

LOUISIANA WILDLIFE AND FISHERIES COMMISSION

MINUTES

December 3, 2009

ROBERT J. SAMANIE, III
CHAIRMAN

BATON ROUGE, LOUISIANA

The following constitute minutes of the Commission Meeting
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Louisiana Department of Wildlife and Fisheries
2000 Quail Drive

Baton Rouge, Louisiana 70808.

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LOUISIANA WILDLIFE AND FISHERIES COMMISSION
BATON ROUGE, LOUISIANA
DECEMBER 3, 2009

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MINUTES OF THE MEETING

OF

LOUISIANA WILDLIFE AND FISHERIES COMMISSION

Thursday, December 3, 2009

Chairman Robert J. Samanie, III presiding.

Ronny Graham
Earl King, Jr.
Stephen Oats
Stephen Sagrera
Ann Taylor

Secretary Robert Barham was also present.

Commissioner Patrick Morrow was absent from the meeting.

Chairman Samanie called for a motion for approval of the **November 5, 2009 Commission Minutes**. A motion for approval was made by Commissioner Oats and seconded by Commissioner Sagrera. The motion passed with no opposition.

Under **Commission Special Announcements/Personal Privilege** for this month, Commissioner Oats mentioned that Commissioner Morrow was absent due to bypass surgery and asked that he be kept in everyone's thoughts and prayers.

Secretary Barham stated that he was recognizing a Commissioner that he would miss. He added this was the last meeting for Chairman Samanie. The Chairman has been on the Board since 2004 having been appointed by Governor Blanco and has been a friend and counselor to the employees of the Department. Secretary Barham then presented Chairman Samanie with a plaque. Chairman Samanie stated that when he was first appointed a Commissioner he thought the world revolved around Dulac and the shrimp business. He has since realized the abundance of natural resources in Louisiana and the people and effort it takes to manage it. Even though he was being honored, Chairman Samanie felt the honor was all his. He then thanked all of the Commissioners and everyone on the staff.

To receive and hear Enforcement & Aviation Reports/November began with Lt. Col. Keith LaCaze stating this month was centered

around deer and waterfowl hunting seasons. The biggest hunting weekend of the year occurred on Thanksgiving weekend. A total of 1857 citations and 350 written warnings were issued and agents helped with 45 public assists. There were a total of 61 night hunting citations issued throughout the state. The Aviation Report showed two of the three planes flew a total of 94 hours during November. There were 8 boating accidents reported with no fatalities for the month but there were 9 injuries. Totals for the year were 133 reported accidents, 110 injuries and 29 fatalities. Lt. Col. LaCaze then discussed several of the reported accidents that showed PFD's and kill switches were in use which resulted in no fatalities. News Releases discussed included three individuals taking deer at night with an artificial light and a female black bear and her cub were killed on Red River WMA. One incidence of public assist was on November 23 when a hunter from Pointe Coupee Parish fell from his climbing stand and could not move his legs. Agents, Acadian Ambulance personnel and a Sheriff's Deputy were able to get to the hunter, move him to another location so he could be airlifted out to the hospital. In an effort to restructure the Enforcement Regions, Lt. Col. LaCaze announced the Ferriday Office would close and that Region would be divided into 2 districts. One district would be assigned to the Monroe Region and the other to the Alexandria Region. The agents assigned to the areas would continue with their assigned duties. With this change, came a few number changes; Region 6 in Opelousas would now be Region 4 and Region 9 in Houma would now be Region 6.

To receive and hear presentation from Mr. George Oldenburg, Zoo of Acadiana began with Mr. Oldenburg stating he was the owner of the Zoo of Acadiana in Lafayette Parish. He requested that the guidelines be amended for excluded entities. The rules regarding large carnivores reference guidelines set by AZA and they do not specify written guidelines for enclosures. Inspection of the Zoo of Acadiana resulted in interpretation of AZA rules. Mr. Oldenburg then stated that ZAA guidelines were very clear and left no room for interpretation in the safe keeping of large, dangerous animals. The Department's guidelines were composed of a team of AZA institutions and included themselves in the exempt category. Only AZA accredited zoos were asked to be on the committee to create the rules. Mr. Oldenburg felt the interpretation of the current rules was not realistic nor an acceptable method of guidelines. The Zoo of Acadiana was an accredited member of the Zoological Association of America (ZAA). He added that other states allow the same exemption to ZAA zoos as for AZA facilities. The Zoo of

Acadiana did not wish to become a member of AZA since their guidelines for non-related animal issues and some animal related issues were not practical for their facility. Some of those issues related to breeding, exhibiting, selling and obtaining certain animals, as well as employee compensation, bathroom facilities and concessions which are not animal related. Mr. Oldenburg felt the guidelines followed by AZA zoos were complimented with city and state funding. He noted that ZAA zoos, formed in 2005, focused on animal well being. His organization opted for ZAA accreditation since the process was similar to AZA but took into account the size and resources of the facility. The mission of ZAA was to promote the responsible ownership, management and propagation of animals in both private and public domains. Mr. Oldenburg assured that his request was not to avoid required inspections, but to have guidelines with no room for interpretation. He then noted, that since the Zoo of Acadiana was an established zoological facility for almost 20 years and adhered to ZAA guidelines, they should have the same consideration as AZA facilities.

Chairman Samanie asked for a Department representative to address the issue. Ms. Maria Davidson, Large Carnivore Program Manager, stated when the legislative bills passed to give regulation for the animals to the Department, rules and regulations were promulgated for primates first and then big cats. A committee was formed of a zoo director, zoo curator, a zoo veterinarian, the Louisiana State Public Health Veterinarian, East Baton Rouge Animal Control Director, and staff from Enforcement and Legal. After looking at the people that would possess the animals, they were broken into categories hoping to prohibit personal ownership over time. The committee knew there were non-AZA zoos that they wanted to permit but categories had to be created. Ms. Davidson explained further that they chose the AZA as the exemption association since it was globally recognized as the gold standard in keeping exotic animals and have been in place since 1974. The reason for not choosing ZAA was they are a relatively new organization being formed in 2005. Also, AZA had similar guiding philosophy as those used when the rules were created, such as having these type animals strictly controlled and not in the pet sector. ZAA supports these animals being kept as pets and permit and accredits some individuals which was contradictory to what the Department was trying to do with the rules. The standard used by AZA for enclosures for large animals was used as a safety issue to apply to the non-AZA zoos. The Department's main interest was that the animal welfare and public safety were looked after. The most significant difference between ZAA and

AZA was ZAA vertical height for lions and tigers was only 12 feet and AZA's requirement was 16 feet. Chairman Samanie asked if the Commission recognized ZAA, they would be lowering the safety standards being used now and Ms. Davidson answered absolutely. Commissioner Oats asked when did they go through the rule process and Ms. Davidson stated that in 2006 was when the cats were given to the Department. Commissioner Oats then asked if it was time to look at the regulations again. Ms. Davidson commented they have learned new things in the process and plan to write amendments, but she did not recommend lowering any of the safety standards. Mr. Oldenburg noted that following the inspection, they did increase the height of the fencing and do not have a problem in following that regulation. They also feel safety was very important for the visitors and animals as well. Mr. Oldenburg felt the ZAA guidelines were very clear; however the AZA did not have specifics in their guidelines. He mentioned that he wanted the regulations to be very clear and not vague.

To present comments on 2009-2010 Kisatchie National Forest Hunting Season Notice of Intent and to receive and consider Rule Ratification was handled by Mr. Randy Myers. He began stating that at the July Meeting, after a lengthy public comment period, the Commission passed the rule that established the 2009-2010 hunting seasons which included an 8 day with or without dog deer season on Kisatchie National Forest. Dog hunters on Kisatchie were required to receive a permit and all dogs had to be properly identified including the use of electronic devices. At that meeting, staff from Kisatchie National Forest recommended maintaining the 8 day with or without dog deer season, but asked that the requirements for the permit and the dog identification be eliminated. The Commission adopted a Declaration of Emergency and a separate Notice of Intent on the changes requested by Kisatchie. This Notice of Intent was put out for public notice. Mr. Myers requested the Commission's favorable passage of the final rule to permanently set the Kisatchie National Forest hunting seasons. A total of 152 comments were received on the Kisatchie deer season proposal. Of those, 11 were in favor of the season and 141 were opposed (112 of those 141 were from a form e-mail). Hearing no questions, Commissioner King made a motion to adopt the rule, seconded by Commissioner Graham and passed with no opposition.

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

RULE

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby promulgate rules and regulations governing the hunting of resident game birds and game quadrupeds.

Title 76

WILDLIFE AND FISHERIES

PART XIX. HUNTING AND WMA REGULATIONS

Chapter 1. Resident Game Hunting Season

§103. Resident Game Birds and Animals

A. - G.4. ...

H. The hunting season for Kisatchie National Forest (KNF) during the 2009-2010 hunting season shall be as follows:

1. All Seasons for KNF are for 2009-10 only. Bag Limit = 1 deer of the appropriate sex per day up to the statewide seasonal limit of three antlered and three antlerless deer. All deer must be tagged as required by LDWF regulations. Hunting stand, blind, tripod, etc. regulations applicable to LDWF WMAs are in effect on KNF (refer to "Methods of Taking Game" section of 2009-2010 LDWF Wildlife Management Area Regulations).

2. Motorized travel off designated roads and trails and outside designated areas is prohibited on the entire KNF. Motor Vehicle Use Maps (MVUM) showing designated roads and trails and associated vehicles and travel seasons are available in all Forest Service offices and on the Kisatchie Web site www.fs.fed.us/r8/kisatchie. ATV travel is allowed between 1 hour before sunrise and 1 hour after sunset; nighttime ATV travel is prohibited. Game retrieval with an ATV is only allowed within designated 300-foot corridors within the National Wildlife Management Preserves (see MVUM). Camping corridors for highway-legal vehicles to drive within 100 feet of the road and camp are designated on the Caney District and in the National Red Dirt Wildlife Management Preserve.

3. Catahoula Ranger District (Grant & Rapides Parishes), Winn Ranger District (Winn, Grant & Natchitoches

Parishes), Kisatchie Ranger District (Natchitoches Parish), Evangeline Unit of the Calcasieu Ranger District (Rapides Parish):

a. Deer hunting with dogs on the Catahoula Ranger District shall occur only north of La. 8, excluding the National Catahoula Wildlife Management Preserve. Deer hunting with dogs on the Evangeline Unit shall occur only in the portion of the unit located south of La. 121 from near McNutt southwesterly to Spring Creek, east of Spring Creek southeasterly to US 165, except dogs may be used in Palustris Experimental Forest. National Forest lands within the Evangeline Unit, Calcasieu Ranger District, described in still hunt only area shall be still hunt only.

b. Deer:

i. Oct. 24-25, either-sex, primitive firearms, still hunt only.

ii. Oct. 31-Nov. 1, either-sex, still hunt only.

iii. Nov. 2, bucks only, still hunt only

iv. Nov. 7-8, 14-15, 21-26, bucks only, still hunt only.

v. Nov. 27, either-sex, still hunt only.

vi. Nov. 28-29, bucks only, still hunt only.

vii. Dec. 5-6, 12-13, buck only, still hunt only.

viii. Dec. 19-24, 26-27, bucks only, with or without dogs.

ix. Jan. 1-3, bucks only, still hunt only.

x. Jan. 8-10, bucks only, still hunt only.

4. Vernon Unit of the Calcasieu Ranger District (Vernon Parish, excluding Fort Polk WMA):

a. Oct. 24-25, either-sex, primitive firearms, still hunt only.

- b. Oct. 31-Nov. 1, either-sex, still hunt only.
- c. Nov. 2, bucks only, still hunt only.
- d. Nov. 7-8, 14-15, 21-26, bucks only, still hunt only.
- e. Nov. 27-29 either-sex, still hunt only.
- f. Dec. 5-6, 12-13, 19-24, 26-31, bucks only, still hunt only.
- g. Jan. 1-3, bucks only, still hunt only.
- h. Jan. 8-10, bucks only, still hunt only.

5. Caney Ranger District (Webster and Claiborne Parishes):

a. Deer - Same as outside including Youth Hunt (Area 2) except still hunt only. Either-sex entire season.

6. Other seasons on KNF:

a. Archery: Vernon Unit, Calcasieu Ranger District: Sept. 19-Jan. 15. Remainder of KNF: Oct. 1-Jan. 31. Either-sex deer may be taken at any time by archers during archery season except when bucks-only firearms seasons are in progress on KNF (archers must hunt only bucks during bucks-only firearm seasons).

b. All Other Small Game: Same as outside except closed to squirrel hunting during the spring season and waterfowl hunting ceases at 2 p.m.

c. Unmarked Hogs, Coyotes, Armadillos and Beavers: May be taken incidentally on any KNF hunt by properly licensed hunters with weapons legal for that hunt until the daily or seasonal bag limit of game is taken. The placing of seed, corn, wheat, salt, or other feed to constitute a lure or enticement for any species, including hogs, is prohibited on KNF. Hunting over such feed is prohibited on KNF. Moving deer or hogs with organized drivers and standers, drivers, or making use of noise or noise-making devices is prohibited.

d. Raccoons and opossums: May be hunted during

daylight or nighttime from Oct. 1-Feb. 28 only. A licensed hunter may take raccoon or opossum, one per person per day, except during the trapping season when there shall be no limit. Night-time chase only: May 1-Sept. 30, Tuesdays and Thursdays only. No firearms allowed. Nighttime ATV travel is prohibited.

e. Crows, blackbirds, grackles, and cowbirds: May be taken September 1-January 1 only.

7. All hunters (including archers and small game hunters; excluding waterfowl and dove hunters) must display 400 square inches of hunter orange and wear a hunter orange cap during any firearm season for deer. Deer hunters hunting from concealed ground blinds during firearms season must display a minimum of 400 square inches of hunter orange above or around their blinds which is visible from 360 degrees. Rabbit, quail, and woodcock hunters must wear a hunter orange vest or cap outside the firearm seasons for deer. All persons afield during hunting seasons are encouraged to wear hunter orange. Hunting in or within 150 yards of a developed recreation site, campsite, any residence, or any building is prohibited.

8. Hunting-dog training from Mar. 1-Sept. 30 is allowed only in the following circumstances: dogs are within voice-command distance of handler; dogs are participating in night-time raccoon chases mentioned above; dogs are participating in licensed events conducted by nationally-recognized kennel clubs (KNF permit required - contact Forest Supervisor's office); dogs are under close control of hikers; and any dog on a leash. The training of deer dogs is prohibited year-round. No firearms allowed while training dogs.

9. National Catahoula Wildlife Management Preserve and National Red Dirt Wildlife Management Preserve. Owner - U.S. Forest Service: Catahoula Preserve - 36,000 Acres in Grant and Winn Parishes; Red Dirt Preserve - 38,000 Acres in Natchitoches Parish. Season Permit required from Forest Supervisor's office, Winn, Catahoula or Kisatchie Ranger District offices or www.fs.fed.us/r8kisatchie/hunting/index.html for all hunting. Additionally, weekend permits, available at the check stations, are required for deer gun hunts.

a. Deer:

i. Oct. 17-18, special youth hunt, either-sex, still hunt only. Weekend permit required. Youths between the ages of 8-17 inclusive only. Youths must possess a hunter

safety certification or proof of successful completion of a hunter safety course. Each youth must be accompanied by one adult 18 years of age or older. If the accompanying adult is in possession of hunter safety certification, a valid hunting license or proof of successful completion of a hunter safety course, this requirement is waived for the youth. Adults may not possess a firearm. Youths may possess only one firearm while hunting. Legal firearms are the same as described for deer hunting. The supervising adult shall maintain visual and voice contact with the youth at all times. An adult may supervise only one youth during this special hunt. Also, special season for physically-challenged hunters with a LDWF Physically Challenged Hunt Permit, either-sex, still hunt only. Weekend permit required.

ii. Oct. 24-25, primitive firearms, either-sex, still hunt only, weekend permit.

iii. Oct. 31-Nov.1, either-sex, still hunt only, weekend permit.

iv. Nov. 27, either-sex, still hunt only, weekend permit.

v. Nov. 28-29, bucks only, still hunt only, weekend permit.

b. Rabbit: Same as outside except beagles allowed for rabbit Jan. 9-Feb. 28 only. Only beagle hounds which do not exceed 15 inches at the front shoulder and which have recognizable characteristics of the breed may be used on the Wildlife Management Preserve.

c. Squirrel: Same as outside except squirrel hunting with dogs allowed Jan. 9-Feb. 28 only. Hunting parties may not include more than one dog. Closed to squirrel hunting during the spring season.

d. Raccoon (Nighttime): Dogs allowed Jan.9-Feb. 28 only.

e. All Other Game: Consult KNF's Catahoula and Red Dirt Preserve Regulations issued by KNF. To obtain permits and information, visit website listed above or contact: KNF Forest Supervisor's Office, 2500 Shreveport Hwy., Pineville, LA 71360, telephone (318) 473-7160. Office hours 8 a.m. to 4:30 p.m.

B. The aforementioned season dates, bag limits and shooting hours shall supplant and supersede those season dates, bag limits and shooting hours for Kisatchie National Forest previously adopted and which will be published in the July 20, 2009 Louisiana Register.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115, R.S. 56:109(B) and R.S. 56:141(C).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21:707 (July 1995), amended LR 22:585 (July 1996), LR 23:871 (July 1997), LR 24:1324 (July 1998), LR 25:1290 (July 1999), repromulgated LR 25:1526 (August 1999), LR 26:1506 (July 2000), LR 27:1061 (July 2001), LR 28:1615 (July 2002), LR 29:1122 (July 2003), repromulgated LR 29:1521 (August 2003), LR 30:1494 (July 2004), LR 31:1627 (July 2005), LR 32:1254 (July 2006), LR 33:115 (January 2007), LR 33:1399 (July 2007), LR 34:1447 (July 2008), LR 35: (July 2009), LR 35: (July 2009), LR 35: (December 2009).

Robert J. Samanie, III
Chairman

To receive and hear Results on Bottomland Hardwood Deer Telemetry Study was presented by Mr. Scott Durham. The objectives of the study were to assess habitat, survival of deer, fate of 1 1/2 year old male deer and causes of mortality. Study area was on 40,000 acres in West Baton Rouge and Iberville Parishes. The deer were trapped and collared to see where they went and what happened to them. During the study, 65 deer were caught and marked and 48 were collared of which 37 were bucks and 11 were does. The age of the captured bucks were mainly 2 1/2 year old bucks which were the easiest to capture. Since does were harder to catch, the sample size was smaller. Survival results showed that 64 percent of the females survived and 100 percent of the 1 1/2 year old males survived during the spring and summer months. There was an annual survival rate of 53 percent. Causes for mortality were hunting (14 bucks and 3 does), natural causes (3 bucks and 1 doe) and vehicles (2 bucks). Space usage was looked at in 2 ways, home range and core area. The year was divided into 3 seasons, spring, summer and fall. The fall season was when the breeding period occurred as well as the hunting season. The home range for the females was less than 125 acres and the core areas was even smaller (about 14 acres). The juveniles and adult bucks showed the largest home range during the spring season. The average home range for bucks was 300 acres or less. The 1 1/2 year old males

left the area during the spring season and were found from 2 1/2 to 8 1/2 miles away. The reason for the small home range was possibly due to the way the habitat was managed. Mr. Durham felt the study provided important parameters and he was interested in non-hunting mortality. It was also shown that hunters could get age on their deer on a smaller scale.

Mr. Marty Bourgeois presented the next agenda item, **To receive and consider a Declaration of Emergency to Close Portions of State Outside Waters to Shrimping.** The portion to be closed would be south of the Inside/Outside shrimp line from Freshwater Bayou Canal to the U.S. Coast Guard Light at Caillou Boca. The action would become effective at official sunset, December 22, 2009 which was the same day as the closure of all state inside waters. Data indicates water temperature in the area averages below 20°C and this inhibits shrimp growth. Also, in this area the white shrimp do not meet the minimum 100 count per pound. The Resolution if approved would authorize the Secretary to close any part of remaining open outside waters if necessary and to reopen when the closure was no longer needed. Also, authority would be given to the Secretary to open and close special seasons in state inside waters if it would not detrimentally impact small brown shrimp. Mr. Bourgeois noted the timing and closure were fairly standard. Chairman Samanie asked if December 22 was the third Monday and he was told it was the Tuesday following the third Monday. Chairman Samanie commented that the shrimp he was seeing were small. Mr. Bourgeois reminded the Commission that the minimum possession count of 100 count shrimp expires October 15 through the third Monday in December and this closure will occur the day after. Commissioner Sagrera made a motion to adopt the Resolution, seconded by Commissioner King and passed with no opposition.

(The full text of the Resolution and Declaration of Emergency are made a part of the record.)

RESOLUTION

Closure of State Outside Waters to Shrimping
adopted by the
Louisiana Wildlife and Fisheries Commission
December 3, 2009

WHEREAS, R.S. 56:497 provides the open shrimp seasons for all or part of the state waters shall be fixed by the Louisiana Wildlife and Fisheries Commission, and

WHEREAS, R.S. 56:497 provides the Commission shall also have the right to set special seasons for all or part of the state waters, and

WHEREAS, R.S. 56:497 provides the Commission shall have the authority to open or close outside waters by zone each year as it deems appropriate upon inspection of and based upon technical and biological data which indicates that marketable shrimp, in sufficient quantities, are available for harvest, and

WHEREAS, R.S. 56:498 provides that the possession count on saltwater white shrimp for each cargo lot shall average no more than 100 (whole specimens) count per pound, except during the time period from October fifteenth through the third Monday in December when there shall be no count, and

WHEREAS, in state outside waters, water temperatures remain below 15 degrees Centigrade and the growth rate of white shrimp is therefore slow, and

WHEREAS, current biological sampling conducted by the Department of Wildlife and Fisheries has indicated that white shrimp in a portion of state outside waters average smaller than 100 possession count and additional small white shrimp are expected to recruit to these waters during the remainder of winter and early spring, now

THEREFORE BE IT RESOLVED, the Wildlife and Fisheries Commission does hereby order a closure to shrimping in that portion of state outside waters, south of the Inside/Outside Shrimp Line as described in R.S. 56:495, from the western shore of Freshwater Bayou Canal at 92 degrees 18 minutes 33 seconds west longitude to the U.S. Coast Guard navigational light off the northwest shore of Caillou Boca at 29 degrees 03 minutes 10 seconds north latitude and 90 degrees 50 minutes 27 seconds west longitude at official sunset on Tuesday, December 22, 2009.

BE IT FURTHER RESOLVED, the Wildlife and Fisheries Commission does

hereby authorize the Secretary of the Department of Wildlife and Fisheries to close to shrimping, if necessary to protect small white shrimp, any part of remaining state outside waters, if biological and technical data indicate the need to do so or if enforcement problems develop, and to reopen any area closed to shrimping when the closure is no longer

necessary.

BE IT FURTHER RESOLVED, the Wildlife and Fisheries Commission does

hereby authorize the Secretary of the Department of Wildlife and Fisheries to open special seasons for the harvest of white shrimp in any portion of the State's inside waters where such a season would not detrimentally impact developing brown shrimp populations.

BE IT FURTHER RESOLVED, the Declaration of Emergency closing state

outside waters is attached to and made a part of this resolution.

Robert J. Samanie, III, Chairman
Wildlife and Fisheries Commission

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall have the authority to open or close state outside waters to shrimping by zone each year as it deems appropriate, the Wildlife and Fisheries Commission hereby orders a closure to shrimping in that portion of state outside waters, south of the Inside/Outside Shrimp Line as described in R.S. 56:495, from the western shore of Freshwater Bayou Canal at 92 degrees 18 minutes 33 seconds west longitude to the U.S. Coast Guard navigational light off the northwest shore of Caillou Boca at 29 degrees 03 minutes 10 seconds north latitude and 90 degrees 50 minutes 27 seconds west longitude. This closure is effective at official sunset, Tuesday, December 22, 2009.

R.S. 56:498 provides that the possession count on saltwater white shrimp for each cargo lot shall average no more than 100 (whole specimens) count per pound except during the time period from October fifteenth through the third Monday in December. Current biological sampling conducted by the Department of

Wildlife and Fisheries has indicated that white shrimp in this portion of state outside waters do not average 100 possession count and additional small white shrimp are expected to recruit to these waters. This action is being taken to protect these small white shrimp and provide them the opportunity to grow to a larger and more valuable size.

The Wildlife and Fisheries Commission authorizes the Secretary of the Department of Wildlife and Fisheries to close to shrimping, if necessary to protect small white shrimp, any part of remaining state outside waters, if biological and technical data indicate the need to do so or if enforcement problems develop, and to reopen any area closed to shrimping when the closure is no longer necessary; and hereby authorizes the Secretary of the Department of Wildlife and Fisheries to open and close special shrimp seasons in any portion of state inside waters where such a season would not detrimentally impact developing brown shrimp populations.

Robert J. Samanie, III
Chairman

Next on the agenda, a **Report on the Request to the Commission from the United Commercial Fishermen's Association for Emergency Declaration to Allow the Harvest of Sack Oysters in Certain Areas of Lake Borgne Not Currently Under Lease from the State of Louisiana** was handled by Mr. George Barisich with the United Commercial Fishermen's Association. He began stating the oyster production in the open state waters are poor with the daily catch effort being marginally profitable even on good weather days. A request was made to the staff to expand the area southwest of Lake Borgne to harvest a considerable crop of marketable sized oysters that was not presently leased but inside the boundary lines. He then read a letter from the United Commercial Fishermen's Association. One of the positive economic impacts from this opening was the extra money that can be used to pay licenses and leases that will be due January 1.

Chairman Samanie asked Mr. Patrick Banks for the Department's recommendation on the request. Mr. Banks stated they have spoken at length with Mr. Barisich, his organization and the Oyster Task Force. The Department looks at an issue from a biological point and not as much from the economic stance. The biology shows that there are mussel on oysters in that area, but it has been determined that there was no biological emergency to put the resource at risk. Mr. Banks did not feel comfortable speaking on an economic issue, but he did not see any biological

imperilment to the resource. Chairman Samanie asked Mr. Don Puckett if it was legal to do a Declaration of Emergency now. Mr. Puckett felt there may be serious concerns using a Declaration of Emergency for this item. He added there were a few times a Declaration of Emergency was used when temporary grounds were created which eventually became permanent grounds. The reasons for the use of that Declaration of Emergency was to avoid loss of resource based on the opening of the Davis Pond and as a prelude to the creation of a permanent ground. Mr. Puckett was sensitive to the economic needs of the fishermen but there may be a hard time in justifying this as a Declaration of Emergency. Another issue to consider was the fact that there are leaseholders in the area which may create inherent conflict. Mr. Puckett thought the Commission may want to go through the normal rulemaking process in order to receive public comment and allow all affected users to speak. Commissioner Oats asked if there were any other methods to open the area. Mr. Puckett stated standard rulemaking could be utilized which begins with a Impact Statement, Notice of Intent and it gives all affected parties the opportunity to see if this was an appropriate action. Commissioner Oats asked if there was any other avenue to move faster on this request, the legislature, Governor, etc. Mr. Puckett answered no. Chairman Samanie then opened the meeting for public comments.

Mr. Ante Lepetic, Mr. Nikola Vetic, Mr. Nikola Zarak, Mr. Dero Cibilic, Mr. Davor Tomasevich, Mr. Mato Lepetich, Mr. Simo Tomasevich and Mr. Homero Camargo did not wish to speak but were in favor of the proposal.

Mr. Lorne LeBouef, a leaseholder in the area, stated he was in favor of the proposal. Opening this area to sacking only would bring the catch to about 60 sacks per day and would be appreciated by the fishermen.

Mr. Robert Campo, an oyster fisherman, stated he has helped get other seed grounds open in Lake Borgne to what they are now. Right now the fishermen were down to 3 or 4 sacks per day on this reef and he emphasized that they have to have this to survive. Mr. Campo explained that there have been a lot of citations written for fishing on the reef. He then suggested that if the private leaseholders would make sure they mark their leases correctly, there would not be any problems. Any help would be greatly appreciated.

Mr. Ralph Pausina, Oyster Task Force, stated the Task Force scheduled their regular meeting on December 7, but felt this

issue was important enough to call a special meeting. The recommendation was to open the area as outlined in the proposal on a temporary basis as soon as possible and close the same day the public seed ground closes. The area should be open for sacking only with a possession limit of 60 sacks. He explained that the reason for this opening was that the salinity in Lake Borgne has increased since the opening of the Mississippi River Gulf Outlet which made it more adaptable for seeding, setting and growing and survival of oysters. Also Mr. Pausina explained that the area was going through a wet cycle weather event which would reduce the salinity and would put the product in peril. The problem was, according to Mr. Pausina, what would happen next year to the product. Again, he stated that the product was there, available and needed to be sold this winter since it would be dead during the summer. He then asked, on behalf of the Oyster Task Force, to vote favorably to save the product.

Commissioner Graham asked if there was a biological reason not to open the area. Mr. Banks agreed with Mr. Pausina that the salinities in the area would reduce with the MRGO, but could not say that the resource would be biologically imperiled. He added that with the public grounds being in such poor shape, they saw the value of the resource as a rebound or rebirth for those grounds. Mr. Banks stated that they do not make assessments in that area and as such, do not know how much product was available. Chairman Samanie asked what was the main reasons the public grounds were so low. Mr. Banks stated the reasons were complex with environmental being the main driver. The amount of harvest from one season and the amount left after the season would have a direct impact on what was available the next season. Commissioner King asked Mr. Banks if the fact was he just did not know and was told that was correct. Mr. Banks added that they do not believe there was a biological imperilment to the resource at this time. Mr. Pausina stated that with 50 years of experience, keeping a certain amount of oysters as broodstock had no relation to what will be in an area for the next year.

Mr. Fred Everhardt, Councilman for St. Bernard Parish, stated he wanted to present the Resolution they passed supporting the United Commercial Fishermen's Association. While listening to the discussion on passing this action as a Declaration of Emergency, he stated that they pass them on health, safety and economic revenues for the people the Council represents. Mr. Everhardt stated the fishermen needed the stimulation from this action for the tax dollars in St. Bernard Parish. He added that he spoke with President Billy Nungesser of Plaquemines Parish

and he was in favor of the proposal since some of his fishermen utilize the grounds also.

Mr. Mat Lepetich, an oyster fishermen from Plaquemines Parish, stated his boat was tied to a dock in St. Bernard Parish and he could not afford to fish anymore. The 25 percent stock they began the season with was gone. Mr. Lepetich advised that if his boat stayed tied up there would not be a Merry Christmas. He hoped the Commission would help the fishermen.

Mr. Barisich stated they had a committee meeting before the emergency Oyster Task Force meeting and Mr. Pausina directed the committee to go back to the communities and talk to the dealers and then get the dealers to talk to the fishermen so everyone would know what was being discussed. He added that he was a leaseholder in the area and he needed this resource. Most people do not want to steal and will not have to if this area was opened, commented Mr. Barisich. In regards to the long term impact, during the spring there are demands for oysters and if you loose that market, you will not get that back. He then noted that he and Mr. Banks talked and there was a late spat catch in the area which did not allow for the area to open. He then asked the Commission to allow the opening of the requested area and then leave the current area closed.

Representative Reed Henderson stated he would like to see the area opened especially with the fishermen struggling and asked what could be done. He mentioned that Representatives Wooten and Hutter were also for the opening. Chairman Samanie asked Mr. Puckett to explain the situation. Mr. Puckett stated he advised the Commission they are limited on their Declaration of Emergency powers which are for imminent peril to public safety, health and welfare. Instances that the emergency rule were used were as a prelude to a permanent seed ground. A Notice of Intent was advisable with the potential diverse user groups. Commissioner Sagrera asked if the standard procedure was followed, how long would the process take and he was told it was 120 days. Representative Henderson felt there was a need to take action. Commissioner Graham asked if the process could be in place for the Commission to act on at the January meeting. Mr. Puckett stated the process generally takes 120 days. Commissioner Graham made a motion to go with the request as a Declaration of Emergency to open a portion of Lake Borgne to sack oysters. Chairman Samanie asked Commissioner Graham if he was going against the legal opinion. Commissioner Graham stated he has not heard of anything that says the area did not need to be opened. Commissioner Oats asked if the intent of the motion

was to declare an emergency, would it be for 50 or 60 sacks. Mr. Banks noted the request from the industry was for 60 sacks. Mr. John Roussel stated staff did prepare a draft Declaration of Emergency and it included the 60 sack provision along with other enforcement provisions. This was prepared prior to knowing the legal opinion. Commissioner Sagraera asked if the draft stated when the season would shut down. Mr. Banks stated the document was prepared so the season would open that next Tuesday and end the same date as the general public oyster seed ground closure. Also, the draft would give the Secretary authority to close an area if any problems exist. Mr. Roussel suggested Mr. Banks review the high points of the draft so everyone knows its contents. As a note of procedure, Mr. Puckett commented that the agenda item was listed as a discussion and he suggested the Commission amend the agenda to consider the Resolution and Declaration of Emergency. Commissioner Oats made a motion to suspend the rules and amend the agenda to include the consideration of a Resolution and Declaration of Emergency regarding Lake Borgne. Commissioner Graham seconded the motion and it passed with no opposition. Then Commissioner Graham made a motion to adopt the Resolution on natural reef in Lake Borgne and the setting of an oyster season within the area. Commissioner King seconded the motion. Mr. Banks noted the season would open one-half hour before sunrise on December 8, 2009 and close one-half hour after sunset on April 1, 2010. Other stipulations by Enforcement included: the daily take and possession limit shall be no more than 60 sacks per vessel; bedding from the Lake Borgne Public Oyster Seed Ground and the Temporary Natural Reef shall be prohibited; no person harvesting oysters from the Lake Borgne Public Oyster Seed Grounds or the Temporary Natural Reef shall take, sell or possess more than 60 sacks of oysters on any calendar day regardless of where the oysters are harvested; all oysters harvested within the Lake Borgne Public Oyster Seed Grounds or the Temporary Natural Reef must be contained within properly tagged sacks prior to leaving these areas; any oysters contained in sacks or containers that contain fewer oysters than a standard sack shall be included into the 60 sack limit and any sack or container larger than a standard sack shall be prohibited; if a vessel is harvesting on the Lake Borgne Public Oyster Seed Grounds or the Temporary Natural Reef, all oysters on that vessel are deemed to have been taken from the Lake Borgne public grounds; and it shall be prohibited to harvest oysters from any private oyster lease and any area of the Lake Borgne Public Oyster Seed Grounds or the Temporary Natural Reef on the same day. Chairman Samanie asked Lt. Col. Keith LaCaze for their position on this request. Lt. Col. LaCaze stated the provisions were their recommendations and

gives them some enforceability. Hearing no further questions or comments, the motion passed with no opposition.

(The full text of the Resolution and Declaration of Emergency are made a part of the record.)

RESOLUTION

ESTABLISHMENT OF A DESIGNATED TEMPORARY NATURAL REEF IN LAKE BORGNE AND THE SETTING OF AN OYSTER SEASON WITHIN THIS AREA

December 3, 2009

WHEREAS, R.S. 56:6(12) provides that the Commission shall, through its Secretary, improve, enlarge, and protect the natural oyster reefs of this state as conditions may warrant, and

WHEREAS, R.S. 56:433 provides that the Department may designate from which natural reefs oysters may be fished, and

WHEREAS, portions of the un-leased, state-owned water bottoms of Lake Borgne in St. Bernard Parish have been reported to contain oysters of harvestable size and quantity, and

WHEREAS, portions of the existing public oyster grounds in St. Bernard Parish continue to be under a closure making them off-limits to harvest, and

WHEREAS, R.S. 49:953(B) allows the adoption of emergency rules if there exists an imminent peril to public health, safety, or welfare, and

WHEREAS, due to poor economic conditions and lingering impacts of the hurricanes of 2005 and 2008 the local oyster industry reports significant economic hardship, and

WHEREAS, the United Commercial Fisherman's Association (UCFA) has requested that the Department allow harvest from the un-leased, state-owned water bottoms of Lake Borgne to assist with the economic stability of the local fishing communities, and

WHEREAS, the Oyster Task Force has recommended support of this request, and

WHEREAS, the oyster resource in this area would be immediately placed under active state management and this would allow

controlled harvest providing immediate economic benefit to the oyster industry,

THEREFORE BE IT RESOLVED, the Wildlife and Fisheries Commission and the Department of Wildlife and Fisheries declare a designated temporary natural reef on the state-owned water bottoms not currently under lease in Lake Borgne in the area described in the Declaration of Emergency which is attached to and made a part of this resolution, and

BE IT FURTHER RESOLVED, the Wildlife and Fisheries Commission hereby declares the 2009/2010 oyster season open in the Lake Borgne Designated Temporary Natural Reef as described in the Declaration of Emergency which is attached to and made a part of this resolution, and

BE IT FURTHER RESOLVED, that the Secretary of the Department of

Wildlife and Fisheries is authorized to take emergency action, if necessary, to close areas if oyster mortalities are occurring, or if oyster resources and/or reefs are being adversely impacted, or where it is found that there are excessive amounts of non-living reef material in harvested loads or if enforcement problems are encountered, and

BE IT FURTHER RESOLVED, that the notice of any opening, delaying, or closing of a season will be made by public notice at least 72 hours prior to such action, unless such closure is ordered by the Louisiana Department of Health and Hospitals for public health concerns, and

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 effectuate this Declaration of Emergency, including but not limited to the preparation of reports and correspondence to other agencies of government.

Robert J. Samanie, III, Chairman
Wildlife and Fisheries Commission

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries

Wildlife and Fisheries Commission

December 3, 2009

In accordance with emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) which allows the Wildlife and Fisheries Commission to use emergency procedures when it is determined there exists imminent peril to public health, safety, or welfare, R.S. 49:967(D) which allows the Commission to use emergency procedures to set oyster seasons, and in accordance with R.S. 56:6(12) and R.S. 56:434(A) which allows the Commission to enlarge the natural reefs of the state and to designate and set aside state water bottoms for the planting, growth, propagation, and policing of seed oysters, the Wildlife and Fisheries Commission does hereby declare and designate a temporary natural reef on those public water bottoms of Lake Borgne in St. Bernard Parish, more specifically described below as per the seasonal framework described below.

Due to the declining availability of oyster resources on the public oyster seed grounds, the current unavailability of these un-leased state-owned water bottoms for oyster leasing, the closure of portions of the public oyster grounds in St. Bernard Parish, and the availability of oyster resource located on un-leased water bottoms adjacent to the current Lake Borgne Public Oyster Seed Ground, the designation of the Lake Borgne Temporary Natural Reef Area is needed to assist with the economic sustainability of the Louisiana oyster industry; an industry that is still rebounding from the hurricanes of 2005 and 2008. The oyster resource in this area would be immediately placed under active state management. This would allow harvest of this resource providing immediate economic benefit to the oyster industry.

The Lake Borgne Temporary Natural Reef shall be those state-owned water bottoms not currently under lease within the following description:

Beginning at the most southerly point of the Lake Borgne Seed Ground at latitude 29 degrees 53 minutes 22.749 seconds North and longitude 89 degrees 42 minutes 12.538 seconds West; thence northeasterly along the boundary of the Lake Borgne Seed Ground to a point at latitude 30 degrees 01 minutes 18.470 seconds North and longitude 89 degrees 35 minutes 03.662 seconds West; thence northeasterly continuing along the boundary of the Lake Borgne Seed Ground to a point at latitude 30 degrees 01 minutes 25.814 seconds North and longitude 89 degrees 34 minutes

51.025 seconds West; thence southeasterly continuing along the boundary of the Lake Borgne Seed Ground to a point at latitude 30 degrees 00 minutes 26.497 seconds North and longitude 89 degrees 34 minutes 05.521 seconds West; thence northeasterly continuing along the boundary of the Lake Borgne Seed Ground to a point at latitude 30 degrees 02 minutes 25.177 seconds North and longitude 89 degrees 30 minutes 22.277 seconds West; thence north continuing along the boundary of the Lake Borgne Seed Ground to a point at latitude 30 degrees 04 minutes 01.816 seconds North and longitude 89 degrees 30 minutes 22.277 seconds West; thence northeasterly continuing along the boundary of the Lake Borgne Seed Ground to a point at latitude 30 degrees 04 minutes 48.216 seconds North and longitude 89 degrees 29 minutes 02.247 seconds West; thence southerly to the Lake Borgne shoreline at latitude 30 degrees 04 minutes 42.4 seconds North and longitude 89 degrees 29 minutes 01.7 seconds West; thence southwesterly along the Lake Borgne shoreline to the boundary of the Lake Borgne Seed Ground at latitude 29 degrees 56 minutes 12.711 seconds North and longitude 89 degrees 44 minutes 11.750 seconds West; thence southeasterly along the Lake Borgne Seed Ground to the point of beginning. Less and except all oyster leases within the described area.

The oyster season in this area shall open at one-half hour before sunrise on December 8, 2009 and shall close at one-half hour after sunset on April 1, 2010. The Lake Borgne Temporary Natural Reef will be opened with the following provisions. These provisions shall also be in effect for the entire Lake Borgne Public Oyster Seed Grounds as described in Louisiana Administrative Code (LAC) 76:VII.513.

1. The daily take and possession limit shall be no more than 60 sacks of oysters per vessel.

2. Bedding from the Lake Borgne Public Oyster Seed Grounds and the Lake Borgne Temporary Natural Reef shall be prohibited.

3. No person harvesting oysters from the Lake Borgne Public Oyster Seed Grounds or the Lake Borgne Temporary Natural Reef shall take, sell or possess more than 60 sacks of oysters on any calendar day regardless of where the oysters are harvested.

4. All oysters harvested within the Lake Borgne Public Oyster Seed Grounds or the Lake Borgne Temporary Natural Reef must be contained within properly tagged sacks prior to leaving

these areas.

5. Any oysters contained in sacks or containers that contain fewer oysters than a standard sack shall be included into the 60 sack limit. Any sack or container larger than a standard sack shall be prohibited.

6. If a vessel is harvesting on the Lake Borgne Public Oyster Seed Grounds or the Lake Borgne Temporary Natural Reef, all oysters on that vessel are deemed to have been taken from the Lake Borgne public grounds.

7. It shall be prohibited to harvest oysters from any private oyster lease and any area of the Lake Borgne Public Oyster Seed Grounds or the Lake Borgne Temporary Natural Reef on the same day.

The Secretary of the Department of Wildlife and Fisheries is authorized to take emergency action as necessary to close areas if oyster mortalities are occurring, or where it is found that there are excessive amounts of non-living reef material in harvested loads, or if oyster resources and/or reefs are being adversely impacted, or if enforcement problems are encountered.

All statutes, regulations, and policies pertaining to the use of public oyster seed grounds remain in effect except:

1. Any additional compensation requirements levied from time to time for construction, oil and gas exploration, or pipeline construction activities within this Temporary Natural Reef Area, and

2. The policy pertaining to non-renewal of expired oyster leases within this Temporary Natural Reef Area.

Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such action unless such closure is ordered by the Louisiana Department of Health and Hospitals for public health concerns.

This Declaration of Emergency will become effective on December 3, 2009 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until revocation by the Commission and the Department.

Robert J. Samanie, III
Chairman

The Commissioners agreed to hold the **April 2010 Meeting** on Thursday, April 1, 2010, beginning at 9:30 a.m. at the Baton Rouge Headquarters.

Next agenda item was to receive **Public Comments**. Mr. Vlaho Michovich stated that the leases he has been working were surrounded by seed grounds and the state was not allowing him to renew his leases. The leases are located in lower Plaquemines Parish and they go back 60 years. Due to erosion, the line has moved and the Department would not renew the leases. He was told the Commission could redraw the line and prevent the Department from taking the leases. Mrs. Karen Foote stated the Department's policy was to non-renew leases in public seed grounds and the lease being talked about was in a seed ground. The lease will expire on December 31, 2009. She added that the Commission does set the seed ground line and the process to move the line would take the normal 120 day process. Chairman Samanie asked if there would be the possibility of giving Mr. Michovich the first opportunity for the lease when the moratorium was lifted. Mr. Roussel stated that was the option the Department was pursuing but it was contingent upon the Legislature taking action. Currently, the leasing system was on a first come first serve type system as based in statute. Discussion has been held with the Oyster Task Force on this issue and they supported going to the Legislature authorizing any leaseholders that lost their lease due to the policy have first right to apply for an additional area before the moratorium was lifted. Mr. Roussel noted they have not heard of any opposition but it did not help Mr. Michovich right now. Chairman Samanie asked if a Resolution at the next meeting asking the Legislature to go along with the request would help. Mr. Roussel thought the Commission could pass a Resolution supporting the concept. Chairman Samanie asked that a Resolution be placed as an item on the January agenda. Commissioner Oats asked if the area of Lake Borgne just opened becomes a public seed ground, would all of the leases not be renewed when they expire. Mr. Roussel stated that they would not expire since the action just taken was only temporary.

Mr. Joe Macaluso stated he recently took a few days to sit in on the Red Snapper Advisory Panel Council Meetings. He then asked that the Department present what the Council suggests on the red snapper season and the status of the red snapper for Louisiana. Assistant Secretary Randy Pausina stated they would make the presentation.

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

Robert J. Barham
Secretary

scf

TRANSCRIPT OF JOE MACALUSO'S REQUEST DURING DECEMBER 2009 PUBLIC COMMENTS AGENDA ITEM:

Mr. Macaluso: Thank you, I just took a few days off of my purgatory time by sitting through the Red Snapper Advisory Panel Council Meetings. Please if you would ask the Department next month to come and present what that Advisory Panel suggest on up the line about our red snapper season and the status of red snapper for our state because there are some crucial votes that will be going on in the fishery (end of tape-beginning of tape) for January. So, if the Commission would request the Department for a report on the Red Snapper Advisory Panel announcements at the next meeting.

Chairman Samanie: That shouldn't be a problem...