

Compressed Transcript



COMMISSION ON MARINE RESOURCES

COMMISSION MEETING

April 17, 2012

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1 COMMISSION ON MARINE RESOURCES
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4 April 17, 2012
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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 17TH DAY OF APRIL 2012
10 COMMENCING AT 9:00 A.M. AND REPORTED BY NORMA JEAN LADNER
11 SOROE, CERTIFIED SHORTHAND REPORTER.
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14 COMMISSION MEMBERS PRESENT:

15 JIMMY TAYLOR, Acting Chairman
16 RICHARD GOLLOTT
17 SHELBY DRUMMOND
18 STEVE BOSARGE

19 ALSO PRESENT:

20 DR. WILLIAM WALKER, Executive Director DMR
21 JOSEPH R. RUNNELS, ESQ., Asst. Attorney General
22 SANDY CHESNUT, ESQ., Asst. Attorney General
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25

1 MR. TAYLOR: All those in favor. Passes.
2 Okay. We need a motion now to accept the
3 agenda. Do I have one?
4 MR. DRUMMOND: I make a motion we accept the
5 agenda, Mr. Chairman.
6 MR. BOSARGE: I'll second.
7 MR. TAYLOR: Those in favor. Passes,
8 D. Public Comments
9 MR. TAYLOR: Now, first item is public comments.
10 We welcome your comments. Once again, if you want to speak
11 about items not on the agenda, please come forward.
12 The first person would be Tom Becker. And state
13 your name when you get to the microphone, please.
14 MR. BECKER: My name is Tom Becker, president of
15 the Mississippi Charter Boat Captains Association.
16 I'm here today for an agenda item that was
17 brought up at our last meeting. And we discussed and we
18 brought forward that we wanted to talk about this item.
19 We have charter captains that fish the Back Bay
20 with the smaller boats. And they have been witnessing boats
21 from -- some of them Alabama and Mississippi -- has scraped all
22 the shells off the bridge, the Ocean Springs-Biloxi Bridge, and
23 then they throw a castnet on top of it. And they're bringing
24 up -- one of our captains actually went up to see. The front
25 of his boat was just slap full of sheepshead.

1 A. Call to Order
2 MR. TAYLOR: I'd like to welcome everybody to
3 the April meeting of the Commission on Marine Resources.
4 If you want to speak, please fill out one of the
5 forms in the back and have someone bring it forward. And we
6 will allot the time.
7 B. Approval of Minutes - Commission Meeting March 13, 2012
8 MR. TAYLOR: First thing on the agenda is
9 approval of the minutes. Do I have a second? I mean, a
10 motion?
11 MR. DRUMMOND: I make a motion, Mr. Chairman, we
12 approve the minutes.
13 MR. GOLLOTT: Second.
14 MR. TAYLOR: Those in favor. Approved.
15 C. Approval of Agenda
16 MR. TAYLOR: Okay. Approval of the agenda. Do
17 we have any items that need to be changed?
18 DR. WALKER: One, Mr. Chairman. Agenda Item
19 H-3(b), Hancock County Board of Supervisors, needs to be
20 removed. The applicant has asked for extension to work out
21 some mitigation concerns.
22 MR. TAYLOR: Okay. Do I have a motion to accept
23 the modification of the agenda?
24 MR. GOLLOTT: So moved, Mr. Chairman.
25 MR. DRUMMOND: Second.

1 Now, what they're asking is that to go through
2 the process if possible, go through the process and move the
3 commercial line to south of the Ocean Springs-Biloxi Bridge
4 instead of the railroad bridge, and no castnetting or scraping
5 of barnacles. That's like deer hunting over a corn feed.
6 And they got I don't know how many pounds. He
7 said it was just packed in the front of his boat.
8 But this is the agenda they're asking for to see
9 if you guys can do something about it. The customers, they
10 were not happy. And these are the people we want to come back.
11 And this is the image we're setting for the rest of the nation
12 when these tourists leave here and go back. We don't need
13 that.
14 So we are asking for, move that line out to the
15 south of the Biloxi-Ocean Springs Bridge and no castnetting
16 around area for the fish by the commercial fishermen.
17 MR. TAYLOR: Tom, let me ask you a question.
18 I'm a member of the association. And it concerns me. But one
19 thing, we allow castnetting in other species as opposed to gill
20 netting.
21 Do you think that maybe not allowing the
22 scraping of barnacles off the pilings would solve the problem
23 because if we can congregate the fish or something? I mean,
24 I'm asking.
25 MR. BECKER: It possibly would. I know when I

1 have fish, rigs, not scraping barnacles, and after a while with
2 chum overboard, they do come up. But we're using hook and line
3 and still catch the fish.

4 It's possibly that could work.

5 Any other questions? Thank you.

6 MR. GOLLOTT: How do you know it's these boats
7 coming from out of state and not just local people?

8 MR. BECKER: It has AL on the front of the boat
9 and a number. They're small boats that are doing this.

10 MR. TAYLOR: One thing, Tom, that I just asked
11 Dr. Walker, the line might be set by state statute which we
12 could not change if that's the case. We can ask, but it will
13 have to -- we'll check on that.

14 MR. BECKER: Okay. Thank you.

15 MR. TAYLOR: Thank you.

16 Okay. Any other comments? Okay.

17 E. Executive Director's Report

18 MR. TAYLOR: Next, executive director's report.

19 DR. WALKER: I have nothing, Mr. Chairman.

20 MR. TAYLOR: Thank you.

21 F. Marine Patrol

22 MR. TAYLOR: Marine patrol, Chief Walter
23 Chatagnier. I think that's walking short.

24 MR. PITTMAN: I even wore my boots to make
25 myself stand taller.

5

1 MR. PITTMAN: Most of them are local. The ones
2 that you see out of state are mostly we check by vessel. Most
3 of the other ones are fishings from piers, like Urie Pier, on
4 the beach.

5 MR. TAYLOR: Do we have any signs up that you
6 need --

7 MR. PITTMAN: There were signs. I guess they've
8 been put back up at these piers talking about fishing license
9 and what the law is.

10 DR. WALKER: I know our fisheries folks -- and
11 Joe, maybe you are going to talk about it today, I don't know
12 -- but I know our fisheries group is concerned about this, and
13 they are trying to come up with some very proactive ways to
14 inform folks, make sure the people know that they're supposed
15 to have fishing license, make it easier for them to get the
16 fishing license. So hopefully through some proactive measures
17 within the department we can reduce this number significantly.

18 MR. TAYLOR: Thank you, Rusty.

19 G. Marine Fisheries

20 MR. TAYLOR: Next up, marine fisheries, Dale
21 Diaz. I don't see Dale.

22 MR. JEWELL: Good morning, commissioners.

23 Again, Dale sends his regrets. He's out representing the
24 agency at the Gulf Council meeting.

25 And Dr. Walker is correct. We are evaluating

7

1 Good morning, Mr. Chairman, commissioners, Dr.
2 Walker, Sandy.

3 You have the report in front of you.

4 If you see what stands out most is the no
5 fishing license violations we're still getting. For some
6 reason, people just want to fish without a license.

7 We have a few insufficient PFDs.

8 We taught two boat and water safety classes,
9 certified 87 students.

10 We had two boating accidents without injuries.

11 We also had a water related fatality, two of
12 them. One was Cat Island where we helped recover a body. The
13 other was up in the Tchoutacabouffa River.

14 And on our JEA patrols, we had 36 patrols, 623
15 man hours, 234 contacts. We had two enforcement action reports
16 and one state citation.

17 MR. GOLLOTT: Rusty, what's the fine for not
18 having a fishing license; do you know?

19 MR. PITTMAN: It's a hundred to five hundred for
20 saltwater fishing. And it costs -- what? -- \$10 for a license.

21 You see like when we check them, they have their
22 ice coolers with everything they need, their bait, but seems
23 like they just like to try to fish without a license.

24 MR. TAYLOR: Are most of them local or out of
25 state?

6

1 internally ways that we can increase license sales and inform
2 the public about the requirements of the recreational license.
3 Actually, Lauren Thompson and I met just this morning on ways
4 that we can get that information out to the public. And we
5 intend to send out some information through the local media
6 here shortly on that issue.

7 I do want to mention a couple of things before
8 we move through the agenda items that may be of interest to
9 you, the commission.

10 You should have received I think this morning or
11 in your packets a recently developed oyster newsletter that was
12 done for the oyster industry to get out information about the
13 upcoming season and where we're at with the oyster shellfish
14 program. It's development information that is a public service
15 and a public outreach. We have mailed that out to all the
16 license holders, just over 600 went out, to the oyster task
17 force, also, all interested people in the oyster shellfish
18 program and commission. And it describes upkeep of the oyster
19 program, our recent efforts to manage the oyster reefs, and
20 where we're at in our current seafood shellfish oyster season.

21 Additionally, if you notice, the very first
22 article is our license sales and where we're at on that right
23 now.

24 I can give you a little update on just where
25 we're at on the sales. As you well know, the commission gave

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1 us the charge to start license sales the way we did last year
2 and how we've sold those over the past couple of years. We
3 started license sales in April. To date, we've sold
4 recreational oyster sales, we've had two of those sold.
5 Mississippi tonging license, we sold 31. Mississippi dredging
6 license, we sold 87. Out of state tonging license, we sold 18.
7 Out of state dredging license, we've sold 21. For a total of
8 about 159 license to date.

9 So, so far, we've done relatively well. It's
10 gone relatively smoothly, and we look for a successful season.

11 And this letter complements our shrimp and crab
12 letter which is in development right now. The next edition
13 will be coming out shortly.

14 And all these newsletters can be found on our
15 website, www.dnr.ms.gov under the publication tab. So that is
16 a public service and can be found by the public on our website.

17 And second, I wanted to congratulate the seafood
18 technology bureau and the shellfish bureau under direction of
19 Ms. Ruth Posadas and Mr. Scott Gordon and their staffs. The
20 FDA annual evaluation of the shellfish harvest growing areas
21 and the seafood plant inspections were all found in compliance
22 with all program elements of the model ordinance and ISSC and
23 MSSP guidelines. It's a significant contribution and step in
24 our annual evaluations of those programs. It's a great
25 milestone this past year.

1 Seafood Trace. It's a partnership between the commission trace
2 register blueprint of the trip ticket, MREG, and GCR.

3 So I don't think this is news to many folks, but
4 seafood in the United States is largely in a commodity market.
5 And it has imported seafood and Gulf seafood going in there and
6 aquaculture seafood. So it becomes challenging to create a
7 unique way to differentiate Mississippi seafood or Alabama
8 seafood or Gulf seafood because it's in that commodity market.

9 So how do you separate the wonderful seafood
10 that we have in this part of the world from the rest of the
11 world and the imports?

12 We need a way to differentiate it, and
13 traceability, this program, can allow that to take place.

14 So there needs to be the ability to
15 differentiate the seafood, share the information. Doing that
16 ensures confidence and allows you to tell a story of the unique
17 seafood that we have and the unique stories that we have from
18 this part of the world.

19 There are also other challenges that
20 traceability can help with.

21 There are many issues with quality and safety.
22 You might be familiar with some with oysters.

23 There's mislabeling. Grouper being passed off
24 -- catfish being passed off as grouper or red snapper, those
25 types of things.

1 With that being said, we are going to move into
2 the agenda items.

3 And first up is a presentation by Mr. Alex
4 Miller of Gulf States Marine Fisheries Commission on seafood
5 traceability. You all know that's a big issue that's out there
6 now. And he's going to do a short film clip, just four or five
7 minutes, followed by a slide presentation.

8 3. Traceability

9 MR. MILLER: Good morning, Mr. Chairman,
10 commissioners, Dr. Walker. Appreciate the opportunity. I'm
11 the staff economist for the Gulf States Marine Fisheries
12 Commission in Ocean Springs.

13 Today I'd like to present to you a new exciting
14 program called Gulf Seafood Trace. It's a traceability
15 program. And the aim is to increase the demand and increase
16 hopefully the focus on seafood in the Gulf of Mexico.

17 This is funded in the post-BP HORIZON by
18 Congress and passed through NOAA to the commission.

19 But let me show you this video quickly, and then
20 I'll get into the nuts and bolts of the program through Power
21 Point.

22 (Video played.)

23 MR. MILLER: That was an introduction to the
24 program.

25 So like I said before, the program is Gulf

1 Regulation issues.

2 Sustainability issues and marketing.

3 So traceability can help address some of these
4 other types of challenges that the industry is going through.

5 So here is the program. There are largely three
6 different components to the program. There's the base
7 electronic traceability platform. Then we have a data quality
8 and confirmation component that allows us to have more
9 confidence in the information. We're actually able to run real
10 time algorithms that can identify problems in the data.

11 Then we have a marketing module that's basically
12 the icing on the cake that can communicate the information to
13 the consumer to the buyers.

14 We have ten industry programs throughout the
15 Gulf of Mexico. I won't go through and name them all. We
16 particularly have Gulf Pride here in Mississippi.

17 How does this system work? It starts with the
18 vessel electronic trip ticket system. The information goes to
19 the dealer. Information goes into the fisheries information
20 network through the trip tickets. Passed on to processor where
21 they can add additional information, value added information.
22 The distributor can add additional information. And then that
23 information can be shared with retailers, restaurants, and
24 eventually the consumer.

25 So this is what the system looks like from the

1 inside. You can see the trace map on this example. The
2 product came from panhandle of Florida there. It was processed
3 in Florida. Then that particular lot was sent to New York and
4 sent to Texas.

5 I mentioned the data confirmation, data quality
6 side. It's one thing to put information into a system, but
7 does that information really mean something? So we have these
8 algorithms that run that can basically determine areas of risk
9 and identify problems in the data. One example might be the
10 species name, common name, those types of things. Does that
11 species even live in the Gulf of Mexico? If they have pollock
12 on there, it would throw up a red flag, well, that's not from
13 the Gulf of Mexico.

14 Another component for marketing, really want to
15 engage the buyer to communicate the safety of it, the premium
16 nature of it, sustainability of it, flavor of it. Right now,
17 there's a lot of uncertainty, so that allows there to be
18 confidence, allows you to confirm the source, where it's coming
19 from, and tell that story, all getting down to, like I said,
20 the confidence and trust.

21 One example how it's being used, this is
22 Emeril's New Orleans Fish House through our program actually
23 has the QR code, the traceability, on the bag so that consumer
24 can scan it and have that wealth of information. This product
25 is on the Home Shopping Network right now.

13

1 So the marketing, like I say, can tell that
2 story to the Smart Phone which you can get from the QR codes.
3 It's an innovative medium, enhances your credibility, generates
4 traffic, it's really infinite label where you can put really
5 whatever you want on that Smart Phone application.

6 And then education informs.

7 So like I said, this marketing example, you can
8 scan the bag and get the exact story where that product came
9 from. In this case, south of Louisiana, maybe in New Orleans.

10 Another example here of Louisiana motivated
11 oysters where they have QR code. This is just an example. But
12 there's the QR code on the product, and you can scan it and get
13 that life history of where it came from and where it went.

14 So the program is completely voluntary for the
15 industry. And it's offered at no cost through the commission
16 through the end of 2014. So with that, you get the use of the
17 electronic trip ticket interface, the trace register system,
18 the data quality, and the marketing module.

19 We have a website, Gulf Seafood Trace. And I
20 think have a brochure up there for you and a business card that
21 has that address on it. You can go there and learn a whole
22 wealth of information, ability to enroll in the program by
23 filling out an online form. Videos on how it works. You can
24 watch and learn about different components of the program,
25 learn about the program pioneers. This is old. We have about

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1 25 people have signed up at the moment.

2 A couple of news articles that are on there.

3 You can enroll, fill out the form.

4 So that's the program. It's also a toll free
5 number there that you can call and get assistance with the
6 program.

7 Be happy to entertain any questions.

8 MR. BOSARGE: I guess the entry level would be
9 more at the processor retailer end?

10 MR. MILLER: Right. The use of the no cost
11 program is focused on the processors and the dealers. But then
12 the harvesters can work with them to tell their story.

13 MR. BOSARGE: All right.

14 MR. TAYLOR: Thank you very much. It was very
15 informative.

16 MR. DRUMMOND: Thank you, Alex.

17 MR. JEWELL: Next up on our agenda is the live
18 bait update, Mr. Mike Buchanan.

19 4. Bait Mullet Update

20 MR. BUCHANAN: Commissioners, Sandy, Dr. Walker.

21 Anyway, at the last commission meeting, you had
22 asked me to come up with some language on the bait mullet
23 issue. And the fact of the matter is, I couldn't come up with
24 anything much better than what I already had, not that that's a
25 great thing.

15

1 But this is the language that we would like to
2 submit for notice of intent if you would want to do that.

3 And what was changed was basically reducing the
4 amount of dead bait they could have in their possession from
5 ten to five pounds.

6 And this kind of goes along with the live bait
7 shrimping. If you're catching shrimp, it's tough to keep up
8 with how many shrimp they've got. But if you restrict them
9 from the amount of dead bait they've got, you know that they're
10 trying to keep them alive and sell them alive.

11 And that's what we were essentially trying to do
12 here.

13 So, what we'd like to take out to notice of
14 intent is a new section in the live bait ordinance. And it
15 shall be unlawful for any minnow fishermen or live bait catch
16 boat to have in possession excess of five pounds of dead
17 mullet.

18 Commercial minimum length limit for mullet would
19 be -- they would have no minimum size length.

20 And they have to fish below the CSX.

21 Minnow fishermen can only sell mullet to
22 licensed Mississippi live bait dealers or Mississippi
23 recreational fishermen.

24 And you cannot be minnow fishing and
25 have/possess mullet north of the CSX railroad bridge.

16

1 MR. TAYLOR: Buck, where it says Mississippi
2 recreational fishermen. If you're out of state, but you got a
3 Mississippi out of state license, they are not going to have a
4 problem with the wording there?

5 MR. BUCHANAN: No.

6 MR. GOLLOTT: Have you thought about a way to
7 keep up with how many is being landed?

8 MR. BUCHANAN: I couldn't -- hopefully, I can
9 get them in the trip ticket system. But even then, I'm not
10 sure that they know exactly -- you know, they're going to be --
11 they're going to have mullet there, and I guess I can give you
12 some sort of gross estimate.

13 MR. GOLLOTT: I'm sure they're going to be
14 selling them by the piece. You know what I mean? Like with
15 shrimp.

16 MR. BUCHANAN: That's correct, they would be.

17 But we would get the actual -- what we would get
18 is something from the live bait for the minnow fisherman. He
19 would come in, he would put his mullet in there, he would fill
20 out the trip ticket and send it to us for that particular trip.
21 I mean, he's going to have to guesstimate about how many he's
22 got.

23 And he's going to have to try to keep them
24 alive, too, so, I mean, he can't be just -- you know.

25 MR. TAYLOR: Do they have a trip ticket now for

17

1 railroad, if y'all could consider moving this one to the
2 Highway 90 bridge, as well.

3 MR. GOLLOTT: I think that's a state statute. I
4 don't think we can mess with that, Chief.

5 But I would like to make a motion that we take
6 this out for public hearing.

7 MR. BUCHANAN: You want to take this out to
8 public hearing?

9 MR. GOLLOTT: Yeah.

10 MR. BOSARGE: And I'll second the motion. I
11 think you did a good job, Buck.

12 MR. BUCHANAN: Okay.

13 MR. DRUMMOND: Buck, there's no way to monitor
14 the fishery as far as the actual fishermen, the minnow
15 fishermen selling to the recreational fishermen out there when
16 he's fishing; right? No way to do that.

17 MR. BUCHANAN: No, unless we have somebody on
18 board their vessel.

19 MR. DRUMMOND: But I don't see how you can very
20 well track the catches of minnows.

21 MR. BUCHANAN: All the stuff is angler supplied
22 information. Okay? If they want to lie about it, I mean,
23 obviously we're not going to be able to -- unless we are with
24 them.

25 MR. DRUMMOND: I think it's a good thing as it

19

1 the minnows?

2 MR. BUCHANAN: Well, when they come in to buy
3 their license, I'm going to, you know, put them in the program
4 as best I can.

5 MR. TAYLOR: What about just having the live
6 bait dealer adding a line to his ticket that he fills out every
7 month? Don't they have to fill out something every month?

8 MR. BUCHANAN: Yes. And currently, minnows is
9 not on that. We were waiting to see.

10 But the live bait dealer -- okay? -- you want
11 the minnow fishermen to actually -- because they would not get
12 included in any kind of trip ticket thing.

13 All right? So half the reason for -- or most of
14 the reason for having a trip ticket is because they can prove
15 this is what I caught, this is what I sold, this is what I'm
16 worth, you know; you screwed everything up, this is what you
17 owe me.

18 MR. GOLLOTT: I think the chief wants to say
19 something, Mr. Chairman.

20 MR. CHATAGNIER: Good morning. The only thing I
21 would ask is if you're going to consider moving the line for
22 scraping barnacles and commercial sheepshead fishing to the
23 Highway 90 bridge, if it be possible go ahead and include this
24 to the Highway 90 bridge, as well, instead of having two
25 different commercial lines, one at 90 and one at the CSX

18

1 sits right now. But I don't see how they can abuse the
2 privilege that much. I don't see it.

3 MR. BUCHANAN: You would be surprised.

4 MR. DRUMMOND: As far as the line is
5 concerned, I think we'll have to go to the legislature to do
6 that, Chief. I'm not sure, but I think we do.

7 MR. TAYLOR: Okay. We have a motion and a
8 second on the floor. All those in favor.

9 MR. DRUMMOND: What is the motion again, please?

10 MR. TAYLOR: The motion is to send this out for
11 public comment. Is that right?

12 MR. BUCHANAN: To take it for notice of intent
13 and take it out to public comment and take it out to public
14 hearing.

15 MR. TAYLOR: All those in favor. Opposed?
16 Carries. Thank you, Buck.

17 5. Title 22 Part 7: Harvesting Requirements for Reef
18 Fish

19 MR. BUCHANAN: Okay. The next thing is the
20 final adoption for the reef fish that y'all had approved to
21 send up to the Secretary of State for notice of intent.

22 We did not receive any comments back on this.

23 This would change the recreational bag limit
24 from five to four grouper on the recreational side.

25 It would also require that any commercial

20

1 fisherman fishing for these reef fish under the federal reef
 2 fish management plan have the proper federal licenses and
 3 permits.
 4 And I'd like to bring that up for final
 5 adoption.
 6 MR. TAYLOR: Okay. Any questions? Do we have a
 7 motion?
 8 MR. BOSARGE: I make a motion we accept the
 9 recommendations.
 10 MR. TAYLOR: Do we have a second?
 11 MR. DRUMMOND: I second the motion.
 12 MR. TAYLOR: All those in favor. Opposed?
 13 Carries unanimous. Thank you, Buck.
 14 Next up we have coastal ecology. Jan Boyd.
 15 H. Coastal Ecology
 16 MR. BOYD: Good morning, Mr. Commissioners, Dr.
 17 Walker, Sandy.
 18 Coastal ecology has three action items for your
 19 consideration this morning. But before we get to that, Willa
 20 Brantley is going to give a staff response to some public
 21 comments we got.
 22 MS. BRANTLEY: Good morning, commissioners, Dr.
 23 Walker, Sandy.
 24 As Jan said, my name is Willa Brantley, and I
 25 have a staff response concerning a general permit that was

21

1 Ridgewood Drive had acknowledged to me on two occasions that
 2 they could have constructed their boat lift some eight to ten
 3 feet closer to the shore, but they chose not to do so.
 4 Let me say that again. They could have
 5 constructed their boat lift some eight to ten feet closer to
 6 the shore, but they chose not to do so.
 7 I contend or I submit to you that building a
 8 structure 25 percent of the distance across the waterway as
 9 opposed to building it as far out from the shoreline as you
 10 need to for navigable depths represents a gross abuse of the
 11 DMR regulations.
 12 Mr. Chairman, I have some photographs for you
 13 which I believe clearly show that the recently constructed
 14 structure at 137 Ridgewood Drive extends somewhat further into
 15 the waterway than other structures on Canal 6.
 16 These photographs were attached to my letter of
 17 24 March, but I just wanted to bring them to your attention
 18 again.
 19 And I have two requests relative to those
 20 photographs when you're ready, sir.
 21 MR. TAYLOR: Okay.
 22 MR. POARCH: My first request, I'm respectfully
 23 requesting that the DMR evaluate the situation and effect
 24 whatever corrective action that you deem appropriate at 137
 25 Ridgewood Drive.

23

1 issued to Mr. Ernest Gibbs and Ms. Rosemary Crowder.
 2 The topics I'm going to be responding to are a
 3 letter to the bureau of wetlands permitting staff that was from
 4 Vincent and Colleen Nunez that was received March 1, 2012.
 5 Also some public comments made by Mr. Vincent Nunez at the
 6 March 13, 2012, commission meeting, and a letter that was
 7 addressed to Commissioner Vernon Asper that the bureau of
 8 wetlands permitting received a copy of, and that was from
 9 Warren Poarch, and that was received on March 26, 2012.
 10 And I believe that Mr. Poarch is here and has
 11 turned in public comment, and I would like to let him say what
 12 he would like to say, and then I'll present our response.
 13 MR. TAYLOR: Mr. Poarch.
 14 And state your name when you come up, please.
 15 MR. POARCH: Yes, sir.
 16 Good morning, Mr. Chairman, Dr. Walker,
 17 commissioners. Thank you for the opportunity to speak. My
 18 name is Warren Poarch. I'm a full-time resident of 133
 19 Ridgewood Drive in Pass Christian.
 20 I contend that the recent construction in Canal
 21 Number 6 at 137 Ridgewood Drive in Pass Christian represents an
 22 abuse of the DMR regulation for docks, piers, and wharves, that
 23 states in part that the structures should extend no further
 24 waterward than necessary to obtain navigable depths.
 25 The residents, the part-time residents of 137

22

1 The second request is I respectfully request
 2 that DMR in the future for future permits that you look closely
 3 and strictly enforce the requirement for extending no further
 4 into the waterway than necessary for navigation and especially
 5 on narrow waterways like Canal Number 6. It creates a
 6 significant imposition and a financial burden on other property
 7 owners when an individual extends 25 percent of the distance
 8 across a very narrow waterway.
 9 Are there any questions, sir?
 10 MR. GOLLOTT: Did we issue these folks a permit
 11 to do this already?
 12 MR. POARCH: It is my understanding you did,
 13 yes, sir.
 14 MR. TAYLOR: Willa, do you want to respond?
 15 MR. POARCH: Thank you so very much.
 16 MR. BOSARGE: Excuse me one moment. I'm looking
 17 at your photo and looking at the photo that was given to us in
 18 our packet. And from your photo, it almost appears that that's
 19 a point that that's built on. And the photo I'm looking at
 20 that we have, the canal appears fairly straight.
 21 MR. POARCH: Yes, sir. There is a bend in the
 22 canal. It's a slight turn. And it's -- the turn is located
 23 approximately at my property which is 133 Ridgewood Drive.
 24 And two years ago, I conducted a survey of
 25 structures extending waterward. And at that time when I

24

1 conducted that survey, the structure -- you see the slight
2 bend? That would be the apex of the bend, sir.

3 The other point I wanted to make is that two
4 years ago, and I'm referencing two years ago because at that
5 point in time I did a detailed survey of the waterward
6 structures on this canal. And by my measurements from where it
7 appeared that the shoreline had been, the furthest waterward
8 structure that I could find was 13 feet from the shore.

9 Now, that was my rough measurements and my
10 eyesight.

11 This particular structure goes approximately 25
12 percent of the distance across the waterway, and the waterway
13 is some 80 feet wide at that point.

14 MR. BOSARGE: It would be approximately 20 feet?

15 MR. POARCH: I believe that's correct, sir.

16 MS. BRANTLEY: I have detailed measurements in
17 my presentation.

18 MR. TAYLOR: Thank you.

19 MR. POARCH: Thank you, gentlemen.

20 MS. BRANTLEY: For staff response, just to be
21 clear on the record, the location is an unnamed canal adjacent
22 to the Bay of St. Louis. It's at 137 Ridgewood Drive in Pass
23 Christian, Harrison County. That's within the Timber Ridge
24 subdivision. It's in a general use district.

25 This is a diagram. It's kind of hard to see

25

1 these, but this is an existing pier that is approximately seven
2 feet wide. This was existing prior to when Mr. Gibbs and Ms.
3 Crowder bought the property. And it was existing when they got
4 the permit to build the boathouse and the pier.

5 I'm going to come back to this diagram a lot of
6 times during my presentation just to make different points.

7 Again, this is the project location. This shows
8 the Timber Ridge subdivision.

9 And this is a closeup. You can barely see the
10 words there, but this is 137 Ridgewood which is the property in
11 question. I believe this house just to the north is owned by
12 Mr. and Mrs. Nunez. And then approximately down here, like he
13 said, where the canal curves, is Mr. Poarch's home.

14 Just to give you a short chronology of the
15 project.

16 On May 17, 2011, a general permit was issued to
17 Ernest Gibbs and Rosemary Crowder for the construction of a
18 boathouse.

19 On February 8, the general permit was modified
20 to include a pier.

21 On February 27, 2012, Mr. Nunez called DMR to
22 express his opposition to the construction of the boathouse and
23 the pier.

24 And on February 29, Mrs. Colleen Nunez submitted
25 her request for disclosure of the general permit that had been

26

1 issued. A copy was mailed to her the following day of both the
2 permit and the modification.

3 On March 1, 2012, the DMR received a letter from
4 Mrs. Colleen and Mr. Vincent Nunez objecting to the project.

5 And on March 26, we received a letter from Mr.
6 Warren Poarch objecting to the project.

7 And those I'm going to respond to specifically
8 to points that they bring up.

9 So this is the letter from Mrs. Colleen and Mr.
10 Vincent Nunez. First point was that the developer who
11 previously owned the land placed the bulkhead six feet into the
12 waterway and back-filled the property.

13 No such complaint was made at the time of the
14 construction. And a review of historical aerial photography
15 does not indicate that such filling took place.

16 Also, this is a picture that was taken during a
17 compliance check during construction of the bulkhead. And if
18 you notice, behind the bulkhead, that's natural dirt. When you
19 see fill dirt, it's -- greater than 95 percent of the time it's
20 red clay fill dirt, and we can tell really easily whether
21 something has been filled or not. You can even see some -- you
22 may not be able to see it in this picture, but you can see some
23 roots of natural vegetation that was there. And those wouldn't
24 be there if they had filled out into a waterway.

25 Ms. Nunez also requested the scale and size of

27

1 the project be reevaluated.

2 The project as proposed and as constructed does
3 meet general permit guidelines. It was not judged by the staff
4 to present a hazard to navigation when it was proposed.

5 And a request for a stop work order was made.
6 And no violation of issued general permit has taken place, so
7 we have no grounds for issuing a stop work order.

8 In response to Mr. Vincent Nunez's comments at
9 the March 13 commission meeting, he stated that recently the
10 Timber Ridge Property Owners Association has left the burden of
11 preserving the natural resources of canals to the DMR.

12 This is true. The current Timber Ridge Property
13 Owners Association covenants state that DMR holds jurisdiction
14 over all waterways and that lot owners must meet DMR
15 requirements.

16 The structure as authorized and as constructed
17 does meet our general permit guidelines which are approved for
18 projects that are considered to be minor in nature.

19 He also stated in 2006 the property owners were
20 sued and signed a statement saying they would remove a boat
21 shed that was built 21 feet out into the waterway and now DMR
22 has authorized an even larger boat shed.

23 DMR regulations are not affected by outside
24 agreements or lawsuits unless -- that's outside DMR. If DMR is
25 one of the parties to the suit, of course, it would affect us.

28

1 But if we're not a party to the suit, then it doesn't affect
2 our regulations.

3 And the total structure extends 21 feet across
4 the width of the waterway, not more than 21 feet. This is a
5 picture of we believe the original pilings that Mr. Nunez was
6 referring to that were placed approximately 20 to 21 feet out
7 into the waterway. Those were subsequently removed, and no
8 boat lift was built. This picture is from 2006.

9 And then again, going back to the diagram,
10 you've got an existing pier that's seven feet wide. The
11 boathouse as constructed was measured at 13 feet 9 inches which
12 means it's less than 21 feet by three inches. And the width of
13 the waterway is 85 feet. And that was measured with a tape
14 measure, so that is an accurate width of waterway, which means
15 that the 25 percent across the width of the waterway would be
16 21 and a quarter feet.

17 Another comment that he made was that currently
18 permitted structure is 40 feet long on a 60 foot lot, and if
19 the adjacent landowner built a 40 foot long structure, neither
20 person could access their boat hoist.

21 This is a possibility. These are the property
22 lines, and the width of the lot is 60 feet. So you've got a
23 ten foot setback here on this side and a ten foot six inch
24 setback on the other side. I believe this side is the side
25 that Mr. Nunez owns adjacent to. So you've got a ten foot

1 that. You've got the bulkhead right here. Directly off the
2 bulkhead, the depth is 2.5 feet. At the landward side of the
3 boathouse, it is -- I believe that's 4.4. In the middle of the
4 boathouse, it's 5.3. And on the landward side, it's 6.4 feet
5 deep.

6 And then they also measured in the very middle
7 of the channel which was the deepest portion of the canal, and
8 that is seven feet deep.

9 So nowhere in the canal did they find depths of
10 eight feet deep.

11 Also wanted to note on this, this was taken at a
12 high tide on April 5, 2012. The wind was west southwest at 14
13 miles per hour, and the area -- south Mississippi area had
14 received three to five inches of rainfall in the three days
15 preceding when they took those measurements.

16 So all that kind of tells us that these are the
17 maximum depths you really ever get to in that canal. Under a
18 normal circumstance and at low tide, they would be at least a
19 foot or almost two feet less than that.

20 Finally, we have Mr. Warren Poarch's comments in
21 a letter to Dr. Vernon Asper.

22 Mr. Poarch, as he did in his comments just now,
23 cites general permit guidelines for piers, wharves, and docks
24 which state that the structures should extend no further
25 waterward than necessary to attain navigable depths.

1 setback there.

2 So if Mr. Nunez came in and built a boathouse
3 that left only ten feet, there would be only 20 feet between
4 the boathouse. Same over here; there would only be 20 feet and
5 six inches, which could make it difficult to access the
6 boathouse.

7 However, there are no guidelines or legislation
8 that allow dimensions of the proposed structures to be dictated
9 by the length of the shoreline owned.

10 Also, the requirement for the ten foot buffer is
11 only found in the general permit guidelines. And even though
12 that's not a guideline for regulated activities according to
13 the Mississippi Coastal Program, permitting staff has always
14 recommended that the commission maintain this requirement even
15 on things that don't qualify for a GP and could possibly be
16 built closer than ten feet to the adjacent property line.
17 We've always asked that the commission require that ten foot
18 buffer, and until now, that's always been done.

19 Another comment is that the boathouse is located
20 in water depths of eight feet, and the water depth is four feet
21 directly adjacent to the existing bulkhead, meaning that they
22 could have built the boathouse directly adjacent and had plenty
23 of depth.

24 This is in your packet. It's a little hard to
25 read, but it is in your packet just in case you want to look at

1 Mr. Poarch believes that the waterward
2 construction is greater than necessary to attain navigable
3 depths and is not in accordance with the referenced guideline.

4 Going back to the diagram again, you can see
5 that the boathouse is constructed parallel to the shoreline
6 meaning that they would pull in from the side with their boat
7 rather than straight out. That reduces the length that they
8 would have to go out into the waterway.

9 This boathouse is very similar in size to a
10 majority of the boathouses that we issue permits under general
11 permits. It's no wider than is necessary to accommodate an
12 average size vessel, and it does not cross more than 25 percent
13 of the width of the waterway.

14 This seven foot wide pier could have been
15 removed, and therefore they could have built their boathouse
16 seven feet closer to the bulkhead. To go any further than
17 that, as Mr. Poarch said eight to ten feet, they could have
18 done an indented boat slip. However, these were not discussed
19 as alternatives because of the increased cost to the property
20 owners, increased impact to the environment from removal of
21 pilings, and it does meet the general permit guidelines, and
22 they could construct the structure that they wished to
23 construct within 25 percent of the width of the waterway. So
24 removing that pier was not brought up as an alternative.

25 Mr. Poarch also states that the project has a

1 significant impact on the property values, navigation safety,
2 and community aesthetics for the other properties on the canal.
3 Our general permit guidelines regulate the area
4 and height of structures, how far they can extend across the
5 width of the waterway, and how closely they can be located to
6 another property line without that adjacent property owner's
7 authorization.

8 These guidelines have been reviewed by many
9 state and federal agencies. They were determined to be minor
10 in nature in regard to the environment, navigational safety,
11 and protection of riparian rights.

12 Again, the Timber Ridge property owner covenants
13 -- Property Owner Association covenants, excuse me, state that
14 DMR has jurisdiction over the waterways and property owners
15 must meet the DMR regulations, and to further control
16 structures based on potential impacts to property values falls
17 within the purview of property owner associations or similar
18 organizations, not the DMR.

19 This is a picture of the canal. This was taken
20 from a kayak that was in the middle of the canal.

21 And this right here -- I had to look for a
22 second and find it -- this is the boat lift that's in question.
23 And as you can see, there are other boathouses built and other
24 piers that extend out into the waterway. And there appears to
25 us to be plenty of room to navigate. There's a little more

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1 than 50 percent of the waterway that's left open because the
2 property owner across the canal directly has not built out to
3 the 25 percent width of the waterway.

4 And then this is a picture of the actual boat
5 lift from Ms. Crowder and Mr. Gibbs' property.

6 Mr. Poarch also requests that DMR reevaluate the
7 construction at 137 Ridgewood Drive and strictly enforce the
8 cited general permit guidelines for future projects.

9 Based on all of our evaluation, staff has
10 determined that there are no compliance issues with the
11 structures nor any need for enforcement or other action by the
12 commission at this time.

13 We did not put this on as an action item, so as
14 long as you agree with that, there's no need for a motion.

15 If you don't agree with that, if you think there
16 is a need for action, you are more than welcome to make a
17 motion and take such action as you determine to be appropriate.

18 Do you have any questions?

19 MR. TAYLOR: Hold on just a minute there.

20 Okay. I'd like to ask commissioners if anybody
21 would like to make a motion to change anything, or if there is
22 no motion, you agree with the staff's recommendation, it will
23 die.

24 I see no motion, so the commissioners agree with
25 the staff's recommendation.

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1 MS. BRANTLEY: Okay.

2 Next up, Greg Christodoulou will be presenting
3 an application by Cavenham Forest Industries.

4 Thank you.

5 PERSON IN AUDIENCE: Excuse me, ma'am. Are you
6 allowed to board boats onto that boat dock?

7 MS. BRANTLEY: Sir, if you have anything, you
8 have to come to the podium and state your name.

9 MR. TAYLOR: This issue is dead. We have
10 another issue coming, so it's already -- it's been decided.

11 And --

12 PERSON IN AUDIENCE: Mr. Ladner (sic), if we
13 anchor a boat on the side of this boat dock that's already
14 taking up 25 percent of the canal, like she said, nobody's
15 built one, if they anchor a boat up to this boat dock, it's
16 impassable.

17 And I understand the DMR's picture does show the
18 boat shed, but it's a picture of opportunity.

19 And I'd really like to convene, if we could meet
20 out there one day, and you fellows look at the preservation
21 that the neighborhood has gone through to preserve these canals
22 for the last 35 years. It's in your hands. There's only 25
23 percent of the lots unbuilt out there. You guys have a golden
24 opportunity to preserve a neighborhood and avoid it being
25 overbuilt. Somebody else has already done the majority of the

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1 homework. We're down to 25 percent.

2 My son can't turn his boat around.

3 MR. TAYLOR: Thank you.

4 3. Bureau of Wetlands Permitting

5 a. Cavenham Forest Industries, Inc.

6 MR. CHRISTODOULOU: Good morning, commissioners,
7 Dr. Walker, Sandy.

8 I will present Project H-3(a). It's a permit
9 request for Cavenham Forest Industries. It's located at the
10 confluence of Turkey Creek and Bernard Bayou at 9502 Creosote
11 Road in Gulfport. It's in the industrial use district. And
12 the agent is Environmental Management Services.

13 Here is an outline of the project location. If
14 you look here, this is I-10, and this is just east of the 49
15 interchange. This would be Bernard Bayou, Industrial Seaway,
16 and Turkey Creek winds through, and the site is this area
17 highlighted, this very large site right here.

18 Project description and purpose.

19 The applicant is proposing to take measures to
20 prevent contaminants associated with the past wood treating
21 activities that were at the site from entering Turkey Creek and
22 the nearby waters.

23 The project is part of a U.S. Environmental
24 Protection Agency mandated cleanup per the Resource & Recovery
25 Act, known as RCRA, that was enacted in 1976.

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1 Impacts for the project include the fill of
2 waterbottoms. These are unvegetated public trust tidelands,
3 approximately a half acre impact.

4 There is also fill of emergent tidal wetlands.
5 These are vegetated public trust tidelands that are .35 acre
6 and nontidal wetlands in the amount of 2.82 acres.

7 Also, structures associated with this project
8 include 925 linear feet of bulkhead and a concrete lined
9 spillway measuring 192 feet by 84 feet and three feet deep.

10 Here is a diagram of the project a little bit
11 closer in. I'll go through the impacts on this diagram for
12 you.

13 The bulkheads will be in four principal
14 locations. There will be a bulkhead right here to close off
15 this inlet of Turkey Creek, bulkhead here to close of this
16 inlet of Turkey Creek, one right here in this meander. It will
17 be more of a low profile bulkhead. And it will be right in
18 front of this concrete lined spillway.

19 The purpose of the spillway is to actually
20 convey floodwaters during times of flooding on Turkey Creek.
21 This would allow the water to bypass going through this big
22 curve and actually go straight into Bayou Bernard.

23 The reason for designing this spillway is this
24 project will require that these two areas be filled and, of
25 course, City of Gulfport and FEMA regulations allow you to have

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1 waterbottoms created. In this area, there will be .382 acres
2 of emergent vegetated wetlands.

3 Also, onsite they will be creating some nontidal
4 scrub shrub wetlands just landward of these created coastal
5 wetlands.

6 In addition to the onsite wetlands mitigation,
7 they have also purchased wetland mitigation credits from the
8 Land Trust for the Mississippi Coastal Plains in lieu fee
9 program which serves the Turkey Creek watershed only. So the
10 mitigation that is even offsite of this project will be done
11 within the Turkey Creek watershed.

12 Here is a picture of one of the inlets in
13 question. You can see there is some open water and a large
14 amount of cattails in this instance.

15 Here's the emergent wetlands in question.

16 And here is a smaller inlet on Turkey Creek. We
17 have some Sagattaria also known as bull tongue is the dominant
18 vegetation in this area.

19 Decision factors.

20 The public benefits of the project include
21 reduced risk of contaminants entering Turkey Creek and the
22 surrounding waters and eventually entering into the aquatic
23 food chain.

24 The project is allowable within the industrial
25 use district.

39

1 no rise, so with this change in elevation for these two areas,
2 and they have to show that there is no water going to be pushed
3 onto anybody else. So to compensate for these areas, they have
4 designed this concrete lined spillway.

5 Also, these inlets that are going to be
6 bulkheaded, this is where the impacts will occur to the
7 emergent wetlands in this area here. There will also be the
8 fill of the waterbottoms.

9 In addition to the bulkhead that will be
10 constructed past mean high tide, there will also be a
11 subsurface wall that will be approximately 30 feet deep that
12 will be placed to keep the contaminants from leaching out of
13 these waters and these wetlands into Turkey Creek and the
14 surrounding areas.

15 Here is a broader view. To compensate for these
16 impacts to the wetlands, Cavenham had to do mitigation,
17 proposed mitigation for the project.

18 The mitigation for this project is a combination
19 of onsite measures and offsite measures.

20 The onsite measures include creation of
21 waterbottoms from uplands on their property in these areas.
22 These areas have been scouted ahead of time and are free of any
23 contaminants, so there would be no danger of excavating down
24 these areas to create wetlands in this area.

25 In this area, there will be .5 acres of

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1 The applicant has requested two variances for
2 the project, one being permanent filling of coastal wetlands
3 because of potential adverse and cumulative environmental
4 impacts is discouraged. And vertical face structures shall be
5 aligned no further waterward than mean high tide.

6 And the applicant has provided justification for
7 the variances by stating three of the four possible
8 justifications. The first being impacts to coastal wetland
9 would be no worse than if the guidelines were followed. The
10 justification for that is they have proposed a mitigation plan
11 that will compensate for the impacts to coastal wetlands. And
12 also there is no feasible alternative sites or construction
13 techniques that are available, a significant public benefit in
14 the activity, and the activity does require a waterfront
15 location, and a public hearing has been held.

16 Again, an alternative site is not possible
17 because this is where the contamination exists. The
18 contamination is in wetlands and waterbottoms located on site,
19 so the impacts to the wetlands are unavoidable in this case.

20 The commission has approved a similar project in
21 Gautier and Bayou Pierre, just a couple of years back, and that
22 had to do I believe with CSX Railroad cleaning up some areas.

23 There will be a temporary decrease in
24 productivity and disturbance of local fauna. There was a
25 threatened and endangered species survey done prior to this

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1 application. One species there was concern about was the
2 Alabama redbelly turtle. They did sampling for that, and there
3 were none found in the area.

4 The productivity of the area should increase
5 with the establishment of the mitigation sites. And again, the
6 overall purpose of this project is to protect the biological
7 integrity of the coastal wetlands, as well as the human health.

8 Again, the concrete spillway that I mentioned
9 earlier is to offset the change in elevation as a result of the
10 capping and filling of the solid waste management units.

11 And again, this spillway will be constructed in
12 uplands. There's no wetland impacts associated with it. And
13 it will only function during flooding events.

14 Best management practices will reduce any
15 adverse impacts. Building the bulkhead and the subsurface
16 barriers at the current mean high tide line or landward of
17 wetlands would allow the contaminants that are in the wetlands
18 and in the waterbottoms to leach offsite.

19 No alternative sites were considered since this
20 is the area of contamination.

21 And previous investigations of the site
22 indicated that there are contaminants in the wetlands and the
23 waterbottoms, so it does require a waterfront location for the
24 bulkhead and the flood control structure.

25 The site is located in a mixed use area, so

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1 mitigate for the impacts to coastal wetlands has been
2 submitted. And therefore, staff recommends approval of the
3 variance request and issuance of the permit.

4 MR. TAYLOR: Any questions?

5 MR. DRUMMOND: EPA has put up the money for
6 this?

7 MR. CHRISTODOULOU: No, sir. The applicant is
8 actually funding this entire project themselves. There is no
9 government money involved in this cleanup.

10 MR. BOSARGE: How long has it been in the works?

11 MR. CHRISTODOULOU: The actual -- this plan here
12 I believe has been approximately five years, three to five
13 years. And there has been other work done in like the upland
14 portions of the property since 1987 when it was closed.

15 MR. DRUMMOND: Mr. Chairman, I make a motion
16 that we accept the recommendations of the DMR.

17 MR. BOSARGE: I'll second his motion.

18 MR. TAYLOR: All those in favor. Carries
19 unanimously. Thank you.

20 c. William Meyer

21 MR. COLE: Good morning, everyone. My name is
22 Ron Cole, and I'll be presenting the next project.

23 We have a violation/after-the-fact by Mr.

24 William Meyer, Jr. It's located on an unnamed canal adjacent
25 to Young Bayou in the Timber Ridge subdivision, Pass Christian.

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1 there is some industrial, some commercial, and some residential
2 in the area. Presently, the plant has been closed for about 25
3 years, so it hasn't been operational I don't believe since
4 1987. And the only thing that's been going on out there since
5 that time is actually other cleanup work on the site.

6 And once the construction is completed, the area
7 will be planted with native vegetation and maintained as green
8 space so the scenic quality should not be impaired by the
9 project.

10 We did run the public notice in Sun Herald as
11 required, and a public hearing was held on March 27.

12 We did receive a comment. That comment that we
13 received was more about the attendance at the event, rather
14 than the project itself.

15 There were no reservations by Department of
16 Archives & History. Secretary of State already had a lease
17 with Cavenham for the public trust tidelands. Wildlife,
18 Fisheries & Parks has recommended implementation of best
19 management practices. And the Corps of Engineers has approved
20 the mitigation plan submitted by the applicants and will be
21 issuing a nationwide Permit 38 for the cleanup of hazardous
22 materials.

23 So based on our departmental review, we have
24 determined the project is consistent with the Coastal Program.
25 It serves a higher public purpose, and appropriate plan to

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1 And it's in the general use district.

2 Here you can see an aerial of the project
3 location. And it is in the Timber Ridge subdivision, Pass
4 Christian.

5 Description of the project.

6 Unauthorized regulated activities that Mr. Meyer
7 conducted consist of constructing approximately 90 linear feet
8 of bulkhead without authorization and dredging/excavating
9 approximately 130 cubic yards of material from a manmade canal.

10 Chronology.

11 On November 14, 2011, DMR received a report
12 stating that a canal was being dredged without authorization.

13 Staff conducted a site visit and learned that a
14 bulkhead had been recently constructed without authorization
15 and there was dredging and excavation that had recently taken
16 place, as well.

17 The contractor on site was ordered to cease
18 activity and submit an after-the-fact application for the
19 work.

20 On the next day, November 15, 2011, Mr. Meyer's
21 contractor submitted an after-the-fact application for the work
22 that had taken place on his property.

23 And throughout late 2011, early 2012, staff was
24 evaluating all available aerial photography, GPS data, that
25 would define -- to figure out whether or not this dead-end

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1 canal had been extended further than it originally existed or
2 if they had just gone in and dredged without a permit.

3 And this is the conclusion that we came to.
4 There is an existing, as you can see here, there's an existing
5 drainage pipe at the end of this dead-end canal. And the
6 drainage came out in kind of a squiggly fashion like this into
7 the manmade canal.

8 On each side of it, there was upland vegetation,
9 some pine trees, some shrubs. And we believe what happened is
10 Mr. Meyer went in and removed all of that existing vegetation
11 and scraped down the shorelines on each side of the existing
12 drainage.

13 And this is kind of an overlay of that picture
14 on the end of the canal there. You can see the areas that were
15 stripped of vegetation and excavated slash dredged.

16 This is a photograph from one of the site visits.
17 You can see the work that had taken place there. The bulkhead
18 that Mr. Meyer is standing on is the one that had been
19 constructed, and you can see the sides of the bank how they
20 have been scraped free of vegetation.

21 This is a picture from the site visit that we
22 did on November 14, the first day when the activity was called
23 in. The bulkhead was under construction at that time.

24 So based on our evaluation, staff recommends
25 that the commission approve the after-the-fact general permit

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1 has been cooperative throughout the evaluation and has agreed
2 to stabilize the area to prevent the runoff, and the project
3 would meet general permit guidelines.

4 MR. TAYLOR: Any questions?

5 MR. GOLLOTT: Mr. Chairman, I'd like to make a
6 motion that we accept staff's recommendation, after-the-fact
7 permit plus the fine.

8 MR. DRUMMOND: I second the motion.

9 MR. TAYLOR: All those in favor. Passes
10 unanimously.

11 MR. COLE: Thank you.

12 d. Paul A. Lea, Jr.

13 MR. DAVIS: Good morning. I'm James Davis.

14 I'll be presenting the last item on coastal ecology.

15 Before us, we have a violation by Mr. Paul Lea,
16 Jr. It's located on an unnamed canal adjacent to Bayou Portage
17 on East Midway Drive in Pass Christian. It's in the general
18 use district.

19 Here you can see an overhead, the Bay of St.
20 Louis. This is north of the Timber Ridge subdivision just off
21 Arcadia Farm Road.

22 This is a zoomed in image of the property and
23 then the property itself, the end of the canal. The boathouse
24 in question is the structure here.

25 Project description.

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1 because the structures do fit general permit guidelines, and
2 that a fine be issued to Mr. Meyer in accordance with
3 Mississippi Code, and the fine should be paid within 60 days of
4 the commission ruling.

5 And we also recommend that the commission
6 require Mr. Meyer to stabilize the areas around the drainageway
7 and either seed or sod to prevent sediment runoff into the
8 canal, and that work to be completed within 90 days of the
9 ruling. And yesterday afternoon, I did receive some pictures
10 from the property, and they have started to lay down sod and
11 stabilize the adjacent areas.

12 The violation was discovered on November 14,
13 2011. It was in duration for 155 days. But here I'd like to
14 make a point that that was largely due to the evaluation that
15 we were doing because if it had been that he extended the
16 canal, the penalties for that would have been much stiffer than
17 after-the-fact dredging which we eventually determined was the
18 case.

19 Maximum potential fine could be \$77,500. The
20 minimum fine would be \$50. And we are recommending a fine of
21 \$250. And we came up with that figure based on the fact that
22 he has had to put down money for the stabilization of the bank
23 adjacent to the canal, and that's cost a little over \$1,000
24 already.

25 Decision factors for determination was Mr. Meyer

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1 A boathouse was constructed outside of permitted
2 guidelines. It was permitted to be no more than 25 feet above
3 mean high tide. As constructed, it is approximately 31 feet
4 above mean high tide.

5 On January 15, 2008, the commission issued an
6 after-the-fact waiver for a boathouse. Condition 5 of this
7 permit stated that an open-sided covered boathouse 30 feet in
8 length, 30 feet in width, and no more than 25 feet above mean
9 high tide shall be constructed.

10 On January 28, 2008, DMR did receive a signed
11 copy of the permit from the applicant.

12 On May 11, 2009, in addressing another violation
13 on site with Mr. Lea, staff, legal counsel, and the Corps of
14 Engineers, Mr. Lea was reminded he could not add a roof to his
15 boathouse because it already measured 23 feet 2 inches high.

16 On February 28, 2012, a violation was reported
17 to DMR.

18 Staff did perform a site visit on March 1, 2012,
19 and found the roof had been placed on top of the deck above the
20 boathouse and the structure currently measured 31 feet above
21 mean high tide.

22 March 6, staff sent cease and desist notices to
23 Mr. Lea.

24 On March 13, staff had e-mail conversation with
25 Mr. Lea regarding the structure and measuring, how to apply for

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1 after-the-fact authorization and how to correct the violation.
 2 Those e-mails were submitted with the mailouts.
 3 On March 14, we did talk to Mr. Lea about an
 4 onsite meeting. Nothing was ever ventured beyond the
 5 conversation of a meeting.

6 Here, this is the general permit guidelines
 7 stating that structures are limited to 25 feet above mean high
 8 tide.

9 This is the Coastal Program showing the
 10 precedent setting effects and preservation of the natural
 11 scenic qualities.

12 This is a fax received on December 14, 2007,
 13 from Mr. Lea. And you can see fax on the left in the diagram
 14 that was faxed on the right showing the boathouse being 27 feet
 15 high.

16 Just a zoomed in image of the boathouse at 27
 17 feet high.

18 After fax and e-mail conversation with Mr. Lea,
 19 we received another fax on December 18, and you can see the new
 20 diagram submitted by Mr. Lea shows the boathouse to be 25 feet
 21 high.

22 This is a picture of the boathouse as
 23 constructed in 2008.

24 This is the boathouse as constructed presently.
 25 The 23 foot 2 inch mark was measured to be at

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1 this handrail on top of the deck.

2 And then 31 feet was measured to be at that peak
 3 on top of the roof line.

4 Based on evaluation by staff, we recommend that
 5 the commission order Mr. Lea to remove all sections of the
 6 boathouse that are over 25 feet in height and also recommend a
 7 fine in accordance with Mississippi Code 49-27-51 that should
 8 be paid within 60 days. And if Mr. Lea fails to comply with
 9 the above actions within 90 days, staff recommends the project
 10 be forwarded to the Attorney General's Office.

11 Potential penalty range. Violation was
 12 discovered February 28, 2012. The duration was 42 days.
 13 Maximum fine would be \$21,000. Minimum fifty. Recommended
 14 fifteen hundred.

15 Our decision factors on this. Project does not
 16 meet guidelines. Mr. Lea has had previous violations at this
 17 site and was aware of the permitting process. He was
 18 previously told his boathouse was too high to have a roof
 19 constructed over the deck because his boathouse was 23 feet 2
 20 inches high. And Mr. Lea was informed of his violation in
 21 March 2012 and did not attempt to bring it into compliance.

22 And I believe Mr. Lea is here, as well.

23 MR. GOLLOTT: James, can I ask you a question?
 24 It's probably a dumb question.

25 But why do we care how high they put this

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1 boathouse?

2 MR. DAVIS: I'll leave that to Willa Brantley.

3 MS. BRANTLEY: One of the reasons is because we
 4 are directed to protect the scenic qualities of areas. And
 5 anything higher than 25 feet has been determined to be more
 6 than minor in nature and could impact the neighbors' views of
 7 the watershed.

8 Also, when you have a boathouse that's very high
 9 with a roof on it, it catches more winds in the case of
 10 tropical storms and hurricanes, and the roof is more likely to
 11 blow off and create hazards and debris in the waterway and
 12 possibly damage.

13 MR. GOLLOTT: Didn't they have about a 25 foot
 14 tidal surge down there during Katrina?

15 MS. BRANTLEY: Yes, sir.

16 MR. GOLLOTT: Looks like you'd be encouraging
 17 people to be above the tidal surge.

18 MS. BRANTLEY: Actually, a lot of times once the
 19 structures go under water, they survive better than if they are
 20 outside of the tidal range because they don't get beat up by
 21 the waves that are on top of the surge.

22 So really in Katrina, the lower the pier was,
 23 the more likely they were to survive that surge.

24 MR. GOLLOTT: Thank you.

25 MR. LEA: My name is Paul Lea.

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1 I have a handout.

2 I did pull a permit to create this particular
 3 boathouse back in '07.

4 After the hurricane, myself and John Scialdoni
 5 and other friends of mine wanted a place to put a boat shed,
 6 and we located this particular spot. It's unusual in character
 7 because I purchased the end of the canal. The canal is dug out
 8 into -- it's essentially hillside. It's 11 feet above sea
 9 level all around it, and essentially my boathouse is in a hole,
 10 if you will. So everything 25 feet above the surrounding
 11 territory is actually about 13 feet above the surrounding
 12 countryside.

13 If you'll notice, I do have room for a roof. I
 14 was not told I couldn't have a roof. I was told I had to be
 15 careful not to go above 25 feet if I wanted to put a roof on
 16 the structure.

17 It's quite high for the very reason that Mr.
 18 Gollott pointed out. I am in and we all are in an extremely
 19 high tide prone area. I'm also off the Wolf River. And we get
 20 the whole end of the road goes under water on a good high tide,
 21 good rain north of here.

22 Seeing that, I wanted to build a boathouse as
 23 high as I possibly could so I didn't crush the sides of my boat
 24 every time the tide went up. Particularly Gustav was a very
 25 important lesson to many, and we did see quite a tidal surge in

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1 the area, and I can tell you as a matter of fact, my neighbor's
2 boat roof was crushed by his own boat because it was not tall
3 enough.

4 I had my contractor look at the situation. He
5 told me I did not actually have a problem, that he could put a
6 roof on the structure because as per the handout, maximum roof
7 structure is not calculated by peak according to the
8 International Building Code which has been adopted by
9 Mississippi right after Hurricane Katrina and since been
10 approved in 2011.

11 Maximum building height is not the height of
12 your chimney, it's not the height of the highest antenna on
13 your building, it's not even the height of your roof height,
14 roof peak. This is actually news to me. I didn't know that,
15 either.

16 And it was per my builder's suggestion we looked
17 at the International Building Code which I have an example of
18 for you, roof height is actually calculated by the mean height
19 of the highest roof plane. That's on the second page of my
20 handout.

21 We don't judge a peak for roof height. You take
22 the eave, and you run the calculation based on an average
23 between the peak and the lowest eave as per the drawing on the
24 front of the handout.

25 When I measured it personally from what is my
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1 money to put a roof on the boat shed. But I did so and as you
2 can see in compliance with the regulations.

3 And I'm -- the DMR -- I'm a little surprised
4 that's how you calculate it. (Inaudible) this is the process
5 by which you calculate maximum height.

6 And I have to wonder, too, how this is going to
7 have any sort of impact on anybody else. I'm at the end of the
8 canal. I'm 11 feet down in a hole. And all I'm trying to do
9 is prevent my property from being damaged every time there's a
10 small hurricane. Even Gustav which was tiny pushed so much
11 water up in the Bay, I practically had water up in my slab
12 which is 11 feet above sea level.

13 So I just ask the commission to understand that
14 this is a very small project. It's also my personal project
15 that I have spent a good amount of money trying to improve the
16 area and that I be allowed, that the commission recognizes that
17 this is a proper way to calculate roof height.

18 MR. DAVIS: I would like to address a few things
19 on some of those issues.

20 As the building is now, even though the 31 feet
21 does come up to the roof, this is a solid deck at roughly 20
22 feet. So that's not really helping the (inaudible) 25 feet.

23 We did measure the structure on a high tide with
24 a west southwest wind, so we're fairly sure that high tide --
25 mean high tide was at that mark that day. It was a 1.6 foot
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1 typical high tide, I come up with 25 feet. And if it's a low
2 tide, it's going to be a little higher than that.

3 And frankly, the measurement of the high tide is
4 somewhat of a guesstimation. But I personally measured it
5 before we built, and based on the the International Building
6 Code, I am in compliance.

7 And I am -- having been cited before for a
8 violation and my violation cited for originally was I was
9 approved a dock, but there was no -- sort of the middle or the
10 end of the canal, and as per your own regulations, you can have
11 as much as 250 feet as you can use that's not part of the
12 permitting process to get to the permitted structure. And
13 unfortunately, that was counted against me, and that was said
14 to be a violation.

15 So if you add my dock with my pier to get to my
16 dock, I was a few square feet over the calculation. And, of
17 course, I wasn't given any credit because (inaudible) but the
18 fact that's far out after the storm, of course, it was torn to
19 pieces, and I had all kinds of debris in the end of the canal,
20 and my dock was twisted.

21 And I've spent the money I have set aside in
22 order to improve this property (inaudible). I've re-shrubbed
23 it. I've planted oak trees and cypress trees. I've got a
24 beautiful -- instead of putting a fence up, I decided to put
25 natural vegetation up (inaudible). But I don't have enough
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1 tide.

2 I did run the calculations for gable height, and
3 the structure did come out to be 27 and a half to 28 feet tall,
4 depending on how you add the height of the gable.

5 Also, precedent setting effects, I didn't
6 mention, but precedent setting -- precedent for a residential
7 structure currently is at 25 feet.

8 MR. BOSARGE: If he was to put a flat roof on
9 that structure, would he still be above the 25 feet?

10 MR. DAVIS: The flat roof would have to be
11 approximately at this point here coming straight off. There
12 would be no gable, and it would be very unlikely you could walk
13 under there and use that deck.

14 MR. GOLLOTT: Let me say one thing, Willa. From
15 personal experience, if that thing was 15 foot high and we got
16 a storm, it would take that tin roof off. The water and the
17 air gets underneath those roofs and takes them off. So that is
18 my personal experience.

19 I'm sorry, I just don't see the big deal in the
20 height. I don't see where it hurts anything.

21 MS. BRANTLEY: I would like to respond, also.
22 He said that he was not told that he could not put a roof on.
23 And that probably is more accurate. I myself was at the site
24 when we measured it to be 23 feet 2 inches tall at the top of
25 the railing. I actually went up to the top of the boathouse,
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1 and Jana Guynes who used to be one of our permitters was down
2 at the bottom at the water level measuring.

3 And we did tell him that he could put a roof
4 over that area if he wanted to use that for storage, but no
5 part of that roof could go above 25 feet, and he was currently
6 at 23 feet 2 inches, so he only had another one foot ten inches
7 that he could go higher and that it probably would be a roof
8 that you couldn't walk under but you could potentially store
9 boating accessories and things like that under it to keep them
10 out of the weather.

11 So we do not go by the International Builders
12 Codes. I don't know that those regulate DMR anyway. Basically
13 our permits state no higher than 25 feet above mean high tide
14 in height. And that's just in height, overall height. It
15 doesn't take into effect the pitch of the roof. You can do
16 whatever you want within that 25 feet. You can pitch your roof
17 as steeply as you want to within that 25 feet, but no portion
18 is to be over 25 feet above mean high tide in height.

19 MR. GOLLOTT: And again, what are your
20 recommendations?

21 MR. DAVIS: Removal of all portions of the
22 structure over 25 feet in height and a fine of fifteen hundred,
23 and that is at the commission's discretion.

24 MR. LEE: I just wanted to show a picture. I
25 am down in a hole. And so you have to actually climb up from

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1 but I also had taken the time to rewire -- all of my wiring
2 went under in Gustav, even the switches to raise the boat. So
3 I purposely raised that, as well, to get it out of the
4 floodplain. It's not all roof.

5 MS. BRANTLEY: I would like to add we did
6 discuss this like I said on site at the original site visit
7 back with the original violation, the question of a roof was
8 raised. It was made clear how we measure the height, what his
9 current height was, and what he could do. So I believe that
10 Mr. Lea clearly understood that he could not go above 25 feet
11 above mean high tide in height.

12 And if there were any questions about that, he
13 had our contact information, our lawyers, the Corps of
14 Engineers was out there, the Corps lawyer was out there with us
15 at the same time. He could have contacted any of us, and we
16 would have been happy to explain what was allowed and what was
17 not allowed, and he did not make any effort to contact us prior
18 to the putting the roof on.

19 MR. LEA: I'd just like to say I did make an
20 effort to comply. I hired a contractor, and we had a long
21 discussion about it, and I told him about the maximum height,
22 and he explained to me the mechanism by which he judged those
23 heights.

24 MR. GOLLOTT: Mr. Chairman, I'm going to give it
25 a shot. I'd like to make a motion that we fine him \$5,000 and

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1 my dock to get to the land around it.

2 I just would like to ask the commission
3 understand that I paid \$12,000 to put that roof on, and after
4 going over it with my building contractor and that DMR may not
5 recognize the International Building Code, but everybody who
6 builds in the State of Mississippi does. And just would request
7 a reasonable penalty, even if there has to be a penalty, that I
8 be allowed to keep my roof instead of tearing it off because
9 that seems a little extreme.

10 And if I made a mistake, I'm willing to pay a
11 fine, but the fine would be \$12,000 essentially if I have to
12 tear it off and then whatever it costs to put another one on at
13 a level that's below 25 feet and make the upstairs part of the
14 structure useless and, in fact, make it probably harder to
15 survive a storm.

16 And regulations of the surrounding property
17 require a minimum height of building structure at 17 feet so
18 that they can be out of the water. It seems unusual that we'd
19 be arguing about pushing something down such that it gets into
20 the eventual flood so we're going to see it again.

21 But I just request that I not be required to
22 demolish. That would be very difficult to do financially.

23 MR. DRUMMOND: What did you spend \$12,000 on,
24 Mr. Lea?

25 MR. LEA: I had to rewire -- I put the roof up,

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1 let him keep his roof. I'm speaking from personal experience,
2 you know, how I would feel in wasting this money tearing the
3 roof off. I'd want a roof on top of my deck where I could sit
4 up there and... So that's my motion.

5 MS. BRANTLEY: Okay. Before any decision is
6 made on this, I guess I would just like to ask legal to advise
7 staff because I'm not sure the 25 feet is a guideline in the
8 general permit guidelines, it's not a guideline for permitted
9 activities in the Mississippi Coastal Program. However, we
10 haven't ever recommended that the commission go over that
11 because the general permits were considered to be minor in
12 nature.

13 So my question would be to allow him to keep
14 that 25 feet above mean high tide in height, would that have to
15 be related to a permit to go out on public notice prior to that
16 being approved?

17 MS. CHESNUT: Has he submitted a request for
18 after-the-fact?

19 MS. BRANTLEY: James says no.

20 MS. CHESNUT: I believe it would have to go to
21 after-the-fact procedures, go out on public --

22 MR. TAYLOR: If Commissioner Gollott's motion is
23 approved, would it set a precedent?

24 MS. CHESNUT: Yes, it would.

25 MS. BRANTLEY: So basically, Sandy, what you're

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COMMISSION ON MARINE RESOURCES

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1 saying is we would need to maybe table this issue, let Mr. Lea
2 put in an after-the-fact, let us put it out on public notice,
3 and then come back next month with a recommendation on that
4 publication?

5 MS. CHESNUT: Yes.

6 MR. GOLLOTT: Okay. Mr. Chairman, I'll withdraw
7 my recommendation. And I make a motion we table this until the
8 next meeting.

9 MR. TAYLOR: Do I have a second?

10 MR. BOSARGE: I'll second.

11 MR. TAYLOR: All those in favor. Passes.

12 MR. DRUMMOND: You didn't ask for those opposed.

13 MS. BRANTLEY: That concludes wetlands
14 permitting. And that's all for coastal ecology. Thank you.

15 J. Administrative Services

16 2. Financial Report

17 MS. VESA: Good morning. The report today is as
18 of March 31, 2012. Our budget on that date remained the same
19 as the prior month which was \$6,267,493. After spending
20 \$5,513,911, we had a remaining balance on March 31 of \$753,582.

21 All tidelands funds remain obligated.

22 Any questions?

23 MR. DRUMMOND: I make a motion we adjourn.

24 MR. BOSARGE: Second.

25 MR. TAYLOR: Motion and a second. All in favor.

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I, Norma Jean Ladner Soroe, Certified Shorthand
Reporter, do hereby certify that to the best of my skill and
ability I have reported the meeting of the Commission on Marine
Resources and that the 62 foregoing pages constitute a true and
correct transcription of said meeting held on the 17th day of
April 2012.

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

Witness my signature this the 3rd day of May 2012.



1 (Meeting adjourned 10:45 a.m.)
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