

Compressed Transcript



COMMISSION ON MARINE RESOURCES

COMMISSION MEETING

March 15, 2011

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1 COMMISSION ON MARINE RESOURCES
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3 MEETING OF COMMISSION ON MARINE RESOURCES
4 March 15, 2011
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7 TRANSCRIPT OF MEETING OF COMMISSION ON MARINE RESOURCES AT
8 BOLTON STATE BUILDING, PUBLIC MEETING ROOM, 1141 BAYVIEW
9 AVENUE, BILOXI, MISSISSIPPI, ON THE 15TH DAY OF MARCH 2011
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 DR. VERNON ASPER, Chairman
16 RICHARD GOLLOTT
17 SHELBY DRUMMOND
18
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
23
24
25

1 MR. GOLLOTT: So moved, Mr. Chairman.
2 MR. DRUMMOND: I'll second.
3 DR. ASPER: Those in favor say aye.
4 C. Approval of Agenda - Chairman - Action
5 DR. ASPER: And then the agenda. Are there any
6 changes to the agenda?
7 DR. WALKER: No, sir.
8 DR. ASPER: Is there a motion to approve the
9 agenda?
10 MR. DRUMMOND: So moved, Mr. Chairman.
11 MR. GOLLOTT: Second, Mr. Chairman.
12 DR. ASPER: Those in favor say aye. Okay. The
13 agenda is approved.
14 D. Public Comments
15 DR. ASPER: So as of right now, we only have one
16 person interested in making public comments, maybe a second
17 person, as well. Okay. Did you fill out a form? You're
18 filling it out. Okay. Great.
19 The first person is Mark Kopszywa.
20 MR. KOPSZYWA: Mark Kopszywa, commercial
21 shrimper.
22 And every year at this time of year, we go
23 through a process of trying to get the waters open to shrimping
24 north of the intercostal waterway east of Gulfport ship
25 channel. And it was brought to my attention that the DMR

1 A. Call to Order
2 DR. ASPER: Good morning. I'd like to welcome
3 everybody to the regular March meeting of the Mississippi
4 Commission on Marine Resources. Really great to have everybody
5 here.
6 Before we start the meeting, I'd like to remind
7 you of a new requirement for our public comments section, and
8 that is if you're interested in speaking during that period of
9 the meeting we request that you fill out a form. That's so we
10 know exactly who is here to talk and everything like that. And
11 we're also going to be trying to limit the total time to three
12 minutes. We have had some instances in the past where people
13 go on and on and on. So we're just going to try and keep
14 things a little bit more concise.
15 If you decide during the meeting that you want
16 to speak, at least until we get into the groove of this, you're
17 welcome to go back, fill one out and wave it at me, and I'll be
18 happy to hear you. We definitely want to hear your comments.
19 Don't get the wrong impression.
20 Okay.
21 B. Approval of Minutes Commission Meeting - February 15, 2011
22 - Action
23 DR. ASPER: The first item on the agenda is
24 approval of the minutes. Are there any changes, or is there a
25 motion to approve?

1 sample boat has went out and caught shrimp that was legal in
2 size for us to catch.
3 But Traci and Dale do not want to sign off on it
4 because the Mississippi Coast Research Lab has caught
5 post-larval brown shrimp at Marsh Point, which Marsh Point is a
6 permanent area that's closed permanently to commercial
7 trawling.
8 So since when does post-larval brown shrimp
9 become an issue in opening waters when it's always been
10 juvenile brown shrimp and the same folk. And if it's on
11 conservation, the area that Marsh Point is, there's bait boats
12 dragging on it every day. So how are we conserving anything
13 with allowing them to drag on the post-larval brown shrimp?
14 And I would like the commission to reconsider
15 the opening of the waters for us for a few weeks so we can work
16 since we did lose last year. And not everybody worked on the
17 VOO program, and not everybody got a pile of money. Some of us
18 do need to work.
19 Thank you.
20 DR. ASPER: Thank you. We will address that
21 when we get to the fisheries section on the agenda. Thank you.
22 MR. WALKER: I'm Ray Walker, commercial
23 fisherman.
24 It was brought to my attention that they was
25 trying to pass eight foot door law again for the Sound. And

1 just -- we've dealt with that in the past. Realize with the
2 eight foot door laws that it opened up the doors for bigger
3 nets which is what destroyed it in the beginning. You know,
4 the bigger boats come in, drag 50 foot nets, where we're just
5 dragging 25 foot nets going by what the law was, and that's why
6 they reduced the door law back to six foot which seemed to help
7 out quite a bit.

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

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

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

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

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

1 that have 60 foot boats that can pull these 8-40 doors and they
2 buy them for Louisiana, they buy them for outside, and they
3 don't want to have two sets of doors.

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

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

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

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

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

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

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

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

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

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

24 And that is our concern. You know, I know that
25 there's people that -- and, you know, I empathize with people

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

3 Thank you.

4 DR. ASPER: Thank you.

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

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

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

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

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

25 But as far as the big boats coming into the

1 Sound, that's ridiculous. We got plenty law enforcement. And
2 that would just be more money in the stat's pocket because the
3 enforcement people are doing their job and they're going to do
4 their job. When them big boats come in, they're a big target.
5 Let them come on.

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

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

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

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

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

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

24 So now here I am before you to present my case
25 with you and options for everyone's best interest because the

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1 prototype, I'm fixing to implement a system to offer options
2 for ecotourism and research capabilities because that's
3 (inaudible, not at microphone).

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

6 E. Executive Director's Report

7 DR. WALKER: I don't have anything this morning,
8 Mr. Chairman.

9 DR. ASPER: Marine patrol.

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

11 2. Marine Patrol Report

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

15 If you look at the report, we had a few more
16 oyster violations this month than we did last month and the
17 previous month.

18 On down, fishing violations report, we have
19 three undersized and one over the limit violation. We had some
20 insufficient PFDs.

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

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

25 Our JEA patrol, we had 23 patrols, 452 man

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1 fact of it is, my airboat is fiberglass and it's small,
2 versatile for various options. You can even take it out to the
3 barrier islands, launch it at barrier islands, reef
4 exploration, or whatever is necessary for out in the Gulf, as
5 well as inland waterways research capabilities.

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

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

17 Thank you very much for your time and response.

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

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

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

25 MR. RAMSEY: What I'm trying to do, I have a

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1 hours, 99 contacts, two enforcement accident reports, and three
2 state issued citations.

3 Any questions?

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

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

12 MR. GOLLOTT: Thank you.

13 DR. ASPER: Okay. Thank you very much.

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

16 G. Marine Fisheries - Dale Diaz

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

21 First before I get started, I'd like to mention
22 that we just sent out a news release for the seminar series.
23 We're going to be continuing that series. Took a little hiatus
24 with the BP oil spill. But it's going to start up again on
25 March 25 here at the Bolton Building at 9:00 a.m. The topic is

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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 MR. DRUMMOND: Where is that, Joe?

9 MR. JEWELL: It's going to be on March 25 here
10 in this room at 9:00 a.m.

11 MR. GOLLOTT: (Not speaking into microphone)
12 Joe, can I interrupt you before you get started?

13 Commissioners, I would like to make a motion
14 that the commission adopt a resolution to be prepared by the
15 Department of Marine Resources and submitted to the City of
16 Biloxi to support utilization of the concrete material from the
17 bridges damaged in Hurricane Katrina to extend the Katrina reef
18 on the south side of Deer Island to act as a wind/wave breaker
19 that protects Biloxi and the Deer Island and additional
20 material can be added to protect the City of Biloxi and would
21 enhance fisheries.

22 Just a little brief on this. It was intended
23 from the beginning for these bridges to go outside the islands
24 to protect the islands and enhance fisheries. But we
25 understand the low bidder is intending to crush this stuff up

1 DR. ASPER: Thanks.

2 3. Title 22 Part 7

3 MR. JEWELL: Okay. Next up on the agenda is me.
4 Title 22 Part 7.

5 As you know, at our last commission meeting, we
6 took this out for notice of intent. It's before you today for
7 final adoption.

8 The first slide is a summary of the notice of
9 intent that went out. To refresh your memories, the substance
10 of the notice of intent was for the current commercial season
11 to run from October 1, 2010, through December 31, 2011. And
12 thereafter the TAC shall commence on January 1 and end on
13 January 31 of each subsequent year.

14 It went out for public comment from February 15,
15 which was the commission meeting, through March 15, which is
16 the commission meeting today. We received two comments.

17 The first one was from Mr. F.J. Eicke from the
18 CCA. In summary, they have no objections. Mr. F.J. Eicke at
19 last month's commission meeting stated such. The second one
20 was really not a comment. It was from Mr. Matt Dubuisson who
21 was here at last month's commission meeting. It was really a
22 question clarifying the initial starting date. And as you can
23 see, I responded to that question.

24 We're also required under the Administrative
25 Procedures Act to go out on public notice. The legal notice

1 and sell it and not put it outside of the islands. So I think
2 we need to support, public support with the City of Biloxi
3 commissioners on this thing.

4 DR. ASPER: Okay. We have a motion. Is there a
5 section to the motion?

6 MR. DRUMMOND: I second the motion.

7 DR. ASPER: Those in favor say aye. Thank you.
8 Sounds like an excellent idea.

9 MR. JEWELL: Okay. We'll do that.

10 MR. STEWART: May I make a comment on that?

11 DR. ASPER: Can you come up to the podium so we
12 get you recorded?

13 MR. STEWART: My name is Mark Stewart.

14 I'd just like to make a comment about putting
15 the concrete out there is a good idea for the fishing and the
16 protection and everything. But I think if they put more, if
17 they'd move it a little closer to the island, the material will
18 go twice as far. So they got it in too deep of water really.

19 DR. ASPER: That was -- I'm sure that was a
20 carefully considered decision where to put it. And there was
21 some discussion on both sides of that, I'm sure. So I have to
22 trust the people, the engineers that come up with that
23 decision, as to why it's out there.

24 MR. STEWART: That's just my opinion of it. You
25 know, want it go to as far as possible I would think.

1 appeared in the Sun Herald on February 26. We took an
2 additional step on February 24 and sent out a mass media
3 release that goes out to over 100 different outlets.

4 Additionally, we published the notice of this
5 action on our web page on February 22.

6 I have posted for your information the public
7 hearing requirements. An agency is required to schedule a
8 public hearing if the three criteria are met. And that is a
9 request from a political subdivision, that's usually an elected
10 official, a public agency, or ten or more people. None of those
11 criteria were met.

12 Finally, for this to proceed, I'll need a motion
13 from the commission for final adoption if there are no
14 questions.

15 MR. DRUMMOND: What about white trout? Is that
16 part of this group of fishes?

17 MR. JEWELL: No, sir.

18 MR. DRUMMOND: Why not?

19 MR. JEWELL: There's no commercial quota for
20 white trout.

21 MR. DRUMMOND: I know there isn't. But why
22 isn't there?

23 MR. JEWELL: If the commission chooses to take
24 that up, it can be part of it. Right now the commercial quota
25 is --

1 MR. DRUMMOND: I mean, you can go out there and
2 catch 500 white trout and throw them away dead. Why not put a
3 limit on them?

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

7 MR. DRUMMOND: Commercial fishing for white
8 trout?

9 MR. JEWELL: I'm sorry?

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

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

14 MR. DRUMMOND: What about recreational fishing
15 limit?

16 MR. JEWELL: That can happen, also.

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

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

22 MR. DRUMMOND: That's a shame.

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

25 DR. ASPER: Is there a second?

17

1 a recommendation for the commission's consideration that during
2 the month of April 2011 restrict 2011-2012 oyster harvest
3 license sales to renewals of current 2010-2011 oyster licenses
4 only.

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

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

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

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

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

19

1 MR. DRUMMOND: I second the motion.

2 DR. ASPER: Further discussion? Those in favor
3 say aye. Carried unanimously. Thank you.

4 MR. JEWELL: Thank you.

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

7 4. Oyster License Proposal

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

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

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

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

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

24 So we're coming up onto April when the new
25 licenses would go on sale. And so the staff would like to make

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

3 MR. GOLLOTT: (Not speaking into microphone)
4 Scott, I don't like this. It smells like limited entry to me.
5 If you want to limit the out of state licenses coming into
6 Mississippi, then I think all Mississippi residents should have
7 the ability to buy a oystering license because there was so
8 much, you know, with the oil spill and Katrina and all that
9 stuff, maybe some people didn't get a license last year. Maybe
10 they didn't feel like could make enough money to pay for it.

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

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

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

22 MR. GORDON: We had a few people that were
23 denied licenses as far as doing the renewals last year, and I
24 think somebody -- some of the folks may not have been paying as
25 close of attention as they could have.

20

1 What we would intend to do this time is to mail
2 out notices to all current license holders telling them about
3 this, if the commission was to pass this.

4 MR. GOLLOTT: Scott, wouldn't your motion or
5 recommendation limit those same people that got turned down
6 last year? I think it was like five or six people -- wasn't
7 it? -- that got turned down. It would deny them a license
8 again this year.

9 MR. GORDON: Yes, sir.

10 But I did have a second portion of this.

11 DR. WALKER: Mr. Chairman, if I might. Scott,
12 why don't you go ahead and present the second part?

13 MR. GORDON: Yes, sir. This is similar to what
14 we had intended to bring up earlier this year for the
15 administrative review of adverse oyster licensing decisions.
16 And it was somewhat modified after the commission discussion of
17 it at that time.

18 But it would be that the Commission on Marine
19 Resources would authorize the executive director to restrict
20 the number of commercial oyster licenses that may be sold
21 during this oyster season. The commission would determine that
22 it was in the interest of Mississippi commercial fishing
23 industry to provide an administrative review of the denial or
24 non-issuance of a commercial oyster license for this oyster
25 season. Therefore the commission would find and order that any

1 felt like the licenses (inaudible) Dr. Walker could limit it.

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

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

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

8 MR. GOLLOTT: So what is is doing?

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

16 MR. GOLLOTT: (Not speaking into microphone)
17 This is opening the door for limited entry, and I'm just not
18 for that.

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

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

1 person, firm, or corporation that was unable to obtain either a
2 dredging or tonging commercial oyster license for the 2011-2012
3 oyster license year may file a written request with the
4 executive director of the MDMR for an administrative review of
5 the denial or non-issuance of that 2011-2012 commercial oyster
6 license. The written request shall include the following: the
7 name and address of the party submitting the request; the
8 registration number of the vessel to be licensed; the last two
9 oyster license years that party submitting the request
10 purchased Mississippi commercial oyster licenses; the last
11 oyster license year that the party submitting the request
12 harvested oysters in Mississippi waters; and any extenuating
13 serious circumstances that the party submitting the request
14 believes should be considered in determining whether a license
15 should be issued.

16 MR. GOLLOTT: Scott, do you have the one that we
17 passed last year?

18 MR. GORDON: For this? It was not passed.

19 MR. GOLLOTT: Okay. I thought we allowed Dr.
20 Walker to --

21 MR. GORDON: I think to refresh your memory,
22 since there was no oyster dredging season this year, the
23 commission felt that that was not necessary at that time.

24 MR. GOLLOTT: (Not speaking into microphone) How
25 about the year before that? We did something that Dr. Walker

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

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

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

7 DR. ASPER: Come to the podium, please.

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

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

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

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

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

23 MR. KOPSZYWA: Well, so be it.

24 But understand this. I'm a fourth generation
25 commercial fisherman. I've never done nothing else. I do not

1 own a Mississippi oyster license. I'm either crabbing or
2 fishing or shrimping.

3 Something happens to one of these other
4 industries, I cannot go oyster.

5 So, how do you support the industry when I can't
6 work in it?

7 DR. ASPER: Again, this is why we have the
8 review process because we are trying to keep Mississippi
9 fishermen fishing. That's the goal here. We're trying to
10 manage the resource, but we're trying to keep the fishermen
11 fishing. We're trying to make it so you can earn a living
12 doing it. And if it's spread out too thin, then it's hard to
13 do that.

14 MR. KOPSZYWA: Well, ten sacks is better than no
15 sacks.

16 MR. GOLLOTT: Mr. Chairman, with all due
17 respect, I know where this originated, and it originated out at
18 Bayou Cadet, and it's designed to keep Mississippi fishermen
19 off the reefs and get a bigger price out of them oysters from
20 Louisiana coming into Bayou Cadet.

21 DR. ASPER: Would you like to make a motion?

22 MR. GOLLOTT: Yes, sir. I'd like to make a
23 motion that we deny this adopting this regulation.

24 DR. ASPER: Is there a second?

25 MR. DRUMMOND: I'll second the motion.

25

1 put a limited amount of license.

2 Here, you got people from Alabama, we cannot go
3 to Alabama, buy a license and go there. I got Louisiana. Turn
4 around, I can't go there.

5 I can't go right here at home, do something that
6 now I can do for myself. Just like the man just said, he has
7 never had a oyster license, but if it comes down to it with
8 everything like it is, he'd like to be able to go out there and
9 do it himself.

10 There's no harm in putting a limited amount out
11 there. But before you sell one Alabama, one Louisiana, you let
12 Mississippians have opportunity to get it first. Set some kind
13 of deadline to be able to do it if y'all do that limited
14 license.

15 DR. ASPER: Okay. Thank you very much.

16 Any further discussion by the commission?

17 The motion we have is to basically deny this
18 request and leave things as they are. Those in favor say aye.
19 Carried unanimously.

20 MR. GORDON: Thank you.

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

27

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

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

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

16 MR. DARDAR: Okay. So like I've been a captain
17 on different boats all these years. My name is Walter Dardar.
18 Okay? I've been a captain on different boats ever since I was a
19 little kid. Okay?

20 I observed for a fellow. He sold the boat. I
21 went to another guy. Turned around, we captain on their boat.
22 Turn around, oyster license, I was able to afford to buy my own
23 boat finally.

24 I cannot get a oyster license because I've done
25 this all my life, I live here in Mississippi, but they want to

26

1 (Comments from audience.)

2 DR. ASPER: I'm not clear on the details. We'll
3 have to talk with Scott. We'll know exactly how this is going
4 to settle up now that this failed.

5 MR. GORDON: The new licenses would go on sale
6 at the beginning of April. And with the action the commission
7 has taken right now, they have until the end of March next year
8 to buy their licenses.

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

16 Keep in mind that we are severely restricted in
17 what we can do regarding out of state fishermen. There are
18 certain things we can't do.

19 So let's just cut it off there, if you don't
20 mind. We can talk afterwards on it.

21 We're moving off of the oyster subject.

22 MR. JEWELL: As the commission recalls, our next
23 item on the agenda is at the last commission meeting --

24 DR. ASPER: Hold on a minute, Joe. One more
25 comment.

28

1 MR. KOPSZYWA: I asked Scott when he stepped up
2 here a while ago please let us know how many boats are on the
3 reef and what's the ratio of Mississippi and Alabama boats.
4 That's what we would like to know at this time, what's on the
5 reef right now.

6 MR. DRUMMOND: Can I ask you a question, Mark?
7 You can't get an Alabama license or a Louisiana license to
8 oyster?

9 MR. STEWART: That's correct.

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

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

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

20 (Comments from audience.)

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

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

1 back in 2001. So that's another user group we have to deal
2 with.

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

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

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

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

18 MR. RICHARDSON: Yes. This was a maximum.

19 DR. ASPER: Discussion? Motion?

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

25 But Mr. Chairman, I'd like to make a motion that

1 5. Recommendations for Modification to Trawl Door Size
2 Title 22 Part 9

3 MR. RICHARDSON: Good morning, commissioners,
4 Dr. Walker, Ms. Chesnut.
5 Bill Richardson with the shrimp and crab bureau.
6 We're going to talk about trawl door size.

7 This is just showing license sales. This is in
8 there just to show it's been on a constant decrease over the
9 past year. We had a little spike last year, but all license
10 sales were up, and we think that might have had a little bit to
11 do with the VOO program, all commercial licenses.

12 We looked at right now we're at six foot by 34
13 inches. We did this back in 2001 to coincide with Louisiana.

14 I looked at license sales. We sell our licenses
15 by boat size. And you can see from 2001 and then comparing it
16 with 2009, we've had a definite decrease in boats. And the
17 majority of boats are larger boats.

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

20 Also, Louisiana, we don't sell by boat size.
21 It's by number of trawls, so I couldn't really compare that.

22 Louisiana went to 8-43s in 2008. And Alabama
23 has no door restriction size.

24 Another thing to note here is we also have a
25 large number of skimmer boats in our fleet which we didn't have

1 we adopt this and send it out for hearings.

2 DR. ASPER: Is there a second?

3 MR. DRUMMOND: Second.

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

6 MR. RICHARDSON: Right.

7 DR. ASPER: Further discussion? Those in favor
8 say aye. Carried unanimously.

9 MR. RICHARDSON: Thank you.

10 MR. JEWELL: Thank you, commissioners.

11 Next item and final item on the agenda is Title
12 22 Part 1 notice of intent. Mr. Bradley Randall will be
13 presenting that for you.

14 6. Title 22 Part 1 - Notice of Intent

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

17 State statute currently, Mississippi Code
18 49-15-27 concerning the lease of bottoms, it says the
19 commission shall fix a ground rental at not less than \$5 per
20 acre, and this was changed in 2005.

21 Currently, the Title 22 rules and regulations
22 for shellfish harvesting, Chapter 19, on bottom shellfish
23 leasing regulations, states that each lease application must be
24 accompanied by a bid price per acre in the form of a sealed bid
25 attached to the application. Said bid must be at least \$1 per

1 acre.

2 And as a resolution, we would like to change
3 that so it says that each lease application be accompanied by a
4 bid price per acre in the form of a sealed bid attached to the
5 application, said bid must be at least \$5 per acre.

6 MR. DRUMMOND: Why would you go to \$5 per acre
7 from \$1?

8 MR. RANDALL: The state statute requires that.

9 MR. DRUMMOND: Okay.

10 MR. RANDALL: You see right here, Mississippi
11 Code 49-15-27.

12 MR. DRUMMOND: I know nothing about that.
13 Anyway, you answered my question. Thank you.

14 DR. ASPER: Is there a motion?

15 MR. DRUMMOND: I make a motion that we pass this
16 item, Mr. Chairman.

17 DR. ASPER: Is there a second?

18 MR. GOLLOTT: Second.

19 DR. ASPER: Those in favor say aye. Passes
20 unanimously. Thank you very much.

21 MR. RANDALL: Thank you.

22 MR. GOLLOTT: Is there somebody in fisheries
23 that could answer Mark Kopszywa's question on when the
24 shrimping season will close outside of the islands?

25 MR. JEWELL: Well, I think Bill here is able to

33

1 for the inside to be opened. And they have some economic
2 issues. They do have some legitimate concerns. They do have
3 economic issues that they would like to address. And they are
4 legitimate concerns.

5 The fishing industry as you all know, they have
6 suffered on poor times. It has been on decline for the past
7 decade or so. Katrina absolutely didn't help anything with
8 infrastructure, with imports, a lot of different things.

9 The BP oil spill exacerbated an already
10 declining industry.

11 And as they mentioned, not all of the fishermen
12 got to participate in the VOO program. There were a host of
13 different user group differences that happened.

14 So they do have legitimate concerns. They do
15 have legitimate issues. But there are a host of reasons why
16 the staff, the research lab, and other people would consider
17 that there are legitimate reasons scientifically and
18 biologically and environmentally why we have not and would
19 suggest that we do not open the inside this time of year.

20 It's a highly sensitive area. It's a highly
21 productive area. And those areas are the future for a lot of
22 different organisms for this time of the year.

23 Our sampling regime this time, and we've done a
24 lot of those in response to this request, and our routine
25 samplings we're picking up a lot of different organisms in

35

1 most answer it. But you did hit on -- Mr. Asper did hit on
2 most of it. Of course, GCRL has expressed concerns about not
3 only the post-larval shrimp that's now moving into he
4 Mississippi Sound at this time, but they've also expressed
5 concerns about a lot of larval and post-larval organisms that
6 are moving in the Mississippi Sound at this time of the year.

7 As we all know, this is a nursery area for the
8 major commercial and recreational species in the Mississippi
9 Sound. And they move into the shallow water, estuarine waters,
10 the Mississippi Sound area at this time of the year.

11 And it's not only GCRL, but marine fisheries, we
12 have our concerns, too. And this would be setting a precedent.
13 We have never opened the inside waters at this time of the year
14 in the past ever in the history of this agency.

15 We have opened -- we have listened to the
16 fishermen. We have taken in their considerations and sampled
17 and opened the outside waters this time of the year to help
18 them economically in several instances in the past.

19 But we have never done that on the inside for a
20 lot of different reasons.

21 But I think Bill is here, and he has a little
22 more detail that he can add to that.

23 MR. GOLLOTT: I understand. But I thought it
24 was a motion to keep the outside open.

25 MR. JEWELL: No. They have asked specifically

34

1 large amounts in those larval, those early life stage cycles,
2 and we have a lot of concerns about damaging and limiting those
3 productive cycles right now.

4 DR. ASPER: What have your counts been?

5 MR. JEWELL: The shrimp samples? I think Bill
6 has that information available right now.

7 DR. ASPER: And what does the state statute say
8 about this? Because I think we have some constraints there as
9 to what we -- does it say we may or we shall open when it hits
10 68?

11 MR. JEWELL: It says we shall.

12 MS. CHESNUT: State statute says that we may
13 open when the count is at a certain level as a minimum
14 requirement, but it's at the commission's discretion.

15 DR. ASPER: Okay.

16 MR. JEWELL: We can't open before, but we may
17 after.

18 DR. ASPER: Okay. And what do the counts show?

19 MR. RICHARDSON: Bill Richardson, shrimp and
20 crab.

21 Well, we had legal shrimp, we had a couple of
22 legal pinks, like 40-50. We're talking about five shrimp total
23 that we had in the sampling that we did. And that's three
24 trips doing all nine of our stations. Of course, we're going
25 during the day.

36

1 But we had three legal whites. A couple of
2 those were last year's. They were like 12 count.

3 And this is throughout the Sound. This isn't
4 inside this area.

5 We had two in the area that's being discussed,
6 we had two legal pink shrimp in our sampling.

7 DR. ASPER: Could you refresh my memory? When
8 you do the counts, you count all the shrimp and then you take
9 the average size, or do you look at the largest ones?

10 MR. RICHARDSON: No. It's all the shrimp. But
11 when you're looking at five shrimp, it's --

12 DR. ASPER: Okay. You had a total of five
13 shrimp?

14 MR. RICHARDSON: Yeah, as in over several
15 samples.

16 DR. ASPER: You weren't seeing small shrimp?

17 MR. RICHARDSON: No. We were not. The
18 juveniles that we were seeing, we saw a lot of juvenile fish in
19 our phantom samples, and we use a liner net in those samples
20 which is a much finer mesh so you're going to catch everything
21 that's there. And there are a lot of juvenile fish right now
22 that we have been seeing.

23 Have seen a few post-larval shrimp actually in
24 the trawls, but the majority of the post-larval information
25 came from BPLs from the research lab.

37

1 and has opened back up on January 1.

2 For over 20 years now, not every year, but
3 probably every other year, we have gotten the season open this
4 time of year. It might have been the first of April rather
5 than the middle of March. We were shooting for the middle of
6 March this year because once we go through the process of
7 getting the waters open, it's done too late, you know, because
8 it takes two or three weeks to go through the process to do it,
9 you know, going through the sampling process.

10 Now, I have in the past, I've had the DMR come
11 up to me on my shrimp boat, I've made tries with my try net,
12 dumped them in a bag so they could actually get enough shrimp
13 to catch because at one time they caught a half a shrimp, you
14 know, in the past, where I caught a couple of pounds in my try
15 net.

16 I have gone out with the DMR sample boat before
17 and showed them where to trawl where they was getting none,
18 they was getting two or three hundred where I showed them where
19 to trawl.

20 So there is marketable shrimp out there to be
21 caught at this time.

22 MR. JEWELL: Well, like you said, this is a
23 scientific process. And we have stations. And if we wanted to
24 target to go get shrimp, we likely could do that. But as you
25 know, it's a scientific process.

39

1 MR. JEWELL: Those are inshore samples. Those
2 samplings usually are sampling more inshore. Our regular
3 shrimp stations are a little further offshore in the
4 Mississippi Sound.

5 So we're getting that whole gamut of sampling
6 right now.

7 DR. ASPER: So just to refresh here, you sample
8 the exact same stations every year for consistency, you do the
9 same procedure with the same nets for consistency.

10 MR. JEWELL: Correct.

11 DR. ASPER: And normally this year you might see
12 a lot of small shrimp. But instead, you're seeing very few
13 shrimp, and some of them are fairly large.

14 MR. RICHARDSON: Yeah. Well, I mean, we usually
15 don't start picking up small shrimp until next month in our
16 sampling.

17 But we have been seeing a lot of finfish,
18 juvenile finfish at this time of year.

19 And like I say, this time of year, we don't
20 catch that many shrimp, you know. We don't do it for a living,
21 thank goodness.

22 So that's what we had to go on was just the very
23 few shrimp that we did catch.

24 MR. KOPSZYWA: Mark Kopszywa.

25 Years past, the season has closed on December 31

38

1 And like I stated earlier, we have opened, but
2 never on the inside. And we have to take in consideration not
3 only shrimp, but the entire biological resource out there for
4 both commercial and recreational interests. And we're picking
5 up in those samples, both GCRL and DMR, tons of other larval
6 species other than shrimp right now. So that needs to be
7 considered, also.

8 MR. KOPSZYWA: I've got to add one more comment
9 if I can.

10 DR. ASPER: Okay. This is your very, very last
11 one.

12 MR. KOPSZYWA: This is the last one. Mark
13 Kopszywa again.

14 As we all know, post-larval shrimp, fish, crabs,
15 spawn in the Gulf, you know, the fish, shrimp, crabs spawn in
16 the Gulf.

17 Post-larval floats to the top of the water and
18 floats in.

19 Where is that stuff being picked up?

20 MR. JEWELL: Different species are in different
21 places.

22 MR. KOPSZYWA: Different species. All right.

23 Where I trawl at is going to be outside the half
24 mile line. All the bait boats -- how many bait boats do we
25 have licensed in the state of Mississippi? They all drag

40

1 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

41

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
25 tell us the bycatch, are they killing the bycatch, is the

42

1 bycatch going back in the water, of whatever.

2 MR. RICHARDSON: Yeah. I mean, some people, you
3 know, they keep croaker, that kid of stuff for bait. But we
4 can get you that.

5 MR. GOLLOTT: Thank you.

6 DR. ASPER: 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

43

1 proposed has no impacts to coastal wetlands. And therefore,
2 the Corps of Engineers will act as the lead agency and DMR 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

44

1 modification to that permit authorizing them to reroute a
2 sendout pipeline which resulted in a 1.97 acre increase in
3 temporary impacts to coastal wetlands. There were no changes
4 to the impacts to -- to permanent impacts to coastal wetlands.
5 There was a 3.26 acre reduction in temporary impacts to
6 non-tidal wetlands. And there was a 2.2 acre reduction in
7 permanent impacts to non-tidal wetlands.

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

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

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

23 So the current modification request proposes no
24 impacts to coastal wetlands and accordingly does not require
25 commission action. And DMR is evaluating the project for

45

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

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

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

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

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

16 The project is allowable within the general use
17 district.

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

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

24 Best management practices will reduce any
25 adverse impacts.

47

1 issuance under coastal zone consistency. And this action falls
2 under the permitting authority of the Corps of Engineers. This
3 information is provided as an update to the previously issued
4 DMR permit and permit modification, and again, no action is
5 required by the commission.

6 Thank you.

7 DR. ASPER: Thank you.

8 3. Bureau of Wetlands Permitting

9 a. Hancock County Board of Supervisors

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

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

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

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

46

1 And the previously authorized jetty
2 configuration would occupy 11,700 total square feet of
3 waterbottoms.

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

7 No offsite alternatives were considered. This
8 is a reduction in the size of a previously permitted jetty.
9 And the applicant has claimed that the previously authorized or
10 current jetty configuration is resulting in shoaling and has
11 necessitated maintenance dredging to the adjacent boat ramp
12 and the channel.

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

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

19 DEQ is reviewing the project.

20 Archives & History has no reservations.

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

23 And based on staff's evaluation, it has been
24 determined that the project is consistent with the Mississippi
25 Coastal Program. It will serve a higher public purpose by

48

1 providing increased public accessibility of the water. And
2 staff recommends approval of the applicant's modification
3 request.

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

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

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

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

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

16 MR. CHRISTODOULOU: I'm not sure exactly.

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

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

21 DR. ASPER: Okay. Need a motion.

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

24 MR. DRUMMOND: I second the motion.

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

1 by restoring safe navigational depths and providing public
2 access to and use of the waterway.

3 The proposed project is allowable within the
4 general use district.

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

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

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

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

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

18 Best management practices will reduce any
19 adverse impacts.

20 No offsite alternatives have been considered
21 since this is a maintenance dredging project. The same channel
22 path was previously followed.

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

1 unanimously. Further discussion?

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

4 (Off the record.)

5 DR. ASPER: Call the meeting back to order.

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

7 b. Jackson County Board of Supervisors

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

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

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

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

18 They are proposing to dredge approximately
19 15,300 cubic yards, and the dredge material will be used for
20 beneficial use if appropriate.

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

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

25 This project will serve a higher public purpose

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

3 Department of Archives & History and Department
4 of Environmental Quality are currently reviewing the project.
5 And Secretary of State has stated that they have no objections.

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

14 DR. ASPER: Is there a motion?

15 MR. DRUMMOND: I'll make a motion.

16 MR. GOLLOTT: Second.

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

19 MR. OVERSTREET: Thank you.

20 c. Jackson County Board of Supervisors

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

1 This is the project location. It is south of
2 Highway 90.

3 Here is another closer view of the Octavia Bayou
4 project location.

5 They are proposing to dredge 3,190 feet by 20 to
6 60 feet, approximately 12,879 cubic yards. Stated by
7 Mississippi Code, it will be used for beneficial use if it is
8 beneficial.

9 They are requesting a ten year maintenance
10 dredging agreement.

11 Here is a diagram of the proposed dredging.

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

15 The proposed project is allowable in the general
16 use district.

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

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

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

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

53

1 next ten years.

2 MR. DRUMMOND: I make a motion that we accept
3 the recommendations of the staff.

4 MR. GOLLOTT: Second.

5 DR. ASPER: Those in favor say aye.

6 MS. MOORE: Thank you.

7 d. City of Biloxi

8 MR. RUNNELS: My name is Joseph Runnels. Willa
9 and I arm wrestled to see who was going to present this one. I
10 lost again.

11 So this is the Kuhn Street boat launch project.
12 And you had this before you at the last commission meeting.
13 And after you approved, on March 1, 2011, Mr. Beck through
14 legal counsel filed a petition for reconsideration. You should
15 have that in your packet. It was mailed to you.

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

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

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

25 I'm Alwyn Luckey. I'm here representing Johnny

55

1 An increase in turbidity is expected during the
2 dredging process. However, conditions shall not exceed the
3 Mississippi Department of Environmental Quality's guidelines.

4 Best management practices will reduce any
5 adverse impacts.

6 No alternative offsite alternatives were
7 considered due to the fact that this is a maintenance dredging
8 project and they will be dredging the previously dredged
9 channel. And no new areas will be dredged.

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

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

15 The MSDAH had no reservations.

16 The Mississippi DEQ is reviewing the project.

17 And the Mississippi Secretary of State had no
18 comment on the project.

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

54

1 and Kim Beck on this petition to reconsider.

2 I hope you have a copy of our petition with you.

3 This is here on a petition to reconsider your
4 action from the previous month's motion to approve the City of
5 Biloxi's request.

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

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

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

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

19 DR. ASPER: Is there a second?

20 MR. DRUMMOND: I'll second the motion.

21 DR. ASPER: Those in favor say aye.

22 MR. LUCKEY: Thank you.

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

25 First off, I would direct the commission's

56

1 attention to the City of Biloxi's application. The application
2 is perfunctory at best. It lacks several items required within
3 the context of the application itself.

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

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

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

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

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

25 And I would point your attention to the city

57

1 There is no evidence in this record to the
2 contrary.

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

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

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

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

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

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

59

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

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

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

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

58

1 compensation.

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

6 So as we sit here today in 2011, the city knows
7 that this land belongs to the Becks. They contracted with them
8 25 years ago to lease that land. So there's no doubt the city
9 knows this. This is a fundamental fairness. You can't 25
10 years ago say, okay, Mr. Beck, we know you own that land, let's
11 lease it from you, and then today come in and say, well, we
12 don't really want to talk about that, give it to us, we don't
13 want to pay for it.

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

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

20 All he asks is fair compensation. And I think
21 it's unfair, it ain't right, for the city to come in here and
22 say give us this land for free, when they know, in fact, in
23 writing, and you'll see it in your petition, have leased Mr.
24 Beck's property in the past. And they took over the port
25 commission in '03. And everything the port commission knows

60

1 the city knows.

2 And clearly, it's not right for them to come in
3 here today and try to get this property for free.

4 And so finally, you all have the option to do
5 anything you want with the city's request. You can grant it
6 which you did last month, and we're here to reconsider that.
7 You can reject it. You can do nothing. You can study the idea
8 which I would recommend as the wisest course to give us time to
9 deal with the city on a fair basis.

10 And so I come to you today asking you to
11 reconsider your approval of this motion and to either reject it
12 or do nothing on it, and allow the Becks to deal with the City
13 of Biloxi on an even basis.

14 Thank you.

15 MR. GOLLOTT: Mr. Chairman, could we hear from
16 legal, their response on this?

17 MR. RUNNELS: As I mentioned before, you should
18 have in our packet a copy of the Beck petition for
19 reconsideration. This is it. It was filed on March 1 in a
20 timely manner.

21 This is Page 2 of the petition for
22 reconsideration, and it provides what will be the thrust of the
23 argument in the petition for reconsideration.

24 And I have to pause right here for a second and
25 tell you that several things that Mr. Beck's lawyer just

61

1 A. Beck. I'm assuming that's his spouse.

2 And both warranty deeds have the same
3 description of the boundary. And I believe counsel for Mr.
4 Beck just read that to you and talked about that it references
5 littoral rights.

6 But there's one thing that's in the 1983 deed
7 that's not in the 1996 deed. And, by the way, when you get a
8 deed, whatever that deed is, that's what you take.

9 And here's the provision that they didn't read
10 to you. And this is in the '83 deed. And it says, this
11 conveyance is made subject to rights-of-way for U.S. Highway
12 90, seawall purposes, and to any rights that may exist in the
13 city, county, state, or in the public in and to the sand beach
14 lying south of the seawall and north of the Mississippi Sound.

15 So the property when it was deeded to Mr. Beck
16 in 1983 was subject to this condition.

17 Now, here's the argument. This is argument on
18 equitable estoppel and laches. I just handed out to you or
19 Michaela just handed out to you the staff's document in
20 petition for reconsideration, and we addressed that. If you
21 want to know what equitable estoppel and laches are in more
22 detail, it's in that handout that you just received.

23 Again, these are technical legal arguments. I
24 don't think that there is anything in the Mississippi Coastal
25 Program or the enabling legislation for the Commission on

63

1 mentioned were not in the petition or reconsideration. So I'm
2 going to address those probably on the fly to some extent.

3 The petition for reconsideration does not
4 contain any references to any omissions by the staff or the
5 commission relating to the implementation of the Mississippi
6 Coastal Program.

7 The entire petition for reconsideration is
8 really about the ownership of the land. It's all a title
9 argument.

10 Here is the main thrust of the argument. That
11 the petitioners -- that they're going to address these issues
12 in their petition -- ownership of the subject lands,
13 regulations regarding private ownership of littoral riparian
14 rights, and eminent domain. These are all very technical land
15 based legal issues.

16 Now, they do say that the simplest way to prove
17 ownership is with a deed. And they provided two deeds as
18 attachments. They're in Exhibit A to the petition for
19 reconsideration.

20 And the first deed is a deed from March of 1983
21 from John O'Keefe to John E. Beck. This is where the Becks got
22 their title to the property that we're talking about today.
23 That's the first deed.

24 The second deed that's in Attachment A or
25 Exhibit A is a deed from February 1996 from John E. Beck to Kim

62

1 Marine Resources that authorizes you to address issues of
2 equitable estoppel and laches.

3 Again, like I said, that's in there.

4 So the laches issue, by the way, and I'll
5 briefly say this, what his argument about, the port commission
6 leased it. They can't now say they didn't lease it.

7 Well, why did the port commission lease it to
8 them? I don't know. I don't know why they leased it to them
9 in 1986. There may have been a good reason. I'm not sure what
10 it was. I don't think that's before this commission. Possibly
11 they wanted to avoid litigation, they feared it was cheaper to
12 give him a boat slip. I don't know.

13 The law was different in 1986, I know that.
14 There were some significant changes in the law following 1986.
15 In fact, we had the Cinque Bambini decision that came out in
16 the summer of 1986. And then later on, we had the Coastal
17 Wetlands Protection Act I believe in 1989. Or, I'm sorry --
18 the Tidelands Act in 1989.

19 So there were some changes in the law. Maybe if
20 those decisions had been made and that statute implemented
21 prior to 1986, quite possibly the port commission would have
22 looked at it a different way. Timing is everything. Mr. Beck
23 benefited from the timing. Six months later, maybe not so
24 much.

25 But I don't know. But I don't think that's

64

1 really an issue for us anyway.

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

6 Well, this is what the Supreme Court said in
7 that 1986 Bambini decision. It said at the time of its
8 statehood, the United States created two public trusts. Those
9 two trusts, one was that the beds of the streams all belong to
10 the state, and the other one involved sixteenth section land.

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

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

20 Here's the first few words from the Public Trust
21 Tidelands Act in Section 29-15-5. Tidelands and submerged
22 lands are held by the state in trust for use of all the people.

23 They also assert that 49-15-9 grants exclusive
24 use, occupancy, and possession of littoral lands by its owners.
25 So they're basically saying we have littoral rights, no one

1 public use, the Gilliches are not entitled to compensation for
2 this encroachment.

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

6 MR. DRUMMOND: Can I ask you a question, Joe?
7 What's the difference between littoral rights and riparian
8 rights?

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

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

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

24 And I believe that there's one that closely
25 shows where the property line is and where the estimated high

1 else has any rights.

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

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

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

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

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

22 And this is what the court said. The only
23 portion of the loop that is located on property alleged to be
24 owned by the Gilliches is 40 feet south of the original
25 seawall. If that property is held in trust by the state for

1 tide line is. I don't have my reading glasses on, but I think
2 I could probably spot it if I had to.

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

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

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

16 Everything that's going to be constructed in the
17 water and where the littoral rights are is actually within the
18 littoral rights of the Kuhn Street right-of-way. Nothing is
19 being constructed in the water on the west side of that line.

20 So, in other words, this is what we've got so
21 far, we've got a deed that says that this property, this up
22 here where the parking lot is, is subject to the city, the
23 county, and the state making use of the sand beach. So that's
24 not at issue. Or I guess it is to the Becks. I don't think it
25 is to the commission.

1 And we have the Secretary of State, by the way,
2 and the city both saying that they have the right to lease this
3 and they have the right to apply for an application.

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

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

13 It says there was no complaint filed in Jackson
14 County against the Mississippi Department of Marine Resources
15 and the Secretary of State involving the east beach sidewalk.

16 What was filed in Jackson County was an appeal
17 of the commission's decision to issue that permit. And the
18 Secretary of State's Office is not a party to that action.
19 It's actually Department of Marine Resources and the City of
20 Ocean Springs.

21 There was no permanent injunction entered by
22 Judge Lutz.

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

1 an appeal at some point.

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

12 Whenever this commission and this department
13 issues a permit, it always has a provision in there that it
14 doesn't authorize the impacts to property owned by others.

15 And if Mr. Beck owns that sand beach, this
16 permit will not authorize the city to build the first parking
17 lot on it.

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

20 DR. ASPER: Thank you.

21 Any questions?

22 Joseph, let me ask you just a couple of quick
23 questions.

24 Given that the two deeds have different
25 statements regarding the restrictions, could you comment on

1 the state.

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

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

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

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

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

1 what that really means? Why does the second deed not have
2 that, and does that supersede or eliminate that grant?

3 MR. RUNNELS: No, it does not. It does not
4 supersede or eliminate it. Why it wasn't put in there, I
5 imagine they probably requested that it not be put in there. I
6 don't know that. Could have been an omission. I don't know.

7 The same legal description is used, but that
8 subject to condition is not put in there.

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

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

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

18 Could you --

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

21 DR. ASPER: Could you clarify the Secretary of
22 State's position on this? I mean, we understand that he's
23 involved in issues in Gulfport which are related. And I'm just
24 wondering where he stands on this and where he draws the line
25 for public trust tidelands in this case.

1 MR. RUNNELS: Well, you want me to see if we can
2 get Mr. Carter to stand up and maybe address that question? He
3 might could do it better than I could.

4 DR. ASPER: That would be --

5 MR. RUNNELS: Ray Carter.

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

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

9 It's basically under the Tidelands Act.

10 I've had some meetings with the Secretary of
11 State, Delbert Hosenann. And he is very serious about his
12 duties as a trustee. And he takes great interest on what
13 happens to those trust lands. He doesn't want to see the trust
14 lands abused like they have been in the past with the sixteenth
15 section lands that were leased away for 99 years for a dollar.
16 And he's administering the Public Trust Tidelands Act as he
17 sees fit. And obviously, there are some people that take --
18 have a difference of opinion on what he should be doing.

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

22 MR. CARTER: Commission, Raymond Carter with the
23 Secretary of State's Office. And I think I will only tell you
24 what your legal counsel could tell you, and that is that as a
25 result of the Tidelands Act of 1989 a tidelands boundary map

1 was produced, and that map shows that the boundary between the
2 public trust tidelands and the private lands which are
3 susceptible to private ownership in this area is the toe of the
4 seawall.

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

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

13 DR. ASPER: Thank you.

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

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

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

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

25 But nonetheless, I'm prepared to address it.

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

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

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

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

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

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

22 The Becks do not contend that they own the
23 littoral rights to the exclusion of everybody else. Obviously,
24 the state has public trust tidelands. But the laws say that
25 littoral and riparian property owners have common law and

1 statutory rights under the Coastal Wetlands Protection Act and
2 that the state recognizes those.

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

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

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

22 And so, and I heard from the Secretary of
23 State's lawyer here, that they claim the property, the sand
24 beach up to the toe of the seawall. That may be. But the City
25 of Biloxi utterly failed to attach that to their application.

1 There is nothing in this room that shows us where that is and
2 nothing, in fact, before you for you to grant your -- to base
3 your decision on.

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

8 Thank you.

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

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

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

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

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

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

10 MR. RUNNELS: I won't dispute that.

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

12 DR. ASPER: Certainly.

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

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

17 DR. ASPER: Okay. We have a motion on the table
18 to deny the petition for reconsideration. It's been seconded.
19 Is there any further discussion? Those in favor say aye.

20 Carries unanimously.

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

23 I guess move on to financial report.

24 J. Administrative Services

25 2. Financial Report - Kara Vesa - No Action

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

3 DR. ASPER: Is there a second?

4 MR. DRUMMOND: I second the motion.

5 DR. ASPER: Any further discussion?

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

9 MR. RUNNELS: You did.

10 MR. DRUMMOND: And estoppel by laches.

11 MR. RUNNELS: If you look at the handout that --

12 MR. DRUMMOND: I saw it.

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

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

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

25 What constitutes laches or equitable estoppel

1 MS. VESA: I'm Kara Vesa. I'll be giving the
2 report today.

3 Our budget on February 28, 2011, remained at
4 \$6,266,493. We have spent \$5,186,666, which left a remaining
5 balance on February 28 of \$1,079,827.

6 And all tidelands funds for this fiscal year are
7 obligated.

8 Any questions today? Okay. Thank you.

9 DR. ASPER: Thank you.

10 I believe that concludes our agenda.

11 Joseph?

12 MR. RUNNELS: I just wanted to say one more
13 thing. It doesn't relate so much about the appeal. And I
14 realize that Mr. Beck and his legal counsel have left the room.

15 But it's the issue about partisanship. When
16 this commission approves a project and issues a permit, at that
17 point, I look upon my duty as one to support the decision and
18 the decision of the staff and the staff's recommendation.

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

23 So I apologize if I seem too partisan.

24 DR. ASPER: No apology necessary. We appreciate
25 your visionary to defend us. It's something we cannot do by

1 ourselves. We appreciate your help on that.
 2 Any further business?
 3 Is there a motion to adjourn?
 4 MR. DRUMMOND: I make a motion we adjourn.
 5 MR. GOLLOTT: Second.
 6 DR ASPER: We are adjourned.
 7 (Meeting adjourned 11:17 a.m.)

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BEFORE THE COMMISSION ON MARINE RESOURCES

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COURT REPORTER'S CERTIFICATE

8 I, Norma Jean Ladner Soroe, Certified Shorthand
 9 Reporter, do hereby certify that to the best of my skill and
 10 ability I have reported the meeting of the Commission on Marine
 11 Resources and that the foregoing 81 pages constitute a true
 12 transcription of said meeting held on the 16th day of March
 13 2011.

14 I do further certify that my certificate annexed
 15 hereto applies only to the original and certified transcript.
 16 The undersigned assumes no responsibility for the accuracy of
 17 any reproduced copies not made under my control and direction.
 18 My signature this the 7th day of April 2011.

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Norma Jean Ladner Soroe, CSR #1297
 Certified Shorthand Reporter

