

LOUISIANA WILDLIFE AND FISHERIES COMMISSION

MINUTES

November 5, 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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AGENDA
LOUISIANA WILDLIFE AND FISHERIES COMMISSION
BATON ROUGE, LOUISIANA
NOVEMBER 5, 2009

	Page
1. Roll Call	1
2. Approval of Minutes of October 1, 2009	1
3. Commission Special Announcements/Personal Privilege	1
4. To present Litter Enforcement Officer of the Year Award	1
5. To present Shikar Safari Enforcement Officer of the Year Award	1
6. To receive and hear Enforcement & Aviation Reports/	1
7. To receive and hear Announcement for Duck Stamp Contest Winner	2
8. To receive and hear Dove Season Opening Report and Presentation of Dove Banding Award	2
9. To receive and hear Presentation of On-Line Registration for Hunter Education Program	3
10. To receive and hear Louisiana Recovery Authority's Annual Update to the Department of Wildlife and Fisheries	3
11. To receive and consider Declaration of Emergency and Notice of Intent on Elmer's Island Wildlife Refuge	5
12. To receive and consider Resolution and Notice of Intent to Amend Rules for Harvest of Reef Fish: Grouper Recreational Seasons and Bag Limits, Grouper Commercial Seasons and Size Limits, Red Snapper/Reef Fish IFQ Modifications	9
13. To receive and consider Declaration of Emergency - Rules for Harvest of Reef Fish: Grouper Recreational	

Seasons and Bag Limits, Grouper Commercial Seasons and Size Limits	13
14. To receive and consider Declaration of Emergency - Closure of the Recreational Fishery for Greater Amberjack in Louisiana Waters	14
15. To receive and consider Resolution Regarding U.S. Food and Drug Administration's Intent to Require Post Harvest Processing of Raw Gulf Oysters	14
16. Set March 2010 Meeting Date	17
17. Receive Public Comments	17
18. Adjournment	18

MINUTES OF THE MEETING

OF

LOUISIANA WILDLIFE AND FISHERIES COMMISSION

Thursday, November 5, 2009

Chairman Robert J. Samanie, III presiding.

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

Secretary Robert Barham was also present.

Chairman Samanie called for a motion for approval of the **October 1, 2009 Commission Minutes**. A motion for approval was made by Commissioner Oats and seconded by Commissioner King. The motion passed with no opposition.

There were no **Commission Special Announcements/Personal Privilege** for this month.

To present Litter Enforcement Officer of the Year Award began with Lt. Col. Jeff Mayne stating that each year the Enforcement Division has taken an aggressive stance against litter enforcement. As a part of that program, one agent was recognized for his outstanding efforts. Lt. Col. Mayne then stated that Ms. Leigh Harris, Executive Director of Keep Louisiana Beautiful, would present the Officer of the Year Award. Ms. Harris agreed that it was a pleasure to recognize what the Department does in terms of enforcement. For the 5th year, Ms. Harris was pleased to present the Enforcement Officer of the Year Award to Sergeant Aron Hastings from Region 9.

To present Shikar Safari Enforcement Officer of the Year Award began with Lt. Col. Keith LaCaze introducing Mr. Tom Montgomery representing Shikar Safari. Mr. Montgomery stated they were not the biggest wildlife conservation organization in the world, but the money raised from their volunteers goes for conservation. The Club honors outstanding officers from various states and he then presented the Shikar Safari Officer of the Year Award to

Louisiana's recipient Agent Beau Robertson.

To receive and hear Enforcement & Aviation Reports/October began with Lt. Col. Keith LaCaze stating this month was the beginning of deer season with archery and primitive weapon seasons opening and the gun rifle season opening in Area 2. Region 1 had a seizure of 2 pronghorn antelope confiscated in conjunction with a case from the Colorado Department of Wildlife. He felt there was a good squirrel hunting season going on throughout the state with several over the limit cases made. Also, night hunting activities were prevalent during October and Lt. Col. LaCaze stated they would focus on night patrols during November and December. A total of 1,318 citations and 324 written warnings were issued and agents helped with 67 public assists. There were 9 boating accidents reported (total for year of 125) with 2 fatalities for the month and 29 for the year. The fatalities discussed occurred in Bossier and Jefferson Parishes. The Aviation Report showed two of the Department's three planes flew a total of 53 hours during October. News Releases discussed included waterfowl cases from last year's hunting season that went to court and search and rescue missions in the Shreveport area, Sabine River and Beauregard Parish. During the summer months, agents completed swift water training which was very useful for this rescue.

Mr. Larry Reynolds began the next agenda item, **To receive and hear Announcement for Duck Stamp Contest Winner** stating the 22nd Annual Competition was held and it would be used on the 2010 Louisiana duck stamp. The contest for the previous 5 years focused on popular waterfowl retriever breeds, but this year, waterfowl was decided to be the feature of the stamp. But instead of selecting one species for an artist to paint, the artist was allowed to choose whatever species they did best. There were 17 entries this year, of which 10 were from Louisiana, 2 from Minnesota, 1 each from Tennessee, North Carolina, Delaware, Georgia and New York. Judges for the contest were Mr. Luke Laborde, Dr. Clint Jeske, Mr. E. J. Deubler and Mr. R. C. Davis. Third place winner was Mr. Tony Bernard from Lafayette, Louisiana. Second place winner went to Mr. Kip Richmond from Apex, North Carolina. The first place winner was Mr. Richard Clifton from Delaware.

To receive and hear Dove Season Opening Report and Presentation of Dove Banding Award was presented by Mr. Mike Olinde. Population dynamics plays an important role in harvest management strategy. With this is needed a measure of harvest rate, harvest size and reproductive success. Without any of

these 3, there is no way to get to where staff wants to be in dove management. Dove banding was extremely important in getting harvest rate estimates. Over 2,000 doves were banded statewide with the staff from the Ferriday office banding 576 birds and receiving the dove banding trophy. The team was composed of Ms. Amity Bass, Mr. Lowery Moak, Mr. Clyde Thompson and Mr. David Breithaupt. Leading up to the opening weekend of the dove season, there was near record acreage of corn planted in the state, a drought that persisted for most of the summer, followed by heavy rains in early August, then a cool dry snap. This served to dilute concentrations of birds which resulted in an average first segment. There were three outstanding WMAs with Elbow Slough harvesting over 600 birds on opening day, Pointe-aux-Chenes and Sandy Hollow harvesting over 400 birds. The Department only had one leased field in the DeRidder area and hunters harvested 1,499 birds on opening day. The second segment of the dove season in the north zone ended that next weekend and the south zone was hitting its middle stride. Record rainfall was being seen in October with as Mr. Olinde called them "teasing cool spells" which should bring birds into the state. He felt the birds were scattered at this point.

To receive and hear Presentation of On-Line Registration for Hunter Education Program was handled by Mr. John Sturgis which was to be released on the Department's website. When a person signs up for a Hunter Education course, they would access the website and find a listing of courses by parish. The student would then physically contact the instructor and sign up for a course. Now staff feels the on-line registration program will be much easier for the public. The process for on-line registration was discussed by Mr. Sturgis. Once the registration process was completed, the student would get a confirmation number. If that person cannot make the course he signed up for, he can go on-line and cancel and re-register for another course. Another feature of this program was that each course was tied into Google maps. Just described was Phase 1 of the project, commented Mr. Sturgis. Phase 2 would allow the registration program to submit course information on-line. There were high hopes for this program and thought it would be user-friendly for the public. Commissioner Oats asked when Phase 1 would go live. Mr. Sturgis stated the field days calendar would go on-line on Tuesday, November 10 and the standard classroom calendar may be live by December 11. Commissioner Morrow felt it was an excellent addition to the Hunter Safety program and he commended Mr. Sturgis and his staff for bringing it on-line.

To receive and hear Louisiana Recovery Authority's Annual Update to the Department of Wildlife and Fisheries would center on Hurricanes Gustav and Ike programs began Mr. Kris Van Orsdel with LRA. About \$32.7 million would be invested in community development block grant funds to assist with commercial fisheries recovery in the state. These dollars would be coordinated with NOAA funds. Speaking on Hurricanes Katrina and Rita, the state has created a number of fisheries programs through NOAA and the Department. Several of these programs were directed toward rehabilitating oyster habitats, direct aid programs for fishermen and clean up operations. With these programs closing, Mr. Van Orsdel felt the Department has done an exemplary job in getting the dollars out. The Louisiana Department of Economic Development created 2 grant and loan programs designed to help small businesses. The commercial fishing industry applied more than any other industry during the first round of grants. Over 1300 grant loan applications were filed totaling \$17.86 million which had a zero percent loan. There were problems with the fishermen since the program was designed from a business perspective. So during the second round of the program, modifications were made for the seasonality of the fishery. This second round was also gearing toward completion but the statistics indicated there was a need for an economic recovery in the commercial fishery sector. From the funds available, 469 individuals applied for a total of \$34.3 million. Of those, only 192 projects were funded totaling \$10.98 million. With the Hurricanes Gustav and Ike programs, the Department of Wildlife and Fisheries and the Department of Agriculture and Forestry will be creating grant loan programs specifically for the fisheries community using a portion of \$32.7 million. Louisiana has 2 allocation of funds to help with recovery from Hurricanes Gustav and Ike, \$40 million came from NOAA and another \$32.7 million came from HUD Community Development Block Grant funds. The Department created a Fisheries Recovery Program that will allow dollars to get into people's hands quickly and puts requirements that the resources are being utilized to get back into the fishery. If fishermen are still in financial need, they can apply for up to \$100,000 loan with terms of 1.5 percent for 5 years. The Department of Wildlife and Fisheries will have oversight of \$32.7 million while the Department of Agriculture will finance the back office operations totaling \$29 million. Of this \$29 million, \$7.5 million will be for the grant loan program and \$7.8 million will be for a gear program. This gear program will allow fishermen to acquire and obtain new gear but this gear needed to be in compliance with federal regulations in place. During the month of December, a series of meetings will be held to make sure that

the fishermen want to allocate the \$15.4 million between the grant loan program and the gear program. If a different allocation was what the fishermen want, then a determination can be made after all of the meetings are held. The third program was a grant loan program geared towards the wholesale dealers and brokers which would be \$8.3 million. The Department of Wildlife and Fisheries would have oversight over this program as well but it would be run through the Department of Agriculture and Forestry. The final allocation from the \$32.7 million was a \$9 million program that would be called the Coastal Community Fisheries Program. Fourteen parishes and 2 communities have received a letter from the Department of Wildlife and Fisheries telling them they have received an allocation of funds if they want to opt into the program. If they opt into the program, the parishes and communities would have to utilize their funds to develop a project that would benefit the commercial fishermen or the fishery in their area. By November 22, the Department should have an idea of what the parishes would like to do with their projects. Then the projects would be taken to LRA which was managing the HUD dollars and find out if it would be an eligible expense. During January, a dialogue can be held with the fishermen to let them know what direct resources would be available to them and to let them know what the projects in their parish may be. Concluding, Mr. Van Orsdel stated that the Federal Recovery website would be revamped so it can be much more user friendly. Chairman Samanie asked if the wholesale, dealer and broker program would be based on trip tickets. Mr. Van Orsdel stated they were having discussions on how best to make the program work. The trip ticket and dealer license would be one of the elements, but it may include a hybrid of information from the Department of Revenue and other areas. Chairman Samanie explained that the last time trip tickets were used but some of the processors do not buy directly from a boat and were not eligible. Mr. Van Orsdel stated he has already been in contact with the Processors Association and they have a list of individuals.

To receive and consider Declaration of Emergency and Notice of Intent on Elmer's Island Wildlife Refuge was presented by Mr. Joey Shepard. At the last Commission Meeting, a Declaration of Emergency and Notice of Intent was presented but there was an issue with firearms. Modifications have been made to that provision and the regulation now states, "No person shall discharge or fire any firearms including muzzleloaders or bows and arrows or crossbows on Elmer's Island." Mr. Shepard stated the Department did not want to stop the public from having firearms in their vehicles for self-protection. Hearing no

comments, Commissioner Oats made a motion to adopt the Declaration of Emergency and Notice of Intent. Commissioner Sagrera seconded the motion and it passed with no opposition.

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

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

The Elmer's Island Wildlife Refuge was opened for public access on July 3, 2009. More than 800 people participated in fishing, crabbing, swimming and sun bathing during that holiday weekend. Since the refuge's opening it has been heavily used by the public, as it is commonly regarded as one of the premiere bank fishing locations in south central Louisiana. A recent attempt to clean up the refuge yielded in excess of 6,000 pounds of trash being removed.

Because of this heavy use, and in some instances misuse of the area, there is an urgent need to establish rules in order to protect the public health, safety and welfare. There is an immediate need to regulate the possession of glass containers, excessive vehicle speed and careless vehicle operations on the refuge and to enact and enforce other rules necessary for the health, safety and welfare of the visiting public. The absence of an existing rule impairs the Department's legal authority to enforce and protect the public health, safety and welfare. For these reasons, it is imperative that regulations be put in place immediately.

It is necessary for the Wildlife and Fisheries Commission to invoke the emergency provisions of the Administrative Procedure Act, R. S. 49:953(B) to adopt these rules. This Declaration of Emergency will become effective on November 5, 2009 and will supersede that Declaration of Emergency published in the October 20, 2009 *Louisiana Register*. It shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

Title 76

WILDLIFE AND FISHERIES

Part III. State Game and Fish Preserves and Sanctuaries

Chapter 3. Particular Game and Fish Preserves, Wildlife Management Areas, Refuges and Conservation Areas

§337. Elmer's Island Wildlife Refuge

A. Visitor Regulations for Elmer's Island Wildlife Refuge

1. Use of the refuge will be permitted from thirty minutes before official sunrise to thirty minutes after official sunset. This includes any land access routes to the refuge. No person or vehicle shall remain on the Elmer's Island Wildlife Refuge or any land access routes during the period from thirty minutes after official sunset to thirty minutes before sunrise.

2. No person shall possess any glass bottles, glass drink containers or other glass products on Elmer's Island Wildlife Refuge.

3. The Secretary of the Department may restrict access to the refuge whenever circumstances exist such that restrictions are necessary to protect the Refuge or the public from harm. No person shall enter onto or be on the grounds of Elmer's Island Wildlife Refuge during a restricted access period; or alternatively shall do so only in accordance with restrictions set forth by the secretary.

4. No person shall discharge or fire any firearms including muzzleloaders, or bows and arrows or crossbows on Elmer's Island.

5. No person shall commercially fish, conduct any guiding service, hunt, pursue, kill, molest or intentionally disturb any type of wildlife on the refuge, except for the legal recreational harvest of living aquatic resources.

6. No person shall be in areas marked as restricted by signs posted by the department.

7. No person shall operate any vehicles in a restricted area. No person shall operate a vehicle in an unsafe or careless manner as to endanger life or property or at any speed in excess of five (5) miles per hour.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6, R.S. 56:109, R.S. 56:109.2, R.S. 56:763 and R.S. 56:781 et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR

Robert J. Samanie, III
Chairman

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 promulgate rules and regulations governing visitor regulations on Elmer's Island Wildlife Refuge.

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The Secretary of the Department of Wildlife 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 Mr. Joey Shepard, Research & Assessment Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to Thursday, January 7, 2010.

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 at R.S. 49:972(B).

Robert J. Samanie, III
Chairman

To receive and consider Resolution and Notice of Intent to Amend Rules for Harvest of Reef Fish: Grouper Recreational Seasons and Bag Limits, Grouper Commercial Seasons and Size Limits, Red

Snapper/Reef Fish IFQ Modifications was the first of several agenda items for Mr. Harry Blanchet. He began stating that the next item, a Declaration of Emergency, was not a mirror image of the Notice of Intent, so it would be considered separately. The difference between the two proposals was that the Individual Fishing Quotas (IFQ) for several types of grouper and tilefish was included in the Notice of Intent. Other changes were associated with seasons and bag limits, removed a commercial closed season for grouper, and changed a minimum size limit for red grouper. The first change incorporated groupers and tilefish into the IFQ program and makes a minor word change to parallel the federal rules. The change in the recreational and commercial minimum and maximum size limit reduced the commercial minimum size limit for red grouper to 18 inches. The federal government removed the existing commercial closure for gag, black and red grouper and that regulation was taken out. For the recreational season for shallow-water grouper, the closure was extended. The last changes were the deletion of the section on commercial grouper trip limits, record keeping requirements for grouper and tilefish species and renumbering of the rule for accuracy of the record. Commissioner Morrow asked if Louisiana suffered when it adopted red snapper regulations that complemented the federal regulations last year, but Texas and Florida did not change their regulations and he was told yes. He then asked what would happen if Texas and Florida did not agree to mirror the federal regulations, would Louisiana be cut further. Mr. Blanchet stated that the entire Gulf of Mexico would be cut. Commissioner Morrow was told yes when he asked if the regulation on 6,000 pound commercial grouper was lifted and then asked how much grouper can be taken on a trip. Mr. Blanchet stated it would be limited by the capacity of the vessel or the amount available from the individual fishing allocation. Commissioner Morrow continued by asking if there was an overall separate limit on the amount taken between the commercial and recreational fishermen and Mr. Blanchet answered yes. Then the Commissioner asked if the season would close earlier if there was not a limit imposed on commercial fishermen. Mr. Blanchet explained that the individual fishing quota had allocations that were specific to an entity which was depended upon their catch history. When a fisherman's individual allocation was reached, he can no longer land that species of fish; this does not affect the recreational fishermen. Commissioner Morrow asked if the commercial fishery reached its quota before the recreational, can the recreational sector continue to be open and he was told yes. Next, Commissioner Morrow asked if the regulations were passed, would there be an adverse effect on recreational fishermen in

Louisiana. Mr. Blanchet stated the effects would change the recreational creel limits for grouper from 5 to 4 with a 2 gag grouper limit and there would be an extension of the closed season for shallow-water grouper. Commissioner Morrow asked if there was an increased closure for commercial fishermen and he was told no. He felt the recreational fishermen were being penalized in favor of the commercial fishermen. Commissioner Morrow asked if the commercial season was open during the increased closure time for recreational fishermen and wondered why. Mr. Blanchet felt the best person to answer that would be the Regional Administrator for National Marine Fisheries Service (NMFS) or those that worked on the amendment. He believed the harvest for both sectors was constrained differently for each. The commercial was constrained by the individual fishing quotas whereas the recreational was constrained by closed seasons and bag limits. Over the year, the Secretary closes several commercial reef fish fisheries as the harvest limits are achieved, and until recent, there have not been any recreational closures. Commissioner Morrow asked what affect would there be by leaving the closure as it currently was as opposed to the proposed 2 months. Mr. Blanchet advised that most of the groupers are taken in federal waters off of Louisiana and having compatible regulations makes enforcement of the federal rules a lot easier. Chairman Samanie asked how many of the commercial fishermen are residents of Louisiana and Mr. Blanchet did not know, and added that the grouper fishery was historically based in Florida. Lt. Col. Jeff Mayne explained that even if the Commission did not adopt the regulations, the closure would still happen. He added that if the regulations were adopted, agents writing citations would be handled, administered and adjudicated locally. Not having compatible regulations causes confusion, agents write more citations, the public suffers and it decreases the voluntary compliance aspect. Lt. Col. Mayne felt the forum to express their concerns was at a different place. Commissioner King stated that recreational fishermen and charter boat services provide economic success to the state and he stressed that the Commission should be mindful of that when making decisions. Hearing no further Commission questions, public comments were taken.

Mr. David Cresson, Executive Director of CCA Louisiana, began stating he represents nearly 20,000 members, anglers and volunteers from across the state. CCA Louisiana did not support the Department's concurrence with the federal regulations. He understood that this could make it more difficult for enforcement, but there was a need to draw a line somewhere. CCA's first reason for not concurring was due to President

Obama's administrative emphasis on catch shares which bestows a percentage of a public fishery resource to a select group of commercial fishermen for their own personal gain. CCA recently filed a lawsuit challenging the adoption and implementation of Amendment 29 to the Gulf Reef Fish Management Plan approved by the Department of Commerce in August. (Amendment 29 would give the majority of Gulf grouper to commercial fishermen with no consideration to recreational fishermen, charter captains, etc.) The next reason for not concurring was that the regulations were based on bad science from inadequate data collection methods. However, steps have been taken to improve the data collection methods by proposing a Marine Recreational Information Program, which CCA feels still falls short. Mr. Cresson had a letter signed by CCA and other conservation and environmental groups asking NOAA to develop and fund a new data collection system that would fix these problems. The last reason was the Governor of Louisiana as well as the Governors of Texas, Alabama and Mississippi did not support the system and outlined the negative impacts of catch shares to their states economy. He concluded by asking that the Commission not rubber stamp the Department's proposal.

Mr. Andrew Roberts, CCA Board Member, stated he was representing recreational fishermen of Louisiana with great concerns on the proposed regulations. He felt the recreational fishermen were continually being left behind and this was impacting the economy in a snowball fashion. He asked the Commission to oppose any regulations that supports commercial fishing at the expense of recreational fisheries.

Mr. Benjamin Graham, CCA Board Member and recreational fisherman, wanted to mirror the previous comments on the economic impacts. He did not believe that the fishery was in as bad a shape as it was made out to be. Mr. Graham felt the science that was followed was horrible and until that was improved, the recreational fishermen should not be punished. He asked the Commission to oppose the regulations and help the anglers.

Mr. Jamie Gaspard, a charter captain, stated that the shorter seasons has put a lot of captains out of business. He felt the science and help given to the Department has been used against the recreational anglers for tighter restrictions. Mr. Gaspard urged the Commission to go against NMFS on everything they stand for.

Mr. George Huye, CCA State Board Member and fishing guide,

stated that the fishery controlled by the Department was in great shape. But everything managed by the feds was "in the tank". The inshore guides were doing well during the summer months, but the offshore boats were sitting in their stalls. Mr. Huye felt when one species was taken away, there was always another one under attack. He thought red snapper was in bad shape, but has seen them move mangrove snapper off the rigs and were migrating in places where they have not been in the past. But the red snapper limits were low for the recreational fishermen. One of the real success stories was the placement of the artificial reefs. Mr. Huye also asked the Commission to stand up for the recreational fisherman.

Mr. William Wall, an offshore charter captain from Venice, stated he dreamed of this opportunity all of his life. But with the recent changes, it was making it very hard to make a living. He felt the commercial sector was putting the recreacionals in a bad spot. Also, Mr. Wall asked to take into consideration the economic impacts that was happening to the charter captains.

Mr. Daryl Carpenter began by thanking Commissioner Morrow for his interest in this subject and thanked Chairman Samanie and Commissioner King for returning e-mails and phone calls. He came as a recreational fisherman but also noted he was an inshore and offshore charter guide from Grand Isle. The main argument was the science and part of the Magnuson Stevens Act recognized that the MRFS surveys were not an accurate measure of fish, fishing effort or catch and should not be used as a management tool. It was mandated that NMFS have a new plan in place by January 2009, but that has not occurred as of yet and still using the MRFS survey. Mr. Carpenter cited different quotes from the letter signed by the Governors from the Gulf states. He then asked the Commission to not follow the NMFS regulations for grouper and amberjack. The comment made earlier from the Enforcement Division that the public will suffer, Mr. Carpenter noted the public was suffering now.

Mr. Chris Moran stated his passion for fishing was great and he was a charterboat operator which was a huge investment. The title that Louisiana is a "Sportsman Paradise" was being threatened by outside sources such as the NMFS. He asked the Commission to not go along with the federal regulations being proposed. Mr. Moran felt the snapper fishery was stronger than he has ever known. He thought allocation was the real problem, the commercial fishery was battling with the recreational fishery. Not knowing what could be a solution, Mr. Moran offered to be put on any panel or council to find it. He spoke

with a Coast Guard representative that told him they guard a 9 mile territorial line for Louisiana, but wondered if for fishery purposes could agents patrol out to 9 mile. Mr. Moran then talked about the economic impact a group of 4 men could have when they make a fishing trip.

Mr. Charlie Smith, Louisiana Charterboat Association, representing Plaquemines Parish stated that he endorsed the comments by CCA and the previous speakers. He felt the state of Louisiana as well as the other states along the Gulf were under assault from the National Government. An example of this assault was the endorsement of aquaculture and fish farming despite the fact the Commission and Legislature was opposed to it in any form. Mr. Smith felt the fishermen had a better idea of the fishery than the scientists sitting at a desk using faulty science. He felt NMFS was starting to stand for "no more fishing seasons". Mr. Smith was "fed up" with the feds knowing what was best for Louisiana and paying no attention to the fishery. He stated that Louisiana was facing the beginning of a serious crisis in the fishery. Concluding, he suggested it was time to do something to get their attention.

Commissioner Oats asked what would be the consequences if the vote was no. Mr. Blanchet stated some of the consequences may depend on the results of the harvest. The guidelines the feds operate from require that annual catch limits and accountability measures be set for each fishery. If there is overfishing by any sector, there has to be an accounting for it in the future which may result in shorter seasons or other limits. Commissioner Oats then asked if the consequence would occur in all states and not just Louisiana and he was told yes. Next he asked if there were any other enforcement consequences. Lt. Col. Mayne stated the efficiency of the enforcement program would go down since there would be a loop hole created in state waters for what was happening in federal waters. Also the voluntary compliance would decrease due to the confusion and it would make it harder to catch violators when there are incompatible regulations. Lt. Col. Mayne agreed a message should be sent based on how things were done, but he did not feel the Commission not adopting the regulations was the way to send the message. Commissioner Oats asked if there was any direct financial impacts if the proposal was not adopted. Lt. Col. Mayne answered they receive federal money to enforce regulations in state and federal waters. Commissioner Oats stated he was told that about \$1.5 million was for enforcement and asked if the Department would lose that money if the Notice of Intent was not passed. Lt. Col. Mayne did not know if the

Department would lose it or the feds would take a different view on allocating those monies. But he did note that the money would not go as far if there were not compatible regulations. Commissioner Oats asked if there was a uniform recommendation to adopt the Notice of Intent from the Department and Mr. Blanchet answered yes. Commissioner King asked if there were any other economic impacts other than the money for Enforcement and Mr. Blanchet stated no. Commissioner King asked if he was correct in stating that Texas accepted the consequences in not adopting the same regulations and he was told yes. Then Mr. Blanchet added that a lot of the decisions presented were results of actions taken at the federal level and one of the remarkable things about the process has been the low input from the fishermen from Louisiana relative to other states. To be truly effective was to provide input on the development of the federal regulations. Commissioner King wondered if they should stand up and rubber stamp the regulations, or stand up for the recreational fishermen and charterboat people or do you stand up for Louisiana's economy. He was tired of Washington bureaucracy not being based on scientific data. Commissioner Sagrera asked if there would be any negative impact to the commercial sector if the Commission did not adopt the proposed. Mr. Blanchet felt the same enforcement consequences would be felt in the commercial sector. Chairman Samanie asked if the commercial sector would be regulated as normal. Mr. Blanchet felt there may be more confusion on what set of rules applies. Commissioner Morrow called for the question on the Notice of Intent. A motion to reject the Notice of Intent was made by Commissioner Morrow, seconded by Commissioner King and approved with no opposition.

To receive and consider Declaration of Emergency - Rules for Harvest of Reef Fish: Grouper Recreational Seasons and Bag Limits, Grouper Commercial Seasons and Size Limits was the next agenda item for Mr. Harry Blanchet. Commissioner Oats asked if this was a parallel Declaration of Emergency to the above Notice of Intent. Mr. Blanchet stated this action did not deal with the individual fishing quota part of the Notice of Intent. It dealt directly with the recreational season, commercial season, bag limits and commercial minimum size limits on red grouper. Commissioner Oats asked if there would be any different or new impact if the Commission voted no on this item and Mr. Blanchet stated no. Commissioner Oats made a motion to reject this action item. It was seconded by Commissioner Morrow and unanimously approved. After the vote, Commissioner Oats expressed appreciation to the staff for all of their hard work. He then asked Lt. Col. Mayne to help develop a strategy for the

right forums that may make a difference on this issue.

The last item for Mr. Harry Blanchet was **To receive and consider Declaration of Emergency - Closure of the Recreational Fishery for Greater Amberjack in Louisiana Waters.** The recreational season for greater amberjack was closed in federal waters on October 24, 2009. A request was received to close state waters for consistency. The closure would remain in effect until January 1, 2010. Commissioner Morrow asked if the Federal EEZ encompassed coastal waters and Mr. Blanchet stated it was from the 3 mile line out. Then he asked when would the season normally close and he was told it had not closed since the recreational harvest was controlled by bag limits and size limits. Commissioner Sagraera asked if there were any significant numbers of amberjacks caught in state waters. Mr. Blanchet stated this was primarily a federal water fish. Typically at the January Meetings, the Commission provides authority to the Secretary to close commercial seasons. He added that this type of closure, a recreational closure, has not occurred before. Commissioner Morrow made a motion to reject the Declaration of Emergency, seconded by Commissioner King and approved with no opposition.

To receive and consider Resolution Regarding U.S. Food and Drug Administration's Intent to Require Post Harvest Processing of Raw Gulf Oysters was handled by Mr. Patrick Banks. He began stating that the issue was due to a recent change of direction from the Food and Drug Administration on raw oysters coming from the Gulf. The Departments of Wildlife and Fisheries and Health and Hospitals and the oyster industry worked with the FDA to control raw molluscan shellfish in order to protect the public health. At a recent meeting, the FDA announced a change in the agreed upon plan toward a move to require a post harvest processing of all Gulf oysters. This change was met with a bit of resistance from the industry and disappointment from state regulators. Since Louisiana only has 3 facilities that can treat post harvest oysters and with the amount of oysters harvested during the summer months, it was possible to exceed the capacity of these facilities. This may result in a number of harvesters not have a place to sell their catch. Mr. Banks then asked the Commission to approve the Resolution which spoke out against the actions of the FDA, supports the oyster industry and have the FDA stay the course of the plan previously agreed upon. Hearing no questions, Commissioner Oats made a motion to adopt the Resolution. Commissioner Sagraera seconded the motion and it passed with no opposition.

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

RESOLUTION

U.S. Food and Drug Administration (FDA) Intent to Require Post-Harvest Processing of Gulf Coast Oysters During April - October

November 5, 2009

WHEREAS, the Louisiana oyster industry is an integral part of the Louisiana culture dating back to the 1800s, and

WHEREAS, the Louisiana oyster industry is an important part of the Louisiana economy with a dockside value of nearly \$39 million in 2008 with a total economic impact exceeding \$300 million each year, and

WHEREAS, the Louisiana oyster industry regularly leads the nation in the harvest of oysters accounting for nearly one-third of all oysters harvested in the United States and over half of all oysters harvested in the Gulf of Mexico states, and

WHEREAS, Louisiana, through the Department of Wildlife and Fisheries and the Department of Health and Hospitals, is a charter member of the Interstate Shellfish Sanitation Conference (ISSC), a conference that is charged with developing guidance on the sanitary control of molluscan shellfish for public safety purposes, and

WHEREAS, the FDA, through a Memorandum of Understanding with the ISSC, agreed to work through the ISSC on matters pertaining to the sanitary control of shellfish, and

WHEREAS, the ISSC, including all participating member states and with FDA approval, has adopted a stringent and aggressive management plan to reduce the number of *Vibrio vulnificus* illnesses and deaths related to the consumption of raw molluscan shellfish, and

WHEREAS, the state of Louisiana and the Louisiana oyster industry has worked cooperatively with FDA through the ISSC to adopt shellfish harvest, handling, and processing regulations for adequate protection of public health under the ISSC's *Vibrio vulnificus* Management Plan, and

WHEREAS, the Louisiana oyster industry has made significant financial investments to meet these regulations for the reduction of harmful *Vibrio* bacteria, including costly refrigeration units on harvest vessels, and

WHEREAS, the FDA has recently provided notice of its intent, through an October 16, 2009 letter to the ISSC membership, to part with the agreed-upon *Vibrio vulnificus* Management Plan and implement measures to require all Gulf of Mexico oysters harvested during the "risk" season (generally April - October) to undergo a Post-Harvest Process (PHP) to reduce *Vibrio* to non-detectable levels, and

WHEREAS, these federal measures would severely impact the Louisiana oyster industry as approximately 54% of all Louisiana oyster landings in 2008 occurred in the months of April - October, and

WHEREAS, current PHP capacity in Louisiana is not large enough to accept such a high level of harvest likely resulting in many harvesters being unable to sell their catch during these months.

THEREFORE BE IT RESOLVED, that the Louisiana Wildlife and Fisheries Commission (LWFC) officially disagrees with the recent actions of the FDA and feels these actions have broken the trust of the oyster industry and broken an agreed-upon plan for the adequate protection of public health putting unnecessary and unfair burden on the hard-working and responsible members of the Louisiana oyster industry, and

BE IT FURTHER RESOLVED, that LWFC finds this action by the FDA to be inconsistent with their Memorandum of Understanding with the ISSC, and contrary to the very spirit of cooperation of the ISSC, and

BE IT FURTHER RESOLVED, that the LWFC strongly urges the FDA re-evaluate their recent actions, and

BE IT FURTHER RESOLVED, that the LWFC directs the Department to

work closely with the Department of Health and Hospitals and the oyster industry to find a workable solution that will lessen this burden on the oyster industry while maintaining established and responsible public health standards for molluscan shellfish in Louisiana.

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

The Commissioners agreed to hold the **March 2010 Meeting** on Thursday, March 4, 2010, beginning at 9:30 a.m. at the Baton Rouge Headquarters.

Next agenda item was to receive **Public Comments**. Mr. Nicolae Nitica stated in 2004 he became sick and then his commercial boat was destroyed in Hurricane Katrina. He applied for a hardship permit but was denied and then was denied by the Appeals Board. Mr. Banks stated they have been in conversation with Mr. Nitica and he applied for a Seed Ground Vessel Permit but was denied initially. The Appeals Board met and his hardship was explained and they recommended the Department issue Mr. Nitica a permit. But Mr. Banks stated there were certain criteria to be met under the appeals process and Mr. Nitica met only 2 of the 3. The criteria not met was proof of industry involvement in the years 2004 through 2008. So, under the current laws, this precluded a permit being granted to Mr. Nitica. Chairman Samanie asked what can be done to help Mr. Nitica. Mr. Banks stated that the Department was looking at the laws to see if there was a way to help him. Secretary Barham noted he was scheduled to meet with Mr. Nitica, but the law was very specific and unless shown an option to legally give him a permit, he did not know how he could help. Commissioner Oats asked if he did not meet the requirements. Secretary Barham stated he has not proven industry activity during those noted years. He then stated that the Commission could change the years of activity based on input from the oyster industry. Commissioner Morrow asked if Mr. Nitica had activity during the pertinent years and he did not have documentation. Mr. Nitica stated he became very sick and had surgeries during those years and his boat was destroyed in Hurricane Katrina and did not have the money to repair it. Commissioner Morrow then stated if the years were changed for one person, then it would have to be changed for all. Secretary Barham stated if the years were changed, the impact on other oyster fishermen would have to be looked at. Mr. Nitica stated that he tried to be honest. Chairman Samanie asked Mr. Nitica to meet with the staff. Secretary Barham stated he would try to find a way to help Mr. Nitica without creating a bigger problem.

Mr. Joe Macaluso stated the Louisiana Outdoor Writers Conference was recently held and Mr. Joe L. Herring, former Secretary of the Department, received the Arthur Van Pelt award. Also, it

was agreed during their meeting that they would provide a monthly report on the State Top 10 Fish Records.

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

Robert J. Barham
Secretary

scf