARD GOLLOTT
18 STEVE BOSARGE
19 JIMMY TAYLOR
20
21 ALSO PRESENT:
22
23 DR. WILLIAM WALKER, Executive Director DMR
24 JOSEPH R. RUNNELS, ESQ., Asst. Attorney General
25 SANDY CHESNUT, ESQ., Asst. Attorney General

1 A. Call to Order
2 MR. DRUMMOND: Thank you, ladies and gentlemen,
3 for coming this morning. This is the February meeting of the
4 Commission on Marine Resources. We do this the third Tuesday
5 of every month. And, of course, the public is always welcome.
6 B. Approval of Minutes Commission Meeting -
7 January 18, 2011 - Action
8 MR. DRUMMOND: The first item on the agenda this
9 morning is approval of last month's meeting minutes. Are there
10 any corrections or additions to the minutes? Hearing none, do
11 I hear a motion?
12 MR. GOLLOTT: So moved, Mr. Chairman.
13 MR. BOSARGE: Second.
14 MR. DRUMMOND: All those in favor say aye. All
15 opposed. Motion carries unanimously.
16 C. Approval of Agenda - Chairman - Action
17 MR. DRUMMOND: The next item is approval of the
18 agenda today. Are there any corrections to the agenda or
19 changes?
20 DR. WALKER: Mr. Chairman, Item H-3(d) needs to
21 be removed. The violation in question has been taken care of.
22 MR. DRUMMOND: H-3(d). Okay.
23 MR. GOLLOTT: Mr. Chairman, I'd like to add to
24 the agenda spotted seatrout under -- I guess it would have to
25 come under G-4.

1 MR. DRUMMOND: Are there any other changes? If
2 not, do I hear a motion to approve the agenda?
3 MR. GOLLOTT: So moved, Mr. Chairman.
4 MR. BOSARGE: I second.
5 MR. DRUMMOND: All those in favor say aye. All
6 opposed. Motion carries unanimously.
7 D. Public Comments
8 MR. DRUMMOND: The next order of business this
9 morning is for public comments. Is there anybody in the
10 audience that wants to speak to the commission this morning?
11 One, two, three, four, five. If you would come forward and
12 give us your name and affiliation, we would appreciate it.
13 MR. DUBUISSON: Yes, sir. I'm Matt Dubuisson
14 from Pass Christian. And it's on spotted seatrout, so I'm not
15 sure what somebody has on the agenda added.
16 But I'm asking the committee to look at raising
17 the quota from 40,000 pounds a year up because there's more
18 license being sold and everybody is selling fish to pay for the
19 fuel, and right now we're at 26,000 pounds, and the summer,
20 spring, summer hasn't even started yet when we normally fish,
21 and we're looking at 26,000 to forty, 14,000 more pounds. And
22 the limit will be reached in fish before the summer will be
23 over with.
24 MR. DRUMMOND: What do you want to raise it to?
25 MR. DUBUISSON: Well, I'd like for the committee

1 to look at a number. I mean, in 2005, there were 20 license
2 sold, and last year there was 200 license sold. And it's been
3 40,000 pounds for several years. And if we're looking at quota
4 -- I mean, ratio to license, give each fisherman, you know, so
5 many thousand pounds and look at raising it to -- I mean, I'd
6 have to have the committee look at it -- a number. I'm not
7 sure on the number.
8 MR. DRUMMOND: Okay. That's on the agenda. If
9 you have some questions when this pops up on the agenda, you
10 can comment on that.
11 Thank you, sir.
12 Next?
13 MR. PARKER: Good morning. My name is Frank
14 Parker. I'm a commercial fisherman, president of the
15 Mississippi Gulf Coast Fishermen's Organization.
16 A couple of things I'd like to address this
17 morning.
18 One of them is a couple months ago, couple
19 meetings ago, Dale and then did a presentation on trip tickets.
20 And I'm still urging the commission that most commercial
21 fishermen still want a trip ticket program. It's my
22 understanding that the money is available to do some funding
23 for this project. So I'd really like to urge y'all to do some
24 more consideration about that.
25 The second thing is probably nine, ten years

1 ago, the commission passed a law for door size law in
2 Mississippi which is a 634. If I recollect correctly, one of
3 the reasons for doing that was Louisiana had a 634 door law.

4 Well, Louisiana has since changed their door law
5 because of these -- one of the reasons is because of the
6 V-doors, the metal doors that they're pulling. And I know that
7 y'all did do an amendment to that. But it still doesn't fit in
8 with like 840 or something like that, you know.

9 So we'd like for y'all to take that into
10 consideration and maybe getting some kind of reciprocal law
11 with Louisiana and going on what they have as far as their door
12 size.

13 MR. BOSARGE: Mr. Parker, is that where
14 Louisiana is at now, 840?

15 MR. PARKER: I'm pretty sure. Talking to some
16 guys down there that do fish the inshore waters, I believe it
17 is 840.

18 MR. BOSARGE: And that's what most of the
19 industry feels like?

20 MR. PARKER: Majority of them. I mean, me
21 myself personally, I pull 634s. It just seems like it fits my
22 boat better. But there are some bigger boats that it is a gear
23 conflict as when you go from one state to the other, which is
24 an imaginary line, you have to change your doors out, you know.
25 You still pulling a 25 foot net, but it's a lot of labor, you

5

1 know, to change the doors out.

2 MR. BOSARGE: Okay. And as far as the trip
3 ticket system, I have been in touch with Dale, and I think he's
4 got a presentation that he can put forth. But, really, can you
5 give us one more month? He's got a little more research he'd
6 like to do on it. Maybe this coming meeting he can let us
7 know.

8 MR. PARKER: Okay. That's no problem. I've
9 been talking to Dale, too, a lot about it, you know, and we
10 really would like to see that for several reasons.

11 One of them is, you know, a little more proper
12 management.

13 Second is maybe we can affiliate or distinguish
14 between a part-time commercial fisherman and a full-time
15 commercial fisherman.

16 MR. TAYLOR: On the door, I don't know really
17 anything about shrimp doors, are you asking us to change the
18 size or just get a reciprocal agreement with Louisiana to where
19 you can use the doors that you have over there?

20 MR. PARKER: Right. Well, you know, ten years
21 ago, they didn't have a door law in Mississippi. You could
22 pull whatever size door you wanted. And there was a lot of
23 problems with the big boats coming in pulling 12 foot doors. A
24 lot of the little boats, you know, they felt like the big boats
25 were getting their part of the shrimp and stuff like that.

6

1 The economics of the shrimp business, there's
2 not as many boats as there was ten years ago, you know. So I
3 believe a lot of that animosity between the big boats and the
4 small boats, a lot of that is over with. You know, I don't
5 think that's going to be a real big problem.

6 But the thing with -- from my understanding is
7 the law now is a 634 door or 2,440 inches square is what
8 Mississippi has, and Louisiana is 840.

9 So if you could take that into consideration as
10 far as one reason why we could change the door, you know,
11 because the majority of us do work in Louisiana.

12 MR. BOSARGE: Just so I understand you correctly,
13 the change you want is basically to be able to -- and I can
14 understand where you don't have to buy two sets of doors -- but
15 in other words, you don't want to do away with the law, you
16 just want to move the size of the door some.

17 MR. PARKER: Right. Make an amendment to where
18 if we are working inshore waters, you know, with the eight foot
19 doors in Louisiana, you know, I mean, Cat Island you go from
20 here to there, you're in Mississippi, here from y'all, y'all
21 are in Louisiana.

22 MR. BOSARGE: Okay.

23 MR. PARKER: Thank you.

24 MR. ROSSs: Good morning. My name is Earl Ross.
25 I'm a shrimper, and I'm here today just to voice my opinion.

7

1 I'm in favor of the trip tickets.

2 We've been using, unloading in Louisiana,
3 probably the last ten years. And I don't know if it's a trip
4 ticket or not, but there is some accountability of where you
5 catch the shrimp, what type gear you use, how many hours you're
6 on the water, every time you go in, you report this. At the
7 end of the year, if you want the data, you can pull it up; it's
8 there.

9 You know, I think it's -- I like it. I think it
10 will help us.

11 And as far as the doors, I carry a set of 634
12 doors on my boat, and they'll probably rot before I can use
13 them. I use them about 40 hours a year, and the rest of the
14 time they just sit there. But I do make the openings over
15 here. Work about two clocks, and I'm back out of here. And it
16 would be nice just to have one set of doors just to come in.

17 What we do is, we're usually going out, we make
18 the opening and go finish our trip outside or come in and
19 finish our trip. But it would be nice just to have one set of
20 doors.

21 Thank you.

22 MR. BOSARGE: And what size are the doors that
23 you normally pull everywhere, not your 634s?

24 MR. ROSS: I have a set of 840s. I have a set
25 of 9 and I have 42s, and now I got a set of 634s.

8

1 MR. BOSARGE: Thank you.
 2 MR. STEWART: How you doing this morning? I'm
 3 Mark Stewart, commercial fisherman. Also give you the same
 4 concerns that these guys have as far as the doors.
 5 I don't have a big enough boat to tote all these
 6 doors on my boat, so therefore I got to steady bring them to
 7 the house, load them up, unload them. Recently I just put them
 8 on the boat to drag in Mississippi. The shrimp were gone. So
 9 I ended up having to take them back off my boat and haul them
 10 home. Never got to make a drag with them. It's just too much
 11 work. And we don't have enough help these days basically to do
 12 all this work. And it's very costly on top of it. Those doors
 13 cost thousands of dollars.
 14 And we don't have the money to spend on all this
 15 extra equipment, either.
 16 Just basically hope that y'all can do something
 17 about it. Like they were saying, you know, if we're dragging,
 18 say, inside of the six foot doors. Well, you go right outside
 19 of Cat Island, you know, you could be dragging out there with
 20 eight foot doors. But you move right across the line, you
 21 don't have the right equipment to drag here.
 22 And it's very costly and aggravating, time
 23 consuming, and expensive. Appreciate y'all taking a lot of
 24 consideration and changing this to the same law that Louisiana
 25 has where we can go back and forth across these lines right

9

1 here at our house and pull the same equipment.
 2 That's all I got. Thank you.
 3 MR. DRUMMOND: Thank you, sir.
 4 Anybody else?
 5 MR. ROSS: My name is Edward Ross, and I'm a
 6 lifetime fisherman, sixth generation.
 7 I was under the impression here that we were
 8 going to be in the loop as far as anything that happened with
 9 the commission's decisions on seafood and how it would be
 10 influxed in the future with BP.
 11 And I was told by a few people, Asian American
 12 and people from here, that we had a meeting last week. And I
 13 don't know if the board was aware of this meeting. I don't
 14 know about anything because the transparency ain't here.
 15 I haven't heard nothing about it. There's been
 16 some details raised that there were some questions of somebody
 17 said that the fishermen get this money, and they are not going
 18 to be able to work.
 19 I don't know if this meeting was in the
 20 newspaper because nobody I know has found it, no website.
 21 I was just wondering if the board knew about
 22 this meeting. It supposedly took place between Monday and
 23 Thursday of last week. And I was just wondering if y'all knew
 24 anything about it.
 25 MR. DRUMMOND: What meeting are you talking

10

1 about?
 2 MR. ROSS: It was a meeting, I think Feinberg
 3 had to do with it. And it was 17 people were invited,
 4 supposedly by mail. I don't know.
 5 But is there a meeting out there that we didn't
 6 know about? I'd kind of like to know about it.
 7 Y'all denying the fact that it didn't happen?
 8 MR. TAYLOR: I don't think -- deny. Like
 9 myself, I was unaware of any meeting with Feinberg or anything
 10 as far as the commission.
 11 MR. ROSS: Well, there was supposed to be --
 12 MR. TAYLOR: Anybody from the commission was at
 13 a meeting, I mean, I know I wasn't.
 14 MR. ROSS: Well, there was a couple of fishermen
 15 that said they were invited to it, and somebody said they seen
 16 Mr. Bosarge there.
 17 MR. BOSARGE: I was going to say I've been to --
 18 there's been all kind of meetings taking place.
 19 MR. ROSS: Last week?
 20 MR. BOSARGE: Last week, yes.
 21 And the one I attended was actually in Alabama.
 22 But -- and I think there's -- from what I understood, there
 23 were supposed to have been a couple set up.
 24 They're in the process of -- if you feel like
 25 you want a meeting with your group, you can request a meeting.

11

1 And I'm pretty sure that they will take the time to come here
 2 and meet with you. Feinberg's office has a staff member that's
 3 working their way up and down this coast with meetings. And I
 4 don't know of one that took place in Mississippi. But I know
 5 the one that I attended was in Alabama.
 6 MR. ROSS: Just yesterday, I was down on Back
 7 Bay right here at the work dock, and a Vietnamese captain who
 8 owns a boat called the CAPTAIN TUN (ph.) told me that he had
 9 got through his grapevine, that's the way we get stuff, that it
 10 was by invitation only, and it was mailed to them.
 11 MR. BOSARGE: And I actually got that mailing.
 12 But that was with a firm I think here in Biloxi that -- I
 13 didn't attend the meeting. All I saw was what I read. But I
 14 think it was a law firm that was basically inviting. And I
 15 don't know, I think that they were just maybe going by the
 16 licenses, whoever had a license, and just mailing out and --
 17 MR. ROSS: Well, I was just curious about it
 18 because it's going to be investigated. We're checking into it,
 19 and we just thought y'all might have some info. Y'all are in
 20 charge of our future, so --
 21 MR. BOSARGE: I suggest, though, that your group
 22 put in a request for a meeting.
 23 MR. ROSS: Well, we've asked for some meetings.
 24 We've even addressed Jim Hood. We're trying to get some stuff.
 25 PERSON FROM AUDIENCE: I don't really think it

12

1 was lawyers, because they wouldn't have that (inaudible, not at
2 microphone).
3 MR. ROSS: Yes. Word is Frankie Duggan's
4 office. I don't know.
5 Well, that's all I have to say. Thank you.
6 MR. BECKER: My name is Tom Becker with the
7 Charter Boat Captains Association.
8 Yes, there was a meeting. Yes, it was in
9 Frankie Duggan's office. There were seafood processors,
10 seafood dealers, commercial fishermen, lot of oyster fishermen,
11 crabbers, shrimpers, and charter boat people there at the
12 meeting.
13 They did have a law firm, some law firm people
14 in there, but they were asking this gal from Feinberg's office
15 out of New York about -- and she was receptive to what the
16 people had to say. She was not defensive about Feinberg's ways
17 or the tunnel report. She was there to listen to what we had
18 to say. And a lot of things were brought up to her that she
19 was unaware of. And hopefully that the processors, the actual
20 processor, the guy that does the marketing and all these
21 things, got their information to her that she -- if you had
22 something, she listened you.
23 And it was a very informative meeting. It was a
24 two hour meeting at Frankie Duggan's office. I was there.
25 PERSON IN AUDIENCE: How did you get an

1 invitation?
2 MR. BECKER: I got a call.
3 PERSON IN AUDIENCE: How do you get a call?
4 MR. BECKER: I've been working with the man
5 that's in charge of the office over on Lemoyne Boulevard. It's
6 Tony over there. He's the one that called me and gave us what
7 they had for their formulas and things like that. And we were
8 asked to read it so we had something to discuss with them.
9 MR. DRUMMOND: Where was the meeting, Tom?
10 MR. BECKER: It was at Frankie Duggan's office
11 in the second floor of the harbor master office.
12 MR. GOLLJOTT: Was anybody from the commission
13 there?
14 MR. BECKER: No, not that I saw. No. You
15 didn't have nothing to do with it, right.
16 It had to do with the guys that actually were
17 affected by it, what and how it affected them is what they were
18 looking for.
19 MR. DRUMMOND: Thank you.
20 Anybody else?
21 We'll move on then. The next item on the agenda
22 is the executive director's report.
23 E. Executive Director's Report
24 DR. WALKER: I don't have anything this morning,
25 Mr. Chairman.

1 MR. DRUMMOND: Thank you, sir.
2 Next order of business is marine patrol. Chief,
3 you got two minutes. I'm sorry. You got all the time you
4 want.
5 F. Marine Patrol - Chief Walter J. Chatagnier
6 MR. CHATAGNIER: I won't take that long, trust
7 me.
8 We had a few violations this past month. Some
9 crabbing violations for the Sanctuary and unmarked traps. One
10 of the interesting was a net fishing violation. One of the
11 officers caught a gentleman gill netting off of Highway 90 in
12 Back Bay over here. He also was using a non-degradable gill
13 net. The net was improperly tagged or no tags at all. And
14 while he was gill netting, he was throwing a 14 foot castnet
15 which is also a violation. Maximum 12 foot castnet used for
16 catching bait and stuff in the bay.
17 One charge of no saltwater fishing license. It
18 wasn't a bunch of good weather this last month or so with all
19 the wind blowing and all, not much boating activity going on.
20 Something interesting is we had a little rash of
21 boat fires there within a couple days. We had four boats burn
22 down at Popp's Ferry, Cedar Point, Jourdan River.
23 We didn't have of the any water fatalities this
24 month which is great.
25 And our JEA patrols, we did 26 patrols, used 340

1 man hours, contacted 161 people. We issued one federal
2 enforcement action report. And the state citations issued was
3 five.
4 And that's my report.
5 MR. DRUMMOND: Thank you, Chief.
6 Anybody got any questions for the chief?
7 Thank you very much, sir.
8 Next order of business is marine fisheries.
9 Dale, are you here? Joe is here.
10 G. Marine Fisheries - Dale Diaz
11 MR. JEWELL: Good morning, commissioners, Dr.
12 Walker, Sandy. Dale sends his regrets. Unfortunately, he was
13 called away for jury duty, so I'm going to stand up here for
14 him.
15 I have a couple of items he had asked me to
16 mention before we get started on our agenda items.
17 First up, which is a pretty important issue we
18 have, we'd like to recognize the shellfish harvest element
19 under Scott Gordon's leadership, the sanitation which is the
20 plant inspection program under Ruth Posadas, and enforcement
21 component under Chief Chatagnier's leadership, they were all
22 recognized in compliance with the NSSP guidelines.
23 In technical terms, the FDA characterized that
24 as no deviations with the NSSP guidelines.
25 And this is really a great accomplishment for

1 the DMR, the coast, and state of Mississippi. This happens
2 every two years. It's a big event. It's a pretty thorough
3 investigation that goes on in our program by the FDA. It takes
4 place over a two to three month period of those three
5 components. It's a big economic boost for our industry, our
6 seafood industry. It promotes seafood safety. It's a program
7 that's been in place from the origins of our agency from all
8 our predecessor, the components of the agency. It's what we
9 say when the BP oil spill hit that we have had one of the
10 safest seafood programs in the country before this hit and that
11 this is what we're getting at. We've been inspected for
12 decades, and our components have all been in compliance and
13 found safe.

14 And finally, we couldn't do this without all our
15 partners involved, primarily our staff, the DMR, the shellfish
16 staff, the law enforcement marine patrol staff, and the seafood
17 safety bureau and working in conjunction with the FDA and the
18 health department. It's a pretty big event, and they passed
19 again with flying colors, and we want to congratulate them for
20 that.

21 Next, of course, over the weekend we had a
22 pretty big event happen which was the boat show at the
23 Coliseum, as y'all are well aware. This year it's sort of
24 rebounding. It was a pretty big event that happened. And our
25 artificial reef bureau participated in that event. And we had

17

1 a big show out of our bureau, artificial reef and finfish
2 bureau and several individuals participated and made it a very
3 successful event.

4 I want to name specifically a few individuals
5 under the leadership of Kerwin Cuevas. Harrison Dittman (ph.),
6 Jed Bullard, Jimmy Sanders, Brendan Hall, Eric Quave, Daron
7 Stewart, Jeff Grant, and Bill Richardson, they all helped
8 participate over the entire weekend. It was a very successful
9 show for our agency. We gave out over 300 artificial reef
10 maps. It's an opportunity to interact with the public and
11 provide public outreach and educational materials and hand out
12 a lot of seafood safety materials.

13 MR. TAYLOR: I worked a booth next to it with
14 the Fishing Banks, and I just want to say that you do a really
15 good job. I watched and talked to the public and how they
16 interacted with them, it was really nice. Got some positive
17 feedback from them.

18 MR. JEWELL: Appreciate that.

19 Next, our agency has received an award from the
20 National Guard and the Reserves. This was done late last week.
21 It was awarded in Jackson. Mr. Scott Gordon from the shellfish
22 bureau received the award. We were nominated by Rory Lipscomb
23 of the shellfish staff. It's called the Seven Seals Award.
24 It's awarded to entities, particularly state agencies, that go
25 out of their way to encourage and retain staff that participate

18

1 in the National Guard and the Reserves.

2 So it's my honor to present this plaque to the
3 Department of Marine Resources on behalf of the seven major
4 armed military services for their dedication in supporting
5 armed services. It's called Seven Seals Award.

6 Next, I'd like to update the commission a little
7 bit as you mentioned on the agenda the quota, where we're at on
8 our three commercial quotas.

9 The flounder quota runs from October through
10 September the following year. For flounder the quota limit is
11 74,000 pounds. And as of January of this year, we're at 7,191
12 pounds.

13 For redfish the quota is 35,000 pounds.

14 Currently, January of this year we're 22,362 pounds.

15 For speckled trout the quota limit is 40,000
16 pounds. And we're currently at 26,077 pounds.

17 Any questions?

18 (People speaking out from audience.)

19 MR. JEWELL: Are there any questions?

20 (People speaking out from audience.)

21 MR. JEWELL: I'm sorry. I answer the
22 commission's questions. If y'all have questions, you can
23 direct them through the --

24 MR. DUBUISSON: I'd like to ask what was the
25 limit in December, if he has a record what the number was in

19

1 December.

2 MR. JEWELL: The December total was twenty-two
3 thousand couple hundred pounds.

4 MR. DUBUISSON: Okay. I just have one statement
5 that Chief Walter stated that there was bad boating this past
6 month January that wasn't much activity. But there's 6,000
7 pounds of trout caught somewhere.

8 MR. JEWELL: Approximately.

9 MR. DUBUISSON: Yeah, 6,000 pounds in the month
10 of January. We'd like to know where the fish are coming from.
11 And heard him state there was a gill netting violation in Back
12 Bay. I mean, that's -- we're just trying to find out where all
13 these fish are coming from.

14 MR. DRUMMOND: Have you got any idea, Joe --

15 MR. JEWELL: I'd be happy to look into that and
16 get back with you.

17 MR. BOSARGE: Joe, there were some concerns from
18 some fishermen over my way that worry that some of the fish
19 being brought into Mississippi are coming from Alabama because
20 Alabama speckled trout are gamefish.

21 And I don't know how we could address that
22 problem. But I think out of state folks buying hook and line
23 licenses and being able to sell their fish over here where they
24 can't sell them in Alabama, is there --

25 MR. JEWELL: We've addressed that issue. That

20

1 issue has been an issue of concern for this commission and its
2 predecessors for quite sometime. And we've looked into ways to
3 address that issue at several different levels.

4 And we're continuing to do that. It's not only
5 fish that are being brought from Alabama, but from other Gulf
6 states, also. And we have looked at different ways to address
7 those type of issues.

8 But that's a difficult issue to get at without
9 penalizing the legitimate commercial Mississippi fishermen.
10 There's no way to target specifically that activity without
11 penalizing legitimate commercial fishermen.

12 MR. BOSARGE: Is there any way to pull the data
13 out that shows the difference between instate landings and out?

14 MR. JEWELL: Yeah, if we do that, that would be
15 a legal issue, and I would be talking to Mr. Chatagnier.

16 MR. BOSARGE: To see what the difference would
17 be in -- don't we have a hook and line license that is a
18 nonresident? I'm not sure.

19 MR. DRUMMOND: Commercial license?

20 MR. BOSARGE: Just a way to look at data.

21 MR. JEWELL: If there's a way that we can do
22 that -- we've looked at this issue over and over and over, and
23 if there was some kind of way we could crack that net other
24 than the way we're doing it, we would look at it. And we would
25 receive input from the commission if there's a better way we

21

1 problem.

2 MR. TAYLOR: I'd like to second the motion.

3 MR. DRUMMOND: Is there any discussion on the
4 motion?

5 MR. BOSARGE: Just one. Can you explain the
6 changes that you're asking to be made?

7 MR. GOLLOTT: Yeah. When you start seeing it
8 all -- do you have this clip by any chance? The months that
9 the fish are caught in.

10 MR. JEWELL: I think so. Hold on. I do.

11 MR. GOLLOTT: When you start the season in
12 October, there's no rhyme or reason to start in October. Last
13 year -- when did the TAC get filled, Joe?

14 MR. JEWELL: It was April, the month of April, I
15 think somewhere around the middle of April.

16 MR. GOLLOTT: Well, starting it in January, it
17 will probably run until the fall of the year. And that's when
18 the retail markets want it is the summertime, not so much the
19 wintertime.

20 And what's happening is these retail markets and
21 these people get filled up on speckled trout, and then in the
22 fall, in the winter, they don't move the trout so they drop the
23 price (inaudible). And there's a lot of fish coming from
24 Louisiana being dumped in our market.

25 I think the time of the year that the fish are

23

1 can do it or a different way we can do it, we're open for ideas
2 most certainly.

3 MR. GOLLOTT: Mr. Chairman, I'd like to make a
4 motion. I think with this process, if you let me straighten it
5 out, I can explain things better.

6 Let me make a motion, and then I'll give the
7 justification for it.

8 I move that the commission amend Title 22 Part 7
9 Chapter 9, Section 107 (inaudible) to provide that any total
10 allowable catch (inaudible) for commercial landing of flounders
11 set at 74,000 pounds, red drum set at 35,000 pounds, spotted
12 seatrout set at 40,000 pounds, shall for the current commercial
13 season run from October 1, 2010, to December 31, 2011, and
14 thereafter the (inaudible) shall commence on January 1 and end
15 on December 31 of each subsequent year. Staff will take
16 whatever action necessary under the Administrative Procedures
17 Act to make the amendment as stated. Okay?

18 The justification for this, market refers to any
19 (inaudible) fish are available during peak summer sales times.
20 There have been reports of Louisiana recreational speckled
21 trout being sold in Mississippi and flooding the market and
22 negatively affecting the Mississippi commercial fishermen and
23 the negative impact Mississippi markets by causing them to
24 prematurely close down.

25 I think this will go a long ways in solving the

22

1 being dumped in our market is November and December.

2 MR. BOSARGE: And so we change the season from
3 April to January?

4 MR. GOLLOTT: From October to January. In other
5 words, the tacks start in January, and it will probably let our
6 fishermen sell fish all the way through.

7 MR. JEWELL: So if I understand the motion, the
8 current TAC season is from October to the following September,
9 it would now be from January to December, the calendar year.

10 MR. GOLLOTT: Yes, sir.

11 MR. DRUMMOND: Any other discussion?

12 MR. TAYLOR: Yeah. I want to make a comment. I
13 have several people that I know that have commercial
14 Mississippi commercial hook and line licenses. And they
15 exclusively fish in Louisiana. And I can't say that they're
16 selling their fish here. But I've been told that they are.
17 And this would probably eliminate a lot of that because they
18 fish October, November, December at Delacroix and to the west.
19 That's part of the reason.

20 PERSON IN AUDIENCE: We're talking about
21 speckled trout --

22 MR. EICKE: No, sir. We're talking about all
23 three.

24 One of the things that the CCA wanted to -- my
25 name is F.J. Eicke. I'm with Coastal Conservation Association.

24

1 CCA has no problem with the proposal as it's
2 presented. What we would like to make people aware, and I
3 think this gentleman here brought out the point so well, is
4 that we have a situation that just is ballooning on us. And it
5 has to do with commercial licenses.

6 We're well aware that the number has increased
7 tremendously. Last year when the quota was reached, we
8 presented a proposal to this board, to this commission, that
9 was not acted on. Had to do with an advisory council which
10 would advise you, this commission, about what to do.

11 I think we've got a situation quite comparable
12 to a lot of states and even comparable to the offshore fishery
13 where we're dealing with people that need to make a living
14 doing what they do and in some ways various other factors are
15 playing into them not being able to do so because the quota is
16 reached.

17 We're concerned about that. We're concerned
18 about having fish available for our restaurants and the
19 processors. We're concerned about the commercial fishermen
20 being able to make a living. But we want to make sure that
21 those are the people that are really making a living at
22 fishing. And I think there are various ways to address that
23 question and assure that the people that truly are dependent on
24 a commercial fishery have the opportunity to make a living.
25 Otherwise, we are going to lose those folks. And we don't want

25

1 last couple of years because of people trying to pay for fuel,
2 help pay for the fuel on the trips and everything.

3 But that was just a quota on the speckled trout.
4 That's the one that's being reached the quickest.

5 With the season being closed, it was actually
6 March it closed, it was closed the month of April, and like I
7 said, the primetime fishing was just coming up May, June, and
8 July, and there was no fish available with the waters closed
9 due to BP, also.

10 But the quota, 40,000 pound quota, is a big
11 concern with the number of fishermen.

12 MR. GOLLOTT: I think this will solve the
13 problem because a lot of the fish coming from Louisiana are
14 being dumped here in the month of November, December, those
15 fish move inshore, and I'd like to see let's go with this, see
16 what happens in a year or so, see if it straightens itself out,
17 and then come back with something else if it --

18 MR. TAYLOR: I think you're going to see a lot
19 of the licenses fall by the wayside with changing it because
20 they're not going to be able to go to Louisiana and bring their
21 fish back and dump them. Like Commissioner Gollott said, I
22 think we're going to see people give up their licenses, a lot
23 of them.

24 MR. DRUMMOND: Any other comments? We have a
25 motion on the floor.

27

1 to do that. It's part of our culture, as everyone here is
2 aware.

3 So the problem is much bigger than setting a
4 quota and/or setting a season. It's a question that has to do
5 with a lot of other things.

6 I have presented to the commission an article
7 that reviewed a similar situation with regard to shrimping,
8 inshore bay shrimping in Texas, that has been tremendously
9 successful. And there are a lot of other ways to go at -- that
10 have to do with buyouts of fishermen when they were really not
11 making a living at what they were doing. And we may be
12 reaching that with the shrimping industry here now, as some of
13 the other people that have spoken today have talked about.

14 So it's a huge issue. And CCA wants simply to
15 make sure that we've got a sustainable fishery that we can all
16 look forward to in the future.

17 MR. DRUMMOND: Thank you, F.J.

18 Do you have a comment?

19 MR. DUBUISSON: Yes. Matt Dubuisson.

20 The season change does sound great. It does
21 sound like a good proposal.

22 But I'd still again like you to look at the
23 quota, the number, because of the number of fishermen, just
24 like he stated from the CCA.

25 The number of licenses really increased in the

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1 MS. SUAREZ: My name is Delores Suarez. And I
2 was wondering how do you get this information accurately
3 without trip tickets showing the commercial license that's
4 reported to the state that's reported to the commission? Where
5 does this information come from that you get your quotas from?

6 Is it from a dock? Is it from a dealer? Who's
7 turning these numbers in? The fishermen themselves? Where is
8 any of this information coming from if you don't have a
9 structured way of reporting it through the state?

10 MR. DRUMMOND: What are you talking about,
11 ma'am, the --

12 MS. SUAREZ: The quota system.

13 MR. JEWELL: The quota system is reported
14 through our port agent which is a pretty accurate way of
15 capturing that data through our dealers and processors. And it
16 is through our Title 22 Part 19 regulation that we have on the
17 books, and our port agent visits all the dealers and processors
18 that these commercial fishermen sell to, and they are required
19 to give us all that information. It's all confidential
20 information, but they are required to give us all their license
21 sales, buying information, receipts. And that's how we compile
22 all that information.

23 MR. DRUMMOND: You're satisfied, ma'am?

24 MS. SUAREZ: I still think, sir, that a trip
25 ticket system would work better where the entire state has more

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1 control, where you all have more control. You can look on this
2 particular day and see what fisherman turned in what, when, and
3 where, which is a more accurate accounting of what's being
4 caught and what's being brought in. And they also have to
5 report where they caught it.

6 If they go out into Alabama waters or Louisiana
7 waters and they come back, they have to say, I caught this in
8 those waters. There's an accounting of the fisherman. There's
9 an accounting of the dealers. There's an accounting of the
10 people who need to be accounted for.

11 MR. BOSARGE: To answer your question, we are
12 working on a trip ticket system. Just bear with us.

13 MR. JEWELL: It certainly would give us a little
14 bit better fine-tuning of the information system. But they are
15 required to give us most of the information that she had
16 mentioned now. It would just give us a little bit better
17 fine-tuning of the.

18 MR. BOSARGE: And I think the flip side that
19 maybe you don't see is that it gives the fisherman a receipt,
20 also. In other words, the fisherman has proof of what he does.

21 MR. JEWELL: Oh, it's certainly buy-in by the
22 fishermen, and any time any of these natural or manmade events
23 occur, and there's federal money available, there is an
24 accountability system where they have that buy-in in the system
25 and accountability where they can document their buy-in to the

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1 members about some type of certification for commercial
2 fishermen because these part-time commercial fishermen, they
3 gobble up a lot of our market, whether it be the fish, shrimp,
4 crabs, they do take away a lot of that. And some type of
5 limited license. I know my Florida license, I have to prove
6 that I actually catch \$5,000 worth of shrimp a year to be
7 eligible to buy a license over there. Louisiana has got a
8 certified commercial fisherman. Texas has a limited entry type
9 thing.

10 I think that would be, you know, it would be
11 beneficial to us commercial fishermen because we'd be looking
12 out for our own.

13 My second point is also take into consideration
14 with this BP spill, you know, the increase in license sales, I
15 know everybody was going down there to buy commercial license
16 to say they were a commercial fisherman so they could
17 participate in the VOO program. So I really do believe that's
18 one reason why there's a big influx of all the licenses, too.

19 MR. DRUMMOND: Thank you.

20 We have a motion and a second on the floor. All
21 those in favor signify by saying aye. Those opposed. Hearing
22 none, the motion carries.

23 Have you finished, Joe?

24 MR. JEWELL: If there are no questions on any of
25 the subjects that I covered, I'm going to continue on with the

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1 system.

2 So it's a win-win system for the fishermen
3 definitely.

4 MR. GOLLITT: This reminds me of someone who
5 came to my office not too long ago and pulled a badge out and
6 said I'm with the Internal Revenue Service, and I'm here to
7 help you.

8 MR. TAYLOR: I think you're going to find that a
9 thief is a thief, and someone who goes to Louisiana and gets
10 speckled trout and brings them back over here, a trip ticket is
11 not going to keep them from doing that. All they're going to
12 do is lie about where they caught them, you know.

13 I mean, it doesn't matter whether it's shrimp,
14 oysters, crabs, whatever, a thief is a thief, and they're going
15 to lie.

16 PERSON IN AUDIENCE: That's where a game warden
17 will come in.

18 MR. TAYLOR: I agree.

19 MR. DRUMMOND: We have a motion on the floor.
20 Any other discussion?

21 MR. PARKER: My name is Fred Parker, commercial
22 fisherman, president of Mississippi Gulf Coast Fishermen's
23 Organization.

24 Two things I'd like to say about this situation
25 is I've been in contact with Dale and Traci and several board

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1 agenda.

2 Next up is Scott Gordon. He has an oyster
3 season update.

4 MR. DRUMMOND: Scott, whatever you got, I didn't
5 quite understand it.

6 3. Oyster Season Update

7 MR. GORDON: That was basically a committee with
8 the Mississippi National Guard and Reserves thanking us because
9 we're putting up with one of our members being in the National
10 Guard. Roy Lipscomb is currently deployed for a period of I
11 think about 400 days with the Louisiana -- I'm sorry -- the
12 Alabama National Guard. He's in the special forces unit. And
13 I'm very proud of him. This is his third deployment. He's
14 currently in training in Fort Bliss in Texas.

15 Good morning, Mr. Chairman, commissioners, Dr.
16 Walker, Ms. Chesnut.

17 We've had a little bit of problems with the
18 Pearl River this year. When it reaches ten feet, it will close
19 areas closer to shore and 12 and a half feet will close II-C,
20 and it just did touch 12 and a half feet last week. As a
21 result of our sampling, we have now been able to reopen those
22 areas.

23 So far this year, and this is through last
24 week, we've had a little over 22,000 sacks harvested. And it's
25 roughly broken down 50-50 between the Mississippi tongers and

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1 nonresident tongers.

2 We've had 2,753 trips also through last week.

3 One of the things that we are aware of,
4 everybody's heard about all the snowfall we've had over the
5 country, so we're keeping an eye on that and what would that
6 potentially mean for any springtime flooding.

7 It looks like the upper Mississippi River valley
8 has a high potential of some significant flooding this year.
9 But the lower Mississippi valley does not. So it looks like so
10 far, we're keeping our fingers crossed and hope the weather
11 conditions don't change too dramatically, we don't anticipate
12 any -- or the National Weather Service is not forecasting any
13 significant springtime flooding. But we will keep an eye on
14 this.

15 I believe the commission, all of you have in
16 your packet a brochure that our staff put together, predators
17 of the oyster, the southern oyster drill. This is done as part
18 of our oyster stewardship program trying to educate the
19 fishermen about some of the different things that they'll pick
20 up when they're out oystering.

21 We are also preparing a hook mussel brochure and
22 the harvester education video that we spoke about last month.

23 We've been moving oysters to the White House
24 Reef. And we are going to be also moving some to inside Deer
25 Island, another area that we have identified.

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1 We are nearing completion of the Deer Island
2 project. That was a relatively small grant amount, I believe
3 \$20,000 total. But we had a lot of staff participation, not
4 just within the office of fisheries, but some of the other
5 offices, as well, helping us on this project.

6 We are having a weather station installed in the
7 Waveland area. And this thing is taking longer than I would
8 have ever thought, but it's a pretty complicated thing.

9 We are participating in the national resource
10 damage assessment process.

11 We are currently soliciting bids for our spring
12 2011 cultch plant.

13 We are continuing water sampling.

14 And we are planning another run at our extensive
15 reef sampling.

16 I'm sorry that picture doesn't show up too well,
17 but that's showing some of the hook mussels and how they will
18 cover the oysters over.

19 And this is The CONSERVATIONIST in our moving
20 the oysters to the White House Reef area, blowing them over the
21 side with water.

22 This is a picture of the Deer Island restoration
23 project where we're putting oyster shells in the wire mesh bags
24 and laying them out. We've got I think well over 800 feet.
25 Eight hundred feet was our goal, and I think we have exceeded

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1 that.

2 And then on the inside of that, they were going
3 to put some submerged aquatic vegetation. And that's what
4 remains to be completed right now.

5 And this is what our weather station is supposed
6 to look like whenever it's completed.

7 And again, continuing our water sampling. Get
8 out far before daylight whenever the weather conditions are
9 calm.

10 This is our current licenses sold by gear type
11 and residence. The Mississippi dredging, 273 have been sold.
12 Out of state dredging, 111. Mississippi tonging, 99. And out
13 of state tonging, 104.

14 We plan on at the next month's commission
15 meeting coming to you with a proposal we would like to do with
16 this for the coming season, so if the commission has any
17 suggestions on that we would be more than happy to hear them.

18 That's my presentation.

19 MR. GOLLITT: (Leaning back from microphone)
20 Scott, would it pay you to go into (inaudible) to cultivate the
21 reefs, the dredging reefs, use them this year and get rid of
22 some of those hook mussels?

23 MR. GORDON: Well, that's one of the things that
24 we are going to look at after we do the extensive sampling
25 program. We'll see how widespread that is, and we can I think

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1 better evaluate at that time whether that's something that
2 would be worthwhile for us to do.

3 But, yes, that would be a distinct
4 possibility.

5 MR. GOLLITT: On the White House, how many loads
6 have you put out there?

7 MR. GORDON: I forget. They made several loads.
8 We've had roughly 600 sacks or 200 barrels of oysters. We have
9 been fighting some of the weather conditions and the tides.

10 But right now, we are going to be I think concentrating a
11 little more on the inside of Deer Island.

12 MR. BOSARGE: Are you going to have the sampling
13 done prior to making your recommendations for this next
14 meeting?

15 MR. GORDON: For the cultivation project or...

16 MR. BOSARGE: I think you said you were going to
17 do another extensive sampling of the reefs.

18 MR. GORDON: Yes. For the -- the recommendation
19 would be for the license sales for next year. Licenses go on
20 sale beginning April 1, next year's licenses. So it will be
21 this month's or next month's commission meeting that I guess we
22 could discuss or the commission could let us know what your
23 will is.

24 MR. BOSARGE: I guess I was wondering if the
25 sampling would be done to kind of know what shape the reef was

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1 in to use that information to base the decision on what to do
2 for the next year.

3 MR. GORDON: If we haven't completed it, we
4 should have a good portion of it done. I think it's about 60
5 something sites. And the last time we did it, we had to go
6 just about seven days a week out there.

7 MR. GOLLOTT: Shouldn't -- if we're going to use
8 the bagless dredges to turn the reef over, shouldn't we do that
9 while the water is still good and cold and it doesn't kill the
10 oysters?

11 MR. GORDON: I think the best time to do
12 something like that, one of the other reasons to do it would be
13 to expose fresh cultch material so we can get a better spat
14 set. And I feel the best time to do that would be maybe
15 starting the middle of April. So maybe the last couple of
16 weeks in April if we were to do that, I think that would be the
17 best time to do it.

18 MR. GOLLOTT: Thank you.

19 MR. DRUMMOND: You got a question?

20 MR. STEWART: I'm Mark Stewart, commercial
21 fisherman.

22 I would like to just ask, on the oyster license
23 and stuff concerning with the out of state license, is there
24 any kind of law in place that gives Mississippi residents
25 precedence of the license before out of state license holders?

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1 Louisiana, in 2008 the commission did change our regulation to
2 go to -- we have a 634 regulation, but we didn't modify that to
3 consider a total of 2448 square inches or any variation of
4 that.

5 So someone could come forward and say I want --
6 just an example -- a seven foot door with 24 inches, and
7 whatever, some variation of it that would still have that
8 square inches.

9 So we did modify our regulation to --

10 MR. BOSARGE: I remember that. We did a
11 modification for the --

12 MR. JEWELL: At the same time that Louisiana was
13 considering, both Louisiana and Mississippi considered that
14 change at the very same time in 2008. But we adopted it.

15 And since then, not one fisherman has come
16 forward to take advantage of that regulation change.

17 Now, in Louisiana, it went to the legislature,
18 that rule, and it went to the legislature essentially the same
19 way we did through the commission. But when it got to the
20 legislature, at the very last minute, they altered it to go to
21 the 8 foot 43. And that was on the inside waters. And so it
22 is on the books for the 8 foot 43 inch.

23 MR. BOSARGE: Actually, I believe, and I could
24 stand corrected, but what we did was to take the square inch
25 measurement, 6 foot by 34 inch door, and therefore, there's no

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1 And another thing I would like to know is the
2 thing you showed on there for waiting on a bid for contracts to
3 moving the oysters, how about put the fishermen to work and let
4 us move the oysters, instead of paying one person millions of
5 dollars that probably already has millions of dollars. Hire
6 the fishermen to move these oysters. We can get it done.

7 MR. GORDON: For clarification purposes, that's
8 for an oyster cultch plant, and that would be using oyster
9 shells. And this will be one of, if not the largest single
10 planting of oyster shells that I know of anywhere.

11 (Comments from audience.)

12 MR. GORDON: It depends upon what the bid amount
13 is.

14 (Comments from audience.)

15 MR. GORDON: Thank you.

16 MR. DRUMMOND: Next item is coastal ecology.
17 Jan.

18 MR. BOSARGE: While we're in fisheries, can you
19 back up for a second? While we're on fisheries, and we had
20 some public comment on the doors, I would like to offer a
21 motion to ask the staff to address the door issue, to look at
22 it, to see what it is in Louisiana, and come back with us -- to
23 us with a recommendation at the next meeting to allow us to
24 possibly rule on that.

25 MR. JEWELL: The door issue mentioned in

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1 way to stretch that to 8 foot 40 inch door. And that's what
2 we're trying to accomplish now.

3 So that's why I'd like for the staff to look at
4 what was done in Louisiana and try to craft our recommendations
5 where it would fit that 8 foot 40 inch.

6 MR. JEWELL: We can do that. We can take a look
7 at it.

8 MR. TAYLOR: That's what we want is for
9 fishermen that go say across an imaginary line and not have to
10 stop and change doors if it doesn't hurt the resource or --

11 MR. JEWELL: We can do that. We'll come back at
12 the March commission meeting.

13 MR. BOSARGE: I second the motion.

14 MR. DRUMMOND: We have a motion and second. All
15 those in favor say aye. All opposed. Motion carries.

16 Thank you, Joe.

17 Jan.

18 H. Coastal Ecology - Jan Boyd

19 MR. BOYD: Good morning, Mr. Chairman,
20 commissioners, Dr. Walker, Ms. Chesnut.

21 Coastal ecology has four action items for your
22 consideration this morning. And Rebekah Ray will be our first
23 presenter.

24 3. Bureau of Wetlands Permitting

25 a. John E. Kerrigan

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1 MS. RAY: Good morning. My name is Rebekah Ray,
2 and I will be presenting a violation/after-the-fact general
3 permit by John E. Kerrigan, Jr. It's located at 24392 Arcadia
4 Farm Road in Pass Christian, Harrison County. It's in a
5 general use district.

6 The yellow thumbtack shows the location of the
7 project. It is north of Pass Christian.

8 This is a photo of the unauthorized boat ramp
9 that is in the process of being maintained.

10 On September 3, 2010, a violation was reported
11 to DMR bureau of wetlands permitting.

12 On September 7, a site visit by DMR staff
13 revealed that a boat ramp had recently been either constructed
14 or maintained. A cease and desist was posted on the site.

15 On December 3, we received the after-the-fact
16 application for the boat ramp. When we received the
17 after-the-fact application, on the diagram it showed that
18 Harrison County actually owns part of the location where the
19 boat ramp is. So we requested that Mr. Kerrigan receive
20 approval from Harrison County for maintaining the boat ramp on
21 that property.

22 Mr. Kerrigan has been in contact with Harrison
23 County for the approval, but the legal document necessary to be
24 written out for the approval has not yet been finalized or
25 approved by the Harrison County Board of Supervisors.

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1 property within these 90 days.

2 Staff recommends that the commission allow Mr.
3 Kerrigan to maintain the complete boat ramp.

4 Staff also recommends that the commission issue
5 a fine in accordance with Mississippi Code 49-27-51 and that if
6 the impacted marsh vegetation has not been restored completely
7 within five growing seasons that the matter be forwarded to the
8 Attorney General's office for further enforcement action.

9 And the part of the boat ramp that is on Mr.
10 Kerrigan's property would be here which is what we recommend
11 the after-the-fact approval for.

12 The potential penalty range for this project.
13 The violation was discovered on September 7, 2010. It has been
14 163 days. So the maximum potential fine is \$8,150 with a
15 minimum fine of \$50 and a recommended fine of \$500.

16 This project does meet guidelines when the marsh
17 is completely restored.

18 Mr. Kerrigan did not have prior knowledge of the
19 permitting process.

20 And Mr. Kerrigan has been cooperative in
21 resolving the issues of the project.

22 And Mr. Kerrigan is also here, and he would like
23 to speak to the commission.

24 MR. KERRIGAN: My name is John Kerrigan. This
25 boat ramp has been in effect in existence for over 32 years. I

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1 On February 2, 2011, DMR staff received Mr.
2 Kerrigan's written agreement to restore the 25 square feet of
3 impacted marsh vegetation in accordance with the marsh
4 restoration guidelines.

5 The description of the project is a boat ramp 33
6 feet in length and 11 feet in width. And the impacted
7 vegetation is 25 square feet.

8 This is a diagram of the project. This is the
9 boat ramp. It's 33 feet in length and 11 feet in width. And
10 along this side is where the 25 square feet of marsh vegetation
11 will be restored. And you can see the dotted line here is the
12 property line between Mr. Kerrigan's property and Harrison
13 County. So part of the boat ramp is on Harrison County's
14 property.

15 Mr. Kerrigan has not provided DMR staff with the
16 authorization from Harrison County allowing the boat ramp to be
17 maintained on the property to date. So staff recommends that
18 the commission approve the after-the-fact general permit for
19 the maintenance of the boat ramp on Mr. Kerrigan's property
20 since he has agreed to restore the impacted vegetation in
21 accordance with marsh restoration guidelines.

22 That the commission require Mr. Kerrigan to
23 restore the area on Harrison County's property in 90 days
24 unless Mr. Kerrigan submits documentation that Harrison County
25 has granted permission for the boat ramp maintenance on the

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1 bought the property eight years ago and just purchased a little
2 skiff. This summer, like the past summer, the boat ramp was
3 sitting there unused, and the asphalt paving had deteriorated.
4 So I hired someone to resurface it with crushed stone.

5 I was unaware that this work would require a
6 permit. And I was told to stop. And I think a \$500 fine is
7 excessive for what I have done. I ask that you reconsider it
8 and put it to the minimum.

9 MR. TAYLOR: Mr. Kerrigan, did you have any
10 contact with the county to see if they're going to give you the
11 letter that you need to maintain that ramp?

12 MR. KERRIGAN: Yes. I have spoken to them. The
13 gentleman by the name of Bobby Weaver, spoke to him yesterday
14 as a matter of fact. He said that the lawyer that was supposed
15 to be drawing up the papers has been involved in other matters,
16 and I think this project is pretty low on his priority list.
17 And he told me that he was sure that in the 90 days the guy
18 would come up legally and we would sign off on it.

19 MR. DRUMMOND: Any other comments?

20 MR. GOLLOTT: Mr. Chairman, I'd like to make a
21 motion that we go with the staff's recommendation on the permit
22 but reduce the fine to the minimum \$50.

23 MR. DRUMMOND: There is a motion on the floor.
24 Is there a second?

25 MR. BOSARGE: Yes, sir, I'll second that.

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1 MR. DRUMMOND: Have a motion and a second. All
 2 those in favor signify by saying aye. Opposed. Motion
 3 carries.

4 MR. KERRIGAN: Thank you very much.

5 b. City of Biloxi

6 MS. WITTMANN: Good morning. My name is
 7 Jennifer Wittmann, and I will be presenting the next two
 8 projects on the agenda.

9 The first is a request for permit by the City of
 10 Biloxi located on Beach Boulevard at the Kuhn Street-Highway 90
 11 intersection in Biloxi. It is in the general use district, and
 12 Edwin Ott with the Public Works and Engineering Department of
 13 the City of Biloxi is the agent.

14 The red star shows the location of the Kuhn
 15 Street boat ramp.

16 The applicant is seeking authorization to repair
 17 and improve the Kuhn Street boat launch. The applicant is
 18 proposing to construct two piers, a boat ramp inside the
 19 footprint of the pre-Katrina ramp, dredging of approximately
 20 280 cubic yards of material, expansion of the existing parking
 21 area to total 36,000 square feet, and debris removal.

22 And the applicant is also requesting a variance
 23 to Chapter 8, Section 2, Part III.0.1 of the Mississippi
 24 Coastal Program.

25 This is the project diagram. You can see the

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1 derelict piers that are out there now are mostly pilings will
 2 be removed. The center pier and the middle of the existing
 3 ramp will be removed. And the two finger piers will be placed
 4 on either side. The parking area will be extended out to the
 5 east and the west.

6 This shows the grade of the ramp will be
 7 approximately 16.25 percent. Again, the two finger piers will
 8 be added to the outside, and the area will be concreted.

9 The project serves a higher public purpose by
 10 repairing, improving, and providing access for recreational
 11 fishermen and other boaters directly to the Mississippi Sound,
 12 as well as supporting increased boat trailer parking at the
 13 existing facility.

14 The project is allowable within the general use
 15 district.

16 The applicant has requested a variance to
 17 Chapter 8, Section 2, Part III.0.1 of the Mississippi Coastal
 18 Program which states the permanent filling of coastal wetlands
 19 because of potential adverse and cumulative environmental
 20 impacts is discouraged.

21 The applicant has justified this request
 22 utilizing Chapter 6, Section 2, Part I.E.2.c.i and iv stating
 23 that the impacts to coastal wetlands would be no worse than if
 24 the guidelines had been followed, and the project requires a
 25 waterfront location, there's a significant public benefit in

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1 the activity, and a public hearing has been held.

2 There are no precedent setting effects expected.

3 The site has historically been utilized as a boat launch and a
 4 public access facility, and similar projects have been approved
 5 by the commission.

6 Marsh vegetation does not currently exist within
 7 the limit. Any of the areas considered coastal wetlands would
 8 be classified as low quality and previously disturbed wetlands.

9 Construction activities will be limited to the
 10 shoring, excavation, and pouring of concrete for the ramp,
 11 timber pile driving, attachment of the stringers, and decking
 12 for construction of the finger piers, expansion of the parking
 13 area, and removal of the derelict piers and pilings.

14 The city does anticipate additional vehicle and
 15 vehicle boat trailer parking spaces will be needed in the
 16 future to accommodate the public.

17 Best management practices will be utilized
 18 during all phases of construction to minimize adverse impacts
 19 to coastal wetlands.

20 The city is reconfiguring the existing pier by
 21 removing the center pier and the center of the ramp.

22 The city has also considered onsite alternative
 23 such as shifting the project approximately 50 to 60 feet to the
 24 east. However, an eastward shift would require wider turning
 25 radius and offsite access. The sea oaks and trees planted at

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1 the schooner pier complex would have to be removed. Available
 2 parking would be reduced from 18 spaces to 12 spaces.

3 Increased cost because of the need to demolish the existing
 4 ramp. And the project would be more visible from the
 5 Ohr-O'Keefe Museum and the schooner pier.

6 This is an expansion and repair and improvement
 7 project to the existing boat launching facility, and the site
 8 requires fewer impacts than other city maintained or owned
 9 access points.

10 City owned and maintained access points at the
 11 Veterans Avenue-Rodenberg Avenue intersection would have
 12 required dredging an access channel, transportation and
 13 disposal of the dredge material, continued maintenance
 14 dredging, and acquisition of additional beachfront property for
 15 parking areas.

16 The old Oak Street ramp would have required
 17 minimal dredging; however, problems such as limited parking
 18 only to four or five spaces, narrow turning radius, and trailer
 19 access areas and restrictive right-of-way by casino development
 20 made this an unacceptable site for the boat ramp.

21 The project is in an area that has historically
 22 been utilized as a boat launching and public access area.

23 Notification of the project appeared in the Sun
 24 Herald as required.

25 Public comments were received concerning the

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1 upland property owner's riparian and littoral rights and
2 privileges, needs for the city to request permission from the
3 upland riparian owner, failure of the city to obtain permission
4 from the Harrison County Board of Supervisors, movement of the
5 property to the east, the rights of the upland property owner
6 to construct a pier for their own use, and 2009 conversations
7 between the city and the upland property owner concerning no
8 future development of the Kuhn Street boat launch.

9 A public hearing was held on January 13, 2011.
10 Public comments were received concerning support for the
11 project from the Mississippi Gulf Fishing Banks, the Gulf Coast
12 Heritage Trails Partnership, Biloxi Yacht Club, and two
13 citizens because of the need for more public boat launches, the
14 ramp's location, and the opportunity for throughways and
15 ecotourism.

16 There were also comments against the project
17 from the upland property owners and their legal counsel for the
18 same reasons that were submitted during the public notice the
19 period.

20 The Department of Environmental Quality is
21 reviewing the project.

22 Department of Archives & History has no comment.
23 Secretary of State's Office has stated that a
24 tidelands lease would be required.

25 And the Mississippi Department of Wildlife,

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1 Fisheries & Parks has stated that if best management practices
2 are implemented and properly maintained and monitored the
3 project likely poses no threat to listed species or their
4 habitat.

5 The Harrison County sand beach area is
6 designated as a special management area for shorefront access.
7 The Coastal Program states that it's imperative that beaches be
8 maintained primarily for the recreational benefits of the
9 public. And the Kuhn Street landing is designated as an area
10 requiring access improvements because of access road and
11 parking areas. That is in Chapter 6, Section 3, Table 6.1 of
12 the Coastal Program.

13 This is a study that was completed by the Gulf
14 Regional Planning Commission during the development of the
15 Mississippi Coastal Program.

16 The Biloxi downtown redevelopment area is
17 designated as an urban waterfront. Chapter 6 of the Coastal
18 Program states that redevelopment or rehabilitation urban
19 waterfronts often requires the clearance of substandard
20 structures, renovation of other structures, and providing for
21 increased traffic circulation and parking. And the highest
22 priority for use in urban waterfronts are those which will
23 provide additional access to the water.

24 Based on departmental review and evaluation, it
25 has been determined that the project is consistent with the

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1 Mississippi Coastal Program because it will serve a higher
2 public purpose, and therefore staff recommends approval of the
3 variance request and approval of the permit.

4 And I believe the city has a few representatives
5 here, and also the upland property owners.

6 MR. TAYLOR: Jennifer, did I hear you say that
7 they reduced the parking spaces from 18 to 12?

8 MS. WITTMANN: No. If they were to shift to the
9 east, the parking spaces would have been reduced from 18 to 12.

10 MR. DRUMMOND: Any other comments, questions?

11 MR. LUCKEY: Members of the commission, I'm here
12 to speak against the project. I'm Alwyn Luckey with the law
13 firm of Luckey & Mullins, and I'm here on behalf of the Becks.

14 But if the city would like to speak before me...

15 Good morning. The application by the city for
16 this lease fails on its terms, and I know in the packets that I
17 saw the staff had prepared for you, you do have a copy of the
18 application.

19 The rules of the application themselves require
20 an environmental assessment by the city, a copy of the Becks'
21 deed, and a representation of the mean high tide line.

22 None of that was included in my copy that I got
23 as of this morning from the staff.

24 The Becks clearly object to this. They are the
25 upland owner. Had the city provided you a copy of their deed,

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1 you would have been able to read on the first page that their
2 property includes that certain parcel fronting 68 feet on the
3 Bay of Biloxi, so on bounded on the south by the Bay of Biloxi,
4 and together with all littoral rights pertaining thereto.

5 So their deed which they paid value for when
6 they bought this property includes the sand beach down to the
7 mean high water line.

8 We could not get anything in the permit from the
9 city showing us where the mean high water line is. There is a
10 representation of where the water meets the beach. That does
11 not meet the definition of mean high water line.

12 So in front of you as you sit here today you do
13 not have that information on the mean high water line.

14 The Becks being the upland owners are subject to
15 the Secretary of State's rules that say that they will not
16 lease a tidelands property without the permission of the upland
17 owner. Let's make it clear. The Becks do not give permission
18 to the city.

19 The Becks are here with me. I understand
20 sitting as a commission you do not take evidence, but this is
21 an important issue for them. This is a taking of what they
22 view as their property for which they paid good money many
23 years ago.

24 The Becks are here. I would love to have y'all
25 hear from them. I understand it's not your practice to take

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1 evidence, but if you would like, we certainly can.
 2 The city --
 3 MR. DRUMMOND: I think we ought to hear from
 4 them.
 5 MR. LUCKEY: I think that is an excellent idea.
 6 If you would, I'd like to finish just one
 7 thought and we can bring them up.
 8 The city has, in fact, met with the Becks and
 9 assured them that this project would not encroach on their
 10 property. Their property being -- and the map was shown
 11 briefly -- their property being on the immediate west side of
 12 Kuhn Street running north and south from the water's edge up
 13 north into the upland area.
 14 The city previously has extended Kuhn Street
 15 across the sand beach and down to the boat ramp. And, in fact,
 16 I think that's the real point here. In 1986, the Biloxi Port
 17 Commission recognized that the Becks were the owners of this
 18 property, the sand beach, because they executed a lease with
 19 the Becks to build that boat ramp, to build that pier. And
 20 they gave value to the Becks for that right to do that lease.
 21 Now, that lease has since expired by its terms.
 22 But the city clearly recognized as recently as 1986 that the
 23 Becks owned that property.
 24 Is now a good time for you to hear from the
 25 Becks?

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1 and be bad neighbors and not be community involved which most
 2 people realize that Kim and I are very much involved in our
 3 community, we decided to let it go. We were not using the
 4 property at the time. The pier was already there. So rather
 5 than have them going and tear it down and throw away all of our
 6 tax dollars, we just said, okay, fine.
 7 We signed a lease agreement for ten years. At
 8 the end of that ten years -- and by the way, that lease
 9 agreement was recorded at the courthouse in Harrison County.
 10 At the end of the ten years, the pier was to be removed and our
 11 beach restored to its original appearance and condition.
 12 Of course, that was not done.
 13 Prior to Hurricane Katrina, the pier had been
 14 destroyed, and the boat ramps were completely unusable. So
 15 this goes back well prior to Katrina.
 16 Am I talking too loud?
 17 Anyway, we're not trying to be bad neighbors or
 18 anything else. But Kim and I worked hard for what little bit
 19 we've got. We bought and paid for this property. The City of
 20 Biloxi and Harrison County has graciously billed and accepted
 21 our tax dollars on this property each and every year. And we
 22 feel that it would just be absolutely atrocious to come in and
 23 take something away from us that we worked and earned and paid
 24 for and have supported over all these years without some type
 25 of compensation.

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1 I'd like to reserve a little bit of my
 2 discussion for after y'all hear from them.
 3 MR. DRUMMOND: That will be fine.
 4 MR. LUCKEY: Would you prefer we do this in just
 5 a question and answer method, or do y'all just want to hear
 6 from Johnny?
 7 MR. BECK: My name is Johnny Beck. I represent
 8 my wife and I which own the property on Kuhn Street and Highway
 9 90.
 10 We purchased it in 1983 from the O'Keefe family
 11 who had owned it for many years prior to that.
 12 In 1986, the port commission extended the Kuhn
 13 Street road which really wasn't even paved I don't believe back
 14 then, and they built the Kuhn Street pier.
 15 I don't know if this commission was notified or
 16 if there were any meetings held. I know Kim and I were not
 17 notified as to the project until it was already built.
 18 At the time Mr Larry Manuel was head of the port
 19 commission, whom I knew personally, and I went and sat down
 20 with Mr. Manuel and with the attorney that represented the port
 21 commission and reminded them that they had encroached on our
 22 property without our permission and what could we do about it.
 23 I believe it was the Corps of Engineers that did
 24 the funding that provided the short pier and three boat ramps,
 25 two boat ramps, whatever it was. And rather than make a scene

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1 I do want to say one thing else that I believe a
 2 representative of the city -- I'd like to comment on the 2009
 3 meeting which was held on this property less than a year ago.
 4 We were assured at that time by the City of
 5 Biloxi, Harrison County, and the State of Mississippi that the
 6 Kuhn Street extension would not encroach on our property. So
 7 Kim and I were shocked when we got this letter that stated that
 8 they were going to take our beach property and put a few
 9 parking places in there.
 10 We have spent \$7,000 several years back putting
 11 in palm trees which people go down, they have picnics under. I
 12 mean, it's a beautiful part of the beach, and we have spent
 13 good money to improve it for the community.
 14 So I would just ask this commission to think
 15 very seriously and very hard about justifying the City of
 16 Biloxi taking something which they have absolutely no right to.
 17 If they would have come to Kim or if they would in the very
 18 near future come to Kim and I, sit down and talk to us and try
 19 to work out some fair and amicable agreement, we would
 20 certainly be willing to do so.
 21 I thank you so much for your time.
 22 MR. LUCKEY: Do y'all have any questions for Mr.
 23 Beck?
 24 MR. DRUMMOND: Is your property for sale? Can
 25 the city buy it?

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23 Beck?

24 MR. DRUMMOND: Is your property for sale? Can
25 the city buy it?

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1 MR. PECK: Yes, sir. I guess we could do that.

2 MR. GOLLOTT: Let me ask you a question. I was
3 at the public hearing. And you testified at the public hearing
4 that this was an eyesore and you wished it was cleaned up.

5 MR. BECK: I'm talking about the pilings that
6 are sitting out there that have been sitting there for almost
7 ten years.

8 MR. GOLLOTT: It's a mess.

9 MR. BECK: It is a mess. And the boat slips
10 have been totally unusable for ten years. I have a little
11 runabout. I tried to get it up one day and had to get someone
12 with a four-wheel drive pickup to pull me and my boat out.

13 MR. GOLLOTT: Looking at this Kuhn Street, it
14 looks like the ramp and the piers they're going to put in is in
15 the middle of Kuhn Street; it doesn't go on your property.

16 MR. BECK: Yes, sir, it does encroach on our
17 property, absolutely does.

18 MR. GOLLOTT: The ramp itself?

19 MR. BECK: Yes, sir, the ramp and one of the
20 breakwaters also on the west side.

21 Also if I may point out one other quick thing.
22 I have walked this and walked this and walked this as you can
23 imagine. There is tremendous parking available right there at
24 Kuhn Street coming east which the city already owns, not even
25 mentioning the schooner pier and all that parking that they've

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1 got there. They've got at least 200 feet. Ours is a little 68
2 foot piece that they're trying to take from us. They already
3 own 200 feet at least that they could put tons of parking in if
4 they wanted to do it.

5 It's nothing but a grab.

6 MR. TAYLOR: Mr. Beck, you said that the pier
7 was built in '86?

8 MR. BECK: Yes, sir.

9 MR. TAYLOR: Was it repaired? Because I
10 remember using that ramp as a kid if I remember right. I grew
11 up in Biloxi.

12 I'm just curious, because I remember using a
13 ramp there. But I can't say there was parking. I can't
14 remember. But there's been a ramp there as long as I can
15 remember, you know. And I grew up in Biloxi.

16 And I'm not saying, you know, I don't want to
17 take anybody's property. But I can remember even when the
18 O'Keefes owned the property, there was a ramp there.

19 I'm not saying it was legal or whatever. I
20 mean, I don't know. But...

21 MR. BECK: Yeah. I don't know how old you are,
22 so I don't know when you were a kid. You look like a young man
23 to me. But there may have been some sort of ramp there at one
24 time. It certainly wasn't paved or improved. It would have
25 just been a beach at the end of the road.

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1 MR. TAYLOR: I graduated in 1969 from Biloxi
2 High, and I remember using the ramp going to Deer Island. I
3 had a 16 foot Larsen All American V.

4 And again, it would be nice to come to some kind
5 of agreement.

6 But if I understand it, Mr. Commissioner, our
7 permit does not allow the city to move forward unless all the
8 -- I mean, maybe Joe Runnels needs to -- you know, the scope of
9 our permit if we permit this.

10 MR. GOLLOTT: See, I was (inaudible)
11 understanding that we could issue the permit and then he could
12 work it out with the city. Am I right?

13 MR. LUCKEY: I appreciate y'all hearing from Mr.
14 Beck. I think that was important, and I appreciate you
15 changing your normal format to allow that.

16 In addition to the deed which was not attached
17 to the application, I have the records from the tax assessor
18 that shows at least for the past ten years the Becks have paid
19 taxes on the property upland and on the sand beach part all the
20 way down to the water.

21 And Mr. Beck is right, no one turned his tax
22 dollars away when he went to pay them at the courthouse.

23 I do have some photographs that I think -- I
24 don't have enough for everybody. If y'all don't mind passing
25 -- may I approach the commission?

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1 This shows the palm trees and improvements that
2 Mr. Beck alluded to. And I think you will agree that it's a
3 first class job, a benefit to the beach and to the city.

4 MR. DRUMMOND: How in the world can the City of
5 Biloxi take your property?

6 MR. LUCKEY: Well, sir, that's a great question
7 and that's why we're here. We don't think they can and we
8 don't think they should, and we don't want this commission to
9 aid them in doing that. If you all approve this lease, then
10 you're going to force the Becks to go to court to preserve
11 their constitutional right to their property.

12 Now, the commission may not be aware there's a
13 case exactly like this over in Jackson County where the
14 Secretary of State had to defend the actions of the City of
15 Ocean Springs on a boardwalk or a sidewalk they wanted to
16 build.

17 As we sit here today, the property owners whose
18 deeds have land that cross the sand beach down to the high
19 water mark have prevailed initially in court and have received
20 an injunction because the Judge was concerned of this very
21 issue that private property rights were being run over in the
22 process of this.

23 And so, you know, that's what we're here for
24 today. The city has recognized the Becks' property rights.
25 This isn't a situation -- I think this is much stronger

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1 situation than over in Ocean Springs.

2 The city has dealt with the Becks on this lease
3 with this boat ramp and the piers.

4 Mr. Taylor, I think that you're right. There
5 was a boat ramp there previously, but in '86 the port
6 commission improved it, built the new piers and so forth. And
7 at that time, I think the point is they recognized the Becks'
8 rights and they paid them for them.

9 And that's really what we're here for today is
10 the government just can't come along and take somebody's
11 property away from them without some sort of compensation.

12 And the Becks are reasonable people. They're
13 willing to sit down and discuss this.

14 The area not being tidelands, and we don't have
15 anything in front of us showing the mean high water mark, means
16 the Secretary of State doesn't even have jurisdiction over
17 this. I don't think he even has the authority to issue a
18 lease.

19 So I think we're really, I hate to say we're
20 spinning our wheels here, but I think you will find that with
21 no evidence you can't approve this request because we don't
22 know where the mean high tide mark is. And as a result, he
23 doesn't have authority to grant the lease.

24 Mr. Beck alluded to the fact that the city does
25 own substantial property to the east. Their proposal said that

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1 they had considered that but rejected it because it would
2 reduce the parking. But candidly, I think that's just a manner
3 in which they drew their parking. There is a lot of land
4 between this boat ramp to the east running down in front of the
5 Chr-O'Keefe Museum. And there is a lot of property in which
6 the city could develop without having to fight this battle by
7 taking over somebody's private property.

8 So to wrap this up, our request first that this
9 commission reject the application. It fails because it failed
10 to have the things attached to it that it should have when the
11 city made their application. It fails because the city has
12 recognized the Becks' private property rights in the past and
13 just chooses not to deal with them at this point.

14 Certainly under the Constitution of the United
15 States our private property rights are held inviolate, and we
16 do not take somebody's property without compensation.

17 So I would ask you to deny the application or at
18 the very least table this application until the Secretary of
19 State gets some resolution of this case in Jackson County or as
20 I have suggested sit down and work out some sort of agreeable
21 alternative which doesn't put you all in the position of having
22 to run over Mr. Beck's property rights to grant the city a
23 lease that truly I think they have an easier alternative to
24 develop.

25 Thank you all.

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1 MR. TAYLOR: Mr. Luckey, I have a question for
2 you. Has the city and Mr. Beck been to court on this
3 particular piece of property before; do you know?

4 MR. LUCKEY: Yes.

5 MR. GOLLOTT: Mr. Chairman, can we hear from our
6 counsel?

7 MR. LUCKEY: In answer to your question,
8 apparently there was litigation over the terms of the port
9 commission lease payments. Apparently near the end of the
10 lease, they failed to make some payments.

11 MR. DRUMMOND: Can we hear from the city first?

12 MS. TOMPKINS: I'm Gina Tompkins with Page
13 Mannino here in Biloxi. I represent the City of Biloxi.

14 The city has been in litigation with Mr. Beck
15 before particularly over whether or not he had any ownership
16 interest in the property. Mr. Beck allowed that to be
17 dismissed.

18 Our position is he doesn't have an ownership
19 interest in it. It belongs to the Secretary of State and is
20 governed by your guidelines, as well as the Secretary of State.

21 And as I understand it, if you issue a permit,
22 then we will have to go to the Secretary of State to get a
23 lease.

24 Mr. Beck has -- he is the owner of the uplands
25 property. But as far as the sand beach goes, he's not the

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1 owner. He does have certain rights and privileges. But this
2 is a higher public purpose. It's for a public pier. And this
3 pier has been there for a number of years, and the port
4 commission's arrangement with Mr. Beck in this after ten years,
5 if he commenced litigation and he let that lapse, we believe
6 because he understood and his attorneys understood that all he
7 had was a right, a revocable right, and he gave that up. And
8 now this is a higher public purpose, and we believe that this
9 permit should be granted on behalf of the City of Biloxi.

10 MS. WITTMANN: I wanted to clear up a couple of
11 things.

12 The application that Mr. Luckey spoke about
13 requiring the deed and the mean high water mark is not the DMR
14 application. That is the Secretary of State's application for
15 tidelands lease. We are not making a ruling on the tidelands
16 lease today. That is the Secretary of State's Office.

17 We do not require a copy of the deed or the mean
18 high water mark.

19 Also, on the application that was signed, the
20 DMR application signed by Mayor A.J. Holloway, it states that I
21 further certify that I am the owner of the property where the
22 proposed project is located or that I have a legal interest in
23 the property and that I have full legal authority to seek this
24 permit.

25 And with regards to the Secretary of State's

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1 Office, they did issue or send a letter to the city dated
2 August 12, 2010, stating that if the Commission on Marine
3 Resources granted a permit that it would include the DMR
4 standard condition that the subject area be under a tidelands
5 lease from the office prior to the commencement of construction
6 or dredging.

7 We are not making a statement on who owns the
8 property. That is between the Secretary of State's Office and
9 Mr. and Mrs. Beck.

10 So I didn't know if there were any questions
11 that the commission had about that. But we are not making a
12 statement about who owns the property. We are simply
13 authorizing impacts.

14 MR. DRUMMOND: Joe?

15 MR. RUNNELS: My name is Joseph Runnels.

16 I don't know that I can say it any better than
17 Jennifer did. We have a standard condition that we put in all
18 of our permits that say we are not granting you title to
19 property. You have to have an ownership interest in order to
20 do what you propose to do in your permit application.

21 Obviously the city believes that they have some
22 interest. The Secretary of State's Office has submitted a
23 letter to the department saying that they have some interest
24 and that a lease will be required.

25 So if you don't issue a permit, on one hand

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1 Chancery Court to Biloxi.

2 MS. WITTMANN: And there was also a question
3 about possibly tabling the matter. And we have had the
4 application in since August of this year. We have passed the
5 180 day mark and have had to request a stay of the federal time
6 clock. and that stay of the time clock will end on March 4 of
7 this year.

8 So just wanted to let the commission know that
9 actually tabling the decision is not an option.

10 MR. DRUMMOND: I don't know if I understand
11 that. To table it is to do what?

12 MS. WITTMANN: There's not a time clock option.
13 We've reached the end of the time clock, and we've actually
14 requested a stay of the federal time clock.

15 DR. WALKER: What happens if the time clock
16 expires, what happens to this project in terms of approval or
17 disapproval?

18 MS. WITTMANN: I believe at this point the Corps
19 of Engineers has withdrawn the application until all issues
20 with DMR can be resolved. If the federal time clock runs out,
21 I don't know that -- the city would have to agree to extend the
22 state time clock further. And then the federal time clock
23 would just expire. And I guess once the permit was -- if a
24 permit was issued, at that point they would be able to go back
25 to the Corps of Engineers with the state authorization as the

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1 you're saying the Becks own it; and on the other hand if you
2 do, then you're saying that the Secretary of State's Office has
3 an interest.

4 That's not your decision. You're issuing a
5 permit to do the improvements as proposed. You're not granting
6 title. You're not taking anybody's property. And you're not
7 issuing a lease.

8 DR. WALKER: Why don't you explain the process,
9 potential process (inaudible, not speaking into microphone).

10 MR. RUNNELS: Well, if the commission was to
11 grant a permit today, then those that are opposed to the
12 issuance of the permit can petition the commission for a
13 reconsideration. I believe that they have 14 days from the
14 date of the commission meeting to petition for a
15 reconsideration. That is -- the process is outlined in Title
16 22 Part 15. On the DMR website, you can access that.

17 And if you file a petition for reconsideration,
18 you will probably come back before the commission at the March
19 meeting, at which point the commission will have an opportunity
20 to either reject the petition for reconsideration, grant it,
21 authorize an evidentiary hearing, or take whatever further
22 action it deems necessary and appropriate under the
23 circumstances.

24 Beyond that, if the commission was to affirm the
25 decision made, then you would have to take an appeal to

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1 last piece of information that they need for their federal
2 application and move forward.

3 DR. WALKER: I guess my understanding was if we
4 do not take action by the end of our time clock or state time
5 clock, that project would be approved.

6 MS. BRANTLEY: Jennifer is checking on the state
7 time clock. I just want to clarify.

8 On the federal time clock, if we do not take
9 action before the federal time clock expires, the federal
10 agency can presume our consistency with the project if we don't
11 deny or grant that.

12 But they've withdrawn the application on their
13 end, so that does make some difference with our time clock.

14 MR. BOSARGE: And just out of curiosity, is this
15 a manmade beach?

16 MS. WITTMANN: Yes, it is.

17 MR. BOSARGE: Which a number of states along the
18 coast --

19 MS. WITTMANN: Yes, sir.

20 MR. GOLLOTT: If I understand it right, we are
21 really not making a decision on who owns the land and all that.
22 All we're doing is issuing a permit for the City of Biloxi.
23 Then they can go forward to court or wherever to make the
24 decision.

25 MS. WITTMANN: Yes, sir.

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1 MR. GOLLOTT: Mr. Chairman, I'd like to make a
2 motion that we accept the staff recommendation and approve this
3 permit.

4 MR. DRUMMOND: Do I hear a second?

5 MR. BOSARGE: Yes, sir. I'll second it.

6 MR. DRUMMOND: There's a motion and a second on
7 the floor.

8 MR. LUCKEY: Can I have just a moment before you
9 vote?

10 I have some evidentiary matters that I'd like to
11 enter into the record, and I just don't want your vote to
12 preclude me from doing that.

13 Would you care for me to do it now or
14 afterwards? Now? Thank you, sir.

15 The first is the Becks' warranty deed showing
16 the ownership of the littoral area and the sand beach.

17 The second is the lease between the Becks and
18 the port commission for that property.

19 And then third is their tax record showing they
20 paid the taxes on their property.

21 And just briefly I wanted to point out to the
22 board, I was remiss earlier, in the drawing supplied with the
23 application, it does clearly show that parking area and the
24 requested ramp area exceeds or encroaches to the west on the
25 Becks' property. So I want to make sure the record is clear

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1 what, because this is an appeal on the record, and that's
2 provided for by statute if you appeal this permit decision.

3 MR. DRUMMOND: Thank you very much, Joe.

4 Any other comments or questions? We have a
5 motion on the floor and a second. All those in favor signify
6 by saying aye. Those opposed. Hearing none, the motion
7 carries.

8 Next item on the agenda.

9 c. Mike Keene

10 MS. WITTMANN: The next item on the agenda is a
11 violation/after-the-fact general permit by Mr. Mike Keene
12 located on an unnamed canal adjacent to the Jourdan River at
13 4227 North Nassau Street in Bay St. Louis, Hancock County.
14 It's in a general use district.

15 The red star shows the location of the project
16 in reference to I-10 and Highway 43. And the red star again
17 shows the location in the Shoreline Park neighborhood.

18 On December 8, 2010, a compliance check was
19 performed by DMR staff which resulted in the discovery of the
20 violation. Two piers that had not been included in an existing
21 general permit had been constructed.

22 On December 13, a cease and desist notice was
23 sent to Mr. Mike Keene.

24 On December 20, Mr. Keene contacted DMR
25 concerning a cease and desist.

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1 that it does, in fact, show that on the application.

2 Thank you.

3 MR. DRUMMOND: Thank you, sir.

4 MS. WITTMANN: Any further questions for me?

5 MR. DRUMMOND: Anybody have any questions for
6 Jennifer?

7 There's a motion and a second on the floor.

8 MR. BOSARGE: I'm just curious. On the map, how
9 high is the piece of property which you own that --

10 MR. BECK: Sixty-eight feet.

11 MR. BOSARGE: And that's what it says here, 60
12 feet.

13 MR. BECK: It's about 200 foot of vacant
14 property to the east that the City of Biloxi already owns that
15 adjoins Kuhn Street.

16 MR. DRUMMOND: Any other comments before we vote
17 on this?

18 MR. RUNNELS: I just wanted to say one other
19 thing for Mr. Beck and Mr. Luckey. Of course, any appeal from
20 the decision of this commission is an appeal on the record and
21 it's appeal of the permit decision. It still will not decide
22 title or ownership to the piece of property.

23 If the City of Biloxi and the Secretary of
24 State's Office and the Becks want to decide the issue about
25 ownership, that's going to be in a separate case, no matter

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1 On December 21, Mr. Keene came to DMR offices
2 and met with staff to discuss the after-the-fact application
3 process.

4 On January 11, 2011, Mr. Keene submitted an
5 application for after-the-fact authorization for the piers and
6 also adjacent property owner authorization for the structures
7 that were constructed within ten feet of neighboring property
8 line.

9 On January 27, 2011, an e-mail was sent to Mr.
10 Keene requesting the \$50 application fee.

11 On February 7, 2011, the commission meeting
12 notification and a second request for the \$50 application fee
13 was sent to Mr. Keene.

14 This picture shows the pier that was
15 constructed. It wasn't put in the original general permit that
16 was issued to Mr. Keene.

17 The diagram on the left shows the permit that
18 was -- the structures that were included in the original
19 permit. There was a boat ramp and a bulkhead. And the diagram
20 on the right shows the two piers that were constructed on
21 either side of the boat ramp that were not included in the
22 original permit.

23 Staff has conducted a thorough evaluation of
24 project. Because this is a project that would normally be
25 allowed under a general permit, staff recommends that

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1 commission approve the after-the-fact request and issue a fine
2 in accordance with Mississippi Code 49-27-51. This
3 authorization would be contingent on submittal of the \$50
4 application fee within 30 days of the commission ruling or the
5 matter would be forwarded to the Attorney General's Office for
6 enforcement action.

7 In this case, the violation was discovered on
8 December 8, 2010. The violation duration to today's date is 69
9 days. The maximum potential fine is \$34,500 with a minimum
10 fine of fifty. Staff would recommend a maximum fine of no more
11 than \$500.

12 The project does meet guidelines. Mr. Keene did
13 have prior knowledge of the permitting process. Mr. Keene did
14 contact DMR within one week of the cease and desist being
15 mailed and met with staff the following day. However, Mr.
16 Keene has not submitted the requested application fee and has
17 not responded to staff's e-mail correspondence.

18 Are there any questions?

19 MS. KEENE: Hi. My name is Brenda Keene. And
20 my husband is Mike Keene. And he can't be here today because
21 he's working the Dixie National Livestock Shows. He works for
22 Mississippi Extension Service.

23 And I'm here saying that if we were supposed to
24 have given the money at a certain time, I don't know about it.
25 I have the check in my hand, and this is all we know about it

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1 is we showed up here this morning.

2 And so I'm saying here's the check. I don't
3 know what else to do.

4 MR. DRUMMOND: How much is the check?

5 MS. KEENE: They told me \$50, so I made it.

6 MR. DRUMMOND: How much?

7 MS. KEENE: Fifty. They told me fifty, so I
8 made a check for fifty.

9 MS. WITTMANN: This would be the \$50 application
10 fee. So in this case, staff would recommend that the
11 commission approve the after-the-fact request and issue the
12 fine in accordance with the penalty range. They have submitted
13 the fee. Again, the maximum recommended fine would be \$500;
14 the minimum fine would be fifty. So that would be at the
15 commission's discretion how much they would choose to fine the
16 Keenes.

17 MR. DRUMMOND: Any comments? Do I hear a
18 motion?

19 MR. BOSARGE: I make a motion we accept the
20 staff's recommendation and set the penalty at \$100.

21 MR. DRUMMOND: Do I hear a second?

22 MR. GOLLOTT: Second.

23 MR. DRUMMOND: Motion and a second. All those
24 in favor signify by saying aye. Opposed. Hearing none, motion
25 carries. Thank you.

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1 E. John Koerner

2 MS. BRANTLEY: Good morning, commissioners. My
3 name is Willa Brantley, and I have the final item on the agenda
4 this morning. It's a permit request by John Koerner. It's
5 located on the Bay of St. Louis at 140 Holly Point Drive in
6 Pass Christian, Harrison County. It's in the general use
7 district. And Patrick Chubb is the agent.

8 This shows the project location. The yellow
9 thumbtack shows the project location in Pass Christian. It's
10 on the Bay of St. Louis.

11 The current project description. The applicant
12 is requesting to dredge two boat slips and construct piers and
13 boathouses totaling 1,920 square feet of shading. You can see
14 the piers listed here. The boathouse is 30 by 32. And the two
15 areas of dredging, very minimal, 12 cubic yards within the boat
16 slips under the boathouse.

17 And if you notice, I've got some of the piers in
18 light blue here on the screen. Those piers would not count in
19 the total square footage. One is the access pier, and those
20 typically don't count in the square footage. And then the
21 other two piers are being constructed from light penetrable
22 material, so those also don't count in the shading square
23 footage.

24 You will notice this is significantly different
25 than what was given you in your mailout. We have been working

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1 with the applicant for the past couple of weeks since the
2 mailout went out. We've had some minimization to the impacts,
3 and actually now we are recommending approval as opposed to the
4 denial that went in your mailout.

5 This is a diagram of the overall project site.
6 This is Mr. Koerner's property. This is where his boathouse is
7 located on a little bayou that comes in. And this is the
8 longer pier located out on the Bay of St. Louis.

9 This is a closeup of the longer pier. This
10 section is 4 by 80. And this section is 4 by 24. Both of
11 those are the piers that are being constructed from light
12 penetrable materials and will not count in the square footage.
13 Then he's got a platform in between those two. And this is the
14 boathouse showing the two slips, the dredging and another pier
15 for fish cleaning and accessing the boats.

16 This point right here is where the longer pier,
17 the 80 foot pier, will go out to the platform.

18 And then this shows the area where the boathouse
19 will be constructed.

20 This is a private residence, so the project does
21 not serve a higher public interest.

22 It is allowable within the general use district.

23 As proposed, with the minimizations, this does
24 not set a precedent for size. The previous size precedent was
25 2,016. The original proposed was 2,640 square feet, and that

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1 has been reduced to 1920.
 2 The extent to which the proposed activity
 3 affects the biological integrity of the coastal wetlands. We
 4 expect very minimal impacts from the proposed dredging. Large
 5 piers can have an increased unnatural shading of waterbottoms.
 6 They can decrease the available habitat for submerged aquatic
 7 vegetation. And that can lead to degradation of larger areas
 8 of essential fish habitat. But as I said, this does not set
 9 any size precedent. And Mr. Koerner has agreed to use light
 10 penetrable piers in places so that the light can reach the
 11 waterbottoms.
 12 He was previously authorized for a bulkhead,
 13 riprap, and marsh plantings, which will still be constructed
 14 along with these new piers.
 15 He has reduced the overall square footage of the
 16 boathouse itself.
 17 Several of the piers were slightly reduced in
 18 size.
 19 And again, there's two large sections that will
 20 be constructed with light penetrable materials.
 21 He did not look at any offsite alternatives.
 22 This is his residence, and the piers will serve to help them
 23 access the water.
 24 The boathouse, piers, and dredging do require a
 25 waterfront location.

1 for it not to count toward the square footage, what we require
 2 is that they allow a minimum of 50 percent light penetration.
 3 We ask for the specifications of the product that will be used
 4 to be submitted prior to construction so that we can see that.
 5 MR. DRUMMOND: Any other comments? Do I hear a
 6 motion?
 7 MR. TAYLOR: So be it.
 8 MR. BOSARGE: Second.
 9 MR. DRUMMOND: There's a motion and a second.
 10 All those in favor signify by saying aye. Those opposed.
 11 Motion carried.
 12 MR. BOSARGE: It is nice to see the applicant
 13 and the staff be able to come to an agreement where both
 14 parties get really what they're asking for. That's good.
 15 MR. TAYLOR: I think it's great the way that
 16 y'all helped him get the permit instead of trying to deny it.
 17 That's good.
 18 MS. BRANTLEY: Thank you. We definitely prefer
 19 coming to something we can recommend approval of rather than
 20 denial.
 21 That's everything for coastal ecology. Thank
 22 you.
 23 MR. DRUMMOND: Financial report.
 24 J. Administrative Services
 25 2. Financial Report

1 They are similar to nearby structures and scenic
 2 qualities.
 3 Public notice was run in the Sun Herald as
 4 required. We received no public comments.
 5 The Department of Environmental Quality is
 6 reviewing the project.
 7 Archives & History. Yesterday, we received a
 8 request for a cultural resource survey, but I believe they have
 9 withdrawn that request.
 10 And the Secretary of State has stated that it
 11 will require a tidelands lease.
 12 Based on our evaluation, it's been determined
 13 that even though the project will not serve a higher public
 14 interest, the effects to coastal wetlands have been minimized
 15 and it will not set a precedent. Therefore, we recommend
 16 approval of the request contingent on a tidelands lease from
 17 the Secretary of State, approval by the Department of
 18 Environmental Quality, and clearance by the Department of
 19 Archives & History.
 20 And the agent is here if you have any questions
 21 specifically for him.
 22 MR. TAYLOR: I see you said light penetrable
 23 stuff. Is that where you space the boards, or is there a
 24 material that they're using?
 25 MS. BRANTLEY: It actually is a material, and

1 MS. VESA: Good morning. The financial report
 2 shows the status of our budget on January 31, 2011. Our budget
 3 remained at \$6,266,493. On January 31, we had a remaining
 4 budget of \$1,746,313. And that's reflective of expenditures
 5 totaling \$4,520,180.
 6 And as always, our tidelands funds are all
 7 obligated out.
 8 Are there any questions today?
 9 MR. DRUMMOND: Any questions?
 10 Thank you, Kara.
 11 Do I hear a motion we adjourn?
 12 MR. BOSARGE: So moved.
 13 MR. TAYLOR: Second.
 14 MR. DRUMMOND: All those in favor, signify by
 15 saying aye. Those opposed. Motion carried.
 16 We are adjourned.
 17 (Meeting adjourned 11:05 a.m.)
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1 BEFORE THE COMMISSION ON MARINE RESOURCES

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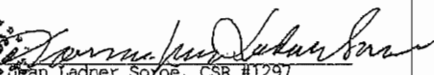
6 COURT REPORTER'S CERTIFICATE

7

8 I, Norma Jean Ladner Soroe, Certified Shorthand
9 Reporter, do hereby certify that to the best of my skill and
10 ability I have reported the meeting of the Commission on Marine
11 Resources and that the foregoing 80 pages constitute a true
12 transcription of said meeting held on the 15th day of February
13 2011.

14 I do further certify that my certificate annexed
15 hereto applies only to the original and certified transcript.
16 The undersigned assumes no responsibility for the accuracy of
17 any reproduced copies not made under my control and direction.

18 Witness my signature this the 3rd day of March 2011.

19
20 
21 Norma Jean Ladner Soroe, CSR #1297
22 Certified Shorthand Reporter



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