

RESOLUTION

MORATORIUM ON NEW OYSTER LEASES

March 7, 2002

- WHEREAS, the Commission, pursuant to R.S. 56:6(10) shall, for the comprehensive control of shellfish, adopt rules and regulations not inconsistent with the provisions of R.S. 56.Part 1. and in accordance with the provisions of the Louisiana Administrative Procedure Act, and
- WHEREAS, R.S. 56:422(A) provides that certain residents, firms and corporations may lease bedding grounds for the cultivation and propagation of oysters within any waters within the territorial jurisdiction of the state, upon terms and conditions and subject to the restrictions and regulations set forth therein, or under the authority which may be imposed by the Commission, and
- WHEREAS, the Secretary of the Department of Wildlife and Fisheries pursuant to R.S. 56:425(A) may lease state-owned waterbottoms and natural reefs in the waterbottoms of this state for the purpose of oyster cultivation, and
- WHEREAS, the Secretary of the Department of Wildlife and Fisheries may take possession of leased waterbottoms for default in payment of rent and lease them to the highest bidder pursuant to R.S. 56:429, and
- WHEREAS, the Secretary of the Department of Natural Resources has requested that the Commission place a moratorium on the issuance of new oyster leases for any waterbottoms not presently under lease as immediate action is essential to reduce the State's exposure to potential claims from oyster leaseholders and further, that failure to do so would pose an imminent peril to the coastal restoration program and to the Federal/State partnership which is critical to the efforts of the State to obtain comprehensive coast-wide restoration authorization and funding.
- THEREFORE BE IT RESOLVED, the Wildlife and Fisheries Commission does hereby establish a moratorium on the issuance of oyster leases for any waterbottoms not presently under lease as well as a moratorium on the taking of oyster lease applications for any such acreage, and
- BE IT FURTHER RESOLVED, the Wildlife and Fisheries Commission

directs the Secretary to immediately cease the acceptance and processing of new oyster lease applications for any waterbottoms not presently under lease.

BE IT FURTHER RESOLVED, that the Wildlife and Fisheries Commission does hereby establish a moratorium on the auction of oyster leases taken for default in payment of rent.

BE IT FURTHER RESOLVED, that the Wildlife and Fisheries Commission does hereby exempt from this moratorium any applications for new leases selected by leaseholders who have previously selected the relocation option pursuant to R.S. 56:432.1.

BE IT FURTHER RESOLVED, that this moratorium will not apply to nor affect oyster lease renewals.

BE IT FURTHER RESOLVED, the Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this Declaration of Emergency, Notice of Intent and the final rule, including, but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

BE IT FURTHER RESOLVED, the Declaration of Emergency and Notice of Intent establishing a moratorium on the taking of oyster lease applications for new acreage, and on the issuance of oyster leases for new acreage, and to establish a moratorium on the auction of oyster leases in default are attached to and made a part of this resolution.

Thomas M. Gattle, Jr., Chairman
Wildlife and Fisheries Commission

James H. Jenkins, Jr., Secretary
LA Department of Wildlife and Fisheries

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

In accordance with emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and in accordance with R.S. 56:6(10), R.S. 56:422, R.S. 56:425, R.S. 56:429 and R.S. 56:432.1, the Wildlife and Fisheries Commission declares an immediate moratorium on the issuance of oyster leases and on the taking of oyster lease applications for state waterbottoms not presently under lease. Continuation of issuance of new oyster leases would pose an imminent peril to the public welfare and requires adoption of a rule upon shorter notice than provided in R.S. 49:953.A, the Wildlife and Fisheries Commission does hereby adopt the following emergency rule. Adoption of this Declaration of Emergency is necessary, according to the Department of Natural Resources, inasmuch as immediate action is essential to reduce the State's exposure to potential claims from oyster leaseholders and further, that failure to do so would pose an imminent peril to the coastal restoration program and to the Federal/State partnership which is critical to the efforts of the State to obtain comprehensive coast-wide restoration authorization and funding.

This Declaration of Emergency will become effective on March 7, 2002, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

WILDLIFE AND FISHERIES

PART VII. Fish and Other Aquatic Life

Chapter 5. Oyster

§505. Oyster Lease Moratorium

A. A moratorium on the issuance of oyster leases for waterbottoms not presently under lease is established. This includes a moratorium on the taking of oyster lease applications for waterbottoms not presently under lease. All pending applications will be held, along with all fees paid, pending a resolution of the moratorium, unless the applicant requests cancellation of the application and refund of fees. In the event of the death of an applicant, the applicant's heirs or legatees should so notify the Department; and any lease ultimately issued shall only be issued to persons placed in possession of the application by Judgment of Possession or to a court-appointed administrator or executor on behalf of a deceased applicant's estate.

B. A moratorium is placed on the auction of oyster leases in default in payment of rent per LAC 76:VII.501.G, as authorized by R.S. 56:429.

C. Any leases selected by a leaseholder who has previously selected the relocation option pursuant to R.S. 56:432.1 shall be exempt from this moratorium but only to the extent of such previous selection.

D. At such time as the moratorium is lifted, applications

for oyster leases will be accepted in accordance with all applicable statutes, rules and regulations and the procedures set out below:

1. One week prior to the date that the moratorium is lifted, the date, time and place where applications are to be taken will be publicly advertised.

2. On the date for taking of applications only one applicant at a time will be allowed in the office and this applicant will be allowed to take only one application. Each applicant will have 15 minutes to designate the area he wishes to apply for. After the applicant pays the application and survey fees, he may return to the end of the line for another application.

3. Applications will be taken 24 hours a day (on a first come basis) until the department feels the influx of applicants can be handled during regular office hours at the New Orleans Office, at which time anyone will be able to take an application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), R.S. 56:422, R.S. 56:425, R.S. 56:429, and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 10:948 (November 1984), amended LR 28: .

Thomas M. Gattle, Jr., Chairman
Wildlife and Fisheries Commission

Notice of Intent

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby give notice of its intent to repeal LAC 76:VII.500 relative to lifting the oyster lease moratorium and to amend and re-enact LAC 76:VII.505 relative to a moratorium on new oyster leases. Authority for adoption of this Rule is included in R.S. 56:6(10), R.S. 56:422, R.S. 56:425, R.S. 56:429, and R.S. 56:432.1. Said Rule is attached to and made a part of this Notice of Intent.

Title 76

WILDLIFE AND FISHERIES

PART VII. Fish and Other Aquatic Life

Chapter 5. Oyster

§500. Lifting of Oyster Lease Moratorium

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10) and R.S. 56:422.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 17:808 (August 1991), repealed LR 28: .

§505. Oyster Lease Moratorium

A. A moratorium on the issuance of oyster leases for waterbottoms not presently under lease is established. This includes a moratorium on the taking of oyster lease applications

for waterbottoms not presently under lease. All pending applications will be held, along with all fees paid, pending a resolution of the moratorium, unless the applicant requests cancellation of the application and refund of fees. In the event of the death of an applicant, the applicant's heirs or legatees should so notify the Department; and any lease ultimately issued shall only issue to persons placed in possession of the application by Judgement of Possession or to a court-appointed administrator or executor on behalf of a deceased applicant's estate.

B. A moratorium is placed on the auction of oyster leases in default in payment of rent per LAC 76:VII.501.G, as authorized by R.S. 56:429.

C. Any leases selected by a leaseholder who has previously selected the relocation option pursuant to R.S. 56:432.1 shall be exempt from this moratorium but only to the extent of such previous selection.

D. At such time as the moratorium is lifted, applications for oyster leases will be accepted in accordance with all applicable statutes, rules and regulations and the procedures set out below:

1. One week prior to the date that the moratorium is lifted, the date, time and place where applications are to be taken will be publicly advertised.

2. On the date for taking of applications only one applicant at a time will be allowed in the office and this

applicant will be allowed to take only one application. Each applicant will have 15 minutes to designate the area he wishes to apply for. After the applicant pays the application and survey fees, he may return to the end of the line for another application.

3. Applications will be taken 24 hours a day (on a first come basis) until the department feels the influx of applicants can be handled during regular office hours at the New Orleans Office, at which time anyone will be able to take an application.

~~A. 1. Whereas, the Louisiana Wildlife and Fisheries Commission was requested to consider the issue of those lease applications which were cancelled for failure to comply with a Commission rule requiring them to survey the application within the six month period after notification for which the applicant had executed a forfeiture agreement, and~~

~~Whereas, the following pertinent comments were pointed out at previous meetings of the Commission's Oyster and Shrimp Committee by memoranda and discussions and generally again today by Dr. Ford, Mr. Schafer, Mr. Ron Dugas or Mr. James Anyon:~~

~~a. that the original purpose of the "Moratorium on Applications" for oyster leases was to permit the Survey Section to become reasonably current with many outstanding applications that were a number of years old,~~

~~b. that much progress has been made,~~

~~c. that achievement of a "current" operating basis~~

~~was projected to be reached in the next 12 to 18 months provided field surveys continued to be completed at the current level or improved in quantity accomplished and could be executed,~~

~~----- d. that the original and primary purpose of the "Partial lifting of the moratorium" on applications was to permit and encourage younger fishermen to get in the oyster business as oyster farmers by obtaining their own leases,~~

~~----- e. that the original guidelines of six month's limitation was recommended and agreed upon by representatives of the oyster industry after much discussion,~~

~~----- f. that we felt the opportunities extended by the Department were conducted fairly and reasonably in accordance with the provisions established by the Commission provided that there was no procrastination by the applicants,~~

~~----- g. that every reasonable courtesy and consideration was extended by the staff,~~

~~----- h. that any extension or reinstatement of this group of cancelled applications could have the very serious potential of setting the Survey Section back substantially in trying to achieve a current operating level since each private survey had to be examined and checked very carefully (some having been referred back to the private surveyors several times up to six times in one case, at least, for making corrections) and, finally,~~

~~----- i. that these eight points and other constitute good and valid grounds for the staff recommending no further~~

~~was projected to be reached in the next 12 to 18 months provided field surveys continued to be completed at the current level or improved in quantity accomplished and could be executed,~~

~~----- d. that the original and primary purpose of the "Partial lifting of the moratorium" on applications was to permit and encourage younger fishermen to get in the oyster business as oyster farmers by obtaining their own leases,~~

~~----- e. that the original guidelines of six month's limitation was recommended and agreed upon by representatives of the oyster industry after much discussion,~~

~~----- f. that we felt the opportunities extended by the Department were conducted fairly and reasonably in accordance with the provisions established by the Commission provided that there was no procrastination by the applicants,~~

~~----- g. that every reasonable courtesy and consideration was extended by the staff,~~

~~----- h. that any extension or reinstatement of this group of cancelled applications could have the very serious potential of setting the Survey Section back substantially in trying to achieve a current operating level since each private survey had to be examined and checked very carefully (some having been referred back to the private surveyors several times up to six times in one case, at least, for making corrections) and, finally,~~

~~----- i. that these eight points and other constitute good and valid grounds for the staff recommending no further~~

~~additional 20 percent of the basic application fee to cover the cost of administrative services, and this would be based on the acreage applied for.~~

~~e. The same applicant must apply; he or she can not change the name on the application, nor can the applicant be transferred to another person.~~

~~2. The applicant would then have six months from the date of the application to complete this survey.~~

~~3. The department's Survey Section would use a different prefix to distinguish these applications from those cancelled.~~

~~4. If the applicant fails to comply with any of the above rules, and the department's applicable rules and regulations for this program, the application will be cancelled and the application fee retained by the department.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), R.S. 56:422, R.S. 56:425, R.S. 56:429, and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 10:948 (November 1984), amended LR 28: .

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of

intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to: Heather Finley, Marine Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to Thursday, June 6, 2002.

In accordance with Act#1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out R.S. 49:972(B).

Thomas M. Gattle, Jr.
Chairman