COMMISSION MEETING

March 13, 2012

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(228) 467-2199
COMMISSION ON MARINE RESOURCES

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March 13, 2012

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TRANSCRIPT OF MEETING OF COMMISSION ON MARINE RESOURCES AT
BOLTON STATE BUILDING, PUBLIC MEETING ROOM, 1141 BAYVIEW
AVENUE, BILOXI, MISSISSIPPI, ON THE 13TH DAY OF MARCH 2012
COMMENCING AT 9:00 A.M. AND REPORTED BY NORMA JEAN LADNER
SOROE, CERTIFIED SHORTHAND REPORTER.

COMMISSION MEMBERS PRESENT:

JIMMY TAYLOR, Acting Chairman
RICHARD GOLLOTT
SHELBY DRUMMOND
STEVE BOSSARD

ALSO PRESENT:

DR. WILLIAM WALKER, Executive Director DEM
JOSEPH R. RUSSELL, Esq., Asst. Attorney General
SANDY CHESTNUT, B.S.Q., Asst. Attorney General

A. Call to Order

MR. TAYLOR: I'd like to call the meeting of the March DEM to order.

B. Approval of Minutes Commission Meeting - February 14, 2012

MR. TAYLOR: And the first thing on the agenda is the approval of the minutes.

MR. GOLLOTT: So moved, Mr. Chairman.

MR. TAYLOR: Okay. Second?

MR. DRUMMOND: So second the motion.

MR. TAYLOR: Any opposition? Motion passes.

C. Approval of Agenda

MR. TAYLOR: Okay. Item C, approval of the agenda. I think there's some changes.

DR. WALKER: Yes, sir, Mr. Chairman. We need to add an Item H-3(e), First National Banking Association permit extension. And we also would ask you to move legal to the end of the agenda. We have an item that we are going to ask you to take up. We'd like to finish everything else up before we do the legal business.

MR. TAYLOR: That would be L-4; right?

DR. WALKER: Right, L-4.

MR. TAYLOR: Do I have a second?

MR. GOLLOTT: I second.

laws and what the statutes tell us is allowable.

MR. NONNE: In the Corps of Engineers statement, it says that you're allowed to build out and up to a navigable waterway. I mean, she's in eight feet of water now. Up against the bulkhead you're in four feet of water. Unless you plan on mooring a 50 foot boat, you don't need to be in eight feet of water.

And these are our natural resources. There are pilings that are driven eight inches apart that are impeding the drainage flow of the canal.

MR. TAYLOR: We'll have coastal ecology look at this and check it out, and they'll give us a report.

MR. NONNE: And somebody will get back to us?

MR. TAYLOR: Yes, sir.

MR. NONNE: Thank you, sir.

MR. TAYLOR: Thank you. Appreciate it.

Next up is Tom Becker. Commissioner, Dr. Walker. My name is Tom Becker. I'm speaking on behalf of myself.

Something was brought to my attention just recently. Why has the dredging stopped out there and filling in Ship Island?

I hear there's oil being found out there. If this is the case, why isn't the public hearing about this?

And they have linked it to -- BP has supposedly bought the equipment that was out there dredging. And nobody is hearing about this. Why not? That's my question. Why not does the public know what's going on out there?

They keep saying that this thing is not over, and yet BP wants to get us out for the lawyers and all this stuff to get out of our claims.

But I'm just trying to find out what exactly is going on out there. Are they finding oil and that's why they stopped drilling and that's why the equipment has been bought by BP and now moved?

Thank you.

MR. TAYLOR: Tom, I can answer just a little bit of it.

I can't say that oil -- and that's the first I've heard of that as a commission member. I don't know if any of our other people have heard. But I do know that -- and I can't say that the dredge has been bought. But the dredge is a very small dredge, and I've talked with some of the people that work on it, and they have to bring it in when the weather is bad because it is so small.

That's one of the reasons you see it going in and going out.

Now, I can't say and I don't know, I'd sure like to find out myself, if there's oil. That would be real serious.
1 has been sent out specifically to our Vietnamese community, our
2 Vietnamese fishermen.
3 And so they are out and available. It shows how
4 to install and properly measure the turtle excluder devices in
5 shrimping trawls.
6 And just as note, you probably have seen this.
7 This is one of our past public relations sent out, these
8 measuring devices also. There are several events that we have
9 engaged in with our shrimping community to assist them and help
10 them with this process. And we will continue to do so.
11 And second, I'd like to mention that we, in our
12 continuing public education outreach program, we're going to
13 hold another seminar. It's entitled Gentle Giants. It will
14 include topics on whale sharks, tarpon, manatees, and sturgeon.
15 And it will occur on March 22 in this room from 4:00 to 6:00
16 p.m. And we would like to thank (inaudible) from the Grand Bay
17 NERR who went above and beyond to help us set up that program.
18 So next up on our agenda is Mr. Mike Buck
19 Buchanan with two changes. He'll be presenting both of those.
20 Live mullet regulations and reef fish regulation.
21 3. Live Bait Mullet Regulation Options
22 MR. BOUCHANAN: Thank you, Joe.
23 I'm Mike Buchanan with the finfish bureau. Dr.
24 Walker, commissioners, Sandy.
25 And at the last commission meeting, we had a
26 couple of minnow fishermen come in and request some possible
27 options on how they could catch undersized mullet. And at
28 y'all's behest, we went ahead and put together a few options
29 after talking with enforcement and our legal counsel.
30 And I'm going to present some of the options
31 that we have come up with.
32 MR. GOLLOTT: Excuse me, Buck. Could you pull
33 that mic closer to you? We can't hear you.
34 MR. BOUCHANAN: Okay. Sorry.
35 First option for live bait mullet. These would
36 be mullet that would be smaller than ten inches. The one thing
37 is you could keep the status quo. Currently, commercial mullet
38 right now is at ten inches.
39 The other thing you could do is remove the
40 minimum size limit altogether which would open it up to anybody
41 that wanted to catch undersized mullet, commercial, live bait,
42 anybody.
43 The other thing to do after talking with
44 enforcement and some of the other things, and I believe,
45 Commissioner Gollott, you requested that we put some sort of
46 restriction on it, but -- so we came up with some language
47 here.
48 Should be unlawful for any minnow fisherman or
49 live bait catcher boat to have in possession in excess of ten
50 pounds of dead mullet. This would hopefully kind of prevent
51 just catching juvenile mullet and selling them as dead bait.
52 The commercial minimum length limit would not
53 apply to the resident licensed minnow fishermen, the live bait
54 catcher boats fishing below the CSX, or licensed live bait
55 dealers selling mullet for bait.
56 No fishermen can only sell mullet through
57 licensed Mississippi live bait dealers or Mississippi
58 recreational fishermen.
59 And enforcement had requested that we put it
60 shall be unlawful to possess mullet north of the CSX railroad
61 while engaged in minnow fishing. So they would have to check
62 their minnow traps or do whatever they were going to do and
63 could not actively be engaged in fishing at the time when they
64 were in possession of smaller mullet or mullet.
65 So this is some of the language that we came up
66 with. I didn't know if you wanted to take this out for -- come
67 up next week with a notice -- or next meeting with a notice of
68 intent or whatever is y'all's will and pleasure.
69 MR. TAYLOR: Any questions or...
70 MR. GOLLOTT: Yeah. I don't think we should say
71 that they can only sell them in Mississippi, Mississippi live
72 bait folks.
73 But, let's send this out for public hearing.
74 Let's see what people have to say about it. They might be
75 against it; they may be for it. We can always modify it once
76 we bring it back; can't we, Buck?
77 MR. BOUCHANAN: Yeah. But we have to take it out
78 for notice of intent first. Or is that the way it works out?
79 MR. CHESNUT: You have to take it out on notice
80 of intent and have a hearing on it.
81 MR. BOUCHANAN: I have talked to the guys that --
82 the live bait or the guys that were doing this. They were okay
83 with most of this stuff. So I didn't know if that was that
84 they --
85 But you want to take this out for notice of
86 intent; is that the gist?
87 MR. GOLLOTT: I make a motion that we take it
88 out for notice of intent.
89 MR. TAYLOR: Is there a second?
90 MR. DUNN: I'll second it.
91 MR. BOUCHAN: I'll second it, but I have one
92 question.
93 You talk about only resident licensed
94 Mississippi live bait. Isn't that kind of the norm for most of
95 the things? I know it is for shrimping.
96 MR. BOUCHANAN: Right.
97 MR. GOLLOTT: So, I didn't quite -- Commissioner
98 Gollott, I didn't quite understand why we wanted to -- do you
99 think there's a need for it for other states? Is that what
100 you're thinking

N.J. SOROE, CSR #1297
MR. BUCHANAN: Well, at least in Alabama -- we
have one minnow fisherman from Alabama right now, and I'm
checking on their laws particularly. Yeah.

I'm told that we are not allowed to go in their
state and do that, to actually fish for minnows in their state.
But I'm checking on that. The last time I
checked, it was okay that we did that. But then I'm getting
told that no, that is not the case, they were refused a license
to do it.

But the problem is that mullet are not
classified. In state statute, they define what a saltwater
minnow is, and it's not a mullet. Mullet is not a saltwater
minnow.

So they would be required to actually get a
commercial license, and we probably would not sell them that
particular license because you can't go to Alabama and fish for
mullet there with any kind of nets.

MR. BOSARGE: I like what you have. I guess if
I had any concern at all it might be with you have a limit on
the dead weight of mullet, and you think maybe --

MR. BUCHANAN: I asked them specifically about
that.

MR. BOSARGE: I'm talking about for the live.
There's a limit there.

MR. BUCHANAN: I didn't know exactly how to --
that's the reason I approached it from the standpoint from the
opposite way. I mean, they've never really done this before, 
keeping bunches of mullet, so...

I don't know how many fish they would -- you
know -- catch --

MR. BOSARGE: I guess we can go back and modify
it at the time if we need to.

MR. BUCHANAN: Are you talking about a number of
individuals like 300? I mean, I don't know how to -- I mean,
they're going to be --

MR. BOSARGE: I don't, either. I guess time
will tell as to how good they were at catching those mullet,
whether or not they can --

MR. TAYLOR: Buck, is there any -- there's no
restriction here on the type of gear you could use. So they
could use a purse seine to do this, or what? You know what I'm
saying, a small purse seine? Well, you don't trap mullet.

MR. BUCHANAN: They'll be using a castnet is
what they'll probably be using.

Now, I'm not aware of utilizing a purse seine.

MR. TAYLOR: Isn't that in there, must be caught
by castnet?

MR. BOSARGE: I think castnet and probably some
traps according to probably the size of the minnow, wouldn't
you think?

MR. TAYLOR: Well, not minnow.

MR. BUCHANAN: Yeah, I talked with them about
that. They really -- they very rarely -- I mean, it's not that
they don't, but they very rarely catch any mullet is their
traps. They don't tend to gravitate towards --

MR. GOLLOTT: Just for argument's sake, and I
really don't -- you know, I'd like to see them -- they can do
this and make a living, help them, I'm all for it.

Don't you think we ought to just stick in there
some kind of total per year or something that they can take out
of the State of Mississippi?

And we don't have to put a number on it. But if
it's in there, it goes out for public hearing, then we can
adjust that to protect the species.

MR. BUCHANAN: So you want a specific number of
live mullet per year per fisherman?

MR. GOLLOTT: Put some kind of a bag limit or
something on it for total, just like speckled trout and
flounders and redfish.

And I'm not thinking of any specific number, but
I know if you don't send it out for public hearing, you can
never go back and address it.

MR. BUCHANAN: Okay. I'm trying to wonder what
the number should thereabouts be.

For a total, not per fisherman, you would have
like 50,000 --

MR. GOLLOTT: Total number, you know, in case it
gets out of hand you can say wait a minute, you know, you can
adjust the total weight, live minnows, or any way you want to
handle it.

MR. BUCHANAN: Are you talking about total dead
-- you're talking about dead bait?

MR. GOLLOTT: Both. I guess dead bait would
cover it, I mean...

MR. BUCHANAN: You can assume that -- well...

MR. GOLLOTT: Like I say, I don't have a number
in mind. I know you don't. Just stick it in there, and any
number that we can come back and adjust after the public
hearing or whatever.

MR. BUCHANAN: I'll try.

MR. DRUMMOND: Are the licensed mullet bait
fishermen the same thing as live bait fishermen? Do they have
the same license?

MR. GOLLOTT: I don't know of any --

MR. BUCHANAN: There's a minnow license. Okay?

We have 19 minnow fishermen in the state right now.

Now, I don't know what that's going to do once
we do this. I mean, anything could happen.

But we wouldn't be restricting -- but also the
live bait catcher boats would also be allowed to -- yeah --
possesses these, you know, while they're trawling. I mean, they
can already possess so much pounds of dead bait in the live
tail ordinance or they can use them for chum. I doubt very
seriously they catch many mullet in trawls. But, I mean...

MR. GOLLOTT: The main thing I was trying to do
was just cover as much as we could so we wouldn't have to go
back. Public hearings happen and people have concerns about
something that we don't have to go back out for another public
hearing just to modify a little bit.

MR. BOUCHANAN: Okay. So you want me to come up
with a total number of --

MR. GOLLOTT: It could be landings a year or
something like that.

MR. BOUCHANAN: Live landed --

MR. GOLLOTT: Yeah.


Only by castnet or --

MR. BOSARGE: I don't think we have to worry
about the gear. And if we go do like we do with the redfish
and trout, say a 40,000 pound limit, but you'll have to do the
math on how many to a pound on the small fish. Or do you want
to use numbers?

MR. BOUCHANAN: I don't know.

MR. GOLLOTT: Mr. Chairman, has this motion been
made and seconded?

MR. TAYLOR: No.

MR. GOLLOTT: I make it to go out -- what we
need to do is --

MR. TAYLOR: Oh, yeah.

MR. GOLLOTT: Then we need to modify it to come
up with these other ideas.

MR. BOUCHANAN: These guys are in no rush.

They're catching minnows right now. It's not like it's a --

MR. TAYLOR: We have a motion on the floor
brought by Mr. Buchanan. We have a second. All those in
favor.

MR. GOLLOTT: Mr. Chairman, let me make a motion
10 to table this until next meeting. Come up with something,
15 Buck, that might be more acceptable. Not in a hurry. Trying
to get it right.

MR. BOSARGE: Yes.

MR. BOUCHANAN: All right.

MR. TAYLOR: Second on tabling?

MR. BOSARGE: Second.

MR. TAYLOR: All in favor. Opposed? No.

Thank you, Buck.

4. Changes in Reef Fish Regulations
22 Part 9. Enforcement had asked us to bring this issue to the
25 table.

And we took a look at a lot of different
options. And I guess the first thing, this is more of a
housekeeping thing. I was trying to make recreational limits
the same as the Fed. And that would be reducing the grouper
aggregate from five to four. And that's all that would be
happening in the recreational portion of it.

And -- I'm sorry. With the gag grouper, only
two out of those four could be gag groupers. It's currently
being overfished, and overfishing is occurring.

MR. TAYLOR: Okay. What your motion needs -- or
are you ready for a motion?

MR. BOUCHANAN: No. That's not the main thing.

That's not the main deal. Okay. That was a way of
housekeeping. Since we're bringing it up anyway, I just wanted
to change the recreational.

Commercial size, possession, and catch limits.

I want ahead and several different things are going on. The
main thing that's going on here is that I've added all the
reef fish species that are in the NOAA fisheries reef fish
management plan into the ordinance. So they're all pretty much
here. I changed the minimum length limits to meet federal
regulations. The red snapper will go from 15 to 13. The red
grouper would go from 20 to 18. And the gag grouper would go
from 24 to 22. And this is essentially to help the commercial
sector eliminate discards so those fish will be counted against

the quota. All right? So we have all the reef fish species
included in here.

And I guess the crux of the matter would be for
any commercial fisherman, person, firm, or corporation, it
would be unlawful to sell, barter, or trade any species of reef
fish identified in that particular section without possessing
the proper federal permits and/or licenses required by the NOAA
Gulf of Mexico reef fish management plan and complying with any
other conditions set forth by federal or state regulations for
the management of the identified reef fish.

So, if you are going to deal in reef fish, I

12 guess the proposal is you would have to be federally licensed.

MR. TAYLOR: Any comments?

MR. BOSARGE: No. I'm with you in that because
there is a management plan, and because our regulations didn't
follow that management plan, I'm glad to see you change it
where hopefully the rebuilding of the species will continue.

MR. TAYLOR: Any other comments?

MR. DRUMMOND: I didn't hear what you said.

MR. BOUCHANAN: He loves it.

MR. BOSARGE: I don't say I like it, but I'm
22 glad to see that we are falling in line with the federal
23 regulations and that the management plans that are in place
24 will continue to work.

MR. DRUMMOND: Thank you.
MR. GOLLOTT: I make a motion that we accept the
recommendation.
MR. ROSAREO: Second.
MR. TAYLOR: All those in favor. Passes
unanimous.
Thank you, Buck. Good job.
MR. BUCHANAN: Thank y'all.
H. Coastal Ecology
MR. TAYLOR: Next up coastal ecology.
MS. WITTMANN: Good morning. I'm Jennifer
Wittmann. Jan and Willa both send their apologies for not
being at the meeting today.
Coastal ecology has five action items on the
agenda. And Greg Christodoulou will be presenting the first.
3. Bureau of Wetlands Permitting
a. V.T. Halter Marine, Inc.
MR. CHRISTODOLUM: Good morning. My name is
Greg Christodoulou, and I will be presenting Items H-3(a) and
H-3(b) this morning.
First item H-3(a) is a permit modification for
V.T. Halter Marine. It's located on Bayou Casotte, 900 Bayou
Casotte Parkway, Pascagoula. It's in the industrial
development use district.
Project location is marked by the yellow thumb
nack. It's on the west bank of Bayou Casotte, U.S. 90.
Project description. The modification is to
help V.T. Halter be able to launch longer ships than they are
currently launching at one location on their yard.
The project involves maintenance dredging of a
launching basin approximately 186 feet by 225 feet to a depth
of 29 feet below mean low water. And that will be 10,700 cubic
yards of material.
And the material would be designated for
beneficial use by Mississippi code.
There will also be 186 feet of bulkhead proposed
for the project and 500 feet of riprap and also shoreline
straightening. In the bulkhead construction, there will be 570
square feet of fill of waterbottoms proposed.
Here is a picture of the site. If you see here,
this is the end of an existing concrete bulkhead. The bulkhead
would then go along the shoreline in this fashion and then line
up at mean high tide. So this area in here would be the area
that would need to be filled in to put in the new launching
mechanism.
Here is a diagram of the project. The areas
that are in blue are the proposed. This would be the proposed
extension of the bulkhead. This is the existing bulkhead in
green. Here is the 500 feet of riprap just to the north of the
bulkhead planned area. The area in gray would be the dredge
area proposed. And then the red area I have here is for the
proposed fill.
The launching system that they currently have
ends right here. In order to be able to launch the longer
vessels, the existing bulkhead would have to be extended in the
same line that it currently is so that the railway tracks that
they use to launch the vessels would line up.
And here is an area of waterbottoms that would
be created on the project site. This is on the southern end of
the property. And since they will be filling 570 square feet
of waterbottoms for the bulkhead for the straightening, they're
going to compensate by creating some waterbottoms over on the
southern end.
The project public benefits include increased
employment opportunities for construction of the expanded
launch structure and employment opportunities from contracts
received by the applicant to construct and service the larger
vessels.
The project is allowable within the industrial
development use district.
They have requested two variances to the
project. Chapter 8, Section 2, Part III.0.1 and Chapter 8,
Section 2, Part III.0.3, the first being permanent filling of
coastal wetlands because of potential adverse and cumulative
environmental impacts are discouraged and vertical face
structures shall be aligned no further waterward than mean high
tide.
The applicant has provided justification for
Chapter 8, Section 2, Part I.E.2.c.i of the Coastal Program by
saying the impacts to coastal wetlands would be no worse than
if guidelines were followed. And what they're saying with this
justification is that they are filling waterbottoms for this
project, but they are compensating by creating waterbottoms on
another location, so there would be no net loss of
waterbottoms.
Similar projects have been approved by the
commission, so this should not set a negative precedent.
Dredging operations, of course, will result in
temporary increase in turbidity and temporary decrease in
number of benthic organisms.
And there will be no net loss of coastal
wetlands from this project because the applicant has proposed
17 to create waterbottoms in an equal amount onsite. And this is
not tidal marsh so no vegetated wetlands or critical habitat
will be impacted by the project.
Best management practices will reduce any
adverse impacts.
And an alternative design would have been to
construct a bulkhead at mean high tide, but with the logistics
of the launching system that are there, that wouldn't have been
able to line up and they wouldn't be able to launch the longer

N.J. SOROE, CSR #1297
1 vessels. No additional sites were considered as the
2 location is already used as vessel launching area.
3 The project is located in an industrial area
4 with similar shipbuilding facilities nearby so should not
5 impair scenic qualities of the area.
6 And V.T. Walter is contracted to construct and
7 service vessels for the military and for companies essential to
8 national energy policy.
9 Public notice was placed as required. No public
10 comments were received. Archives & History has no objections
11 to the project. DEQ is reviewing the project. Secretary of
12 State said the project will require a tidelands lease. And
13 Wildlife, Fisheries & Parks recommended that best management
14 practices be implemented.
15 Based on evaluation by the staff that the
16 project is a water-dependent industry and it's for vessels that
17 service the U.S. Military and nation's energy policy, as well
18 as creating jobs and providing economic benefit to local tax
19 base, staff recommends approval of the applicant's variance
20 request and issuance of the permit.
21 MR. TAYLOR: Any questions? Do I have a motion?
22 MR. DRUMMOND: Mr. Chairman, I make a motion we
23 approve this project.
24 MR. TAYLOR: Second?
25
26 MR. BOSARCE: I'll second.
27 MR. TAYLOR: All those in favor. Unanimous.
28 Thank you.
29
30 b. Gretchen Cunningham
31 MR. CHRISTODOULOU: Next we have a violation
32 after-the-fact waiver by Gretchen Cunningham. It's located on
33 Kreh's Lake at 4615 Willow Street in Pascagoula. It's in the
34 general use district.
35 Here's an aerial of the project location. The
36 yellow thumb tack marks it here. It's on Kreh's Lake. This is
37 the U.S. 90 bridge in Pascagoula. So it's just to the north of
38 that.
39 The applicant has proposed installing four
40 pilings for boat lift, two piers, one an extension of an
41 existing pier 18 feet by 6 feet, and a new pier 71 feet by 6
42 feet, and debris removal of 100 feet of damaged bulkhead. And
43 then after-the-fact authorization for a pier 20 feet by 5 feet. 44
45 Chronology. In August of 2003, Ms. Cunningham
46 received a general permit to replace bulkhead and a pier on the
47 property.
48 She was not able to get that work done in the
49 three year period following the original permit. So she
50 applied for another permit in September of 2007 and received a
51 general permit to replace that same bulkhead and pier.
52 In 2012 just in January, we received an
53
54 application from Ms. Cunningham. And when we performed a site
55 visit, we found that an unauthorized pier had been constructed
56 on the property.
57 Here's a picture of the area in 2003. There's a
58 small little island with a Live oak on it, and it's been
59 surrounded by a bulkhead previously and some riprap. And
60 there's a small access pier leading out to the little island.
61 You can see that in 2007, the area looks fairly
62 the same. There's the access pier is still in place going to
63 the island.
64 And in 2012 when we did our site visit, a pier
65 had been constructed just in front of the island perpendicular
66 to the access pier.
67 Here is the area where most of the work will be
68 taking place. This pier that's existing will be extended to 18
69 feet out and then a new pier in this area here will go out
70 approximately 71 feet, and the boat lift pilings will be
71 installed in between the two piers.
72 Here's a diagram of the project. The green is
73 what is existing. The yellow are the proposed pilings, pier,
74 pier extension, and the unauthorized is the red.
75 Staff has conducted an evaluation of the
76 project. And we recommend approval of the after-the-fact and
77 the proposed structures and a fine in accordance with
78 Mississippi Code 49-27-51.
79
80 The violation was discovered February 6, 2012.
81 The duration of the violation was 36 days. The maximum fine is
82 $18,000; the minimum is fifty. The recommended fine in this
83 case is five hundred. And the decision factors: Ms.
84 Cunningham has been cooperative, and she does have knowledge of
85 the permitting process as she's applied for permits three
86 times. And basically it was self-reported violation. She put
87 the application in and knew a site visit was going to be
88 conducted.
89 MR. GOLLOTT: Do we have any comments from the
90 applicant?
91 MR. TAYLOR: Are they here?
92 MR. CHRISTODOULOU: I don't know. I don't think
93 they are here.
94 MR. TAYLOR: Okay.
95 MR. DRUMMOND: Mr. Chairman, I make a motion
96 that we go along with the staff's recommendation and we fine
97 them $50.
98 MR. TAYLOR: Do I have a second?
99 MR. GOLLOTT: Second, Mr. Chairman.
100 MR. TAYLOR: All those in favor. Passes
101 unanimous.
102 c. Hall-Lily Harbor, LLC
103 MR. COLE: Good morning, everyone. My name is
104 Ron Cole, and I will be presenting the next two projects.
105

N.J. SOROE, CSR #1297
First up, we have request for a permit by Hall-Lily Harbor. It's located on Old Fort Bayou off of Dixie Street in Ocean Springs. It's in the general use district. And the agent is Oullette & Associates.

Here you can see an aerial of the project location. It's located south of I-10, just west of Highway 57. Here, the applicant is requesting authorization to construct a 12 slip private multifamily pier comprised of six finger piers and a boardwalk with two access piers which will be crossing over submerged aquatic vegetation.

The regulated activities for this project include a 457 foot by 10 foot wide boardwalk to be constructed parallel to the shoreline of Old Fort Bayou. That boardwalk will also have two access piers. The one on the west side of the boardwalk will measure 20 feet long by 4 feet wide. The one on the east side of the boardwalk will measure 33 feet long by 6 feet wide, and it will be following the footprint of a previously existing access pier.

The multifamily docking area will contain 12 residential boat slips and consist of two finger piers that measure 25 feet in length and 4 feet in width and four finger piers that measure 20 feet in length and 4 feet in width. There will be removal of 300 linear feet of existing bulkhead within the manmade canal.

And the applicant proposes to excavate approximately 1,827 cubic yards of uplands that is adjacent to this manmade canal and then go back in with 330 linear feet of new replacement bulkhead landward of the excavation that's to take place.

Here is an aerial photograph of the existing conditions. You can see here you have Old Fort Bayou and then directly adjacent to that you have a manmade canal.

And there is an existing pier out here on the point.

This is a color diagram of the basic project layout. You can see here some submerged aquatic vegetation that follows the shoreline. Out in front of that, the applicant is proposing the boardwalk that I discussed previously. And within the manmade canal, they are proposing the 12 residential slips.

Here is just an overlay of that project on the aerial photograph just to give you a better idea of the configuration.

And here is a detail of the crossing of the submerged aquatic vegetation by the access piers. Like I said, the access pier on the east side is going to follow the footprint of the existing access pier, and it measures 33 feet by 6 feet. And the access pier on the west side will follow our standard guidelines of four feet wide over submerged aquatic vegetation.

This is a detail of the 12 slips located within the manmade canal. And the pink purple area here are the uplands to be excavated. You have the green line here that indicates the existing bulkhead, and the red line here indicates the new bulkhead to be constructed. If you look down here on the bottom right-hand side, you can see there's an existing boat slip.

This is a picture looking down the manmade canal. Just to the left-hand side, there's the existing bulkhead. This is the one that is to be removed, and then there's a section of uplands there to be excavated behind it. And then a new bulkhead built landward of that.

This is a picture looking west down Old Fort Bayou. And this is the existing pier that's on that point. And this just indicates the basic location of the boardwalk that's proposed.

So to go through the decision factors. The placement of the 12 slip private multifamily pier within a manmade canal is reduction from the originally proposed 18 slip marina.

And the project will provide an increase to the local tax base during the construction phase. The project is allowable within the designated general use district. The project is not anticipated to set a precedent. Similar projects have been approved by the commission.

There will be a temporary increase in turbidity and loss of benthic organisms during the excavation of the uplands that is adjacent to the manmade canal.

And once the facility is up and operational, we can expect an increase in litter, minor discharges of fuel and oil, and increase in boat traffic. Best management practices will be utilized during all phases of construction.

The proposed boardwalk does include two access piers that are to be constructed over submerged aquatic vegetation. Typically, we only allow one access pier to a boardwalk or pier or any other type structure. But because of the size and configuration of this one, it is possible that that could pose a safety hazard. If something happened on the pier, it might be a while before someone could get to them.

The construction of the boardwalk will require a public trust tidelands lease from the Secretary of State's Office.

And the applicant is seeking to construct a residential condominium complex on a nearby upland portion of the property, and the boat slips will only be available for use by those condominium owners. And there will be no permit桃花沿道板走道修筑，沿古道而行。
1 All the permit mooring will be within that manmade canal.
2 Modifications to the project's original design
3 have eliminated approximately six boat slips, 2,848 cubic yards
4 of excavation, and approximately 4,510 square feet of shading
5 over submerged aquatic vegetation. And again, best management
6 practices will be used throughout construction.
7 This is the diagram of the originally proposed
8 project. As you can see here, four of these boat slips and
9 more excavation was eliminated in the manmade canal. And then
10 there is also a couple of boat slips that were proposed within
11 the submerged aquatic vegetation in an existing slip down here
12 on the western end. And then the access piers crossing over
13 the SAV were larger than they're proposing at this time.
14 Alternative sites available. No offsite
15 alternatives were considered because the applicant does own the
16 area with the manmade canal, and they were seeking to utilize
17 that area.
18 Several onsite alternatives were considered but
19 it was determined that those onsite alternative may cause a
20 greater impact to coastal wetlands.
21 Private multifamily pier and boardwalk do
22 require a waterfront location.
23 It is likely that the boardwalk will have a
24 minimal impact on the current scenic qualities of Old Port
25 Bayou, and the multifamily pier will be located within the

1 manmade canal and should barely be visible from the public
2 waterways.
3 The project has been cut on public notice. No
4 comments were received. The Department of Environmental
5 Quality is currently reviewing the project. Archive & History
6 did not offer a comment. Secretary of State's Office indicated
7 that a lease will be required for the portion over Old Port
8 Bayou. And Department of Wildlife, Fisheries & Parks has
9 recommended that SAV impacts be kept to a minimum and care be
10 taken to prevent bulkheads from blocking the Alabama redbelly
11 turtle from accessing uplands adjacent to marshes.
12 And these recommendations have been taken care
13 of by the minimization of the size of the access piers and the
14 fact that the bulkhead that is going to be constructed is just
15 to replace an existing bulkhead that's already there.
16 So after our evaluation, it has been determined
17 that the project is consistent with the Mississippi Coastal
18 Program, and therefore staff recommends approval of the permit
19 request contingent upon clearance from the Department of
20 Environmental Quality and the Secretary of State's Office.
21 MR. GOLLOTT: Ron, a question for you.
22 Is this considered commercial or residential?
23 MR. COLE: It will be commercial, yes, sir.
24 MR. GOLLOTT: It's commercial.
25 MR. COLE: The reason that we're calling the

1 slips residential is because they will only be available to the
2 residents of the condominium complex. It won't be available to
3 the public to rent a slip.
4 MR. TAYLOR: Will the condominium owner own the
5 slip?
6 MR. COLE: Yes.
7 MR. TAYLOR: Okay. Do I have a motion?
8 MR. COSHAGE: I'll make a motion we accept
9 staff's recommendation.
10 MR. TAYLOR: Second?
11 MR. GOLLOTT: Second.
12 MR. TAYLOR: All those in favor. Recess
13 unanimous. Thanks.
14 d. Robert P. Meyers (Cleo Bernard)
15 MR. COLE: Next up we have a violation
16 after-the-fact general permit by Robert P. Meyers and also the
17 contractor Cleo Bernard located on an unnamed canal adjacent to
18 Graveline Bayou in Gautier. It's in the general use district.
19 Here you can see an aerial. The project
20 location is south of Highway 90 down on Dolphin (ph.) Street
21 off of that area.
22 Description of the project. Cleo Bernard, owner
23 and operator of Save A Dollar Marine Construction, submitted an
24 application to permitting staff on behalf of the property
25 owners Mr. Meyers.
were not planning to recommend approval of that segment of the bulkhead.

At that time, Mr. Meyers requested that someone else meet him on site once again.

So on February 14, staff met with Mr. Meyers and discovered that both sections of the bulkhead had already been constructed and that riprap had recently been placed waterward of the eastern section.

Mr. Meyers indicated that Mr. Benward led him to believe that the DMR staff's placement of those flags for the location of the bulkhead was in fact approval of the bulkhead.

And that's not the case. You cannot construct a bulkhead until you actually receive the permit in hand.

This is just a diagram overlaid on the aerial, and you see the 30 foot section of bulkhead here on the right-hand side was -- DMR staff was planning to recommend approval of that or was going to grant approval of that.

The 32 foot section on the northeastern side over here, we were probably not going to recommend approval of. Well, both sections were construction on the February 14 site visit.

These are some pictures from that site visit.

You can see the western segment of the bulkhead here and the eastern segment of the bulkhead here.

Now, some riprap has been placed here, and I believe that is because we discussed with the property owner that we preferred riprap in place of a bulkhead, and the property owner did go out and obtain some riprap and placed it in front of the bulkhead that was constructed without authorization.

So in this case, we've conducted a thorough evaluation, and staff recommends that the commission issue an after-the-fact general permit for the construction of the bulkhead and that a fine be issued to Mr. Benward, the contractor in this case, in accordance with Mississippi Code, and staff is recommending the fine for the contractor in this case because of his prior experience with the permitting process. He's handled quite a few permits for other property owners, and he's well aware of how things work in permitting.

The violation was discovered on February 14. It's been in duration for 28 days. Maximum potential fine would be $14,000; minimum fine would be $50.

Recommended fine in this case is $1,000 to the contractor. Our decision factors for this recommendation are the contractor had previous knowledge of the permitting process and led the property owner to believe that the approval was placing the flags instead of receiving the permit in hand. And also the project does meet general permit guidelines.

I believe the property owner and the contractor are both here if you have any questions for them.

MR. TAYLOR: Would you like to speak?

MR. ROB MEYERS: I'm Rob Meyers. I'm here on behalf of my father, the property owner, in this matter.

And I can assure you that my father at all times has attempted to comply with all requirements and regulations regarding wetlands and permitting.

He retained Mr. Benward to handle this project.

And it's my understanding that Mr. Benward, on behalf of my father, took the application for approval, and that thereon individuals came to the site, and there was a discussion, and that construction started after that discussion on the site.

When the permit was forthcoming, my father took it upon himself because he had no contact with individuals to find out what was the status of the actual piece of paper.

He then went and spoke with Ms. Willa Brantley and learned for the first time that the northern section of the bulkhead project proposal in fact had not been approved.

And there were discussions he had with Ms. Brantley about -- I don't know the proper term, I'm not a marine engineer or biologist -- but where the wave action would erode from the bulkhead and how they preferred riprap.

And so based upon that discussion with Ms. Brantley, it was his understanding that he needed to place riprap against the bulkhead to prevent the refraction or wave action.

And so my father and my mother at that time went and purchased truckloads of riprap in an attempt to comply with what Ms. Brantley wanted done in this case. And that's how the riprap got against the bulkhead on the northern section.

So I think that in and of itself certainly shows that my father was at all times trying to comply, thought he had complied, retained somebody to comply. And when he learned that it didn't, he did whatever was necessary and what Ms. Brantley suggested.

So we don't really have any other things to present to the commission. If you want to ask my father questions, he's certainly here. I think he wanted the benefit of free education of law school after 20 years, so I get to speak on his behalf.

MR. TAYLOR: Thank you.

Mr. Benward.

MR. BENWARD: I was fully aware of that you have to wait until you get the permit in hand. Me and Mr. Meyers discussed that. Mr. Meyers told me that he wasn't going to wait. And I had already obtained some of Mr. Meyers' money and bought material to do that job, and it was either me give him his money back, or I had to go ahead on and do the bulkhead because I told him after the inspectors left that it's going to be another two weeks or so before we get to do the job. And he told me no. He said, I'm not going to wait no two weeks.

And I told him then, I said, Mr. Meyers, I said,
there's nothing else we can do because if you don't wait two
weeks, you know, we stand a chance of getting fined.

He said, well, look, he said, this is my
property. He say that I'm going to do what I want to do on my
property. He said, now, either you do this work or give me my
money back. And I couldn't turn the material back in because
once I buy the material, that's it.

So I was put -- basically I've been doing this
work for 15, 20 years, you never see me up here, you know.
But I was putting under the circumstances that I didn't have no
other choice. Either do it or give him his money back, and I
didn't have his money. His money was on the ground in
material.

So as far as him being aware of that, he was
aware of that because he called me -- when Greg called me and
told me that they wanted to come back out and look at the other
side of the bulkhead, I called Mr. Meyers.

And when I called Mr. Meyers, Mr. Meyers told
me, he said, look, what are we going to do. I said, well, I
don't know what we're going to do, Mr. Meyers, I said, because
the bulkhead is already out there, you know.

But basically I was, you know, put into a
predicament to which I either -- I had to put the bulkhead down
because he say he wasn't waiting no longer. And I didn't have
the money to give him his money back, and I had already bought
the material.

MR. TAYLOR: Thank you.

MR. COLLOTT: I think I'd like to hear from Mr.
Meyers if you don't mind.

MR. ROBERT MEYERS: My name is Robert Meyers. I
live at 2324 Santa Cruz Street in Gautier, Mississippi.
And I am the person of interest, the property
owner.
I sure didn't tell this guy to do what he said
he did.

Any questions?

MR. ROSARGE: I guess I have one question.
You stated that you bought the material. Do you
normally buy the material before you have the permit in hand?

MR. ROBERT MEYERS: When I went to see Ms.
Brantley over here, I hadn't heard anything in three or four
weeks in regards to the permit. And she reviewed, and she said
the one on the south side of the boat slip, boat ramp, is okay.
She didn't have any problem with that because the pier would
intercede and break up the wave action.
She said however on the north side, since you
have that bulkhead there, I want you to put some riprap because
if you don't it will wash across the bayou and erode away that
marsh grass. And she said you don't want that to happen or we
don't want that to happen.

I purchased the materials from Applewhite over
there.

MR. ROSARGE: And Mr. Benward, is it normally,
your -- do you normally buy the materials before you have the
permit in hand?

MR. BENWARD: Yes, sir, because a lot of people
get disgusted because of the length of time that they have to
wait, and I have actually lost jobs because people feel like
that once they pay for their permit that they're supposed to
to get it right then and there.

And in Mr. Meyers' case, he called me three or
times before Greg even come out to look at the job, and he
basically just told me he wasn't going to wait.

So, you know, I didn't have no -- you know,
nothing I could do. You know what I mean? Because I didn't
have the money to give him back, and they wasn't going to take
the material back.

MR. ROSARGE: I guess I would imagine -- I can't
imagine how you could buy the materials if you didn't know
exactly what you were going to have to do before you even had
the permit in hand. You see what I mean?

MR. BENWARD: Yeah, I understand that, you know.
But, you know, 99.9 percent of the time, you know, I've been
doing this about 15 or 20 years, and I can go out on a site
myself and I can just about tell whether he going to have
problems getting that permit or he's not going to have
problems.

And when they came out, the two permitters said
that they wasn't going to have any problems getting it which I
already kind of speculated that.

But the thing about it, I wish that Mr. Meyers
would be truthful about it and tell the truth, that he was
aware of -- because I pulled him to the side after they left
because I had just waited a month for a couple of other
applicants, you know, I told him, I said, Mr. Meyers, I said,
it's going to be two or three weeks before you do this job.
And he basically just flat out told me he wasn't
going to wait. So, you know, I didn't have no other choice.

MR. COLLOTT: Can I say something, Mr. Chairman?

This is a tough situation. You know, we don't
know who to believe. And, you know, I've built bulkheads, and
you have to order the material ahead of time, and sometimes it
takes a month or two to get the material because it has to be
Woodenized, and there's only certain places you can order this
thing from.

I'd like to make a motion and see what everybody
thinks. I'd like to make a motion that we approve
after-the-fact permit as the staff has recommended and split
the fine $500 apiece, and that way we, you know, we're not
blaming any one person.
Mr. Bernard has never -- to my knowledge, he hasn't been before us before. Right? Have you ever been before us?

MR. BENWARD: No, sir. I've been doing it for 20 years. I never been before y'all before.

MR. DRUMMOND: Can I ask a question before we vote on this motion?

Mr. Bernard or Mr. Meyers, either one of you have a receipt for the materials?

MR. BENWARD: I give all the receipts to Mr. Meyers because he say he needed it for tax purposes.

MR. ROB MRYERS: We don't have any receipts except for maybe --

MR. DRUMMOND: I was just wondering --

MR. BENWARD: Well, he gave -- he wrote a check and gave it to me, and I had the materials ordered, but I brought him the receipt for it. But I can get a receipt for it, you know, because the person that I ordered the material for, he can give me a copy of it if you need it.

MR. ROB MRYERS: I think it is relevant, the fact that after the January 13 meeting that my father had to go to the office to see about the permit rather than Mr. Bernard.

And I'll tell you that there were phone calls made to Mr. Bernard, and perhaps he now has a different recollection, that went unanswered.

And so my father took it upon himself to find out what was the deal with the permit, that it wasn't forthcoming.

And then he went down and met with Ms. Brantley. Mr. Bernard was nowhere to be found until this enforcement and violation procedure was initiated with a phone call or a letter from Mr. Cole.

And so my father has gone down and spoken with Mr. Cole and spoke with Ms. Brantley, done everything to cooperate in this matter.

And now as you can see today, we're getting a different story from an individual who has a different recollection of events.

I understand the motion, and I understand it is a difficult case. But because it's a difficult case, I don't think my father should be forced to pay $500 when he hired the expert, and now you're hearing a gentleman testify before you that he knew it was a violation to start without the permit in hand, and he went ahead and did it anyway. That's a knowing violation.

And I will tell you right now that my father denies ever telling this man to start this project. That's why he hired the expert.

If he knew he was in violation, he certainly wouldn't have gone down to the office and talked to Ms. Brantley to find out what was going on, why didn't I get my permit.

In fact, he called the inspectors down. He asked them to come down to the property.

So if he knew it was a violation, he sure wouldn't call the enforcement procedure or agency down to your property and then point out that you made a violation of the process.

There is no guilt here. He didn't know he committed anything. He relied upon the expert.

I think the facts show that.

MR. BENWARD: You know, sir, even though he's an attorney, he can put words like -- but Mr. Meyers was fully aware because I called Mr. Meyers after Greg left a message on my phone, and I told Mr. Meyers that, you know, that Mr. Greg didn't want to okay the other side of the bulkhead.

And he said, well, what are we supposed to do.

I said, well, Mr. Meyers, I said, what probably going to have to happen is, I said, they going to want to come back out there and see that, I said, and once they come back out there and see that bulkhead is already there, I said, we going to get fined.

And then that's when he got in touch with Ms. Willa at that point there because he knew that just by sitting there it wasn't going to do him any good. So he went on and 42
1 trying to stay out of a bad situation trying to see who's
telling the truth and everything. I think $500 apiece is very
reasonable, and you should take it.

But it's up to the rest of the commission, I'm
sure.

MR. COLE: And again, this is Ron Cole with EBM.
I would like to state as this information may be relevant that
several phone calls were made to Mr. Bernard during our
evaluation of the permit, and as he has confirmed, we did
receive the telephone calls. Didn't actually get in touch with
him personally, but left voice mails with him asking for a
return call. And we never received any return call.

Our first contact with the applicant or the
agent was when Mr. Meyers came to the office and requested to
get a status update on the project.

MR. BERNARD: All that's why he did that because
when you contacted me, I contacted Mr. Meyers.

MR. TAYLOR: We have a motion on the floor. Do
we have a second?

MR. BOSARGE: You know, it's he said, she said.
So like Commissioner Gollott, we don't know which way to go.
And as much as I want to believe both of you, I have no proof,
I have nothing to convince me.

Can we do an alternate motion, Mr. Gollott, if
you agree, and anyhow drop the fines to $250 apiece?

MR. GOLLOTT: That's fine with me.
MR. TAYLOR: We have a motion and a second.

MR. BOSARGE: Yes, sir, second.

MR. TAYLOR: All those in favor.

MR. BOSARGE: I made an alternate motion, and I
guess we need to vote on the alternate motion.

MR. GOLLOTT: I withdrew my motion, so you made
your motion. That's fine. I second it.

MR. TAYLOR: Second and a motion. All those in

MR. ROBERT MEYERS: I'd still like to make one
more statement. Although I'm being fined, I'm not guilty and I
won't be guilty of this.

MR. TAYLOR: Thank you.

The First, a National Banking Association

Jeremy Overstreet, and I'm presenting a request for an
extension and modification by The First National Banking
Association. The project is located on the Escatawa River and
O'Leary Lake in Moss Point. It's located in the general use
district.

This is the project location. This is Highway
613. This is the City of Moss Point. And this is the area.
This is the marina. This is the area that the
marina would be built.

This is one structure that has already been
built, and it's about as far as they went so far.

The chronology is:

On February 2005, the commission approved a
permit for Bobby Tucker who expired on March 8, 2008.

On December 2005, a permit modification was
approved which removed one pier and added a covering of 156
slips from Pier D, E, and F, and authorized piers under the
covered portions to be solid and floating.

The commission approved two year extensions for
the permit on March 18, 2008, and on March 18, 2010.

On March 1, 2012, the EBM received a letter
requesting a two year extension and a modification just to
reflect new ownership of the marina site.

The applicant is requesting that the permit be
modified to reflect the new ownership of the marina site by The
First, a National Banking Association, and a two year extension
being granted.

The previously permitted project includes a
marina with six piers totaling 31,950 square feet, a bulkhead
900 feet in length, floating access piers 60 feet in length, a
floating fuel dock 30 feet in length.

This is a diagram of the current project.

Based on departmental review and evaluation, the
staff recommends that the commission approve the applicant's

two year extension and request and modification to reflect new
ownership.

MR. GOLLOTT: So moved, Mr. Chairman.

MR. BOSARGE: Second.

MR. TAYLOR: All those in favor. Passes
unanimous. Thank you.

Next up we have the financial report.

J. Administrative Services

2. Financial Report

MS. VENA: Good morning. My name is Kara Vena.
I'll be giving the budget status as of February 29, 2012.

Our budget was $6,267,493. On that date, we had
spent $4,766,361, leaving a remaining balance on February 29 of
$1,501,132.

Are there any questions?

MR. TAYLOR:: No. Thank you.

L. Directorate

4. Legal

MR. TAYLOR: I think we have a motion. Joe
Runnels.

MR. RUNNELS: Good morning. I'm Joseph Runnels.

It's very rare that the department ever asks you to go into
executive session, but I have a matter of prospective
litigation that I need to discuss with you. And so I'd like
you to consider making a motion to go into closed session to
determine the necessity of going into executive session.

MR. GOLLOTT: So moved, Mr. Chairman.

MR. DRUMMOND: Second the motion.

MR. TAYLOR: All those in favor.

(Off the record 10:15 a.m.)

MS. CHESTNUT: The commission is now in executive session to discuss prospective litigation.

(Off the record 10:25 a.m.)

(On the record 10:34 a.m.)

MR. TAYLOR: We're back in open session now.

And Mr. Runnels.

MR. RUNNELS: Mr. Chairman, I'm going to report on what happened in executive session.

At 10:19, the commission met in Room 205. Present were Vice-Chairman Taylor, Commissioners Bosarge, Drummond, Gollott, the executive director, and legal counsel for the commission Sandy Chesnut and Joseph Runnels.

At that point, Joseph Runnels informed the commission that they needed to go into executive session to discuss some prospective litigation. Motion was made by Commissioner Gollott, seconded by Commissioner Drummond, to go into executive session. That's at 10:25.

At that point, counsel for the staff, Joseph Runnels, informed the commission of a matter involving prospective litigation and potential resolution of that issue.

Commission made a motion by Commissioner Gollott, seconded by Commissioner Bosarge, to authorize the staff and legal counsel to resolve the prospective litigation.

At 10:31 a motion was made to return to open session by Commissioner Gollott and seconded by Commissioner Drummond.

All those motions passed unanimously.

So now we're back in open session.

MR. DRUMMOND: Mr. Chairman, I make a motion we adjourn.

MR. TAYLOR: Do I have a second?

MR. BOSARGE: I'll second it.

MR. TAYLOR: All those in favor.

(Meeting adjourned 10:36 a.m.)