

LOUISIANA WILDLIFE AND FISHERIES COMMISSION

MINUTES

August 20, 2010

**STEPHEN W. SAGRERA
VICE-CHAIRMAN**

BATON ROUGE, LOUISIANA

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Louisiana Department of Wildlife and Fisheries
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Baton Rouge, Louisiana 70808.

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AGENDA
LOUISIANA WILDLIFE AND FISHERIES COMMISSION
BATON ROUGE, LOUISIANA
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MINUTES OF THE SPECIAL MEETING

OF

LOUISIANA WILDLIFE AND FISHERIES COMMISSION

Friday, August 20, 2010

Vice-Chairman Stephen Sagrera presiding.

Ronny Graham
Patrick Morrow
Ann Taylor
Mike Voisin

Secretary Barham was also present.

Chairman Stephen Oats and Commissioner Earl King were absent from the meeting.

Vice-Chairman Sagrera began by recognizing Representative Joe Harrison and former Commission Member Danny Babin to the meeting.

Vice-Chairman Sagrera then asked the Department before going on with the next agenda item, **Consideration of Declaration of Emergency and Notice of Intent to Allow Recreational Fishing Including Recreational Charter Boat Guides in all State Waters**, to update the Commission on the negotiations with FDA on getting all waters open. Mr. Joey Shepard stated he had a conference call with FDA the day before the meeting. Right now, there was a request with FDA to open all waters for commercial and recreational fishing. But the only tissue samples not completed yet were for crabbing, but during the conference call Mr. Shepard was told all of the sensory testing east and west of the river were clean as well as the chemical tests were clean. He anticipated hearing that day on results from west of the river that would then give authorization to open the areas. Authorization for east of the river would probably be given the upcoming weekend. Mr. Shepard added that they would ask the federal people to open as quickly as possible for recreational and commercial fishing. A large portion of federal waters (4,000 square miles) off western Louisiana was anticipated to also open this upcoming weekend. The next step was to open the closed areas to commercial fishing by working on the beaches (have the beach tested and fish tested). The marshes with oil, the feds were hesitant in opening these areas. Commissioner

Morrow hoped, from what Mr. Shepard commented, that within the next week the federal government would allow commercial activity within state waters. Mr. Shepard stated the areas currently open for fishing and shrimp would open for crabbing. Commissioner Morrow then asked if there has been any indication from the FDA on opening shrimping in the closed areas of state waters and Mr. Shepard answered no, not for shrimping. Staff wanted to open the passes and beaches first. Commissioner Morrow read from a newspaper article on a Nicholls State study and asked what was the federal government's position on keeping certain shrimping areas closed in state waters. Mr. Shepard responded that from conversations with the federal government, they were still concerned about areas and marshes impacted with oil. Commissioner Morrow asked if Department staff was aware of any study which indicated an adverse effect on shrimp due to the oil spill and contamination. From all the Department's testing and those given to NOAA or FDA, all tissue samples came back non-detect for hydrocarbons. Commissioner Morrow wondered if the federal government had given any indication of detects versus non-detects and Mr. Shepard answered no, all of the tissue samples were clean. Commissioner Morrow commented that the federal government had not given a definitive answer on why certain commercial shrimp areas were still closed. Mr. Shepard stated the only explanation was due to the existence of oil on the vegetation in the marsh areas. Commissioner Morrow then asked about a slide which showed a closed area and asked if that was for commercial shrimping. Mr. Shepard answered yes, but they were trying to get the federal government to open the beach and open waters of that closed area. Commissioner Morrow asked if there were any oil detects in the open waters and Mr. Shepard answered no. Commissioner Morrow had a difficult time understanding why the federal government closed an area, especially the open waters, if there was no oil. Mr. Randy Pausina, Assistant Secretary, added they invited NOAA Fisheries and FDA to come to the meeting but they declined. The main reason was the stir created with the thought there was oil on the bottom, but Mr. Pausina felt that was proven not to be true when the white shrimp season opened on August 16. A comprehensive plan to detect subsurface oil in the Gulf of Mexico and Louisiana state waters from the U.S. Coast Guard was given to the Commissioners. To date, a micron oil droplet was detected in the Breton Sound Area. Commissioner Voisin asked how big was a micron. Mr. Pausina stated it was tiny, about the size of a pencil point, but it had not been finger printed. Commissioner Voisin asked if the closed areas which were agreed upon were closed for commercial harvest except oysters and Mr. Pausina answered that was correct. Then Commissioner Voisin

asked what was the percentage of the state open for harvest and Mr. Pausina felt it was about 87 percent. Commissioner Voisin wondered how much was added when the 2 small recreational areas were closed to keep the lines consistent and Mr. Pausina felt it was less than 1 percent. Commissioner Voisin commented that the closed areas on the map were not open for recreational or commercial fishing, another large area was not open for crab fishing and oysters could not be fished in another major area. But Mr. Shepard announced the crab fishing may open by Monday and the rest of the area would open soon. He then asked Mr. Shepard, in targeting the beach areas, were there samples in with the FDA and NOAA. Mr. Shepard stated the first thing to do was to prove there was no oil, so staff was walking the beaches and taking pictures. After that, the area can be petitioned to open and then samples would be taken. Commissioner Voisin asked if there was a concern of leaching of oil that may occur on the beaches or marshes. Mr. Shepard answered that was the concern in the marsh where the oil was visible in the marsh grass, but the beaches were clean. Commissioner Voisin then commented to Commissioner Morrow that he had updated information from NOAA and FDA. They ran between 5800 to 5900 samples and they not only went beyond what was called "action level" but found 7 samples the sniffers thought smelled something. These 7 samples were then sent for chemical analysis with nothing showing up. All of the samples were 100 to 1000 times below the level of concern and the protocols were greatly exaggerated considering a 5 year exposure. Commissioner Voisin mentioned that the commercial fishermen wanted to open the areas as soon as possible, but noted there was a significant amount of waters open. Commissioner Morrow asked, if the Commission voted to open all state waters to recreational finfishing, would all of the red (closed) areas go away and he was told yes. Then Commissioner Morrow asked if the results of the samples from the red areas were non-detects. Mr. Shepard corrected that statement by noting they did not sample the red areas. Commissioner Morrow made a motion to open all state territorial waters to recreational angling and charter boat angling by licensed charter boat guides immediately. Commissioner Taylor seconded the motion. Then Commissioner Voisin asked if recreational angling and charter boat angling would mean there would be no recreational shrimping nor recreational crabbing, it would just be recreational angling for finfish. Commissioner Morrow stated that was his intent.

Representative Joe Harrison, District 51, stated he has been traveling the country trying to stabilize the seafood market and has worked very hard to make this become a reality. The

perception of the seafood industry throughout the country was that an area was closed due to contaminated seafood. They were not thinking that the area was closed to protect the seafood and the idea of not bringing those seafood to the market from the closed areas. The FDA has a protocol and the state was within a week of opening all areas, and Representative Harrison felt it would be prudent to look at the protocol. He added he would not choose sides, his choice was to establish credibility again on how the product was perceived in the country and how it's purchased in the markets. Once a clean bill of health was given, Representative Harrison felt it should for both commercial and recreational. As a State Representative, he felt it best to protect the interest of the tax payers, which was to maintain the idea the FDA protocols would be followed. Wanting to be number 1 in the seafood market, the Representative noted that 91 percent of the market has been taken by imports and the industry was trying very hard to hold on to that other 9 percent. He asked the Commission to withhold their decision for a week until it can be opened for all areas, both commercially and recreationally. Commissioner Morrow asked if an area was open for recreations, would it not send a message that there is no longer any oil. Representative Harrison answered by stating that the Commission was bypassing the FDA protocols which meant the liability was still there. He added that they could wait another week and make a decision based on good scientific data. Commissioner Morrow felt the FDA has hindered the state in moving forward and putting this event behind us. He added that the citizens of Louisiana, both commercial and recreational, have suffered due to the oil spill, but the scientific data indicated there are no detects. Commissioner Morrow asked what other scientific data was needed to safely open the state for recreational and commercials. Representative Harrison did not want to jeopardize the name that Louisiana was known as, the "Sportsman's Paradise", and he did not want to jeopardize the revenue the state needs. After the last special meeting, Representative Harrison noted he received calls from around the country wondering why the other areas were not open to commercials. Also, he wanted to be diligent in making sure the Congressional delegation was following this event and expediting it to where all fishing was open.

Mr. Daniel Babin, shrimp processor, stated he and Commissioner Voisin were privileged to sit with Dr. Peggy Hamburg, FDA Director. He agreed with Commissioner Morrow that the FDA as well as other agencies were slow to get things moving. Dr. Hamburg indicated that it was 7 to 10 days for a turn around on samples, but now it can be done in 48 hours due to an increase

in the number of labs and better sampling. Mr. Babin noted that Mr. Pausina mentioned there was 13 percent of state waters closed which leaves 82 percent open to commercial and recreational waters. He felt a substitute motion should be made to give FDA 1 to 2 weeks to open and then if it was not open, then revisit the issue. Mr. Babin commented he was off 55 percent in production, 92 percent in inventory and 35 percent in sales (only due to selling his inventory). The numbers were down, according to Mr. Babin, due to the oil spill and the fact that customers throughout the country do not want Louisiana product, they would rather buy imports. He asked what message would be sent when the news media sees people cleaning the beaches while someone was throwing a rod and reel. Mr. Babin hoped the Commission would reconsider the motion or call for a 2 week moratorium.

Mr. Andy Gipson, Tideland Seafood as well as a member of Coastal Zone Management (CZM) in Terrebonne Parish, stated they were very concerned about the coast and the CZM was watching the closed areas. They agreed with the statement that the FDA does act too slow, but the protocol needed to be followed. His production was off by 78 percent and sales by 85 percent, since they fish offshore waters. Again Mr. Gipson asked that the protocol be followed. If the product was fished from a closed area, the customers would not accept them. With 87 percent of the waters open, Mr. Gipson felt it was "quite bully" towards the industry to have the rest of the waters open. Commissioner Voisin mentioned that Mr. Gipson's Grandfather was a former member of the Commission.

Mr. David Cresson, CCA, stated no matter which direction the Commission acted on, one industry would suffer. He added that recreational fishing was also a multi-billion dollar industry with small shops along the coast that depends on recreational fishermen to make their living especially during the months of April through August. The fact that 13 percent of the waters were closed would not make it or break it for those companies, but it was the message being sent by the FDA. Also, Mr. Cresson commented that the FDA had no authority over recreation. Since the oil spill, he has ordered Louisiana seafood, not only because it was the best but also to support the processors and fishermen. To close a part of the recreational fishing due to a lack of speed by the federal government was not right, added Mr. Cresson. From what he has seen, Mr. Cresson did not think 48 hours for results from the federal government was realistic. He then urged the Commission to approve the agenda item on behalf of the fishermen of this State.

Mr. Clinton Guidry, Louisiana Shrimp Association, was opposed to the opening due to the same reasons already spoken. He knew that everyone wished the oil would go away, but he knew that the oil was still in some of the estuaries and closed areas. With all of the people working in the areas, how could an area be opened for recreational fishing. Mr. Guidry felt the closed areas should remain as such until they have been cleaned. He also agreed that the protocol should be followed. He appreciated the fact that there are people willing to work to clean up which will allow areas to open for fishing. Mr. Guidry felt going outside of the protocol would put everyone in a position of liability.

Then Vice-Chairman Sagrera noted Mr. Richard Hebert, Mr. Michael Mathews, Mr. Alexander Beane, Mr. Jesse Thompson, Mr. Ryan Guerin, Mr. Tyler Hicks and Mr. Camp Matens were in favor of the proposal but did not wish to speak.

Commissioner Voisin asked Mr. Don Puckett if the word fishing in the motion would be changed to angling throughout the action. Mr. Puckett stated the motion would approve the Declaration of Emergency with the second option which was recreational angling and charter boat angling by licensed charter boat guides. Commissioner Voisin felt the Commission has done the right things in the past even though they do not win many friends. He then made an amended motion to change the effective date to September 1, 2010 instead of August 20. No second was heard on the amended motion. Commissioner Voisin felt from the comments made, the amended motion was appropriate. The Department made a decision a few days earlier to close less than 1 percent of the state to recreational fishing so the lines could be the same. He thought the Commission should be careful in reacting to challenges some people feel. He added that he sat in meetings with federal and state agencies and this was a real crisis, but noted that Louisiana's seafood was safe, and would always be safe. He was satisfied that there would not be any recreational shrimping or crabbing in the areas. Commissioner Voisin heard that the charter boat industry was opposed to the proposed action, but no one was at the meeting to comment. He knew that the Commission would make the right decision even though it would be a tough one. Commissioner Taylor noted that she fishes out of Grand Isle and the 13 percent of the area closed was where fish have been caught. She added that boom can not be placed on beaches due to the wave action and there were not any people with haz mat suits on cleaning the beaches. Commissioner Taylor felt the recreational fishermen had suffered enough and

it was time to reopen everything. She added that she sympathized with the commercial fishermen. Vice-Chairman Sagrera asked if there was no testing being done in areas currently closed and Mr. Shepard stated that was correct. He added that part of the protocol was to test in the areas once the oil was gone.

Hearing no further discussion, the motion passed with no opposition.

(The full text of the Declaration of Emergency is made a part of the record.)

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Recreational Fisheries Opening
August 20, 2010

In accordance with the emergency provisions of R.S. 49:953.B and R.S.49:967.D of the Administrative Procedure Act, and under the authority of R.S. 56:6.1, the Wildlife and Fisheries Commission hereby opens recreational angling, and charter boat angling by licensed charter boat guides in all state inside and outside territorial waters, effective immediately August 20, 2010.

Recreational angling and charter boat angling is being allowed within all state inside and outside waters impacted by oil from the Deepwater Horizon drilling rig accident which were previously closed to all recreational fishing, subject to continual testing and monitoring, as this activity is not regulated by the Food and Drug Administration, and the Environmental Protection Agency's nearshore water tests to date have shown no chemical contamination.

The Commission hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to close, reopen-reclose, broaden or otherwise modify the areas opened to recreational angling and charter boat angling if biological, environmental and technical data indicate the need to do so, or as needed to effectively implement the provisions herein.

Stephen W. Sagrera
Vice-Chairman

Consideration of Request to Appropriate Federal Agencies to Expedite the Opening of Closed Waters to Fishing began with Commissioner Morrow noting this issue had been discussed at length. The Commission should request the Federal Government take immediate action to expedite the opening of all closed state waters to commercial fishing. This request was based on the lack of evidence of contamination. Commissioner Voisin made a motion and it was seconded by Commissioner Morrow. Mr. Puckett advised that the motion be in the form of a directive to the Secretary. Commissioners Voisin and Morrow agreed with Mr. Puckett. Hearing no further discussion, the motion was unanimously approved.

Vice-Chairman Sagrera then asked for **Public Comments**. Mr. Daniel Babin commented he was opposed to the action by the Commission. He asked Commissioner Taylor if recreational fishing had occurred in closed areas based on her statement and she stated that happened before they were closed. Mr. Babin noted that was not the comment she made. He then added that they had asked for a compromise and Commissioner Voisin asked for a week, and September 1 would have been a great compromise. Mr. Babin then stated that, in his opinion, this action had further divided the area between commercial and recreational. Commissioner Morrow stated the action was a compromise since the initial action was to open all recreational fishing which included shrimping and crabbing, but this was changed to exclude shrimping and crabbing because of the protest from shrimpers. Mr. Babin commented that it was worthless for them to come to the meeting since it was already a foregone conclusion, but Commissioner Morrow did not agree.

There being no further business, Commissioner Graham made a motion to **Adjourn** the meeting and it was seconded by Commissioner Morrow.

Stephen W. Sagrera
Vice-Chairman

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