COMMISSION ON MARINE RESOURCES

COMMISSION MEETING

March 15, 2011

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COMMISSION ON MARINE RESOURCES

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TRANSCRIPT OF MEETING OF COMMISSION ON MARINE RESOURCES AT
BOLTON STATE BUILDING, PUBLIC MEETING ROOM, 1141 RAYVIEW
AVENUE, BILOXI, MISSISSIPPI, ON THE 15TH DAY OF MARCH 2011
COMMENCING AT 9:00 A.M. AND REPORTED BY NORMA JEAN LADNER
SOROE, CERTIFIED SHORTHAND REPORTER.

COMMISSION MEMBERS PRESENT:

DR. VERNON ASPER, Chairman
RICHARD GOLLOTT
SHELBY DRUMMOND

ALSO PRESENT:

DR. WILLIAM WALKER, Executive Director DMR
JOSEPH R. BUNNELL, ESQ., Asst. Attorney General
SANDY CHESNUT, ESQ., Asst. Attorney General

A. Call to Order

DR. ASPER: Good morning. I'd like to welcome everybody to the regular March meeting of the Mississippi Commission on Marine Resources. Really great to have everybody here.

Before we start the meeting, I'd like to remind you of a new requirement for our public comments section, and that is if you're interested in speaking during that period of the meeting we request that you fill out a form. That's so we know exactly who is here to talk and everything like that. And we're also going to be trying to limit the total time to three minutes. We have had some instances in the past where people go on and on and on. So we're just going to try and keep things a little bit more concise.

If you decide during the meeting that you want to speak, at least until we get into the groove of this, you're welcome to go back, fill one out and wave it at me, and I'll be happy to hear you. We definitely want to hear your comments.

Don't get the wrong impression.

Okay.

B. Approval of Minutes Commission Meeting - February 15, 2011 - Action

DR. ASPER: The first item on the agenda is approval of the minutes. Are there any changes, or is there a motion to approve?
just -- we've dealt with that in the past. Realize with the
eight foot door laws that it opened up the doors for bigger
nets which is what destroyed it in the beginning. You know,
the bigger boats come in, drag 50 foot nets, where we're just
dragging 25 foot nets going by what the law was, and that's why
they reduced the door law back to six foot which seemed to help
out quite a bit.

In that case, the big boats would not go buy six
foot doors and come in here and drag, which helped us. And
everybody realized that, and you can see that by the numbers of
production.

If they allow the eight foot doors to be back in
effect, which would affect -- you know, help the 25 foot nets
production quite a bit. But it leaves that door open for the
boats to come in and say, well, weather is bad, the boat's not
in here, let's go ahead and pull stuff in here with eight foot
doors and put our 50 foot nets on it and drag where we won't be
out there.

I just feel as though it won't be monitored well
enough to see that's only 25 foot nets on eight foot doors.

DR. ASPER: Thank you. That is on the agenda
today, so we'll be discussing that in a few minutes.

MR. SEVILLE: My name is Mitchell Seville. And
I also wanted to speak on behalf of my brother who couldn't be
here who wanted to make the statement that we did not, the

fisheoan organization did not vote on the door law. And when
I talked to Mr. Diaz about this door law, he had brought that
up, that it was being supported by the fishermen's
organization, which did not -- there was no vote taken on it.

Part of the organization is supporting it, what
needs to be said that there was no vote taken on it.

As far as continuing with what Ray Walker said,
that the reason that we had this six foot door law was to keep
these 90 foot boats out, these real big boats from coming in
the Sound because a lot of times they didn't switch to little
nets. And we have so many of these boats that has put some
stress on the conservation and unfortunately to measure all the
nets that are being pulled by all these boats.

So they would not purchase a set of six foot
doors, and they didn't come in.

They also pull what's called tickler chains,
oversized tickler chains, and they really kind of tear the
bottom up. And there was places that they drag -- you know,
they would come in for a couple of weeks on the opening and
drag for a couple of weeks out to the east, and then they're
gone for the rest of the season. And that whole area is kind
of tore up, you know. It's really not a lot that happens in
that area. It's kind of bad for the bottom.

And that is our concern. You know, I know that
there's people that -- and, you know, I empathize with people
that have 60 foot boats that can pull these 8-40 doors and they
buy them for Louisiana, they buy them for outside, and they
don't want to have two sets of doors.

When speaking to Mr. Diaz, he said that one of
the reasons that this was being proposed was because the number
of licenses that were being purchased was drastically down
since the date -- I think it was 2002 or 2001, and there was a
drastic decrease.

Well, obviously we had a couple of things
happen. One would be Hurricane Katrina. There is no Gulfport
harbor any more, so that was 300 plus boats right there. And,
you know, that's one of the reasons for this decrease in
license.

This is why he told us that it was being
proposed that this eight foot door, since we changed the door
law, the license purchasing has dropped.

We're just very concerned about it opening up
the door to boats coming in pulling oversized nets. With the
price of fuel, the low price of shrimp, we're having a hard
time making it. And if we have a lot of competition come from
Alabama, there is a pretty good group of 60 to 75 foot boats,
and these are the boats going to be pulling these eight foot
boards. And we're worried about them coming in and really kind
of taking over our area.

And I know that there's some guys that this is

1 going to help. But we're real concerned about the large scale
2 what this eight foot door is going to do.

Thank you.

DR. ASPER: Thank you.

MR. STEWART: I wanted to speak about the eight
6 foot door law myself. And any of these fishermen that want to
voice their concern need to come pay their dues and come to the
meetings where they can vote on it. You can't sit at the house
and complain about what the organization does when you don't
come to the meeting.

And that's what the organization has decided
that we want. And it was went over again the other night four
different times to see if anybody wanted a meeting. There was
no discussion. A vote wasn't needed because everybody agreed
upon it that was there, a member of the organization.

And we do want the eight foot door law where we
can drag from Cat Island to three miles over there, back and
forth across the line. We pay a lot of money for that license.

But if we have either six foot doors, we stay on
this side the line, we got eight foot doors, we got to stay on
that side of line. It's very detrimental to our business.

The people that stay right here outside the
harbors, yeah, they don't want that, sure they don't. They
don't want no more competition.

But as far as the big boats coming into the
Sound, that's ridiculous. We got plenty law enforcement. And that would just be more money in the stat's pocket because the enforcement people are doing their job and they're going to do their job. When they big boats come in, they're a big target.

Let them come on.

DR. ASPER: Thanks, Mark. And the final one is Gilbert Ramsey.

MR. RAMSEY: Good morning, commission. I'm aware that you're on the government commission, as well, various people on board.

And what I have to offer is for the public and ecosystem's best interest.

Previous, I came before you for manufacturing capabilities -- I have the manufacturing capabilities of a miniature airboat for research ecosystem tourism.

I'm offering availability to more welfare recreational departments, disabled veterans, and elderly people for options of ecotourism and also research capabilities with the Grand Bay National Estuarine.

I'm aware they have a boardwalk out for the National Estuarine, and they've been reserving BMR airboats and neglecting to have adequate time for research capabilities, as well as manpower and time waste.

So now here I am before you to present my case with you and options for everyone's best interest because the fact of it is, my airboat is fiberglass and it's small, versatile for various options. You can even take it out to the barrier islands, launch it at barrier islands, reef exploration, or whatever is necessary for out in the Gulf, as well as inland waterways research capabilities.

Multiple organizations are coming on board with me at this time. Dr. Mohan (ph.), Dr. Chris Boyd, various organizations I've consulted with, they're all interested in it. I'm fixing to pursue this for everyone's best interest, and I'd like to discuss with anyone that's interested with me, and I'm here to offer all options for everybody.

So I'd like to consult with anybody who would prefer to discuss it with me. The option is I will be pursuing it with Ms. Trudy Fisher and with Governor Garbar and himself. I'm going to Jackson because I'm very well interested in this for natural resources capabilities.

Thank you very much for your time and response.

DR. ASPER: Thank you. I did receive the documents that you mailed to me.

MR. RAMSEY: I have photos right here, sir.

DR. ASPER: One thing you might want to do is just bring it along with you some morning and park it out in the parking lot and we can take a look at it on the way out. That may be a nice thing.

MR. RAMSEY: What I'm trying to do, I have a prototype, I'm fixing to implement a system to offer options for ecotourism and research capabilities because that's (inaudible, not at microphone).

DR. ASPER: Okay. Thank you very much for your comments. We'll move on to the executive director's report.

E. Executive Director's Report

DR. WALKER: I don't have anything this morning.

Mr. Chairman.

DR. ASPER: Marine patrol.

F. Marine Patrol - Chief Walter J. Chatagnier - No Action

2. Marine Patrol Report

MR. PITTMANN: Good morning, Mr. Chairman, commissioners, Mr. Walker, Sandy. Colonel Chatagnier sends his regards. He's in Texas attending a meeting.

If you look at the report, we had a few more oyster violations this month than we did last month and the previous month. On down, fishing violations report, we have three undersized and one over the limit violation. We had some insufficient PFDs.

Also had one boating safety class that we taught at Vancleave Middle School.

One thing good to report, no boating accidents in the month of February.

Our JEA patrol, we had 23 patrols, 452 man hours, 99 contacts, two enforcement accident reports, and three state issued citations.

Any questions?

MR. GOLLOTT: Rusty, a couple of the fishermen made allegations about the six foot trawls coming in with the eight foot doors. I'd like to ask, do you think marine patrol is able to keep this law and keep boats out of here that have (inaudible) foot trawls on them?

MR. PITTMANN: The chief and I talked about it, and we have no comment on it, and we could do the job. We're always measuring trawls during the season, anyway, oversized.

MR. GOLLOTT: Thank you.

DR. ASPER: Okay. Thank you very much.

And with that we'll move on to fisheries. I guess that's Joe.

G. Marine Fisheries - Dale Diaz

MR. JEWELL: Good morning, commissioners, Dr. Walker, Sandy. Dale again sends his apologies. It's been a very busy time for marine fisheries. He's away at the Gulf Council meeting.

First before I get started, I'd like to mention that we just sent out a news release for the seminar series. We're going to be continuing that series. Took a little hiatus with the BP oil spill. But it's going to start up again on March 25 here at the Bolton Building at 9:00 a.m. The topic is...
1. going to be Mississippi living shorelines. Our keynote speaker 2. is going to be Dr. Chris Boyd. We're also going to have 3. several other speakers at that time: Mr. Greg Christodoulou 4. and Allie Leggett from our coastal ecology department, and Mr. 5. Marty Jones from the marine fisheries office.

6. We'd like to invite the public and the
7. commission to come and participate and attend that meeting.
8. 
9. MR. DRUMMOND: Where is that, Joe?
10. 
11. MR. JEWELL: It's going to be on March 25 here
12. in this room at 9:00 a.m.
13. 
14. MR. COLLOTT: (Not speaking into microphone)
15. 
16. Joe, can I interrupt you before you get started?
17. 
18. Commissioners, I would like to make a motion
19. that the commission adopt a resolution to be prepared by
20. the Department of Marine Resources and submitted to the City of
21. Biloxi to support utilization of the concrete material from the
22. bridge damaged in Hurricane Katrina to extend the Katrina reef
23. on the south side of Deer Island to act as a wind/wave breaker
24. that protects Biloxi and the Deer Island and additional
25. material can be added to protect the City of Biloxi and would
26. enhance fisheries.
27. 
28. Just a little brief on this. It was intended
29. from the beginning for these bridges to go outside the islands
30. to protect the islands and enhance fisheries. But we
31. understand the low bidder is intending to crush this stuff up
32. and sell it and not put it outside of the islands. So I think
33. we need to support, public support with the City of Biloxi
34. commissioners on this thing.

35. 
36. DR. ASPER: Okay. We have a motion. Is there a
37. section to the motion?
38. 
39. MR. DRUMMOND: I second the motion.
40. 
41. DR. ASPER: Those in favor say aye. Thank you.
42. 
43. Sounds like an excellent idea.
44. 
45. MR. JEWELL: Okay. We'll do that.
46. 
47. MR. STEWART: May I make a comment on that?
48. 
49. DR. ASPER: Can you come up to the podium so we
50. get you recorded?
51. 
52. MR. STEWART: My name is Mark Stewart.
53. 
54. I'd just like to make a comment about putting
55. the concrete out there is a good idea for the fishing and the
56. protection and everything. But I think if they put more, if
57. they'd move it a little closer to the island, the material will
58. go twice as far. So they got it in too deep of water really.
59. 
60. DR. ASPER: That was -- I'm sure that was a
61. carefully considered decision where to put it. And there was
62. some discussion on both sides of that. I'm sure. So I have to
63. trust the people, the engineers that come up with that
64. decision, as to why it's out there.

65. 
66. MR. STEWART: That's just my opinion of it. You
67. know, want it to go as far as possible I would think.
MR. DRUMMOND: I mean, you can go out there and catch 500 white trout and throw them away dead. Why not put a limit on them?

MR. JEWELL: You can. If the commission chooses to take that up and put a commercial quota on that, that can happen. But right now —

MR. DRUMMOND: Commercial fishing for white trout?

MR. JEWELL: I'm sorry?

MR. DRUMMOND: Put a quota on commercial fishing for white trout?

MR. JEWELL: If the commission chooses to do that, they can.

MR. DRUMMOND: What about recreational fishing limit?

MR. JEWELL: That can happen, also.

MR. DRUMMOND: But right now there's nothing regarding seatrout, white seatrout?

MR. JEWELL: That's correct. There's actually several species of fish there is no quota or no limit on commercial or recreational.

MR. DRUMMOND: That's a shame.

MR. GOLLOTT: Mr. Chairman, I'd like to make a motion that we adopt the final proposal on this rule.

DR. ASPER: Is there a second?

MR. DRUMMOND: I second the motion.


MR. JEWELL: Thank you.

Next on the agenda, Item 4, oyster license proposal by Mr. Scott Gordon.

4. Oyster License Proposal

MR. GORDON: Good morning, Mr. Chairman, commissioners, Dr. Walker, Sandy.

This agenda item is on the oyster license sales.

Last year, the commission had basically said that during the month of April anyone that had a current oyster license, they would have the month of April in which to renew their license. And then if we hadn't reached what the cap that had been set earlier that beginning May 1, those licenses would go on sale.

Well, we met the caps. And then the commission at the beginning of this oyster season, since there was no dredging season allowed, allowed the dredgers to purchase a tonging license if they so desired.

I believe we've had about 30 or 40 people that chose to do that.

These are license sales by license type and gear type going back to 2000, or FY2000.

So we're coming up onto April when the new licenses would go on sale. And so the staff would like to make a recommendation for the commission's consideration that during the month of April 2011 restrict 2011-2012 oyster license sales to renewals of current 2010-2011 oyster licenses only.

Beginning May 2, 2011, if the original 2010-2011 oyster license cap numbers have not been reached, the remaining licenses will be available up to the original license cap by license type and gear.

DR. ASPER: Scott, could you refresh my memory on the cap numbers and whether or not it's divided up by resident, nonresident, and so on?

MR. GORDON: Yes, sir. The license cap numbers are divided up basically how I have it here, resident dredging, resident tonging, nonresident dredging, and nonresident tonging.

And how we had arrived at those numbers is we looked at the years, I believe it was the 2009-2010 season was the first season that we put a cap on. And we looked at the five normal years prior to that and saw what the maximum license sales numbers were at those, and then we added ten percent on by category. And so that's what the original license caps were.

Just feeling that we couldn't have runaway license sales on this, so that was the whole purpose of putting the cap on.

And if the commission takes any action on this, then I have a second part to it.

MR. GOLLOTT: (Not speaking into microphone) Scott, I don't like this. It smells like limited entry to me.

If you want to limit the out of state licenses coming into Mississippi, then I think all Mississippi residents should have the ability to buy a oyster license because there was so much, you know, with the oil spill and Katrina and all that stuff, maybe some people didn't get a license last year. Maybe they didn't feel like could make enough money to pay for it.

So, I'm not for this. Like I say, if you want to limit out of state, you know, I will go along with that.

MR. GORDON: It is true, this is very primitive form of limited entry. And as far as limiting the out of state license sales, it's my understanding we are not able to do that unless we also limit the in-state license sales.

DR. ASPER: Could you again refresh my memory on how these caps work? Let's say two years ago when we had a real season, did we reach the resident tonging, resident dredging caps? And if so, how early in the process, and do you think that Mississippi fishermen were denied licenses?

MR. GORDON: We had a few people that were denied licenses as far as doing the renewals last year, and I think somebody -- some of the folks may not have been paying as close of attention as they could have.
felt like the licenses (inaudible) Dr. Walker could limit it.

MR. GORDON: I don't believe we did.

DR. ASPER: We had a limit two years ago that we authorized the executive director to limit it. I think that's true. We had no process for appeal two years ago.

MR. GORDON: That's correct. There was no appeals process.

MR. GOLLOTT: So what is it doing?

MR. GORDON: This would allow -- if there was some serious extenuating circumstances that they weren't able to purchase a license, such as if they were hospitalized or I don't know -- I believe Commissioner Asper last time had said, you know, if they were in the military in Iraq or Afghanistan, you know, something like that, that's pretty extenuating circumstances.

MR. GOLLOTT: (Not speaking into microphone)

This is opening the door for limited entry, and I'm just not for that.

We need people in the fishing industry. This is a level entry into the work force. People that maybe can't get a leg onto something, they (inaudible) they may come to fishing.

And this is public reefs, and I think the public, the Mississippi public, should be able to buy a license.

That's part of our freedoms, I believe, and that's just where I stand. Thank you.

DR. ASPER: Scott, how does our new commercial fishermen's organization feel about this? Have they weighed in it?

MR. GORDON: I don't believe they did.

DR. ASPER: Come to the podium, please.

MR. GORDON: I could let you know how the oyster task force weighed in on this. Not this specific proposal, but the limited entry, that they tended to be in favor of it.

MR. KOPSZYNA: Mark Kopszywa. And I can't speak officially for the organization. But I will tell you, I am against 100 percent limited entry.

I support Mr. Richard on this. No limited entry for the State of Mississippi.

DR. ASPER: Now, you understand that the origin of this and a limited entry in general and why the oyster task force supports it was it was in their estimation an attempt to help the oyster fishermen because it helps constrain competition.

And so, if we don't have something like this, we're going to end up with small sack limits.

MR. KOPSZYNA: Well, so be it.

But understand this. I'm a fourth generation commercial fisherman. I've never done nothing else. I do not
own a Mississippi oyster license. I'm either crabbing or fishing or shrimping.
Something happens to one of these other industries, I cannot go oyster.
So, how do you support the industry when I can't work in it?
DR. ASPER: Again, this is why we have the review process because we are trying to keep Mississippi fishermen fishing. That's the goal here. We're trying to manage the resource, but we're trying to keep the fishermen fishing. We're trying to make it so you can earn a living doing it. And if it's spread out too thin, then it's hard to do that.
MR. KORSHYNA: Well, ten sacks is better than no sacks.
MR. GOLLITT: Mr. Chairman, with all due respect, I know where this originated, and it originated out at Bayou Cadet, and it's designed to keep Mississippi fishermen off the reefs and get a bigger price out of their oysters from Louisiana coming into Bayou Cadet.
DR. ASPER: Would you like to make a motion?
MR. GOLLITT: Yes, sir. I'd like to make a motion that we deny this adopting this regulation.
DR. ASPER: Is there a second?
MR. DARDAR: I'll second the motion.

DR. ASPER: Before we vote on it, let's be sure --

MR. DARDAR: Michele and Walter Dardar. We've run a boat for many years oyster fishing out there on our reefs. And I understand the limited entry. And actually I don't think it's actually a bad thing. But I believe before Mississippi turns away one person, one resident, to get their oyster license, they ought to put a deadline on a date, kind of like if you don't have your oyster license last year, you have to wait until after May. I mean, April. For all the other people that have an existing license to be able to get a license.

Why don't they do a deadline to give Mississippi residents the opportunity to buy their oyster license before they sell one Louisiana license or one Alabama? Because we can't go there.

MR. DARDAR: Okay. So like I've been a captain on different boats all these years. My name is Walter Dardar. Okay? I've been a captain on different boats ever since I was a little kid. Okay?
I observed for a fellow. He sold the boat. I went to another guy. Turned around, we captain on their boat. Turn around, oyster license, I was able to afford to buy my own boat finally.

I cannot get a oyster license because I've done this all my life, I live here in Mississippi, but they want to put a limited amount of license.
Here, you got people from Alabama, we cannot go to Alabama, buy a license and go there. I got Louisiana. Turn around, I can't go there.
I can't go right here at home, do something that now I can do for myself. Just like we've just said, he hasn't never had a oyster license, but if it comes down to it with everything like it is, he'd like to be able to go out there and do it himself.
There's no harm in putting a limited amount out there. But before you sell one Alabama, one Louisiana, you let Mississippians have opportunity to get it first. Set some kind of deadline to be able to do it if y'all do that limited license.

DR. ASPER: Okay. Thank you very much.
Any further discussion by the commission? The motion we have is to basically deny this request and leave things as they are. Those in favor say aye. Carried unanimously.

MR. GORDON: Thank you.

DR. ASPER: I will say, this is me probably butting in where I have no business, but I will give a recommendation to all oyster fishermen that since we have voted to not have a cap this year, that if you want to get a license, get a license, because this is going to come up next year.

(Comments from audience.)

DR. ASPER: I'm not clear on the details. We'll have to talk with Scott. We'll know exactly how this is going to settle up now that this failed.
MR. GORDON: The new licenses would go on sale at the beginning of April. And with the action the commission has taken right now, they have until the end of March next year to buy their licenses.

DR. ASPER: So I would strongly suggest that you make sure you get a license this year because it's going to come up - it's a limited resource. We're trying to expand it. We're trying to support it. We're trying to put cultch everywhere we can. We're doing everything humanly possible to enhance the fishery. And we're trying to make sure that the Mississippi fishermen are being able to make a living.

Keep in mind that we are severely restricted in what we can do regarding out of state fishermen. There are certain things we can't do.
So let's just cut it off there, if you don't mind. We can talk afterwards on it.
We're moving off of the oyster subject.
MR. JEWELL: As the commission recalls, our next item on the agenda is at the last commission meeting --
DR. ASPER: Hold on a minute, Joe. One more comment.
MR. RICHARDSON: I asked Scott when he stepped up here a while ago please let us know how many boats are on the reef and what's the ratio of Mississippi and Alabama boats. That's what we would like to know at this time, what's on the reef right now.

MR. DRUMMOND: Can I ask you a question, Mark?

You can't get an Alabama license or a Louisiana license to oyster?

MR. STEWART: That's correct.

MR. DRUMMOND: But Louisiana can come over here and get a license.

MR. STEWART: Yes, sir. The only way for me to get a Louisiana oyster license is to find someone that wants to get out of the business, and I'd have to buy his boat and his permits at high dollar. That's the only way I could catch an oyster in Louisiana.

And Alabama, they don't allow us to participate in any of their programs. So therefore, I think that's good for them is good for us.

(Comments from audience.)

DR. ASPER: Let's move on, Joe.

MR. JEWELL: Commissioners, as you recall at our last meeting, y'all had asked the DNR staff to come forward with some recommendations for trawl door sizes. And Mr. Bill Richardson is here to present that.

5. Recommendations for Modification to Trawl Door Size

Title 22 Part 9

MR. RICHARDSON: Good morning, commissioners,

Dr. Walker, Ms. Chesnut.

Bill Richardson with the shrimp and crab bureau. We're going to talk about trawl door size. This is just showing license sales. This is in there just to show it's been on a constant decrease over the past year. We had a little spike last year, but all license sales were up, and we think that might have had a little bit to do with the VOO program, all commercial licenses.

So we looked at right now we're at six foot by 34 inches. We did this back in 2001 to coincide with Louisiana. I looked at license sales. We sell our licenses by boat size. And you can see from 2001 and then comparing it with 2009, we've had a definite decrease in boats. And the majority of boats are larger boats.

Alabama, we sell the license the same way. And you can see the same kind of trend.

Also, Louisiana, we don't sell by boat size. It's by number of trawls, so I couldn't really compare that. Louisiana went to 8-43s in 2008. And Alabama has no door restriction size.

Another thing to note here is we also have a large number of skimmer boats in our fleet which we didn't have back in 2001. So that's another user group we have to deal with.

The proposed door change would lessen the burden on the fishermen not having to have two sets of doors, not having to worry about changing doors when you cross as they put it an imaginary line out there, and it would make us consistent with adjacent states.

Here is what we're proposing to change. We'd take out the six foot by 34, replace it with eight foot by 43, and remove the square inch law that we have. We did that so that some cambered doors could be considered. But since we did that, we've had no one approach us with cambered doors, so we see that that could be taken out.

For this to proceed, we would need a motion to take this rule out for a notice of intent.

DR. ASPER: Just to clarify, these are size limits. It's okay to pull smaller doors.

MR. RICHARDSON: Yes. This was a maximum.

DR. ASPER: Discussion? Motion?

MR. COGLLOT: (Not speaking into microphone) Mr. Chairman, I think this would probably make it easier on the shrimp fishermen. I don't have a lot of boats that go to Louisiana and come back to Mississippi (inaudible) skimmer nets now.

But Mr. Chairman, I'd like to make a motion that we adopt this and send it out for hearings.

DR. ASPER: Is there a second?

MR. DRUMMOND: Second.

DR. ASPER: And to clarify, the fishermen's organization does support this.

MR. RICHARDSON: Right.


MR. RICHARDSON: Thank you.

MR. JEWELL: Thank you, commissioners.

Next item and final item on the agenda is Title 22 Part 1 notice of intent. Mr. Bradley Randall will be presenting that for you.

6. Title 22 Part 1 - Notice of Intent

MR. RANDALL: Good morning, commissioners, Dr. Walker, Ms. Chesnut.

State statute currently, Mississippi Code 49-15-27 concerning the leasing of bottoms, it says the commission shall fix a ground rental at not less than $5 per acre, and this was changed in 2005. Currently, the Title 22 rules and regulations for shellfish harvesting, Chapter 19, on bottom shellfish leasing regulations, states that each lease application must be accompanied by a bid price per acre in the form of a sealed bid attached to the application. Said bid must be at least $1 per
acres. And as a resolution, we would like to change
that so it says that each lease application be accompanied by a
bid price per acre in the form of a sealed bid attached to the
application, said bid must be at least $5 per acre.
Mr. DRUMMOND: Why would you go to $5 per acre
from $1?
Mr. RANDALL: The state statute requires that.
Mr. DRUMMOND: Okay.
Mr. RANDALL: You see right here, Mississippi Code 49-15-27.
Mr. DRUMMOND: I know nothing about that.
Anyway, you answered my question. Thank you.
Dr. ASPER: Is there a motion?
Mr. DRUMMOND: I make a motion that we pass this
item, Mr. Chairman.
Dr. ASPER: Is there a second?
Mr. GOLLOTT: Second.
Dr. ASPER: Those in favor say aye. Passes unanimously. Thank you very much.
Mr. RANDALL: Thank you.
Mr. GOLLOTT: Is there somebody in fisheries
that could answer Mark Kopszywa's question on when the
shrimping season will close outside of the islands?
Mr. JEWELL: Well, I think Bill here is able to
most answer it. But you did hit on -- Mr. Asper did hit on
most of it. Of course, GCRIL has expressed concerns about not
only the post-larval shrimp that's now moving into the
Mississippi Sound at this time, but they've also expressed
concerns about a lot of larval and post-larval organisms that
are moving in the Mississippi Sound at this time of the year.
As we all know, this is a nursery area for the
major commercial and recreational species in the Mississippi
Sound, and they move into the shallow water, estuarine waters,
the Mississippi Sound area at this time of the year.
And it's not only GCRIL, but marine fisheries, we
have our concerns, too. And this would be setting a precedent.
We have never opened the inside waters at this time of the year
in the past ever in the history of this agency.
We have opened -- we have listened to the
fishermen. We have taken their considerations and sampled
and opened the outside waters this time of the year to help
them economically in several instances in the past.
But we have never done that on the inside for a
lot of different reasons.
But I think Bill is here, and he has a little
more detail that he can add to that.
Mr. GOLLOTT: I understand. But I thought it
was a motion to keep the outside open.
Mr. JEWELL: No. They have asked specifically
for the inside to be opened. And they have some economic
issues. They do have some legitimate concerns. They do have
economic issues that they would like to address. And they are
legitimate concerns.
The fishing industry as you all know, they have
suffered on poor times. It has been on decline for the past
decade or so. Katrina absolutely didn't help anything with
infrastructure, with imports, a lot of different things.
The BP oil spill exacerbated an already
decaying industry.
And as they mentioned, not all of the fishermen
got to participate in the VGO program. There were a host of
different user group differences that happened.
So they do have legitimate concerns. They do have
legitimate issues. But there are a host of reasons why
the staff, the research lab, and other people would consider
that there are legitimate reasons scientifically and
biologically and environmentally why we have not and would
suggest that we do not open the inside this time of year.
It's a highly sensitive area. It's a highly
productive area. And those areas are the future for a lot of
different organisms for this time of the year.
Our sampling regime this time, and we've done a
lot of those in response to this request, and our routine
samplings we're picking up a lot of different organisms in
large amounts in those larval, those early life stage cycles,
and we have a lot of concerns about damaging and limiting those
productive cycles right now.
Dr. ASPER: What have your counts been?
Mr. JEWELL: The shrimp samples? I think Bill
has that information available right now.
Dr. ASPER: And what does the state statute say
about this? Because I think we have some constraints there as
well. Shall we -- do we say we may or we shall open when it hits
60?
Mr. JEWELL: It says they shall.
Mr. CHERNOY: State statute says we may
open when the count is at a certain level as a minimum
requirement, but it's at the commission's discretion.
Mr. ASPER: Okay.
Mr. JEWELL: We can't open before, but we may
after.
Dr. ASPER: Okay. And what do the counts show?
Mr. RICHARDSON: Bill Richardson, shrimp and
crab.
Well, we had legal shrimp, we had a couple of
legal pink, like 40-50. We're talking about five shrimp total
that we had in the sampling that we did. And that's three
trips doing all nine of our stations. Of course, we're going
during the day.
But we had three legal whites. A couple of those were last year's. They were like 12 count.
And this is throughout the Sound. This isn't inside this area.
We had two in the area that's being discussed, we had two legal pink shrimp in our sampling.
DR. ASPER: Could you refresh my memory? When you do the counts, you count all the shrimp and then you take the average size, or do you look at the largest ones?
MR. RICHARDSON: No. It's all the shrimp. But when you're looking at five shrimp, it's --
DR. ASPER: Okay. You had a total of five shrimp?
MR. RICHARDSON: Yeah, as in over several samples.
DR. ASPER: You weren't seeing small shrimp?
MR. RICHARDSON: No. We were not. The juveniles that we were seeing, we saw a lot of juvenile fish in our phantom samples, and we use a liner net in those samples which is a much finer mesh so you're going to catch everything that's there. And there are a lot of juvenile fish right now that we have been seeing.
Have seen a few post-larval shrimp actually in the trawls, but the majority of the post-larval information came from BPLs from the research lab.

MR. JEWELL: Those are inshore samples. Those samplings usually are sampling more inshore. Our regular shrimp stations are a little further offshore in the Mississippi Sound.
So we're getting that whole gamut of sampling right now.
DR. ASPER: So just to refresh here, you sample the exact same stations every year for consistency, you do the same procedure with the same nets for consistency.
MR. JEWELL: Correct.
DR. ASPER: And normally this year you might see a lot of small shrimp. But instead, you're seeing very few shrimp, and some of them are fairly large.
MR. RICHARDSON: Yeah. Well, I mean, we usually don't start picking up small shrimp until next month in our sampling.
But we have been seeing a lot of finfish, juvenile finfish at this time of year.
And like I say, this time of year, we don't catch that many shrimp, you know. We don't do it for a living, thank goodness.
So that's what we had to go on was just the very few shrimp that we did catch.
MR. KOPSYWA: Mark Kopszywa.
Years past, the season has closed on December 31 and has opened back up on January 1.
For over 20 years now, not every year, but probably every other year, we have gotten the season open this time of year. It might have been the first of April rather than the middle of March. We were shooting for the middle of March this year because once we go through the process of getting the waters open, it's done too late, you know, because it takes two or three weeks to go through the process to do it, you know, going through the sampling process.
Now, I have in the past, I've had the DMR come up to me on my shrimp boat, I've made tries with my try net, dumped them in a bag so they could actually get enough shrimp to catch because at one time they caught a half a shrimp, you know, in the past, where I caught a couple of pounds in my try net.
I have gone out with the DMR sample boat before and showed them where to trawl where they was getting none, they was getting two or three hundred where I showed them where to trawl.
So there is marketable shrimp out there to be caught at this time.
MR. JEWELL: Well, like you said, this is a scientific process. And we have stations. And if we wanted to target to go get shrimp, we likely could do that. But as you know, it's a scientific process.

And like I stated earlier, we have opened, but never on the inside. And we have to take in consideration not only shrimp, but the entire biological resource out there for both commercial and recreational interests. And we're picking up in those samples, both CWR and DMR, tons of other larval species other than shrimp right now. So that needs to be considered, also.
MR. KOPSYWA: I've got to add one more comment if I can.
DR. ASPER: Okay. This is your very, very last one.
MR. KOPSYWA: This is the last one. Mark Kopszywa again.
As we all know, post-larval shrimp, fish, crabs, spawn in the Gulf, you know, the fish, shrimp, crabs spawn in the Gulf. Post-larval floats to the top of the water and floats in.
Where is that stuff being picked up?
MR. JEWELL: Different species are in different places.
MR. KOPSYWA: Different species. All right.
Where I trawl at is going to be outside the half mile line. All the bait boats — how many bait boats do we have licensed in the state of Mississippi? They all drag
inside the half mile. They dragging as we speak this day
2 catching that stuff where I won't.

3 How many bait boats?

4 MR. JEWELL: As y'all all know, we don't have
5 the numbers of bait boats that we had in the past. And there
6 aren't a whole lot of bait boats this time of the year that are
7 operating. You know, the water is still cold. We don't have a
8 whole — bait boats are out there operating for live bait, and
9 they are operating for live bait fishermen. And there are not
10 a lot of live bait fishermen that are out there this time of
11 the year.

12 So we try and do — you know, there's not a lot
13 of bait fishing right there. We've actually tried to encourage
14 bait fishing. We had a lot of legislation at the legislative
15 forum to try and increase our live bait fishing.
16 So there's not a whole lot of live bait
17 fisheries out there. There's not a whole lot of live bait
18 participation this time of the year.

19 The key to it all right now is this time of the
20 year the commission has always protected inside this time of the
21 year, and all I'm trying to do is to present to you the facts
22 as we know it that we're getting from other scientific
23 organizations. How the commission votes is really up to the
24 commission.

25 And like I said, the fishermen have a legitimate

1 concern. I've expressed that. We're not trying to diminish
2 that or reduce that in any way. I think I spoke quite
3 eloquently of their concerns and the things that have impacted
4 them as an industry. And the commission needs to consider
5 that.

6 I think the commission has and will, and how
7 they vote is how they vote. And we will accept that and work
8 with the commission any way they want to vote.

9 MR. GOLLOTT: Joe, I agree with you it should be
10 protected, but would you please look into the live baiters?
11 The fishermen have brought the legitimate concern. If we're
12 going to protect it, it needs to be protected all.
13 Give us a report in a month, if you would, on
14 how many live baiters and how much damage — (inaudible) the
15 fish are they killing in bycatch and such as that.

16 MR. JEWELL: But like I said, there's not a
17 whole lot of participation this time of year. But I will — we
18 will do that.

19 MR. RICHARDSON: Just off the top of my head,
20 right now I think we were at 13 — I think we had 13 camps this
21 year. And I want to say maybe eight to nine of those have
22 boats. Not all of them have boats, but that's not exact, and
23 we can give you that next month. But that's pretty close.

24 MR. GOLLOTT: I'd like for you to come back and
tell us the bycatch, are they killing the bycatch, is the

1 bycatch going back in the water, of whatever.
2 MR. RICHARDSON: Yeah. I mean, some people, you
3 know, they keep croaker, that kind of stuff for bait. But we
4 can get you that.

5 MR. GOLLOTT: Thank you.

6 DR. ASHER: Okay. Thank you very much. Thank
7 everybody for their comments. We're rallying to do our best
8 job to (inaudible) everything.
9 Let's go ahead with coastal ecology, at least
10 get started, then we can get a break in a minute.

11 H. Coastal Ecology - Jan Boyd

12 MR. BOYD: Good morning, Mr. Chairman,
13 commissioners, Dr. Walker, and Ms. Chesnut.
14 Coastal ecology has four action items on the
15 agenda for your consideration this morning.
16 But before we get to that, we have one
17 non-action item that Ron Cole is going to be presenting.

18 1. Staff Follow-Up Items
19 a. Gulf LNG Energy, LLC
20 MR. COLE: Good morning. My name is Ron Cole,
21 and just to give you a little update on this project.
22 We're presenting this as an informational
23 update. This is a modification by Gulf LNG.
24 A permit was previously issued to Gulf LNG by
25 the commission, and the modification that they came and

1 proposed has no impacts to coastal wetlands. And therefore,
2 the Corps of Engineers will act as the lead agency and IMR will
3 issue coastal zone consistency for this project.
4 But since it was such a large permit and a
5 massive project, we decided that it would be good to give you
6 an update on the status.
7 It's for Gulf LNG Energy, LLC. It's located
8 approximately 3.5 miles north of the entrance to Bayou Casotte.
9 It's southeast of Pascagoula. It's in the industrial use
10 district.
11 Here you can see an aerial of the project
12 location. And I should point out here that this is
13 specifically the project location for the modification that
14 they propose. The actual facility is further south.
15 The Gulf LNG is a liquefied natural gas company
16 with a receiving terminal and a sendout pipeline located at the
17 entrance of Bayou Casotte harbor.
18 Gulf LNG has now requested authorization to
19 relocate a previously approved metering station. And the
20 proposed modification will result in no impacts to coastal
21 wetlands and will result in a reduction of .09 acres in
22 permanent impacts to non-tidal wetlands.
23 In August of 2006, the commission issued the
24 initial permit for Gulf LNG's facility.
25 In March of 2009, the commission approved a
modification to that permit authorizing them to reroute a
sendout pipeline which resulted in a 1.97 acre increase in
temporary impacts to coastal wetlands. There were no charges
to the impacts to -- to permanent impacts to coastal wetlands.
There was a 3.26 acre reduction in temporary impacts to
non-tidal wetlands. And there was a 2.2 acre reduction in
permanent impacts to non-tidal wetlands.

On February 3, 2011, we received a request from
Gulf LNG asking to modify their current permit by moving the
meter station. This will result in no impacts to coastal
wetlands, .24 acre reduction in temporary impacts to non-tidal
wetlands, and .09 acre reduction in permanent impacts to
non-tidal wetlands.

Here you can see an aerial of the proposed
change in the metering station. The one on bottom in green is
the currently approved location. The one on the top in orange
is the proposed new location.

Here you can see the impacts that will be
associated with that move. The area in red are permanent
impacts. The area in yellow are temporary impacts. The
temporary impacts will be .05 acres; the permanent impacts will
be .12 acres. And these are all to non-tidal wetlands.

So the current modification request proposes no
impacts to coastal wetlands and accordingly does not require
commission action. And DMR is evaluating the project for
issuance under coastal zone consistency. And this action falls
under the permitting authority of the Corps of Engineers. This
information is provided as an update to the previously issued
DMR permit and permit modification, and again, no action is
required by the commission.

Thank you.

DR. ASPER: Thank you.

3. Bureau of Wetlands Permitting
a. Hancock County Board of Supervisors

MR. CHRISTODOLOU: Good morning. My name is
Greg Christodoulou, and I will be presenting Item H-3(a). It's
a modification request by the Hancock County Board of
Supervisors. Location is adjacent to Washington Street in Bay
St. Louis. It's in the general use district. And Mickey
Lagasse from Compton Engineering is the agent for the project.

Here is the arrow showing the location of the
project. It's south of 90 and south of the CSX railroad bridge
on the Bay.

Previously in 2009, the Board of Supervisors
received a permit to extend an existing jetty approximately 130
feet by 90 feet and filling of 11,700 square feet of
waterfronts for the jetty.

The current proposal is 180 by 30 foot section
and a 45 by 35 foot section. And the currently proposed
impacts for that modification is 7,000 square feet.

Here is a diagram of the dimensions that were
previously authorized for the jetty extension.

Currently, this is what they have built so far
before they realized that there was a bit of an issue with the
proposed layout of it.

And here is what they are asking for now as far
as their modification goes.

The issue that they are having is over here to
the north and to the west is the adjacent sand beach. The
beach is eroding and has been getting trapped in the area of
where the boat ramp channel is. So the proposed modification
would extend this western portion of jetty this direction to
block the sand that's been lost from the beach.

This project serves a higher public purpose by
improving the public's access to the water.

The project is allowable within the general use
district.

No precedent setting effects are anticipated
with the project. Similar projects have been approved by the
commission.

There will be a temporary increase in turbidity
and sedimentation during the construction and a loss of benthic
organisms.

Best management practices will reduce any
adverse impacts.

And the previously authorized jetty
configuration would occupy 11,700 total square feet of
waterfronts.

The proposed modification that they have before
you today would reduce the footprint of the jetty to
approximately 7,000 square feet.

No offsite alternatives were considered. This
is a reduction in the size of a previously permitted jetty.

And the applicant has claimed that the previously authorized or
current jetty configuration is resulting in shoaling and has
necessitated maintenance dredging to the adjacent boat ramp
and the channel.

Surrounding area does contain piers, jetties,
there's a beach and parking area, so the scenic qualities of
the area would not be negatively impacted by the proposed
modifications.

The project was put on public notice as
required. No public comments were received.

DEQ is reviewing the project.

Archives, History has no reservations.

And the Secretary of State's Office said that a
22 current tidelands lease will need to be modified.

And based on staff's evaluation, it has been
determined that the project is consistent with the Mississippi
Coastal Program. It will serve a higher public purpose by
providing increased public accessibility of the water. And staff recommends approval of the applicant's modification request.

DR. ASPER: Greg there is currently a large pile of riprap right there near that ramp. Is that part of this project?

MR. CHRISTOPOULOS: No, sir. That is part of a key that is going in, that the artificial reef bureau is working on getting the federal permits for. So that's just a staging area for that project.

DR. ASPER: Where is that key going to be?

MR. CHRISTOPOULOS: It's going to be just east of the Pass Christian harbor.

DR. ASPER: How far out, and how far from the key known as Taylor Key?

MR. CHRISTOPOULOS: I'm not sure exactly.

DR. ASPER: Will that come before us for approval?

MR. CHRISTOPOULOS: In the past, the keys have gone as a waiver item. This one has already been authorized.

DR. ASPER: Okay. Need a motion.

MR. GOLLOTT: So moved that we adopt the staff's recommendation.

MR. DRUMMOND: I second the motion.

DR. ASPER: Those in favor say aye. Carried unanimously.

unanimously. Further discussion?

Okay. Do we need a break? Let's do a break, 10 minutes.

(Off the record.)

DR. ASPER: Call the meeting back to order.

We'll have Item H-3(b).

b. Jackson County Board of Supervisors

MR. OVERSTREET: Good morning. My name is Jeremy Overstreet. And I am presenting a request for permit for the Jackson County Board of Supervisors.

The project is located on Gulf Hills Bayou in Ocean Springs in Jackson County. It's in a general use district. And the agent is Seymour Engineering.

This is an aerial. It's located west of Washington Avenue and north of Highway 90.

This is a closer look at it. You see it's south of Gulf Hills golf course.

They are proposing to dredge approximately 15,300 cubic yards, and the dredge material will be used for beneficial use if appropriate.

And they're requesting a ten year maintenance dredging agreement.

This is a diagram showing the specific sizes of the canal.

This project will serve a higher public purpose by restoring safe navigational depths and providing public access to and use of the waterway.

The proposed project is allowable within the general use district.

And similar projects have been approved by the commission, and this is not expected to set any precedent.

There will be a temporary increase in turbidity during the dredging operations and a loss of benthic organisms within the dredging area.

This project should not have any adverse impacts other than the loss of benthic organisms.

The activity will remain well away from the shoreline and will not affect natural supply of sediments, nutrients, temperature, salinity, water flow, or circulation.

An increase in turbidity is expected during the dredging process. However, conditions should not exceed Mississippi Department of Environmental Quality guidelines.

Best management practices will reduce any adverse impacts.

No off-site alternatives have been considered since this is a maintenance dredging project. The same channel path was previously followed.

This project will not change the location of the navigational channel and should not affect the natural scenic qualities.

Public notice was published in the Sun Herald February 6, 13, and 20. No negative comments were received.

Department of Archives & History and Department of Environmental Quality are currently reviewing the project.

And Secretary of State has stated that they have no objections.

Based on the departmental review and evaluation, it has been determined that the project is consistent with the Mississippi Coastal Program and serves a higher public purpose by restoring safe navigational depths and providing access to and use of the waterway. Therefore, staff recommends approval of the project and requests that the county notify the Department of Marine Resources if any maintenance dredging is required within the next ten years.

DR. ASPER: Is there a motion?

MR. DRUMMOND: I'll make a motion.

MR. GOLLOTT: Second.

DR. ASPER: Those in favor say aye. Carried unanimously. Thank you.

MR. OVERSTREET: Thank you.

Jackson County Board of Supervisors

MS. MOORE: Good morning. My name is Lynn Moore. I am presenting Item H-3(c), a request for a permit by the Jackson County Board of Supervisors. It's located on Octavia Street in Gautier, Jackson County, Mississippi. It's in the general use district. The agent is Seymour Engineering.

N. J. SOROE, CSR #1297
This is the project location. It is south of Highway 90. Here is another closer view of the Octavia Bayou project location. They are proposing to dredge 3,190 feet by 20 to 60 feet, approximately 12,879 cubic yards. Stated by Mississippi Code, it will be used for beneficial use if it is beneficial.

They are requesting a ten year maintenance dredging agreement.

Here is a diagram of the proposed dredging. This project will serve a higher public purpose by restoring safe navigational depths and providing public access to and use of the waterway.

The proposed project is allowable in the general use district.

Similar projects have been approved by the commission, and this is not expected to set any precedent.

There will be a temporary increase in turbidity during dredging operations and loss of benthic organisms.

This project should not have any adverse impacts other than the loss of benthic organisms.

The activity will remain well away from the shoreline and will not affect the natural supply of sediments, nutrients, temperature, salinity, water flow, or circulation.

An increase in turbidity is expected during the dredging process. However, conditions shall not exceed the Mississippi Department of Environmental Quality's guidelines. Best management practices will reduce any adverse impacts. No alternative offsite alternatives were considered due to the fact that this is a maintenance dredging project and they will be dredging the previously dredged channel. And no new areas will be dredged.

This project will not change the location of the navigational channel and should not affect the natural scenic qualities.

A public notice was run in the Sun Herald on February 6, 13, and 20, and no negative comments were received. The MEDAN had no reservations.

The Mississippi DEQ is reviewing the project. And the Mississippi Secretary of State had no comment on the project.

Based on departmental review and evaluation, it has been determined that the project is consistent with the Mississippi Coastal Program and serves a higher public purpose by restoring safe navigational depths and providing access to and use of the waterway. Therefore, staff recommends approval of this project and that the county notify the Department of Marine Resources if any maintenance dredging is required in the next ten years.

MR. DRUMMOND: I make a motion that it be accepted.

MR. GOLLOTT: Second.

DR. ASPER: Those in favor say aye.

MS. MORE: Thank you.

City of Biloxi

MR. RUNNELLS: My name is Joseph Runnels, Willa and I arm wrestled to see who was going to present this one. I lost again.

So this is the Kuhn Street boat launch project.

And you had this before you at the last commission meeting. And after you approved, on March 1, 2011, Mr. Beck through legal counsel filed a petition for reconsideration. You should have that in your packet. It was mailed to you.

And I believe that Mr. Beck and his legal counsel are here and wish to address the commission regarding their petition for reconsideration.

I do have another slide here. And this is from Title 22 Part 15 Article I Section 4 and provides for what the commission's options are following a petition for reconsideration.

MR. LUCKEY: Good morning, members of the commission, director, Ms. Chesnut.

I'm Alwyn Luckey. I'm here representing Johnny and Kim Beck on this petition to reconsider.

I hope you have a copy of our petition with you. This is here on a petition to reconsider your action from the previous month's motion to approve the City of Biloxi's request.

And before I start arguing, it is within the commission's power to order an evidentiary hearing on this matter. And at this time, I would like to request the commission order an evidentiary hearing and postpone this argument until such time.

It is my understanding it's your option to have that evidentiary hearing to further gather facts which I don't believe are amenable to presentation in the open public forum that we have here today.

So first off, I'd like to request an evidentiary hearing.

MR. GOLLOTT: Mr. Chairman, I'd like to make a motion that we deny the request.

DR. ASPER: Is there a second?

MR. DRUMMOND: I'll second the motion.

DR. ASPER: Those in favor say aye.

MR. LUCKEY: Thank you.

With the board's permission then I will go forward with the argument on behalf of the Becks.

First off, I would direct the commission's
attention to the City of Biloxi's application. The application is perfunctory at best. It lacks several items required within the context of the application itself.

First off, there is no environmental assessment attached as required by item 17 to provide an appropriate report or statement assessing the environmental impacts of the proposed activity.

I submit to you that the brief language in the city's application does not comply with that requirement.

Second and perhaps more importantly, the application has no survey or map attached to provide the commission information or evidence on which to base your decision whatsoever. This is simply a request by the city to allow work to be done on an existing and old boat ramp. But as to the Becks, the city requests additional property to the east and west, but to the Becks to the west property for parking.

The Becks have no objection to the city's renovation of the Ruhn Street boat ramp as it existed. The Becks' problem is the city's request to take over the part of the beach to the west which would intrude upon their deeded property.

The application does not provide you any survey or map that shows you the mean high tide line or, in fact, anything even roughly approximating the existing line.

And I would point your attention to the city provided a site plan for the Ruhn Street boat launch, and nowhere on the site plan is there anything showing the mean high tide line other than an approximate shoreline which I submit does not comply with the commission's requirements, even for your jurisdiction, to hear this matter, much less an ability to determine where the mean high tide line is, where the Secretary of State's obligations as a trustee for the coastal tidelands comes in, or anything else.

This is simply a request by the city for this commission to unilaterally award them the right to use Mr. Beck's property without compensation.

Beyond the application, and you've heard this before, in your copies of the petition you will find the Becks' warranty deed. It clearly states that they are the owners -- and I'll quote it briefly for you. It should be Page 3 of the petition. The Becks are the owners of that certain parcel on the Bay of Biloxi, and then I quote, being bounded on the south by the Bay of Biloxi and then together with all littoral rights pertaining there to.

So they have a written deed which is in front of you as evidence of the Becks property ownership here reflecting their claim that they own land south of the seawall, south of Highway 90, down to the mean high tide line which our position is somewhere close to the existing edge of the beach, the waterline as it sits today.

There is no evidence in this record to the contrary.

So I would submit to you that you have nothing to base a granting of the city's request at this time.

A long time ago, my grandfather used to take me fishing. And I wanted to keep every fish I caught. Some of them were kind of small. They probably weren't legal. And he would put them back. And I'd say, why, why do I have to put that fish back? And his answer was because it ain't right, it ain't right to keep little fish.

Well, I submit to you that to award a man's property for which he has a warranty deed for which he has paid taxes for almost 25 years ain't right.

The city has shown you nothing that says he doesn't own this land. And it ain't right for you to give it to them without at least some sort of compensation.

Now, I think the most important part of this argument is the fact that the city knows Mr. Beck owns this property. They've known it for years through the actions of the Biloxi Port Commission.

The port commission back in the '80s took out a lease with Mr. Beck. They recognized he owned the property. They leased it from him to have a marina and a pier, and they had compensation involved. And later in the '90s there was a lawsuit over that when the port commission couldn't pay their compensation.

The city -- and in 2003, the city took over the port commission, getting all their minutes, all their contracts, all their records, and everything that ever pertained to the port commission became part of the city.

So as we sit here today in 2011, the city knows that this land belongs to the Becks. They contracted with them 25 years ago to lease that land. So there's no doubt the city knows this. This is a fundamental fairness. You can't 25 years ago say, okay, Mr. Beck, we know you own that land, let's lease it from you, and then today come in and say, well, we don't really want to talk about that, give it to us, we don't want to pay for it.

And that's what this is about. The city doesn't want to pay for Mr. Beck's land.

Mr. Beck has never said he wouldn't deal fairly with the city. He has never said that he refused to help out. He recognizes the need for a repaired boat ramp there at Ruhn Street.

All he asks is fair compensation. And I think it's unfair, it ain't right, for the city to come in here and say give us this land for free, when they know, in fact, in writing, and you'll see it in your petition, have leased Mr. Beck's property in the past. And they took over the port commission in '03. And everything the port commission knows...
the city knows.
And clearly, it's not right for them to come in here today and try to get this property for free.
And so finally, you all have the option to do anything you want with the city's request. You can grant it which you did last month, and we're here to reconsider that. You can reject it. You can do nothing. You can study the idea which I would recommend as the wisest course to give us time to deal with the city on a fair basis.
And so I come to you today asking you to reconsider your approval of this motion and to either reject it or do nothing on it, and allow the Becks to deal with the City of Biloxi on an even basis.
Thank you.
MR. GOLLOTT: Mr. Chairman, could we hear from legal, their response on this?
MR. RONNEL: As I mentioned before, you should have in our packet a copy of the Beck petition for reconsideration. This is it. It was filed on March 1 in a timely manner.
This is Page 2 of the petition for reconsideration, and it provides what will be the thrust of the argument in the petition for reconsideration.
And I have to pause right here for a second and tell you that several things that Mr. Beck's lawyer just mentioned were not in the petition or reconsideration. So I'm going to address those probably on the fly to some extent.
The petition for reconsideration does not contain any references to any omissions by the staff or the commission relating to the implementation of the Mississippi Coastal Program.
The entire petition for reconsideration is about the ownership of the land. It's all a title argument.
Here is the main thrust of the argument. That the petitioners -- that they're going to address these issues in their petition -- ownership of the subject lands, regulations regarding private ownership of littoral riparian rights, and eminent domain. These are all very technical legal issues.
Now, they do say that the simplest way to prove ownership is with a deed. And they provided two deeds as attachments. They're in Exhibit A to the petition for reconsideration.
And the first deed is a deed from March of 1983 from John O'Keefe to John E. Beck. This is where the Becks got their title to the property that we're talking about today.
That's the first deed.
The second deed that's in Attachment A or Exhibit A is a deed from February 1996 from John E. Beck to Kim
A. Beck. I'm assuming that's his spouse.
And both warranty deeds have the same description of the boundary. And I believe counsel for Mr. Beck just read that to you and talked about it references littoral rights.
But there's a thing that's in the 1983 deed that's not in the 1996 deed. And, by the way, when you get a deed, whatever that deed is, that's what you take.
And here's the provision that they didn't read to you. And this is in the '83 deed. And it says, this conveyance is made subject to rights-of-way for U.S. Highway 90, seawall purposes, and any rights that may exist in the city, county, state, or in the public in and to the sand beach lying south of the seawall and north of the Mississippi Sound. So the property when it was deeded to Mr. Beck in 1983 was subject to this condition.
Now, here's the argument. This is argument on equitable estoppel and laches. I just handed out to you or Michellea just handed out to you the staff's document in petition for reconsideration, and we addressed that. If you want to know what equitable estoppel and laches are in more detail, it's in that handout that you just received.
Again, these are technical legal arguments. I don't think that there is anything in the Mississippi Coastal Program or the enabling legislation for the Commission on Marine Resources that authorizes you to address issues of equitable estoppel and laches.
Again, like I said, that's in there.
So the laches issue, by the way, and I'll briefly say this, what his argument about, the port commission leasing it. They can't now say they didn't lease it.
Well, why did the port commission lease it to them? I don't know. I don't know why they leased it to them in 1986. There may have been a good reason. I'm not sure what it was. I don't think that's before this commission. Possibly they wanted to avoid litigation, they feared it was cheaper to give him a boat slip. I don't know.
The law was different in 1986, I know that.
There were some significant changes in the law following 1986. In fact, we had the Cinqo Bambini decision that came out in the summer of 1986. And then later on, we had the Coastal Wetlands Protection Act I believe in 1989. Or, I'm sorry -- the Tidelands Act in 1989.
So there were some changes in the law. Maybe if those decisions had been made and that statute implemented prior to 1986, quite possibly the port commission would have looked at it a different way. Timing is everything. Mr. Beck benefited from the timing. Six months later, maybe not so much.
But I don't know. But I don't think that's
really an issue for us anyway.

The Becks question the commission’s assertion that was made at the last commission meeting that littoral properties are public properties. This is on Page 5 of the petition.

Well, this is what the Supreme Court said in that 1966 Bambini decision. It said at the time of its statehood, the United States created two public trusts. Those two trusts, one was that the beds of the streams all belong to the state, and the other one involved sixteenth section land.

This was basically a reference that Judge Robertson is making in his opinion to the equal footing doctrine. The original Thirteen Colonies owned everything that was subject to the ebb and flow of the tide, and every new state came in with the same rights.

The Public Trust Tidelands Act which was passed in 1989 is also quoted in the Becks’ petition for reconsideration. But they emphasize something other than the first line.

Here’s the first few words from the Public Trust Tidelands Act in Section 29-15-5. Tidelands and submerged lands are held by the state in trust for use by all the people. They also assert that 49-15-9 grants exclusive use, occupancy, and possession of littoral lands by its owners. So they’re basically saying we have littoral rights, no one else has any rights.

Well, the courts have addressed 49-15-9, and in Watts v. Lawrence the court said that what 49-15-9 is addressing is the distance property its owners littoral rights reach, not who has the littoral rights. That’s a different issue.

And the courts have also held in Watts and Gillich and many, many other cases that littoral rights are not property rights per se; they are merely licenses or privileges that may be revoked.

So the Becks, if they have any littoral rights, their right may be greater than anyone else out here in the audience, but it’s not greater than the public as a whole because the state owns the waterbottoms.

And if you’ll recall what Mississippi State Highway Commission versus Gillich is about, it’s about the I-110 loop that goes out into the Sound.

And the Gilliches own property across Highway 90 from where the project was going in. And the loop comes down, and where the loop turns is where it would actually impact their littoral rights.

And this is what the court said. The only portion of the loop that is located on property alleged to be owned by the Gilliches is 40 feet south of the original seawall. If that property is held in trust by the state for public use, the Gilliches are not entitled to compensation for this encroachment.

So if you have littoral rights, it can be taken for a higher public purpose without compensation. That’s what the court is saying.

MR. DRUMMOND: Can I ask you a question, Joe?

What’s the difference between littoral rights and riparian rights?

MR. RUNNELS: The difference is littoral refers to areas that are covered by the tide. Really, riparian as it’s used in the Mississippi Code is not correct because riparian really refers to rights in river systems.

But people confuse them all the time, riparian and littoral rights. And I’m trying to stay consistent with littoral rights because that’s part that’s subject to the ebb and flow of the tide, and that’s what we’re dealing with here today.

Here is an overall site plan for the project, which, by the way, this was -- I believe there were several drawings of the proposed project that were prepared by the City of Biloxi, and these were considered by the staff. I believe that they were probably in the presentation that was made at the last commission meeting, so you’ve seen these.

And I believe that there’s one that closely shows where the property line is and where the estimated high tide line is. I don’t have my reading glasses on, but I think I could probably spot it if I had to.

Anyway, this was provided to me by Ed Ott, the city engineer. I met with him and discussed this project with him. I needed to get some clarifications on some things.

And here is a section of it blown up. And what this is, that yellow line represents the east side of what Mr. Beck claims he owns, and the west side of the extension of the Ruhn Street right-of-way.

So it’s projecting the line out. And if you see where that line is projected, I believe this shows the shoreline right here. This is the estimated shoreline. This is the extension of the boundary line separating the two parcels that we’re talking about, the Beck property here and the Ruhn Street right-of-way property right here.

Everything that’s going to be constructed in the water and where the littoral rights are is actually within the littoral rights of the Ruhn Street right-of-way. Nothing is being constructed in the water on the west side of that line.

So, in other words, this is what we’ve got so far, we’ve got a deed that says that this property, this up here where the parking lot is, is subject to the city, the county, and the state making use of the sand beach. So that’s not at issue. Or I guess it is to the Becks. I don’t think it is to the commission.
And we have the Secretary of State, by the way, and the city both saying that they have the right to lease this and they have the right to apply for an application.

So let's take the sand beach out, and let's look at just the littoral rights because he's going to have that. And when we look at it, what we find is they're not constructing anything in his littoral rights. It's on the beach. And there's already a subject to provision in the deed for that.

Now, briefly, there are some other errors that I just want to point out in case the commission was shocked when they read these that are in the petition on Page 9.

It says there was no complaint filed in Jackson County against the Mississippi Department of Marine Resources and the Secretary of State involving the east beach sidewalk. What was filed in Jackson County was an appeal of the commission's decision to issue that permit. And the Secretary of State's Office is not a party to that action.

It's actually Department of Marine Resources and the City of Ocean Springs.

There was no permanent injunction entered by Judge Lutz.

Judge Lutz was appointed by the Supreme Court to hear the appeal of the permit decision that you made on the east beach. So he didn't enter a permanent injunction against the state.

What has been entered in that case is a stay pending the resolution of another pending action in Jackson County that is between the Secretary of State's Office and the Gunn's, I believe, who owns the area where the sidewalk is proposed for the east beach.

And the order that is attached as Exhibit D is not from Judge Lutz; it's actually from Patricia Wise, and it was filed in Hinds County because that's where they heard the injunction against the Secretary of State's Office on the issuance of the lease for the sidewalk project.

So those don't involve us, but they were in the petition, I thought they should be addressed.

So then we have the last issue on or the last argument on Page 9 which is eminent domain. Again, this is a property matter. The CMR has no statutory authority to eminent domain. The specific courts have to determine the issues of eminent domain. It's not in your enabling legislation. It's not in the Mississippi Coastal Wetlands Protection Act, and it's not in the Mississippi Coastal Program. So you have no power over eminent domain.

You told the Becks at the last commission meeting you don't decide property issues. You told them they need to take this to a different forum. But we're here anyway on a petition for reconsideration, and we'll probably be off on an appeal at some point.

This would be our recommendation: to deny the petition for reconsideration based on that it fails to identify any points of law or fact that the commission overlooked or misapprised. It does not identify or allege any violation of the Mississippi Coastal Program. The argument of the petitioner is directly solely to the ownership of the land, though I will admit he threw in a couple of things here today. The CMR is without authority, statutory authority, to establish ownership, and a permit for this project does not authorize impacts to property of third parties.

Whenever this commission and this department issues a permit, it always has a provision in there that it doesn't authorize the impacts to property owned by others. And if Mr. Beck owns that sand beach, this permit will not authorize the city to build the first parking lot on it.

That's an issue that has to be decided somewhere else, not before this commission.

DR. ASPER: Thank you.

Any questions?

Joseph, let me ask you just a couple of quick questions. Given that the two deeds have different statements regarding the restrictions, could you comment on what that really means? Why does the second deed not have that, and does that supersede or eliminate that grant?

MR. RUNNELS: No, it does not. It does not supersede or eliminate it. Why it wasn't put in there, I imagine they probably requested that it not be put in there. I don't know that. Could have been an omission. I don't know. The same legal description is used, but that subject to condition is not put in there.

Maybe they have some other explanation that I'm not aware of, and maybe we'll hear it in a second.

But it's my understanding, and I don't do a lot of property law, thank God, but it's my understanding when you receive a deed, you can't give more than what you get. So when he transferred it in 1996 to himself and his wife, he could only transfer what he got in 1983 from Mr. O'Reege.

DR. ASPER: Okay. Just a couple more quick questions.

Could you —

MR. RUNNELS: I want to go back and arm wrestle some more.

DR. ASPER: Could you clarify the Secretary of State's position on this? I mean, we understand that he's involved in issues in Gulfport which are related. And I'm just wondering where he stands on this and where he draws the line for public trust tidelands in this case.
MR. RUNNELS: Well, you want me to see if we can
get Mr. Carter to stand up and maybe address that question? He
might could do it better than I could.

DR. ASPER: That would be --

MR. RUNNELS: Ray Carter.

DR. ASPER: I hate to put him on the spot.

MR. RUNNELS: I've always wanted to throw him
under the bus.

It's basically under the Tidelands Act.

I've had some meetings with the Secretary of
State, Delbert Hosemann. And he is very serious about his
duties as a trustee. And he takes great interest on what
happens to those trust lands. He doesn't want to see the trust
lands abused like they have been in the past with the sixteenth
section lands that were leased away for 99 years for a dollar.

And he's administering the Public Trust Tidelands Act as he
sees fit. And obviously, there are some people that take --
have a difference of opinion on what he should be doing.

But I can assure you from my conversations with
him that he takes his responsibilities as the trustee for these
state owned lands very, very seriously.

MR. CARTER: Commission, Raymond Carter with the
Secretary of State's Office. And I think I will only tell you
what your legal counsel could tell you, and that is that as a
result of the Tidelands Act of 1989 a tidelands boundary map
was produced, and that map shows that the boundary between the
public trust tidelands and the private lands which are
susceptible to private ownership in this area is the toe of the
seawall.

DR. ASPER: So just to make sure I understand
it. What you're saying is that this entire parking area that's
being proposed here is within public tidelands.

MR. CARTER: It is our position that the map
which shows that the boundary is the toe of the seawall means
that anything seaward of the toe of the seawall is public
trust tidelands, anything landward of the seawall is
susceptible to private ownership.

DR. ASPER: Thank you.

MR. LUCKEY: May I have just a moment to -- just
a couple of brief points.

First off, as Mr. Runnels said, he got the short
straw. I think he did rather well, and I would have hated to
have had the guy who won.

I guess my question, and I understand that OMR
operates with a lot of regulations and laws, I was actually
prepared to argue with the City of Biloxi. And I thought Mr.
Runnels did an excellent job of arguing their side.

I would object to the extent that as a staff
attorney he had put forth what I consider a partisan position.

But nonetheless, I'm prepared to address it.

First off, in the deed, there's a lot of things
in these deeds that I didn't quote in my petition because
they're irrelevant.

I don't know why the Becks left out the comment
-- can we get that slide back? Is that possible?

MR. RUNNELS: I'm technically challenged here,
but I'll see if I can get it.

MR. LUCKEY: If you'll take a look at this
section that was from the '83 deed, it said the conveyance is
made subject to rights-of-way for Highway 90 -- no one argues
with that -- seawall purposes and to any right -- to any rights
that may exist in the city, county, state or in the public
in and to the sand beach lying south of the seawall north of
the Mississippi Sound.

Any rights they may have. It recognizes that
there are rights. Clearly under court decisions, the public
had the right to cross that beach and use it. And so the deed
recognizes those rights.

Nothing in there gives the city or the state
additional rights that they didn't have otherwise. And that's
the point I think.

The Becks do not contend that they own the
littoral rights to the exclusion of everybody else. Obviously,
the state has public trust tidelands. But the laws say that
littoral and riparian property owners have common law and
statutory rights under the Coastal Wetlands Protection Act and
that the state recognizes those.

And that's all we're asking here is that the
state and the commission as part of the state recognize that.

In fact, the rules of the Secretary of State
himself, Rule 4(b), Section 1, the state's responsibilities
extend to littoral and riparian property owners, and moving
down, and the secretary will not lease in the littoral or
riparian areas to parties other than the riparian or littoral
owner without the riparian or littoral owner's permission. And
that would be in our position the Becks.

Now, I guess one last thing. Mr. Runnels was
correct. It was not Judge Lutz's decision in Hinds County. We
misspoke on that. It was another judge, Patricia Wise. But I
do quote from the court decision Cunn and Harris versus
Secretary of State and State of Mississippi and the City of
Ocean Springs, the plaintiffs, that would be the property
owners, permanent injunction request is hereby granted, that
is, stopping the City of Ocean Springs and the state from going
forward with a tidelands lease until the ownership of the
littoral rights is determined.

And so, and I heard from the Secretary of
State's lawyer here, that they claim the property, the sand
beach up to the toe of the seawall. That may be. But the City
of Biloxi utterly failed to attach that to their application.
There is nothing in this room that shows us where that is and nothing, in fact, before you for you to grant your — to base your decision on.

So based upon that, again, we would request that you deny the petition or at least hold it in abeyance to have time to study it and give us time to deal with the City of Biloxi.

Thank you.

MR. RUNNELS: Just one more quick thing. I think that makes my point. That permanent injunction that was entered by Patricia Wise or Chancellor Wise in Hinds County was a result of a separate legal action between the landowners and the Secretary of State's Office. This doesn't involve the Commission on Marine Resources. They filed a separate action, I guess two separate actions, one in Hinds County and one in Jackson County. The one in Hinds County I'm assuming was to enforce the rules and regulations of the Secretary of State's office, which we don't enforce. That's up to the Secretary of State.

So they brought separate legal actions to determine who gets to control the beach where that proposed sidewalk is going in. And the Commission on Marine Resources' decision was a whole separate appeal.

MR. GOLLOTT: Mr. Runnels, would you bring up your reasons for denying this again?

Mr. Chairman, I'd like to make a motion that we deny the petition for these reasons.

DR. ASHER: Is there a second?

MR. DRUMMOND: I second the motion.

DR. ASHER: Any further discussion?

MR. DRUMMOND: I'd like to know one thing, Joe, if I could. What is equitable estoppel? Did I pronounce it right?

MR. RUNNELS: You did.

MR. DRUMMOND: And estoppel by laches.

MR. RUNNELS: If you look at the handout that —

MR. DRUMMOND: I saw it.

MR. RUNNELS: Okay. Well, you and I are in the same boat then. If you want me to read the description, I will.

It says laches and equitable estoppel are similar legal principles. Laches arises from a complaining party's failure to assert a right or claim for an unreasonable and unexplained length of time under circumstances prejudicial to the adverse party.

Equitable estoppel comes into play in situations where a party has changed his or her position in reliance upon the conduct or representation of another and as a result suffers detriment or prejudice caused by the changed position.

What constitutes laches or equitable estoppel has been held to depend on facts and circumstances of each particular case. Therefore, a trial court's decision to accept or reject either doctrine will not be disturbed on appeal when the decision's factual findings are supported by substantial evidence.

MR. DRUMMOND: Why don't you just call it a conclusion?

MR. LUCKEY: Mr. Commissioner, that's legal for it ain't right.

MR. RUNNELS: I won't dispute that.

MR. GOLLOTT: Can I say one thing, Mr. Chairman?

DR. ASHER: Certainly.

MR. GOLLOTT: Mr. Luckey, when you was a boy, it was legal to keep those small fish.

MR. LUCKEY: My grandfather would have given me a beating.

DR. ASHER: Okay. We have a motion on the table to deny the petition for reconsideration. It's been seconded.

Is there any further discussion? Those in favor say aye.

Carries unanimously.

Thank you very much everybody. Wish you the very best in pursuing this.

I guess move on to financial report.

J. Administrative Services

2. Financial Report - Kara Vesa - No Action

MR. VESA: I'm Kara Vesa. I'll be giving the report today.

Our budget on February 28, 2011, remained at:

$6,266,493. We have spent $5,186,666, which left a remaining balance on February 28 of $1,079,827.

And all tidelands funds for this fiscal year are obligated.

Any questions today? Okay. Thank you.

DR. ASHER: Thank you.

I believe that concludes our agenda.

Joseph?

MR. RUNNELS: I just wanted to say one more thing. It doesn't relate so much about the appeal. And I realize that Mr. Beck and his legal counsel have left the room. But it's the issue about partisanship. When this commission approves a project and issues a permit, at that point, I look upon my duty as one to support the decision and the decision of the staff and the staff's recommendation.

So if I'm partisan, it's because of that belief that that's what I'm supposed to be doing. It's not a result of wanting someone to win or lose; it's a matter of performing what I perceive as my duties.

So I apologize if I seem too partisan.

DR. ASHER: No apology necessary. We appreciate your visionery to defend us. It's something we cannot do by
ourselves. We appreciate your help on that.

Any further business?

Is there a motion to adjourn?

MR. BRUNO: I make a motion we adjourn.

MR. GOLLOTT: Second.

DR. ASHER: We are adjourned.

(Meeting adjourned 11:17 a.m.)

BETWEEN THE COMMISSION ON MARINE RESOURCES

COURT REPORTER'S CERTIFICATE

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 foregoing 81 pages constitute a true transcription of said meeting held on the 16th day of March 2011.

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.

I, Norma Jean Ladner Soroe, CSR #1297, have been a Certified Shorthand Reporter in the State of Mississippi since May 11, 2013.