

MEETING OF THE  
MINERALS COMMITTEE  
LOUISIANA WILDLIFE AND FISHERIES COMMISSION

Tuesday, May 3, 1994

Jeff Schneider  
Jerald Hanchey

Chairman Bert Jones was absent from the meeting.

Commissioner Schneider: He asked Ms. Karen Foote to explain what was in the packets.

Ms. Foote: First, lets look at the bigger package. This is what we approved last time with the changes on the page. Eight, I got Global Position System.

Commissioner Schneider: That was the changes that we had in the last meeting?

Ms. Foote: Yes. On page 10, we added the definition of subaqueous reef as requested and we agreed to. That is straight out of the DNR permit and also Global Position System there. On what page number was offsite restoration? Page 18 and 19, actually changes are on page 19 about the offsite restoration where we invited Mr. Burton to submit language that would more exactly define who paid for what in transportation. He submitted it, especially the last sentence of that paragraph as we agreed and that's fine with us, it just clarifies it. So, we put in the changes that we discussed last time and we just wanted to send it to you one more time and would recommend.

Commissioner Schneider: Do we need to take action on this now as a whole?

Ms. Foote: The lease form and the bid package with the blanks included and the tract size which has been defined in here, that you pass this on to the Commission for consideration on Thursday.

Commissioner Schneider: Thursday? Okay. Do you need a motion to that affect?

Ms. Foote: Yes.

Commissioner Schneider: Seeing how there is only two of us.

Commissioner Hanchey: I make a motion.

Commissioner Schneider: I'll second it. I suppose it passes for warrant of a third person being here. Okay. That is adopted to be passed on to the Commission at Thursday's meeting correct as changed?

Ms. Foote: Next you have a May 3rd letter from Mr. Burton supplying information concerning the royalty issue as they were invited to do at the last meeting. If you would like to take a minute to look at it. The staff has had a brief amount of time to review.

Commissioner Schneider: Okay. This is the proprietary information we are talking about. No, no, this isn't, but I see it referred to.

Ms. Foote: This is what they are offering.

Commissioner Schneider: Who all is in this meeting today, do we have any outsiders or do we just have one bidder here? Are all these folks representing just one entity? We don't have any spies?

Commissioner Hanchey: Is everybody with Dravo?

Ms. Foote: Louisiana Dredging.

Mr. Richard Koen: Louisiana Dredging Company.

Commissioner Schneider: I think if we are going to look at proprietary information, I don't think we want to discuss it with the machine on over here. I don't think that is proper because that is part of public record and I don't think that is proper. I just didn't know if we had to leave this room if we looked at it?

(The tape was stopped to preview proprietary information.)

Commissioner Schneider: We are back on record now and let the record show that the information has been given back to the parties. The proprietary information has been reviewed and is now back in the hands of the party that gave it to us. So, all right. Mr. Attorney, do we have any...

Ms. Foote: We looked at the information provided by the company and based on that information and based on wanting to keep shell somewhere in the market, somewhere in the competitive stance with limestone and keeping a viable commodity, we would like to recommend that the Commission consider changes in our previous recommendations. Previously we recommended \$2.67 per cubic yard and a \$1.6 million royalty and that was what we recommended at the last meeting.

Commissioner Schneider: And that was per cubic yard?

Ms. Foote: Yes, \$2.67.

Commissioner Schneider: Did we discuss the term of the lease too or is that?

Ms. Foote: And that was kept at three years as of last time.

Commissioner Schneider: I'm trying to get ducks to ducks.

Ms. Foote: What the staff can recommend at this point is that you consider a five year lease term, as an additional incentive to potential bidders, and a guaranteed annual minimum of increasing that to \$1.8 million, but decreasing the per cubic yard at this point to \$2.25.

Commissioner Schneider: Per cubic yard?

Ms. Foote: Yes, that is what we would like to submit for your consideration.

Commissioner Schneider: All right, we have already voted on this lease form. Are we going to have to revote if we take this consideration and accept this recommendation, are we going to have to revote?

Ms. Foote: If you just took the lease term under consideration today, you would need to revote. If you do any of those, if you want to add the Guaranteed Annual Minimum in there or the per cubic yard in there, you would need to revote.

Commissioner Schneider: Okay, and this will be submitted to the full Commission on Thursday, as the recommendation from this Committee? Okay, do I hear a motion.

Mr. Jim Matters: If I may comment on that?

Commissioner Schneider: You can comment.

Mr. Matters: Karen, taking what you said and what you are trying to accomplish, those particular types of terms, I don't think are going to accomplish those goals. First off, in a five year lease it sounds very attractive, but now you have taken a \$1.8 million guaranteed that is cumulative times five years and you basically have asked any bidder to guarantee \$9 million. That is guaranteed, I mean you have to do that when you sign a lease. I don't know where that person is going to come from. It is a number that is insurmountable. The bonding alone on that is going to be just about an insurmountable problem.

Mr. Richard Koen: This is not going to work for us.

Mr. Don Puckett: Well, let me ask you this just from the industry perspective, does the industry not view a longer term lease as being more favorable to you?

Mr. Koen: Not at this minimum, not with an increased minimum absolutely not.

Mr. Puckett: It is not the long term lease per say, its the term combined with the Guaranteed Annual?

Mr. Matters: You have to bond that \$9 million and.

Commissioner Schneider: A bond will cost you how much, one percent is it or?

Mr. Matters: It depends on how risky they think it is. But you can do one percent, one and a quarter, one and a half, it depends on the market. We have been successful in getting our bonds at a reasonable rate but at the same time, the reason we can do that is we can produce the material, that is why we put in into the inventory. But this time we had a guaranteed \$2.4 million, but \$9 million is a lot.

Commissioner Schneider: Okay, it's a guaranteed minimum of \$800,000 and you have been averaging, I think it was \$1.6 or so, but the bond on that is higher.

Mr. Matters: We only had to bond the \$800,000.

Commissioner Schneider: Right, three times that, \$2.4 million.

Mr. Matters: Yes, but it was decreasing each time too.

Mr. Koen: It decreased by \$800,000 each year.

Mr. Matters: First year you bond \$2.4 million, the second you bond...

Commissioner Schneider: That's right, because two years are gone off your contract. I suppose we could drop it back to three years, we thought the five years would be a inducement to hang in there.

Mr. Richard Koen: Under the present conditions, it's not an inducement, its a deterrent. We don't know, under these conditions, we don't know.

Commissioner Schneider: Well, to do diligence on the state's part, you know, the Department, we have to budget next year's budget and take a look at the following year as to what we can reasonably expect as far as income. It's not the best way in the

world, I mean the way state government works, I'm sure you understand that, it doesn't make a whole lot of sense the way we operate year to year. It kind of destroys long term planning. So as far as the states concern is, we might as well admit that we need to be able to plan on "x" number of dollars and so that is important to us. I would think that would be important to industry to know that a contract is going to last a certain length of time if they are going to get equipment out there and do all that kind of stuff. I understand the bonding, the difference in the bonding.

Mr. Koen: Not only the bonding, the cost of the royalty is still going to prohibit us from marketing our material. So, the minimum is too high, the royalty is too high. One-eighth of the selling price has been acceptable to the mineral industry for years and years in Louisiana. One-eighth of the selling price is a base number that is used by the Mineral Board for oil, gas and other things and it's based on a market value which is the way it seems to me the royalty should be based, on the market value. Sand is 20 cents a yard on sand, gravel, people right now are paying somewhere between 15 and 30 cents a yard royalty on gravel, 22 cents on sand. On limestone, it runs about 6 to 8 percent in domestic limestone. Even one-eighth is 12 1/2 percent, its twice what limestone royalty is paying right now, even at one-eighth of the selling price. It has been fair for and it has been looked as being a fair and equitable royalty by the Mineral Board and by the State of Louisiana for years for royalty for oil and gas and other minerals, one-eighth of the selling price at the well head, which in our case is at the dredge.

Commissioner Schneider: Right, which we are bound be that by court decree.

Mr. Koen: Right is a fair and reasonable royalty. And, \$2.25 is certainly not one-eighth of the price of the material at the well head or at the dredge. One-eighth of the selling price at the dredge would be more like \$1.13.

Commissioner Schneider: I understand what your point is.

Mr. Koen: And that is a more fair and reasonable and equitable royalty, not \$2.25. I don't know why, I have no idea why \$2.25, you might as well pick \$7.00 because it's just as unreasonable.

Mr. Jimmy Brabner: Probably \$2.25 times what you have been averaging comes to \$1.8 million.

Mr. Koen: Yes, I am sure that is what they were basing it on.

Commissioner Schneider: Well, I think we are probably at an impasse on this right now. Maybe we just need to regroup.

Mr. Koen: We have to be able to operate at some sort of break even, well profit, we don't want to be in business just to break even. And, at this, we can not operate at a profit, we can not operate at a break even, we can't operate because we can't sell our material. If one-eighth of the selling price at the well head is fair for other minerals of this state and other properties owned by this state, why is it not fair for shell. If you can sell sand for 20 cents a cubic yard from the state and 22 cents and 27 1/2 including severance, why can't shell, why does shell have to be \$2.25. I am competing against other products.

Commissioner Schneider: How many yards, who has a calculator handy, how many yards would you have to pump at whatever figure you just used to generate \$1.8 million a year? Do you use \$1.13?

Mr. Koen: A lot, more than we could probably pump. But it is a lot more than if no one bids, the revenue for shell dredging is going to be zero.

Commissioner Schneider: We understand that real well.

Mr. Matters: I did it on \$1.25. It is 1,440,000 yards.

Commissioner Schneider: And, that is a lot of yards?

Mr. Matters: That is a lot of yards. There is no question about it.

Mr. Brabner: The sales are just not there to carry that much.

Mr. Matters: Right now they are not for sure they're not. But unless the price of shell comes down substantially, it's not going to improve. We have to make the product competitive. The \$13 is not competitive. We can introduce shell again in the \$10 range to people, you are going to get them back into the business of buying shell and the market is going to come up. But if it stays at a pricing structure the way it is now, it is not going to improve. You are going to continue to lose market shell. That is just a fact because our costs go up. It is not just the royalty, there are other things that are involved in it, fuel has been fairly stable but labor goes up. The cost of insurance goes up. The cost for Jones Act coverage, our Workman's Compensation, the bonding cost, all these numbers march on. They are talking now, in the financial market, people are concerned about inflation. It has been about three percent, but we have been experiencing that three percent every year. And our material is still selling for the same thing or for less and that is a fact of life. And, we are not the only business that has got that same problem, obviously there is others to consider that are in the same boat. But we have to reduce the price of the product in order to expand the market share.

Commissioner Schneider: Well, I don't think we are going to be able to decide this today. We are going to probably just have to go to the Commission with, unless somebody else has got another recommendation from the staff, we probably ought to just go with what we have already voted on going to the Commission Thursday. What do you think, Mr. Attorney?

Mr. Puckett: I concur with that at this time, the full Commission can take it up on Thursday.

Commissioner Schneider: We have already voted on that. We just have to get back and regroup and we will have to have another meeting between now and the next Commission meeting. How are we doing on time, we still have a window to get this thing accomplished, if we can get it accomplished?

Mr. Puckett: Well, if the full Commission.

Commissioner Schneider: This can go to the Mineral Board after the Commission acts on it Thursday for their concurrence?

Mr. Puckett: Yes.

Commissioner Schneider: And that is a necessary step anyway, correct?

Mr. Puckett: That has got to take place and then once the Mineral Board has approved the lease form and there is an agreed upon and the Commission fully approve the whole package, the minimum royalty, etc., then it can be advertised for public bids.

Commissioner Schneider: Mr. Hanchey, do you have anything? Okay, Karen is that alright with you?

Mr. Puckett: To send the lease form absent the other.

Commissioner Schneider: We are going to send it like it is, we are not going to change anything, we will just keep it like it is. We have already voted on that then, is there anything else that we need to consider at this time? Well I guess we are as far as we can go, so I guess we are adjourned once again.

Mr. Koen: What are you sending to the full Commission is the lease form, there is no dollars and cents?

Commissioner Schneider: There is no dollars and cents in it, it is the form as we talked about it today with those changes that we discussed last meeting. And, we are going to have to regroup and maybe do some more research and discussion among ourselves and then we will have another meeting. It doesn't look like we are going to be able to get where we needed to get today. You can only do so much, Mr. Attorney.

OPTION "A"

A. Article 1:

Line 22: Change "term" to "primary term"

Line 3: Change "term" to "primary term"

B. Article 8:

Line 5: Change "term" to "primary term and extended term"

C. Article 11:

Line 10: Change "term of lease or any extended period thereof" to "primary term and extended term"

D. New Article following 1. TERM to read as follows:

2. OPTION TO RENEW

Lessee shall have the option to renew this lease for a period of five years (hereinafter called "extended term"), commencing on the first day following the last day of the primary term, by giving written notice not later than 180 days prior to the expiration of the primary term. Said renewal shall be subject to all of the terms and conditions contained herein.

## OPTION "B"

A. Article 1:

Line 22: Change "term" to "primary term"

Line 3: Change "term" to "primary term"

B. Article 8:

Line 5: Change "term" to "primary term and extended term"

C. Article 11:

Line 10: Change "term of lease or any extended period thereof" to "primary term and extended term"

D. New Article following 1. TERM to read as follows:

### 2. OPTION TO RENEW

Lessee shall have the option to renew this lease for a period of five years (hereinafter called "extended term"), commencing on the first day following the last day of the primary term, by giving written notice of its conditional intent to renew, not later than 180 days prior to the expiration of the primary term. Said renewal shall be subject to all of the terms and conditions contained herein; provided, however that the Commission hereby reserves the right to make such modifications or additions to the lease, including, but not limited to, those provisions governing the royalty, the performance bond, the guaranteed annual minimum royalty, suspension of dredging and, the description of the leased property which it deems to be in the best interest of the state, the Department of Wildlife and Fisheries, or fish and wildlife resources.

Not later than 150 days prior to the expiration of the primary term, the Commission through its Secretary, shall provide Lessee with written notice setting out all such specific modifications or additions to the lease, to which the renewal would be subject.

Not later than 120 days prior to the expiration of the primary term, Lessee shall give written notice to the Commission of its intention to renew the lease subject to the aforesaid modifications and additions. In the absence of timely written notice to this effect, this lease shall expire on the last day of the primary term.

SHELL DREDGING LEASES  
SPECIAL INSTRUCTIONS

1. For general instructions, see Notice of Publication.
2. For tract description, see Notice of Publication and map attached to lease form.
3. Portion of tract bid:

If a lease is awarded based on a portion of a tract, the guaranteed annual minimum royalty and performance bond amounts will be reduced proportionally, based strictly on the number of acres in the tract. If, for example, a bid is submitted on a portion of a tract, which, for the sake of simplicity, contains exactly one-half the acreage of the whole of the tract, then the guaranteed annual minimum royalty and performance bond amounts shall be reduced in the lease to \_\_\_\_\_ and \_\_\_\_\_ respectively, rather than \_\_\_\_\_ and \_\_\_\_\_ which would be required if the whole tract were bid. (The performance bond amount represents three (3) times the guaranteed annual minimum royalty.)

This will, of course, necessarily affect the bid bond amount which is five percent (5%) of the performance bond amount. Thus, in the above example the bid bond for the portion would be \_\_\_\_\_, rather than \_\_\_\_\_ which would be required if the whole tract were bid.

An example of how this was computed, using the above hypothetical with regard to Tract 1 is as follows:

1. Entire tract:  
\_\_\_\_\_ acres - \_\_\_\_\_ guaranteed annual minimum royalty.
2. Portion bid submitted for \_\_\_\_\_ acres, exactly half of the entire acreage of tract.
3. Thus, the guaranteed annual minimum royalty is reduced by one half, or \_\_\_\_\_.
4. This amount is multiplied by three (3) [the term of the lease in years] to arrive at \_\_\_\_\_, the amount of the performance bond.
5. This amount is then multiplied by five percent (5%) to arrive at \_\_\_\_\_ the amount of the bid bond (or cash payment).

The bidder should perform these computations before bidding, particularly as the bid bond or cash payment must be submitted with the bid. Obviously, the bidder should take great care in computing the correct acreage of any portion bid as this acreage figure will directly affect the amount of the bid bond required.

Bidders are required to indicate on the bid form the approximate number of acres in the portion of the tract bid upon. When portion bids are received, the Department will independently confirm the bidder's estimation of acreage, using the transparent plat submitted by the bidder. The Department will further confirm that the bid bond submitted is of a sufficient amount for the acreage bid upon.

ANY BID BOND SUBMITTED TOTALING LESS THAN NINETY PERCENT (90%) OF THE AMOUNT REQUIRED, BASED UPON THE DEPARTMENT'S ACREAGE DETERMINATION, WILL RESULT

IN AUTOMATIC REJECTION OF THE BID.

When a portion bid has been accepted by the Commission as the successful bid, and there is a difference between the Department's acreage determination and the bidder's (which is not within the acceptable margin of error for such determinations), then the Department's acreage determination shall prevail for purposes of the lease, specifically the property description, guaranteed annual minimum royalty and performance bond.

4. Bidding.

Each bid should be placed in a separate sealed envelope, which should then be placed into a larger envelope, addressed and forwarded to the Louisiana Department of Wildlife and Fisheries, Post Office Box 98000, Baton Rouge, Louisiana 70898-9000 ATTENTION: UNDERSECRETARY, by REGISTERED or CERTIFIED mail, or by hand delivery to the Department's offices at 2000 Quail Drive, Baton Rouge, Louisiana, Room 248, with a notation thereon to the effect that a sealed bid is enclosed. A bid may cover all or any portion of the tract advertised. The Commission has authority to accept the bid most advantageous to the State, may reject any and all bids, or may lease a lesser quantity of property than advertised and withdraw the rest. If a joint bid is submitted the UNDIVIDED INTEREST OF EACH PARTY should be designated on the bid in order that the proportionate interest of each bidder may be stipulated in the lease contract.

NOTE: For the convenience of the Commission and in order to eliminate errors, the address of each company should be designated on the Bid form for clarification in typing the lease contract.

The minimum acceptable bid is a royalty of \_\_\_\_\_ of the "selling price of the shell produced," which is defined as the price of the shell FOB dredge site, exclusive of any transportation costs; be it further provided that for bidding purposes, and throughout the term of the lease(s), the minimum acceptable bid for the "selling price of the shell produced" is \_\_\_\_\_ per cubic yard.

Bidders may submit bids which are equal to or greater than either or both the minimum fractional portion \_\_\_\_\_ and the minimum "selling price of the shell produced" (\_\_\_\_\_). Award of bids shall be based upon a mathematical computation of these two figures. For example, Bidder A submits a bid of one-seventh (\_\_\_\_) of a minimum "selling price" of \_\_\_\_\_. Bidder B submits a bid of one sixth (\_\_\_\_) of a minimum "selling price" of \_\_\_\_\_. In this example, Bidder B is deemed to be the higher bidder as his bid would yield a royalty of \_\_\_\_\_ as opposed to Bidder A, whose bid would yield a royalty of \_\_\_\_\_.

Calculated values shall be rounded as follows: 5/10 of a cent and greater - up to the next whole cent; less than 5/10 of a cent - down to the next whole cent.

The term of the lease shall be three (3) years.

The bidder must enclose an executed bid bond or CERTIFIED CHECK, CASHIER'S CHECK or BANK MONEY ORDER with the bid in an amount equal to five percent (5%) of the performance bond amount payable to the Louisiana Department of Wildlife

and Fisheries.

The bid bond, certified check, cashier's check or bank money order for the amount of the cash payment is forfeited in the event the bid is accepted and the bidder or bidders fail to enter into a written contract within twenty (20) days after such lease is submitted to lessee for execution; provided, however, that in the case of a successful bidder who has applied for all necessary and applicable permits but who has not received all necessary and applicable permits by the end of the twenty (20) day period, the Secretary may, in his discretion (a) extend this twenty (20) day period and/or (b) waive the forfeiture of all or part of the bid bond. In the event the bid is rejected, the said check shall be returned, or the bid bond shall be voided.

NOTICE OF PUBLICATION  
OFFICE OF MINERAL RESOURCES  
ON BEHALF OF THE WILDLIFE AND FISHERIES COMMISSION  
BATON ROUGE, LOUISIANA 70821

By virtue of and in conformity with the provisions of Sub-part A of Chapter 2, Title 30 of the Louisiana Revised Statutes of 1950, as amended, R.S. 56:441, and other applicable laws, sealed bids will be received in the Louisiana Wildlife and Fisheries Commission office located at 2000 Quail Drive, Baton Rouge, Louisiana 70808 on or before the \_\_\_ day of \_\_\_\_\_, 1994 at 2:00 p.m., for leases to explore, dredge for and produce fossil shells and fossil shell deposits on the following described tracts at which time and date the bids will be opened publicly in the Louisiana Room, Louisiana Wildlife and Fisheries Commission, 2000 Quail Drive, Baton Rouge, Louisiana 70808. The successful bidder(s) will be formally selected by the Louisiana Wildlife and Fisheries Commission at its regularly scheduled \_\_\_\_\_, 1994 meeting.

All bids are to offer a royalty for leases having a primary term which shall not exceed three (3) years, which leases are to be granted without any warranty or recourse against lessor whatsoever, either expressed or implied, not even for return by lessor of any payments received under the lease or being otherwise responsible to LESSEE. The MINIMUM ACCEPTABLE ROYALTY BID as set by the Louisiana Wildlife and Fisheries Commission is \_\_\_\_\_ ( ) of the "selling price of the shell produced," which is defined as the price of the shell FOB dredge site, exclusive of any transportation costs; be it further provided that for bidding purposes, and throughout the term of the lease(s), the minimum acceptable bid for the "selling price of the shell produced" is \_\_\_\_\_ ( ) per cubic yard. A bid of a royalty less than the aforesaid minimum will be increased to said minimum by the Commission. All bidders are notified that the Commission does not obligate itself to accept a bid

which offers the aforesaid minimum, but reserves the right to accept a bid which offers in excess of the minimum and is considered most advantageous to the State of Louisiana. Bidders may submit bids which are equal to or greater than either or both the minimum fractional portion (\_\_\_\_) and the minimum "selling price of the shell produced" (\_\_\_\_\_).

The provisions of this notice or advertisement and the relevant statutes establish the material considerations necessary for the formulation of proper bids, and this notice or advertisement shall not be deemed to be modified, enlarged or diminished by resolutions or policy expressions of the Commission not incorporated herein expressly or by reference.

Copies of the proposed lease are available to any interested bidders at the Office of the Undersecretary, Department of Wildlife and Fisheries prior to the opening of the bids on the tract, and prospective bidders should carefully examine the same prior to submitting any bid therefor.

The lease tract is situated in the Louisiana Coastal Zone as defined by Act 361 of 1978 (LSA R.S. 49:213), and as such is subject to the guidelines and regulations promulgated by the Coastal Management Section of the Department of Natural Resources. Further, the tract is subject to review and permitting by the United States Army, Corps of Engineers, and may be subject to the review, guidelines, regulations and permits of other state and federal agencies.

All leases awarded shall be executed upon terms and conditions provided in the current State lease forms, including, but not limited to, provisions as follows: Should LESSEE fail to begin the actual dredging on the lease premises within ninety (90) days from the date of the lease, the lease may terminate as to both parties to the lease; provided, however that the Louisiana Wildlife and Fisheries Commission may extend this period if LESSEE'S failure to begin dredging is due to delays in issuance of applicable permits which LESSEE has demonstrated

a due and diligent effort to obtain. The lease shall contain provisions against the assignment or sublease of the lease unless approved by the Louisiana Department of Wildlife and Fisheries.

A bid bond in the amount of \_\_\_\_\_ (or in a proportionately smaller amount if a portion bid is submitted) shall be submitted with each bid, which bid bond shall be written on forms prepared by the Commission and available to prospective bidders at the office of the Department of Wildlife and Fisheries, and shall ensure the commitment of each bidder to enter into and execute the leases, if selected as high bidder. Said bid bond shall be in favor of the Louisiana Department of Wildlife and Fisheries. In lieu of the bid bond and in the same amount thereof, bidders may tender with their bid, cash payments in the form of a certified check, cashier's check, or bank money order payable to the Louisiana Department of Wildlife and Fisheries, and the certified check, cashiers check or bank money order accompanying the bid of the successful bidder shall be immediately negotiated by the Louisiana Department of Wildlife and Fisheries and the proceeds thereof deposited in the Conservation Fund. This cash payment shall be credited to the LESSEE and applied to the cubic yard royalties and/or guaranteed annual minimum royalties as the case may be.

No bid submitted with the above bid bond or cash payment may be thereafter withdrawn or cancelled. The successful bidder(s) to whom the lease is awarded on the date of the lease shall return the written lease, duly executed, within TWENTY (20) DAYS after bidder's receipt of same under penalty of forfeiture of the lease and the aforesaid bid bond or cash payment previously tendered in the event of failure to do so; provided, however, that in the case of a successful bidder who has applied for all necessary and applicable permits but who has not received all necessary and applicable permits by the end of the twenty (20) day period, the Secretary may, in his discretion (a) extend this twenty (20) day

period and/or (b) waive all or part of the bid bond. J

Bids may be for the whole or any particularly described portion of the water bottoms advertised; however, bidders are advised that the Commission desires to lease the entirety of the water bottoms herein described and bidders are encouraged to submit bids for an entire tract. All bidders are hereby notified that bids on portions of tracts should be described by metes and bounds and be accompanied by a transparent plat outlining thereon the portion bid upon. The scale of the plat should be 1 inch = 4,000 feet. Bidders are further notified that bids may be submitted for both tracts in globo.

At the time of the submission of their bids, all bidders are to contact Barney Barrett at 765-2372, to arrange for the submission of a geological and geophysical evaluation of the tract, prepared in accordance with the bidder's usual procedure, along with data relative to any exposed reefs (above the mud line). Any of the above information designated as proprietary by the bidder shall be treated in a confidential manner by the Department.

The Louisiana Wildlife and Fisheries Commission reserves the right to reject any and all bids or to grant a lease on any portion of an advertised tract and to withdraw the remainder of the tract.

Any lease for shell dredging awarded by the Commission requires the approval and countersignature of the State Mineral Board and the Commissioner of the Division of Administration.

Office of Mineral Resources  
On Behalf of the Louisiana  
Wildlife and Fisheries  
Commission

Published in the Baton Rouge "State Times" on \_\_\_\_\_, 1994, and  
the Official Journal of the Parishes in which the property is located.

LOUISIANA WILDLIFE AND FISHERIES COMMISSION BID FORM

\_\_\_\_\_, 1994

CHECK ONE:

TRACT 1:

TRACT 2:

Entire Tract  
Approximately \_\_\_\_\_ acres

Entire Tract  
Approximately \_\_\_\_\_ acres

Portion of Tract 1  
Approximately \_\_\_\_\_ acres

Portion of Tract 2  
Approximately \_\_\_\_\_ acres

-----  
 TRACTS 1 and 2 in globo  
Approximately \_\_\_\_\_ acres

Bidder: \_\_\_\_\_  
(Name to appear on lease contract,  
if lease is awarded)

For a three (3) year lease.

ROYALTY BID:

\_\_\_\_\_ (fractional portion) of the "selling price of the shell produced," which is defined as the price of the shell FOB dredge site, exclusive of any transportation costs; be it further provided that for purposes of this bid, and throughout the term of the lease, the "selling price of the shell produced" shall be deemed to be never less than \_\_\_\_\_ DOLLARS AND \_\_\_\_\_ CENTS (\$\_\_\_\_\_) per cubic yard.

[Mathematical computation of the minimal contractual per cubic yard royalty - to be completed by bidder:

$$\frac{\text{---}}{\text{---}} \text{ (fractional portion)} \times \$\text{---} \text{ ("selling price")}$$
$$= \$\text{---} \text{ /cubic yard}$$

In the event of mathematical error in the above computation, the figures submitted in the bid itself will govern.]

Metes and bounds description as follows: (REQUIRED FOR PORTION BID ONLY) -  
(Plat showing portion outlined in red is attached).

In the event of a "Joint bid", the undivided interest of each bidder is as follows:

The lease contract is to be drafted on such terms as are provided for and written in the current lease form approved by the Louisiana Wildlife and Fisheries Commission for shell dredging leases.

In the event this bid is accepted, the lease contract should name

-----  
\_\_\_\_\_ as lessee or  
lessees, of the following domicile(s) or residence(s)

-----  
(address(es) to be used on the lease form itself)

acting herein on his, its, their own behalf or through \_\_\_\_\_  
\_\_\_\_\_, agent.

The Louisiana Wildlife and Fisheries Commission should mail the contract to:

-----  
----- at the  
following address: -----  
----- attention of  
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The undersigned acknowledges that the bid bond or certified check, cashier's check or bank money order, payable to the Louisiana Department of Wildlife and Fisheries, for five percent (5%) of the performance bond amount as determined by the Commission and set out in the lease forms, shall accompany and be submitted with each bid, and no bid thus submitted may be thereafter withdrawn or cancelled and the certified check, cashier's check or bank money order accompanying the bid of the successful bidder shall be immediately negotiated and endorsed by the Louisiana Department of Wildlife and Fisheries, and the proceeds thereof deposited immediately in the Conservation Fund. The undersigned further acknowledges that the successful bidder, to whom the lease is awarded on the date of the lease sale, shall return the written lease, duly executed, within TWENTY (20) DAYS after his receipt of same. In the event this bid is rejected, said certified check, cashier's check or bank money order shall be returned.

Bidder acknowledges that this bid shall be binding for a period of sixty (60) days from the date of the official opening of bids.

Respectfully submitted,

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NOTE:

Bid bond, certified check, cashier's check or bank money for the required amount should be attached. Checks should be made payable to Louisiana Department of Wildlife and Fisheries.

The tract number of the tract on which the bid is made should appear on the envelope sealing this bid.

BID BOND

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\_\_\_\_\_, as Principal (Bidder) and  
\_\_\_\_\_, as Surety, are bound unto the  
State of Louisiana, Department of Wildlife and Fisheries, (hereinafter called the  
Department) in the sum of \_\_\_\_\_  
DOLLARS (\$\_\_\_\_\_) for payment of which the Principal and Surety bind  
themselves, their heirs, executors, administrators, successors and assigns,  
jointly and severally.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

The condition of this obligation is such that, whereas the Principal has  
submitted a bid to the Department on a lease for the dredging of fossil shell,  
if the said lease is awarded to the Principal and the Principal, within the  
specified time, enters into the lease in writing and gives bond with Surety  
acceptable to the Department for performance of said lease, this obligation shall  
be voided; otherwise to remain in effect for a period of sixty (60) days from the  
date of the official opening of bids.

\_\_\_\_\_  
Principal (Bidder)

\_\_\_\_\_  
Surety

BY \_\_\_\_\_  
Authorized Officer -  
Owner - Partner

BY \_\_\_\_\_  
Agent or Attorney-in-Fact  
(Seal)

\_\_\_\_\_  
TYPED OR PRINTED NAME

I certify that I am, as of the date of this bond, a licensed Resident Agent of the State of Louisiana in good standing with the Louisiana Insurance Commission and authorized to countersign this bond on behalf of the Surety.

BY \_\_\_\_\_

\_\_\_\_\_  
Name of Agency

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Agent License Number

CENTRAL COAST, EAST

Shell Lease: Central Coast

All water bottoms located in the Parishes of St. Mary, Terrebonne and Iberia which lie within an area defined as follows:

Shell Lease: Central Coast - Tract #1

Beginning at a point in East Cote Blanche Bay 1500 feet south of the shoreline below Point Marone at Latitude 29 degrees 37 minutes 38 seconds North, Longitude 91 degrees 39 minutes 48 seconds West; thence in an easterly direction and along a line running parallel to and 1500 feet seaward of the shoreline to Latitude 29 degrees 37 minutes 54 seconds North, Longitude 91 degrees 35 minutes 07 seconds West; thence south along Longitude 91 degrees 35 minutes 07 seconds West to its intersection with Latitude 29 degrees 26 minutes 06 seconds North; thence in a northwestwardly direction to its intersection with Latitude 29 degrees 27 minutes 46 seconds North, Longitude 91 degrees 39 minutes 48 seconds West; thence north along Longitude 91 degrees 39 minutes 48 seconds West to the point of beginning, containing approximately 35,567 acres and as further shown on the attached chart designated EXHIBIT "A", 1994.

Beginning offshore of East Cote Blanche Bay at Latitude 29 degrees 24 minutes 26 seconds North, Longitude 91 degrees 36 minutes 57 seconds West; thence eastward along Latitude 29 degrees 24 minutes 26 seconds North to its intersection with Longitude 91 degrees 35 minutes 34 seconds West; thence northward along Longitude 91 degrees 35 minutes 34 seconds West to its intersection with Latitude 29 degrees 25 minutes 05 seconds North; thence southeastward and 1500 feet seaward of the line marked Territorial Sea to its intersection with Longitude 91 degrees 28 minutes 30 seconds West; thence south along Longitude 91 degrees 28 minutes 30 seconds West to its intersection with the Three Nautical Mile line at Latitude 29 degrees 19 minutes 23 seconds North; thence northwestward along the Three Nautical Mile line to its intersection with Longitude 91 degrees 36 minutes 57 seconds West; thence north along Longitude 91 degrees 36 minutes 57 seconds West to the point of beginning, containing approximately 20,168 acres,

and as further shown on the attached chart designated EXHIBIT "A",  
1994.

Shell Lease: Central Coast - Tract #2

Beginning at a point in East Cote Blanche Bay 1500 feet south of the shoreline at Latitude 29 degrees 37 minutes 54 seconds North, Longitude 91 degrees 35 minutes 07 seconds West; thence in an easterly direction and along a line running parallel to and 1500 feet seaward of the shoreline to Latitude 29 degrees 37 minutes 55 seconds North, Longitude 91 degrees 33 minutes 38 seconds West; thence in a southerly direction and along a line parallel to and 1500 feet seaward of the shoreline to Latitude 29 degrees 30 minutes 50 seconds North, Longitude 91 degrees 32 minutes 59 seconds West located 1500 feet south of Point Chevreuil; thence southeastward to Latitude 29 degrees 25 minutes 44 seconds North, Longitude 91 degrees 31 minutes 04 seconds West; thence eastward to Latitude 29 degrees 25 minutes 34 seconds North, Longitude 91 degrees 22 minutes 47 seconds West; thence southwestward to Latitude 29 degrees 23 minutes 35 seconds North, Longitude 91 degrees 23 minutes 46 seconds West; thence northwestward to Latitude 29 degrees 24 minutes 27 seconds North, Longitude 91 degrees 27 minutes 26 seconds West; thence southwestward to Latitude 29 degrees 23 minutes 55 seconds North, Longitude 91 degrees 29 minutes 18 seconds West; thence south along Longitude 91 degrees 29 minutes 18 seconds West to its intersection with Latitude 29 degrees 23 minutes 18 seconds North, located 1500 feet north of the Territorial Sea Line; thence northwestward and 1500 feet north of the Territorial Sea Line to its intersection with Latitude 29 degrees 24 minutes 30 seconds North, Longitude 91 degrees 32 minutes 12 seconds West; thence north along Longitude 91 degrees 32 minutes 12 seconds West to its intersection with Latitude 29 degrees 25 minutes 00 seconds North; thence northwestward to its intersection with Latitude 29 degrees 26 minutes 06 seconds North, Longitude 91 degrees 35 minutes 07 seconds West; thence North along Longitude 91 degrees 35 minutes 07 seconds West to the point of beginning, containing approximately 35,480 acres, and as further shown on the attached chart designated EXHIBIT "A", 1994.

Beginning offshore of Atchafalaya Bay at Latitude 29 degrees 22 minutes 23 seconds North, Longitude 91 degrees 28 minutes 30 seconds West, located 1500 feet south of the Territorial Sea Line; thence southeastward and 1500 feet seaward of the line marked Territorial Sea to Latitude 29 degrees 20 minutes 11 seconds North, Longitude 91 degrees 22 minutes 42 seconds West; thence southerly to Latitude 29 degrees 19 minutes 32 seconds North, 91 degrees 22 minutes 36 seconds West; thence northeastward to Latitude 29 degrees 19 minutes 41 seconds North, 91 degrees 21 minutes 39 seconds West; thence southeasterly along a line running parallel to and 1500 feet seaward of the shoreline to Longitude 91 degrees 20 minutes 00 seconds West; thence south along Longitude 91 degrees 20 minutes 00 seconds West to its intersection with the Three Nautical Mile line; thence northwesterly along the Three Nautical Mile line to its intersection with Longitude 91 degrees 28 minutes 30 seconds West; thence north along Longitude 91 degrees 28 minutes 30 seconds west to the point of beginning, containing approximately 22,322 acres, and as further shown on the attached chart designated as EXHIBIT "A", 1994.

LEASE FOR FOSSIL SHELL EXTRACTION  
FROM STATE OWNED WATER BOTTOMS

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

SHELL LEASE: Central Coast

WHEREAS, under the provisions of Section 441 of Title 56 of the Louisiana Revised Statutes of 1950, as amended, and other applicable laws, the Louisiana Wildlife and Fisheries Commission advertised for the bids for a lease covering fossil shells on the property described below; and

WHEREAS, in response to required advertisements, bids were received and duly opened in the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and the Minerals Committee of the Louisiana Wildlife and Fisheries Commission having reviewed and evaluated same; and,

WHEREAS by resolution duly adopted, the Louisiana Wildlife and Fisheries Commission accepted the bid of \_\_\_\_\_ whose mailing address is \_\_\_\_\_ (hereinafter referred to as "Lessee") as being the most advantageous to the State of Louisiana:

NOW, THEREFORE, be it known and remembered the Louisiana Wildlife and Fisheries Commission (hereinafter referred to as the Commission) acting under said authority for and in behalf of the State of Louisiana, as Lessor, does hereby lease unto the said Lessee, the property described below for the purpose of extracting fossil shells and fossil shell material.

In connection therewith Lessee shall have the right to use as much of the property as may be reasonably necessary for such

operations, subject to restrictions contained in this lease or applicable permits. The leased property, situated in the State of Louisiana, is more fully described on Exhibit "A" which is attached hereto and made a part hereof.

Notwithstanding any provisions to the contrary in this Lease, this Lease is granted and accepted without any warranty of title and without any recourse against Lessor whatsoever, either expressed or implied. It is expressly agreed that the Lessor shall not be required to return any payments received hereunder or be otherwise responsible to Lessee therefor.

The State Mineral Board, herein represented by its Chairman, appears herein for the purpose of indicating its approval of said lease.

The State of Louisiana represented herein by the Commissioner of the Division of Administration, appears herein pursuant to the provisions of Act 282 of 1989.

#### 1. TERM

The rights and privileges herein granted shall be for a term period of three (3) years beginning November 1, 1994 and ending October 31, 1997- (hereinafter called "term"). This lease shall be subject to all existing and future oil and gas pipeline rights-of-way, mineral leases and servitudes granted by third parties and the State of Louisiana through the Department of Natural Resources, the Division of Administration, and the State Mineral Board located in the area hereinabove described. Nothing herein shall preclude the State of Louisiana from granting future oil and gas pipeline rights-of-way, mineral leases and servitudes to third parties.

## 2. ROYALTY

As consideration under this lease, LESSEE shall pay the Department of Wildlife and Fisheries, (hereinafter referred to as the Department), a royalty of \_\_\_\_\_ of the "selling price of the shell produced", from the above described water bottoms which is defined as the price of the shell free on board (FOB) dredge site, exclusive of any transportation costs. Such price must represent a fair market price as would be determined by a negotiated arms length agreement between two independent parties. Be it further provided that for purposes of this lease, and throughout the term of this lease, the "selling price of the shell produced" shall be deemed to be never less than \_\_\_\_\_ per cubic yard.

Lessee shall be required to report at intervals specified by the Department the posted barge price, as well as any changes thereof and any sales that take place from the barge.

Payment in full of royalties for all shells and/or deposits removed by the LESSEE during any one calendar month shall be made on or before the 15th day of the succeeding month, all in a manner consistent with the applicable law of the State of Louisiana. Any unpaid royalties shall be subject to legal interest which shall begin to accrue on the date said royalties are due.

For purposes of this lease, measurements of cubic yards of shell on barges shall be calculated as follows:

$$\text{Volume} = \frac{L (A + d + 4M)}{162} = \text{cubic yards}$$

Where A = Area of top

d = Area of base

M = Area of cross section midway  
between top and base

L = Height

### 3. DATA; AUDIT AND INSPECTION

LESSEE, on or before the 15th day of each month, shall furnish the Department any or all of the following types of data relating to shell production: (1) type of material removed, (2) dates removed, (3) name of vessel, (4) area of dredging, (5) cubic yards removed, and (6) royalty due.

LESSEE shall periodically and in a manner and on such forms specified by the Department, report to the Department purchasers of the shell dredged and the prices paid thereon.

These data shall not be deemed conclusive and the Department reserves the right, and LESSEE so agrees, to permit the Department's authorized representative and/or agents and representatives of the Legislative Auditor's Office or the Inspector General's Office to examine any and all of LESSEE'S books, records and memoranda of whatever kind or nature, pertaining to or having any connection whatever with the removal or sale of said shells.

The Department further reserves the right, and LESSEE agrees, to have the Department's agents or representatives and/or agents and representatives of the Legislative Auditor's Office or the Inspector General's Office inspect the barges, boats, and dredges, etc., in which the said shells are removed, and to keep a check on the number thereof, and also to determine by whatever means it may deem necessary, the number of cubic yards of shells which have been removed from the hereinabove described beds or water bottoms, and to require the payment therefor.

LESSEE shall permit routine field inspections by the above personnel for the purposes of verifying:

- a) location of dredges,

- b) direction of effluent discharge,
- c) measurements of quantity of shell aboard, and
- d) compliance with all Department of Wildlife and Fisheries regulations pertaining to shell dredging.

For the purposes of this inspection, the LESSEE shall allow the above personnel to board vessels for inspection of documents and records pertinent to the leases and regulations, positioning equipment, shell cargo, any other operations of the dredge and/or its supporting equipment, and to retrieve Loran-C tapes from recording instruments.

#### 4. EQUIPMENT AND PERSONNEL

LESSEE warrants that it has currently under its exclusive ownership and/or control, or will have by the effective date of this lease, an adequate supply of dredges, adequately powered tow boats for the operating conditions, barges, cranes, machinery, tools and implements of every kind or character which may be necessary to the taking and removal of shell and/or shell deposits under the terms of this Agreement.

LESSEE further warrants that it has in its employ a number of skilled personnel sufficient to adequately perform the requirements of this contract. LESSEE also warrants that it has, or will acquire, valid permits issued by the United States Army Corps of Engineers, the Louisiana Department of Natural Resources, and any other agencies as may be required by law.

#### 5. LIABILITY, HOLD-HARMLESS, DEFENSE AND INSURANCE

It is expressly understood that the State of Louisiana, all of its departments, agencies, boards, commissions and

employees, including the Department and the Commission shall incur no liability or expense of any kind in connection with the ownership, control and operation of such equipment by LESSEE, including but not limited to all court costs, cost of defense and any judgments arising from any claims, actions or causes of action by all third parties, LESSEE, its employees, agents, officers, directors, successors and assigns, their employees, agents, officers and directors caused by LESSEE, its employees, agents, successors and assigns in the exercise of the dredging rights and privileges granted by this lease.

LESSEE agrees that it shall be liable and responsible for property damage or personal injury, whether to property of the State of Louisiana or of any individual, firm or corporation, or to any person or persons, caused by the negligence or breach of contract of LESSEE or by its agents, directors or employees of any kind. LESSEE, its successors and assigns agree to indemnify and hold harmless the State of Louisiana, all of its departments, agencies, boards, commissions and employees, including the Department and the Commission and their officers and employees from all such damage or damages caused by such LESSEE, including assuming the cost and expense of defending all claims, actions, or causes of action which are or may be filed seeking such damage or damages.

It is expressly provided that the State of Louisiana, all of its departments, agencies, boards, commissions and employees, including the Department and the Commission shall have no responsibility or liability relative to navigation of LESSEE'S vessels, nor any responsibility or liability to inform or advise LESSEE as to the existence or location of any pipelines, drilling platforms, bridges, causeways, docks, piers or other structures, located on the property which is included within this lease. It is further expressly provided that LESSEE shall bear sole responsibility for the navigation of its vessels and for

determining the existence and location of all pipelines, drilling platforms, bridges, causeways, docks, piers or other structures which may be located on or within the property leased herein.

It is further provided that LESSEE will defend, indemnify and hold harmless the State of Louisiana, all of its departments, agencies, boards, commissions and employees, including the Department and the Commission and their officers and employees for any claims, demands, liabilities or causes of action arising out of LESSEE'S taking of shells, including those arising out of the navigation of LESSEE'S vessels, or collisions between LESSEE'S vessels and other vessels, pipelines, drilling platforms, bridges, causeways, docks, piers or other structures, even if such action is alleged to have been brought about solely, or in part, by the negligence of the Department. It is expressly provided, however, that LESSEE shall not be obligated to defend, indemnify and hold the Department or Commission harmless for any claim which does not directly involve LESSEE'S vessels, equipment and/or operations. It is further provided that LESSEE shall not be obligated to defend, indemnify and hold harmless the Department or Commission for any claim for worker's compensation filed by any of their employees; provided, however that nothing herein shall preclude the Department or the Commission from maintaining an action for recovery against the LESSEE under the laws of the State of Louisiana, including LSA R.S. 23:1101 et seq. LESSEE shall specifically obtain insurance coverage of this indemnity provision and shall furnish the Department with satisfactory evidence of such coverage, from a company that A. M. Best and Company has given a "B" or better rating, of not less than FIFTEEN MILLION (\$15,000,000.00) DOLLARS. LESSEE agrees to name the State of Louisiana, all of its departments, agencies, boards, commissions, and employees, including the Department and the Commission and their officers and employees as an additional insured under this policy of insurance, and to furnish the Department a copy of same.

In all suits arising out of this contract, the parties hereto agree that Louisiana law shall govern.

#### 6. OPERATION, LOCATION AND MOVEMENT OF VESSELS

LESSEE further agrees, binds and obligates itself before commencing operations in accordance with this lease, to furnish the Department a map, plat or chart to scale as specified by the Department, of the major areas of the beds and water bottoms hereinabove described and from which LESSEE shall take and remove shells and/or shell deposits, which map, plat or chart shall have marked thereon the location at which LESSEE shall commence its operations; and LESSEE shall notify the Department, in writing, of any and every major change of location of its operations, and by correcting said map, plat or chart aforesaid by marking its new major areas of operation as well as each and every former major area of operation under this lease.

LESSEE shall notify the Department in writing, at least ten (10) days prior to putting into actual service any dredge, barge or tow boat used in the removal of shells and/or shell deposits, together with the capacity of each, and the Department may thereupon verify the measurements of said barges. In case the giving of such notice by the LESSEE becomes impractical, the LESSEE shall give written notice as soon as practicable after such vessel is placed in service.

Each operating dredge shall be required to have a tamper-proof device, as specified by the Department, installed on board which will plot, map and record all movements and locations of the dredge vessel. Location of the dredge shall, at a minimum, be recorded on an hourly basis in ~~Loran-C~~ Global Positioning System or latitude and longitude coordinates.

Each operating dredge shall be required to have on board at all times a person with the authority to stop and/or move the dredge and/or other equipment upon notification by the designated representative(s) of the Department.

LESSEE shall report on a calendar weekly basis, on a form provided by the Department, the daily location(s) of dredging activities and any other information required by the Department. A calendar week shall be defined as Sunday through Saturday. These report forms shall be delivered to the Department on the Monday following the end of the calendar week, or postmarked by that date.

For purposes of this section the term "Department" shall include the Department, its agents, offices, and employees and its authorized representatives.

#### **7. ADHERENCE TO APPLICABLE PROVISIONS; RESTRICTED ZONES**

LESSEE binds and obligates itself to strict adherence to all applicable state and federal permit stipulations, environmental laws, rules, and regulations and not to dredge within three hundred (300') feet of any other shell dredging operations or within any area designated as a restricted zone.

Effluent shall be directed back into the dredged area via a discharge conduit. The affected water bottoms shall, to the extent reasonably possible of accomplishment, be returned or restored to a condition as near equivalent to that which existed before said operations were conducted.

Dredging operations shall not be conducted within restricted areas as shown on the zone chart (Exhibit A) nor within 1,500 feet of natural land masses or exposed reefs.

No subaqueous reefs shall be dredged. "Subaqueous reefs" are herein defined as those reefs which are above the water bottom but beneath the water level at Gulf Coast Low Water Datum (GCLWD). LESSEE shall provide independent third party verification consistent with traditional survey methods employed in the industry, that no subaqueous (submerged) reefs are being dredged. This verification shall be provided periodically as required by the Department.

Before commencing operations in any given zone the LESSEE shall notify the Department in writing at least ten (10) days in advance as to its proposed zone of the operations and to the best extent possible, the approximate location within the zone. Zones identified in this notice shall correspond with the zone chart which is attached hereto and identified as Exhibit A.

Dredged areas shall be surveyed with a recording fathometer and copies of each depth profile shall be submitted to the Department of Wildlife and Fisheries on or before the 15th day of the succeeding month. Maximum depth along with the vertical scale shall be indicated on each profile. Location of depth profiles shall be specified using precise ~~Local~~ Global Positioning System or latitude and longitude coordinates (i.e. reported to the nearest 0.1 of the line of position/T.D.).

#### 8. GUARANTEED ANNUAL MINIMUM ROYALTY

LESSEE agrees that the quantity of shells removed by it will yield to the Department guaranteed royalties of no less than \_\_\_\_\_ per year, starting with the year beginning on the date hereof, and continuing therefrom throughout the ~~life of this lease~~ term. LESSEE further agrees that in the event for any reason LESSEE does not remove sufficient shells to aggregate in total, at the price per yard stipulated

above, the guaranteed yield to the Department of \_\_\_\_\_  
\_\_\_\_\_ per year, LESSEE will pay to the  
Department an amount sufficient to produce the minimum sum of \_\_\_\_  
\_\_\_\_\_ per year as stipulated.

Should this lease be terminated at any time other than  
the end of any lease year, then the \_\_\_\_\_  
\_\_\_\_\_ annual minimum guaranty shall be reduced by the amount  
of royalty paid by LESSEE to the Department during such lease year,  
but prior to such termination, to the end that LESSEE in the lease  
year of termination shall pay not less than the \_\_\_\_\_  
\_\_\_\_\_ minimum annual guaranty. After making  
said calculation, should it be determined that any part of said  
annual guaranty shall be due and owing, then such amount shall be  
immediately paid to the Department. The words "lease year",  
wherever used in this lease, shall mean an annual period beginning  
**November 1**, and ending **October 31**.

LESSEE'S obligation to pay this guaranteed annual minimum  
royalty shall not be relieved or reduced as a result of any force  
majeure, as defined in Paragraph 15 herein.

The Commission may consider a proportional reduction of  
the guaranteed annual minimum royalty in the event that an order,  
or permit condition that arises subsequent to the effective date of  
this lease, of the Department or other governmental agency, or  
order of court suspends LESSEE'S operations and thereby results in  
a substantial reduction of shell production; provided however that  
in no event shall the Commission consider such a reduction when the  
suspension order is due wholly to LESSEE'S own fault or a violation  
of the provisions of this lease, any applicable permit or any  
applicable state or federal laws, rules or regulations.

#### 9. TERMINATION FOR CAUSE

In case LESSEE fails to make payment according to the reservations, terms and conditions hereinabove stipulated within the time provided in this agreement, or should LESSEE fail or refuse to comply with any provisions in this agreement, on and after ten (10) days from the date said payments are due, or from the date of said failure or refusal to comply herewith, this lease may be revoked, terminated and cancelled; provided that the LESSEE shall be given written notice of any such failure to comply with a provision of this lease, and LESSEE shall have five (5) days after receipt of such notice in which to correct such default. In the event such default is not cured within the said five (5) day period, then this lease may be terminated without further formality, except for a written notice of such revocation and termination to be forwarded by the Secretary for the Department to LESSEE at its domicile and to the Clerks of Court in the Parishes wherein the hereinabove described water bottoms are located, by United States mail, postage prepaid. Nothing to the contrary withstanding, the provisions of this paragraph shall not release or relieve LESSEE, its successors and assigns from the liability assumed and established in this lease, arising on or before the date of cancellation or forfeiture of the rights and privileges herein provided.

If actual dredging operations are not commenced hereunder on the leased premises in good faith on or before ninety (90) days from the date hereof, this lease shall then terminate, subject to the above procedure. Be it further provided that if all applicable permits have not been issued within the above ninety day period, the Commission may extend this period upon a showing that LESSEE has made and is making a due and diligent effort to obtain the issuance of same.

Within ninety (90) days after expiration or termination by its own terms of this lease or any portion thereof, either during or after the primary term hereof, LESSEE shall execute and

record an appropriate release evidencing such expiration or termination, and shall also supply the Department with a copy or copies thereof properly certified by the recorder or recorders of the parish or parishes in which the leased premises are located. In the event LESSEE fails to timely comply therewith, LESSEE shall be liable for reasonable attorney fees and court costs incurred in bringing a successful suit for such cancellation, and for all damages resulting therefrom. It is agreed, however, that damages to be paid by LESSEE to the Department shall be one hundred dollars (\$100.00) per day for each day of non-compliance after expiration of said ninety (90) day period, regardless of whether suit is filed for cancellation, and for such additional compensatory damages as the Department may prove.

It is further provided that the suspension of dredging activities shall not constitute a breach by LESSEE of this agreement if said suspension comes about as a result of an order of the Department or another agency of government or court, and is not due to any fault of LESSEE or any violation of the provisions of this lease or any applicable state or federal permit, statute, rule or regulation.

#### 10. ASSIGNMENT AND SUBCONTRACT

There shall be no assignment or subcontract of this lease or the rights and privileges hereunder without the express written consent of the Department; provided however that such approval shall not be required if such assignment and all rights hereunder are made to a bona fide successor or subsidiary of said LESSEE. Be it further provided that if assignment is made to a bona fide successor or subsidiary of LESSEE, then LESSEE shall give the Department written notice thereof within five (5) days of the date of said assignment. It is expressly understood, that LESSEE, with the written approval of the Department, may assign to or

subcontract to any person, firm or corporation, from time to time, and at any time, the right to take and remove shells and shell deposits from the area covered hereby, and in such event, the LESSEE shall contract with such assignee or sublessee to take or remove shells and shell deposits from the area covered hereby and said LESSEE shall remain liable for the performance of all duties and obligations herein imposed. It is further provided that in no event shall LESSEE assign or subcontract the rights to remove more than fifty (50%) of the shells or shell material to be removed under this lease.

#### 11. PERFORMANCE BOND

LESSEE further agrees and obligates itself to execute, simultaneously with the execution of this lease, in favor of the Department, in the manner prescribed by law, a performance bond in the sum of \_\_\_\_\_ with a solvent surety company authorized to do business in Louisiana as surety thereon, conditioned that LESSEE will faithfully, promptly and diligently carry out and perform all of the conditions and obligations herein imposed, described and assumed by this lease, which bond shall be renewable annually during the base term of this lease or any extended period thereof. This bond shall not be released except with written permission of the Commission. If written permission is not granted by the Commission within sixty (60) days after termination of this lease, such permission shall be presumed.

#### 12. RELINQUISHMENT OF DATA

Upon termination of this lease, either by the expiration of its term or by forfeiture or revocation, or for any other cause, LESSEE agrees and binds itself immediately to turn over to the

State Mineral Board all maps, records of borings, and other data relative to said shells and/or shell deposits which it may have obtained, and such maps, records, and other data shall be and remain the property of the State Mineral Board. Any information furnished by LESSEE to the State Mineral Board or otherwise examined and studied by the Department shall be retained in confidence. Nothing in this Article shall require that LESSEE furnish or permit inspection of any interpretation of any of the types of data referred to above, and nothing herein shall be construed as requiring LESSEE to secure any such data solely for the purposes of this Article. The Department's representatives shall have access at all reasonable times to examine and inspect LESSEE'S records and operations pertaining to the leased premises therewith.

#### **13. REMOVAL OF SHELLS FOR SEEDING PURPOSES**

The Department specially reserves the right to permit oyster growers to remove such oyster and/or clam shells from any of said water bottoms or reefs within the area above described in this lease as may be required by such oyster growers for seeding purposes only, and with which reservation LESSEE acquiesces and consents.

LESSEE agrees that in the event the Department shall desire to permit oyster growers to remove oyster and/or clam shells as provided, the Department will furnish to such oyster growers a written order to the aforesaid LESSEE authorizing and directing LESSEE to permit the removal of oyster and/or clam shells by said oyster and/or clam growers.

#### **14. ~~RULES AND REGULATIONS~~; SUSPENSION OF OPERATIONS**

The Department specifically reserves the right to establish ~~rules and~~ regulations on dredging areas in the interest of living resources. The Department further specifically reserves the right to suspend the removal of shells and/or other shell deposits from the above described beds or water bottoms by LESSEE and its successors and assigns in the event that the dredging operations by LESSEE and its successors and assigns violate said regulations. Additionally, the Department ~~and the State Mineral Board, acting jointly,~~ specifically reserves the right to suspend the removal of shell and/or shell deposits from the above described beds or water bottoms in the event that detrimental environmental impacts occur or threaten to occur. ~~The determination that detrimental environmental impacts occur or threaten to occur shall be made jointly by the Department and the State Mineral Board.~~ The suspension aforesaid shall remain effective ~~and in full force and effect~~ until the Department determines that continued for such duration or period of time as said dredging operations would not continue to be in violation of said regulations, or cause or produce the detrimental environmental impacts damage or damages herein provided, and until corrected by LESSEE, and its successors and assigns, to the complete satisfaction of the Department.

#### 15. FORCE MAJEURE

No failure or omission by any of the parties hereto in the performance of any obligation imposed by this lease shall be deemed a breach of this lease or create any liability for damages if the same shall arise from any cause or causes beyond the control of such party and without the fault or negligence of such party, including acts of God, acts of the public enemy, war, rebellion, sabotage, insurrection, riot, invasion or strike.

#### 16. SHELL PLANTS

The Department shall have the right to negotiate with the LESSEE for the planting of shells for oyster cultivation and to require the LESSEE to deduct the cost of such planting of shells from the royalties due the Department by LESSEE. LESSEE agrees in good faith to negotiate with the Department for the planting of shells for oyster cultivation and the quantities and value of said shell shall be determined at the time of purchase.

#### 17. IN-KIND ROYALTY

At the option of the Department and/or the State Mineral Board, in lieu of payment of royalty as specified in paragraph 2, Lessee shall provide to the Department, or its designee, in-kind all of any portion due as royalty of any fossil shell and fossil shell material removed pursuant to this lease.

The Department shall exercise this in-kind royalty option by written notice to Lessee at any time and from time to time while this lease is in effect.

The Mineral Board may exercise this in-kind option only after providing reasonable evidence to the Commission that exercise of the in-kind royalty option shall be, at a minimum, revenue neutral to the Department taking into account all administrative and other costs, and shall result in a positive economic benefit to the State. Be it further provided that the Mineral Board, shall cancel and annul its invocation of this in-kind royalty provision should experience, over a reasonable period of time, demonstrate that in fact the result to the Department is less than revenue neutral or that it does not result in a positive economic benefit to the State.

The amount of in-kind royalty due shall be determined

pursuant to the provisions of paragraph 2.

In-kind royalties shall be accepted by the Department, or the Department's designee, FOB dredge site or the usual offloading site, at the option of the Department, or such other site as mutually agreed by the Department and Lessee. In the event the Department chooses to accept the shell at the usual offloading site, LESSEE may deduct all actual costs, including transportation.

Nothing contained in this lease or any attachments shall be interpreted as limiting or waiving this royalty in-kind option. Amendment of this in-kind royalty option shall require express approval by the State Mineral Board and any amendment without such approval shall be null and void.

#### 18. OFFSITE RESTORATION

As compensation for disturbance of the water bottom during dredging, the LESSEE shall, at its sole expense, undertake offsite restoration for improvement of wetlands fish and wildlife habitat, the marine environment and public use. Such restoration shall be as follows:

1. 1,613 yds<sup>3</sup> for every one (1) acre of shell reef one (1) foot thick for every 200,000 cubic yards dredged from the permitted area;
2. Restoration reefs shall be no less than one (1) acre in size and shall be located in areas which are restricted from shell dredging.

Examples of such restoration shall include but not be limited to: creation of or restoration of shell reefs; creation of or

restoration of coastal bird rookeries; construction and/or maintenance of water control structures, erosion deterance devices, levees and access routes on state wildlife management areas or refuges. The location and size of shell reefs shall be determined by the Department and all expenses in connection with the creation of or restoration of shell reefs, including transportation and deposition, shall be borne by LESSEE. However, all expenses incurred in taking or placing shell pursuant to this section for any purpose other than the creation of or restoration of shell reefs, including without limitation all transportation and deposition costs, shall be borne by the Commission or by the Louisiana Department of Wildlife and Fisheries.

It is further provided that any offsite restoration undertaken by Lessee pursuant to the conditions of any permits issued by the Department of Natural Resources or any other State or Federal agency shall constitute partial or complete satisfaction of the above requirement, in a proportional amount based upon the amount of offsite restoration provided. The Department shall determine, in writing, the level of reduction of the amount of above requirement.

#### 19. SEVERABILITY OF PROVISIONS

If any provisions of this lease shall be decreed invalid or unenforceable, the remainder of the lease agreement shall continue in full force and effect.

#### 20. VENUE FOR SUITS

Any lawsuit contesting the validity of this lease or any of the provisions thereof, or asserting any right granted or

seeking the performance of any duty imposed herein, or in any manner arising out of or connected to this lease or any provision thereof, shall be maintained only in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana.

**21. AMENDMENT OR TERMINATION BY AGREEMENT OF PARTIES**

This document contains the entire agreement between the parties and cannot be changed or terminated orally but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

**22. NOTICES**

All notices under this lease shall be sent United States mail, postage prepaid, Certified Return Receipt Requested as follows:

LESSOR:

Joe L. Herring, Secretary  
Department of Wildlife and Fisheries  
P. O. Box 98000  
Baton Rouge, LA 70898-9000

LESSEE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THUS DONE, READ, ACCEPTED, AND SIGNED by the parties hereto in the presence of the respective undersigned witnesses, as of this \_\_\_\_ day of \_\_\_\_\_, 1994, which shall be the date of this lease for all purposes.

WITNESSES

\_\_\_\_\_  
\_\_\_\_\_  
  
\_\_\_\_\_  
\_\_\_\_\_

WILDLIFE AND FISHERIES  
COMMISSION

BY: \_\_\_\_\_  
Joe L. Herring  
SECRETARY

\_\_\_\_\_ (Company)

BY: \_\_\_\_\_

APPROVED BY:

STATE MINERAL BOARD

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
CHAIRMAN

STATE OF LOUISIANA

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
COMMISSIONER, DIVISION OF  
ADMINISTRATION

WITNESS FORM OF  
ACKNOWLEDGEMENT FOR WILDLIFE AND FISHERIES COMMISSION

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority came and appeared  
\_\_\_\_\_, who by me being first duly sworn,  
deposed and said:

That he is one of the witnesses to the execution of the  
foregoing instrument and that he saw Joe L. Herring, sign said  
instrument as Secretary of the Louisiana Department of Wildlife and  
Fisheries for and on behalf of the Wildlife and Fisheries  
Commission and State of Louisiana, in the presence of appearer and  
\_\_\_\_\_, the other subscribing witness.

\_\_\_\_\_  
APPEARER

Sworn to and subscribed before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public

WITNESS FORM OF  
ACKNOWLEDGEMENT FOR LESSEE

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority came and appeared  
\_\_\_\_\_, who by me being first duly sworn,  
deposed and said:

That he is one of the witnesses to the execution of the  
foregoing instrument and that he saw \_\_\_\_\_  
\_\_\_\_\_ sign said instrument as \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_ as the  
free act and deed of said lessee in the presence of appearer and  
\_\_\_\_\_, the other subscribing witness.

\_\_\_\_\_  
APPEARER

Sworn to and subscribed before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public

WITNESS FORM OF  
ACKNOWLEDGEMENT FOR STATE MINERAL BOARD

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority came and appeared \_\_\_\_\_, who by me being first duly sworn, deposed and said:

That he is one of the witnesses to the execution of the foregoing instrument and that he saw John Schober, sign said instrument as Chairman of the State Mineral Board for and on behalf of the State of Louisiana, in the presence of appearer and \_\_\_\_\_, the other subscribing witness.

\_\_\_\_\_  
APPEARER

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public

WITNESS FORM OF  
ACKNOWLEDGEMENT FOR STATE OF LOUISIANA

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority came and appeared  
\_\_\_\_\_, who by me being first duly sworn,  
deposed and said:

That he is one of the witnesses to the execution of the  
foregoing instrument and that he saw Raymond Laborde sign said  
instrument as Commissioner for and on behalf of the State of  
Louisiana, in the presence of appearer and  
\_\_\_\_\_, the other subscribing witness.

\_\_\_\_\_  
APPEARER

Sworn to and subscribed before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public

EXHIBIT "A"

Shell Lease: Central Coast

All water bottoms located in the Parishes of St. Mary, Terrebonne and Iberia which lie within an area defined as follows:

Shell Lease: Central Coast - Tract 1

Beginning at a point in East Cote Blanche Bay 1500 feet south of the shoreline below Point Marone at Latitude 29 degrees 37 minutes 38 seconds North, Longitude 91 degrees 39 minutes 48 seconds West; thence in an easterly direction and along a line running parallel to and 1500 feet seaward of the shoreline to Latitude 29 degrees 37 minutes 54 seconds North, Longitude 91 degrees 35 minutes 07 seconds West; thence south along Longitude 91 degrees 35 minutes 07 seconds West to its intersection with Latitude 29 degrees 26 minutes 06 seconds North; thence in a northwestwardly direction to its intersection with Latitude 29 degrees 27 minutes 46 seconds North, Longitude 91 degrees 39 minutes 48 seconds West; thence north along Longitude 91 degrees 39 minutes 48 seconds West to the point of beginning, containing approximately 35,567 acres and as further shown on the attached chart designated EXHIBIT "A", 1994.

Beginning offshore of East Cote Blanche Bay at Latitude 29 degrees 24 minutes 26 seconds North, Longitude 91 degrees 36 minutes 57 seconds West; thence eastward along Latitude 29 degrees 24 minutes 26 seconds North to its intersection with Longitude 91 degrees 35 minutes 34 seconds West; thence northward along Longitude 91 degrees 35 minutes 34 seconds West to its intersection with Latitude 29 degrees 25 minutes 05 seconds North; thence southeastward and 1500 feet seaward of the line marked Territorial Sea to its intersection with Longitude 91 degrees 28 minutes 30 seconds West; thence south along Longitude 91 degrees 28 minutes 30 seconds West to its intersection with the Three Nautical Mile line at Latitude 29 degrees 19 minutes 23 seconds North; thence northwestward along the Three Nautical Mile line to its

intersection with Longitude 91 degrees 36 minutes 57 seconds West;  
thence north along Longitude 91 degrees 36 minutes 57 seconds West  
to the point of beginning, containing approximately 20,168 acres,  
and as further shown on the attached chart designated EXHIBIT "A",  
1994.

Shell Lease: Central Coast - Tract #2

Beginning at a point in East Cote Blanche Bay 1500 feet south of the shoreline at Latitude 29 degrees 37 minutes 54 seconds North, Longitude 91 degrees 35 minutes 07 seconds West; thence in an easterly direction and along a line running parallel to and 1500 feet seaward of the shoreline to Latitude 29 degrees 37 minutes 55 seconds North, Longitude 91 degrees 33 minutes 38 seconds West; thence in a southerly direction and along a line parallel to and 1500 feet seaward of the shoreline to Latitude 29 degrees 30 minutes 50 seconds North, Longitude 91 degrees 32 minutes 59 seconds West located 1500 feet south of Point Chevreuil; thence southeastward to Latitude 29 degrees 25 minutes 44 seconds North, Longitude 91 degrees 31 minutes 04 seconds West; thence eastward to Latitude 29 degrees 25 minutes 34 seconds North, Longitude 91 degrees 22 minutes 47 seconds West; thence southwestward to Latitude 29 degrees 23 minutes 35 seconds North, Longitude 91 degrees 23 minutes 46 seconds West; thence northwestward to Latitude 29 degrees 24 minutes 27 seconds North, Longitude 91 degrees 27 minutes 26 seconds West; thence southwestward to Latitude 29 degrees 23 minutes 55 seconds North, Longitude 91 degrees 29 minutes 18 seconds West; thence south along Longitude 91 degrees 29 minutes 18 seconds West to its intersection with Latitude 29 degrees 23 minutes 18 seconds North, located 1500 feet north of the Territorial Sea Line; thence northwestward and 1500 feet north of the Territorial Sea Line to its intersection with Latitude 29 degrees 24 minutes 30 seconds North, Longitude 91 degrees 32 minutes 12 seconds West; thence north along Longitude 91 degrees 32 minutes 12 seconds West to its intersection with Latitude 29 degrees 25 minutes 00 seconds North; thence northwestward to its intersection with Latitude 29 degrees 26 minutes 06 seconds North, Longitude 91 degrees 35 minutes 07 seconds West; thence North along Longitude 91 degrees 35 minutes 07 seconds West to the point of beginning, containing approximately 35,480 acres, and as further shown on the attached chart designated EXHIBIT "A", 1994.

Beginning offshore of Atchafalaya Bay at Latitude 29 degrees 22 minutes 23 seconds North, Longitude 91 degrees 28 minutes 30 seconds West, located 1500 feet south of the Territorial Sea Line; thence southeastward and 1500 feet seaward of the line marked Territorial Sea to Latitude 29 degrees 20 minutes 11 seconds North, Longitude 91 degrees 22 minutes 42 seconds West; thence southerly to Latitude 29 degrees 19 minutes 32 seconds North, 91 degrees 22 minutes 36 seconds West; thence northeastward to Latitude 29 degrees 19 minutes 41 seconds North, 91 degrees 21 minutes 39 seconds West; thence southeasterly along a line running parallel to and 1500 feet seaward of the shoreline to Longitude 91 degrees 20 minutes 00 seconds West; thence south along Longitude 91 degrees 20 minutes 00 seconds West to its intersection with the Three Nautical Mile line; thence northwesterly along the Three Nautical Mile line to its intersection with Longitude 91 degrees 28 minutes 30 seconds West; thence north along Longitude 91 degrees 28 minutes 30 seconds west to the point of beginning, containing approximately 22,322 acres, and as further shown on the attached chart designated as EXHIBIT "A", 1994.

Draft

MINUTES OF THE MEETING  
OF THE  
MINERALS COMMITTEE  
LOUISIANA WILDLIFE AND FISHERIES COMMISSION

Tuesday, April 5, 1994

Chairman Bert Jones presiding.

Jeff Schneider  
Jerald Hanchey

Chairman Jones asked Ms. Karen Foote to go over some things in order to format the meeting. Ms. Foote reminded that packages had been mailed to the Commission members which included a draft of the special instructions, draft of notice of publication, draft of the bid form, draft of the bid bond and draft of the lease form. The current shell dredging lease will expire October 1994 was the reason for beginning the process now. The procedure to follow would be: the Minerals Committee would consider the draft package and approve it; would go before the full Commission for their approval; the Commission would submit it to the Minerals Board for their approval; then it goes out for bid with a submission date. Once the bids have been received, the Minerals Committee would consider the bids and make a recommendation to the full Commission; then the Commission would accept the bid and the lease would be executed. The Minerals Board would need to sign the lease also. Commissioner Schneider asked what about the permit? Ms. Foote stated the permit in effect now would not run out until 1995. Commissioner Schneider asked if it would run past the contract date? Ms. Foote advised she could answer questions if the Committee had questions on the forms that were provided. Commissioner Schneider asked if anything has changed from the last time on the Special Instructions. Mr. Don Puckett suggested hearing a presentation on the proposed tracts first and save the specific language until later.

Ms. Foote showed a map with the existing lease which comprised 129,000 acres. The Coastal Management Division has included more exceptions to the area. The proposed map was then shown to the Commissioners. An area of active delta formation within a Wildlife Management Area had been deleted which amounted to approximately 12.7 percent of the acreage from the existing lease. The new map had also been divided into two tracts which were approximately equal in acreage. Chairman Jones stated public comments would be accepted at any time. Commissioner Schneider asked if the bids were going to be on each tract or both tracts together? Ms. Foote stated the bidders had the option to chose how they wanted to bid. Chairman Jones asked if the bids would be considered as Tract 1,

Tract 2 and overall? Mr. Puckett stated a company could submit a bid on both tracts together. Chairman Jones asked if the Commission was going to request the bidders bid on Tract 1 and Tract 2 and in globo. Mr. Puckett reminded that in 1991, the Commission gave bidders the option to bid on Tract 1 alone, or Tract 2 alone, or a designated portion of either tracts, or for the entire tracts together.

Commissioner Schneider asked what was the current status of the current lease. Ms. Foote showed a map which designated where the dredging occurred in 1993. Commissioner Hanchey asked when would the permit be issued? Mr. Richard Koen advised the actions the Corps of Engineers would be taking which included a 30 day public comment period and then the permit would be processed by the Corps. Mr. Farhad Niami provided the Commissioners with production figures for the past 25 months and from 1975 to present. Commissioner Schneider asked if we had a dollar minimum; if the minimum was based on dollars and not yardage and if the company was doing more than the minimum? He then asked the reason for the production to jump way up from 1992 to 1993. Ms. Foote stated there was some geophysical information but was proprietary information and could not be presented in an open meeting. Commissioner Schneider asked about the status of the mitigation. Ms. Foote stated the company had placed everything that was asked, and the summer of 1994 should bring more mitigation to the inshore reefs of the Terrebonne-Timbalier Bay area. Chairman Jones asked if the company was handling the movement of the mitigation. Mr. Puckett suggested Department staff and one member of the company to meet with the Commissioners in executive session.

Chairman Jones reconvened from private session reviewing Louisiana Dredging's proprietary maps. He then asked if there was another company represented at the meeting but found Louisiana Dredging was the only company represented. A question on why the map was redrawn was answered by Mr. Johnnie Tarver. Mr. Tarver met with staff and LSU to determine the shape of the new delta being formed at the Atchafalaya and Wax Lake Outlet. This area was squared off so it could grow without harm from dredging activities. Commissioner Schneider asked what was meant by the near future. Commissioner Hanchey asked how many acres were actually cut out and did that area have to be cut out? Mr. Tarver stated it was approximately 13 percent and it did not have to be cut out, it was just recommended. Commissioner Schneider asked if the shell would be dredged, would it interfere with it building up in the future? Then Commissioner Schneider asked if the line had been moved before? Mr. Tarver answered yes, that as the delta continues to grow, the company can not get as close. Ms. Foote stated there was a Wallop-Breaux project in the area to speed up with the delta's growth. Commissioner Schneider asked how big an area was the project going to affect and if Mother Nature was putting the Department out of the shell dredging business by natural process? Mr. Koen asked if the Corps of Engineers permit restricted a

company from going into waters that are less than 2 foot deep. Commissioner Hanchey asked the company representatives how does the redrawn line affect their company now? Mr. Jimmy Brabner asked for permission to maintain a channel in the areas. Mr. Tarver advised that would be acceptable. Chairman Jones then made a motion to accept the lines as drawn by the Department designating the new potential lease area. Hearing no further public comments or questions, the Committee accepted the lines with an unanimous vote.

The next area of discussion was the Guaranteed Annual Minimum Royalty and the Minimum Royalty advised Ms. Foote. Mr. Miami gave the Commissioners a handout which listed several suggestions for adjusting the guaranteed annual minimum royalty and the minimum royalty. The first suggestion would take the lowest yearly royalty received by the Department during the last three years and basing the guaranteed annual minimum royalty on that figure. The second suggestion would adjust the guaranteed annual minimum royalty from the existing contract which was \$800,000 and adjusted by the Consumer Price Index. The third suggestion would adjust the guaranteed annual minimum royalty every year by using the Consumer Price Index. The last suggestion would be the average of the last three years guaranteed minimum royalty received by the Department. Mr. Miami then went over the options for the minimum royalty. Commissioner Schneider asked if Mr. Miami had a recommendation. Mr. Miami stated his recommendation for the guaranteed annual minimum royalty would be suggestion four and for the minimum royalty, his recommendation would be suggestion two. Chairman Jones asked the company representatives asked how much does the price of shell change, then he asked about the \$21.36 figure, what was the market level now and how was the \$21.36 set originally? Mr. Jim Burton explained where the \$21.36 figure came from and if that price would be used now, then the Department would be trying to regulate the market price. Mr. Koen stated, from the last bid, the minimum acceptable bid would be 1/8 of \$7.50 as compared to what was being asked for now. Commissioner Schneider asked Mr. Miami how much was being gotten per year from the contracts? Mr. Miami said the average from the last three years has been \$1.6 million. Commissioner Schneider asked if the price was lowered and the market was expanded, would the \$1.6 million go up? Commissioner Hanchey asked what was the price of the mexican limestone going into Larose, Louisiana? Chairman Jones asked if a yard of shell and a yard of limestone were similar. Then he stated to Commissioner Schneider if the Commission would set the annual minimum royalty to \$1.6 million and lower the 1/8 from \$21.36, the Department would get more money. Commissioner Schneider asked if it was dangerous to assume Louisiana Dredging was producing more than the minimum annual payment and making money. The representatives stated it was a very dangerous assumption. Mr. Puckett asked if the limestone at Larose was being purchased by Louisiana Dredging, then he asked what was the price the company

pays for the limestone? Chairman Jones asked what was the severance tax?

Mr. Puckett asked if the \$21.36 figure was a relevant number and then stated this was the number Louisiana Dredging's royalty was based on. He then stated the Department was not regulating what the price of shell has to be sold for, but establishing a minimum royalty. A consent judgment was making the Department apply the 1/8 of the selling price at the dredge and the \$21.36 was just used to plug into a math equation to get a per cubic yard price. Commissioner Schneider asked if the 1/8 was the only legal constraint? Mr. Puckett advised that the minimum constraint the Committee was to use 1/8 of the selling price fob. Mr. Koen asked how could a misinformed, now bankrupt company that got the bid three years ago could set the precedence on the minimum royalty. A company representative explained to the Commissioners how their company had to put in money for the first year of the lease to meet the minimum royalty. Chairman Jones asked if the shell was being depleted as a resource and if this was an issue and was it more a transportation issue? Mr. Koen stated the market has to expand beyond the Morgan City area for the company to stay in business. Commissioner Hanchey asked how can the company expand? Mr. Koen replied by producing it at a cheaper price or sell it at a competitive price. Mr. Fred Prejean asked if he understood someone to say that the company representatives had information that showed it would not be profitable to continue the royalty at \$2.67, and did they do a projection to determine a break even point and for average market profit of the company. He then stated the Department has relied on the minimum and the average received and if the market is going to remain in existence, we may need to look at another side. Mr. Houson stated the problem was the prices being plugged into the formula to determine the Guaranteed Annual Minimum Royalty. Mr. Prejean asked if there would be a problem with reducing the cubic yard minimum fee and elevating the basic minimum royalty? Commissioner Schneider asked for a few minutes to meet with Mr. Puckett and Mr. Prejean. Chairman Jones adjourned the meeting at this point for a break.

Chairman Jones reconvened stating options on the Guaranteed Annual Minimum Royalty and for Minimum Royalty would need further deliberations and would not be resolved at the meeting. Interaction between potential dredgers and those in the business to iron out what was happening. Mr. Puckett advised this item could be addressed at another Minerals Committee meeting. Chairman Jones stated there would be another meeting and time was not a factor that would restrict actions and bidders being allowed to bid on a timely basis. The next meeting would be held prior to the May Commission Meeting.

The next item addressed was the Bid Package and Language with regard to deletions and changes. Commissioner Schneider asked if there were any changes. Mr. Puckett stated the package was the

same as approved last time, and discussion would center just on those changes. Ms. Foote stated there were no changes on the Special Instructions package, Notice of Publication, and the Commission Bid Form. Chairman Jones asked if the bids were for Tract 1 and Tract 2 and in globo. Mr. Puckett stated the Committee has the discretion to accept the bid that would help the State the most. Ms. Foote continued explaining the changes with the Bid Form stating the legal description of the two tracts would be added. Then she asked Mr. Puckett to explain the changes on the Lease Form. Chairman Jones asked if the Committee was restricted to a three year lease period? Commissioner Hanchey asked why not go to a five year period? Chairman Jones stated this option should be considered since it may be both beneficial to the state and a company. Mr. Puckett stated the Committee could approve the package subject to future modifications. Chairman Jones asked the company representatives if they felt this option should be considered? Mr. Puckett continued explaining changes in the lease. Section 14 that pertained to Suspension of Operation for Environmental Reasons was changed with using the same language and to delete the State Mineral Board from the provision that provides for Suspension of Operation. Commissioner Schneider asked why was the Mineral Board in the paragraph from the beginning? Mr. Puckett stated the Mineral Board requested this language in 1991. Chairman Jones asked Mr. Puckett what made him think they would change it now? Mr. Puckett suggested sending a copy to the Mineral Board and advise them of what was occurring. Ms. Foote advised the Committee of another change that dealt with offsite restoration. She noted this would allow the Department more options in using the shell. Commissioner Schneider asked if the Department was restricted from utilizing these options. Discussion occurred at this point between company representatives and staff from the Department on this change. Mr. Puckett stated there were two more recommendations from company representatives on amending the lease. He then asked Mr. Burton to explain these changes. The first recommendation was the use of Loran C coordinates in determining the position of dredges and Loran C's are not being used. Chairman Jones asked how accurate were GPS? Mr. Pete Juneau suggested the wording GPS be used in the lease. Ms. Foote agreed with Mr. Juneau in that since the permit has GPS, the lease should have the same wording. Mr. Burton then requested a definition sentence for the meaning of "subaqueous reefs" be included. Mr. Puckett noted the Department had no problem with the recommendation.

Chairman Jones made a motion to approve in general the bid package and lease with the understanding there may be some minor changes. Hearing no further public comment, all Committee Members approved the lease package. The minimum royalty item would be looked addressed at a later date. Chairman Jones then announced that he would postpone any action at the April Commission Meeting and another Committee Meeting would be held before the May Commission Meeting.

Hearing no further discussion, Commissioner Schneider made a motion to adjourn the Minerals Committee meeting of the Commission and was seconded by Commissioner Hanchey.

**DRAFT**  
**Not in Final Form**

Options for Guaranteed Annual Minimum Royalty

1. **Adjust the guaranteed annual minimum royalty by the lowest yearly royalty received.                   \$938,772**

2. **Adjust the guaranteed annual minimum royalty by the three year Consumer Price Index (CPI) for the entire lease.**

$$\$800,000 * 1.119 = \$895,200$$

3. **Consider adjusting guarantee annual royalty amount by yearly CPI. for duration of the lease period (three years).**

4. **Adjust the guaranteed annual minimum royalty to the last three year average annual royalty received by the state.   \$1,635,674**

Options for Minimum Royalty

1. **Consider using the minimum bid of the last contract lease to remain the same.**

$$1/8 * \$21.36 = \$2.67 / \text{cubic yard}$$

or current market price which every is higher.

2. **Consider adjusting minimum bid of the last contract lease by the three year CPI.**

$$1/8 * (\$21.36 * 1.119) = \$2.99 / \text{cubic yard}$$

or current market price which every is higher.

3. **Consider annually adjusting minimum bid per cubic yard by yearly CPI. for duration of the lease period (three years).**

**Any combination of above.**

# State of Louisiana



Joe L. Herring  
Secretary

Department of Wildlife and Fisheries  
Post Office Box 98000  
Baton Rouge, LA 70898-9000  
(504) 765-2800

Edwin W. Edwards  
Governor

March 29, 1994

Mr. Bert Jones, Commissioner  
Minerals Committee Member  
P. O. Box 298  
Simsboro, LA 71275

Mr. Jeff Schneider, Commissioner  
Minerals Committee Member  
Route 1, Box 201  
Loranger, LA 70446

Mr. Jerald Hanchey, Commissioner  
Minerals Committee Member  
101 Eton Circle  
Lafayette, LA 70508

SUBJECT: 1994 Shell Dredging Lease Bid Package for Central Coast

Gentlemen:

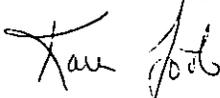
For purposes of the upcoming Minerals Committee meeting scheduled for 10:00 a.m., April 5, 1994, enclosed herewith, please find a proposed bid package for your review. The proposed bid package consists of (1) Special Instructions; (2) Notice of Publications; (3) Bid Form; (4) Bid Bond; and (5) Lease Form. To assist you in reviewing the lease form, I have ~~struck through~~ language that is proposed to be deleted. Additionally, I have underlined new language.

For your further reference, I have included (a) a copy of the executed 1991 Lease; (b) a copy of the Consent Judgement which affects certain aspects of the proposed lease; and (c) the Fourth Circuit's 1988 ruling.

Mr. Bert Jones  
Mr. Jeff Schneider  
Mr. Jerald Hanchey  
March 29, 1994  
Page 2

Don Puckett, Farhad Niami, and I will be present at the April 5th meeting to discuss all aspects of the proposed bid package. If you have questions prior to that time, please do not hesitate to contact me.

Sincerely,



Karen Foote  
Assistant Administrator  
Marine Fisheries Division

KF:csg

SHELL DREDGING LEASES  
SPECIAL INSTRUCTIONS

1. For general instructions, see Notice of Publication.
2. For tract description, see Notice of Publication and map attached to lease form.
3. Portion of tract bid:

If a lease is awarded based on a portion of a tract, the guaranteed annual minimum royalty and performance bond amounts will be reduced proportionally, based strictly on the number of acres in the tract. If, for example, a bid is submitted on a portion of a tract, which, for the sake of simplicity, contains exactly one-half the acreage of the whole of the tract, then the guaranteed annual minimum royalty and performance bond amounts shall be reduced in the lease to \_\_\_\_\_ and \_\_\_\_\_ respectively, rather than \_\_\_\_\_ and \_\_\_\_\_ which would be required if the whole tract were bid. (The performance bond amount represents three (3) times the guaranteed annual minimum royalty.)

This will, of course, necessarily affect the bid bond amount which is five percent (5%) of the performance bond amount. Thus, in the above example the bid bond for the portion would be \_\_\_\_\_, rather than \_\_\_\_\_ which would be required if the whole tract were bid.

An example of how this was computed, using the above hypothetical with regard to Tract 1 is as follows:

1. Entire tract:  
\_\_\_\_\_ acres - \_\_\_\_\_ guaranteed annual minimum royalty.
2. Portion bid submitted for \_\_\_\_\_ acres, exactly half of the entire acreage of tract.
3. Thus, the guaranteed annual minimum royalty is reduced by one half, or \_\_\_\_\_.
4. This amount is multiplied by three (3) [the term of the lease in years] to arrive at \_\_\_\_\_, the amount of the performance bond.
5. This amount is then multiplied by five percent (5%) to arrive at \_\_\_\_\_ the amount of the bid bond (or cash payment).

The bidder should perform these computations before bidding, particularly as the bid bond or cash payment must be submitted with the bid. Obviously, the bidder should take great care in computing the correct acreage of any portion bid as this acreage figure will directly affect the amount of the bid bond required.

Bidders are required to indicate on the bid form the approximate number of acres in the portion of the tract bid upon. When portion bids are received, the Department will independently confirm the bidder's estimation of acreage, using the transparent plat submitted by the bidder. The Department will further confirm that the bid bond submitted is of a sufficient amount for the acreage bid upon.

ANY BID BOND SUBMITTED TOTALING LESS THAN NINETY PERCENT (90%) OF THE AMOUNT REQUIRED, BASED UPON THE DEPARTMENT'S ACREAGE DETERMINATION, WILL RESULT

IN AUTOMATIC REJECTION OF THE BID.

When a portion bid has been accepted by the Commission as the successful bid, and there is a difference between the Department's acreage determination and the bidder's (which is not within the acceptable margin of error for such determinations), then the Department's acreage determination shall prevail for purposes of the lease, specifically the property description, guaranteed annual minimum royalty and performance bond.

4. Bidding.

Each bid should be placed in a separate sealed envelope, which should then be placed into a larger envelope, addressed and forwarded to the Louisiana Department of Wildlife and Fisheries, Post Office Box 98000, Baton Rouge, Louisiana 70898-9000 ATTENTION: UNDERSECRETARY, by REGISTERED or CERTIFIED mail, or by hand delivery to the Department's offices at 2000 Quail Drive, Baton Rouge, Louisiana, Room 248, with a notation thereon to the effect that a sealed bid is enclosed. A bid may cover all or any portion of the tract advertised. The Commission has authority to accept the bid most advantageous to the State, may reject any and all bids, or may lease a lesser quantity of property than advertised and withdraw the rest. If a joint bid is submitted the UNDIVIDED INTEREST OF EACH PARTY should be designated on the bid in order that the proportionate interest of each bidder may be stipulated in the lease contract.

NOTE: For the convenience of the Commission and in order to eliminate errors, the address of each company should be designated on the Bid form for clarification in typing the lease contract.

The minimum acceptable bid is a royalty of \_\_\_\_\_ of the "selling price of the shell produced," which is defined as the price of the shell FOB dredge site, exclusive of any transportation costs; be it further provided that for bidding purposes, and throughout the term of the lease(s), the minimum acceptable bid for the "selling price of the shell produced" is \_\_\_\_\_ per cubic yard.

Bidders may submit bids which are equal to or greater than either or both the minimum fractional portion \_\_\_\_\_ and the minimum "selling price of the shell produced" (\_\_\_\_\_). Award of bids shall be based upon a mathematical computation of these two figures. For example, Bidder A submits a bid of one-seventh (\_\_\_\_) of a minimum "selling price" of \_\_\_\_\_. Bidder B submits a bid of one sixth (\_\_\_\_) of a minimum "selling price" of \_\_\_\_\_. In this example, Bidder B is deemed to be the higher bidder as his bid would yield a royalty of \_\_\_\_\_ as opposed to Bidder A, whose bid would yield a royalty of \_\_\_\_\_.

Calculated values shall be rounded as follows: 5/10 of a cent and greater - up to the next whole cent; less than 5/10 of a cent - down to the next whole cent.

The term of the lease shall be three (3) years.

The bidder must enclose an executed bid bond or CERTIFIED CHECK, CASHIER'S CHECK or BANK MONEY ORDER with the bid in an amount equal to five percent (5%) of the performance bond amount payable to the Louisiana Department of Wildlife

The bid bond, certified check, cashier's check or bank money order for the amount of the cash payment is forfeited in the event the bid is accepted and the bidder or bidders fail to enter into a written contract within twenty (20) days after such lease is submitted to lessee for execution; provided, however, that in the case of a successful bidder who has applied for all necessary and applicable permits but who has not received all necessary and applicable permits by the end of the twenty (20) day period, the Secretary may, in his discretion (a) extend this twenty (20) day period and/or (b) waive the forfeiture of all or part of the bid bond. In the event the bid is rejected, the said check shall be returned, or the bid bond shall be voided.

NOTICE OF PUBLICATION  
OFFICE OF MINERAL RESOURCES  
ON BEHALF OF THE WILDLIFE AND FISHERIES COMMISSION  
BATON ROUGE, LOUISIANA 70821

By virtue of and in conformity with the provisions of Sub-part A of Chapter 2, Title 30 of the Louisiana Revised Statutes of 1950, as amended, R.S. 56:441, and other applicable laws, sealed bids will be received in the Louisiana Wildlife and Fisheries Commission office located at 2000 Quail Drive, Baton Rouge, Louisiana 70808 on or before the \_\_\_ day of \_\_\_\_\_, 1994 at 2:00 p.m., for leases to explore, dredge for and produce fossil shells and fossil shell deposits on the following described tracts at which time and date the bids will be opened publicly in the Louisiana Room, Louisiana Wildlife and Fisheries Commission, 2000 Quail Drive, Baton Rouge, Louisiana 70808. The successful bidder(s) will be formally selected by the Louisiana Wildlife and Fisheries Commission at its regularly scheduled \_\_\_\_\_, 1994 meeting.

All bids are to offer a royalty for leases having a primary term which shall not exceed three (3) years, which leases are to be granted without any warranty or recourse against lessor whatsoever, either expressed or implied, not even for return by lessor of any payments received under the lease or being otherwise responsible to LESSEE. The MINIMUM ACCEPTABLE ROYALTY BID as set by the Louisiana Wildlife and Fisheries Commission is \_\_\_\_\_ ( ) of the "selling price of the shell produced," which is defined as the price of the shell FOB dredge site, exclusive of any transportation costs; be it further provided that for bidding purposes, and throughout the term of the lease(s), the minimum acceptable bid for the "selling price of the shell produced" is \_\_\_\_\_ ( ) per cubic yard. A bid of a royalty less than the aforesaid minimum will be increased to said minimum by the Commission. All bidders are notified that the Commission does not obligate itself to accept a bid

which offers the aforesaid minimum, but reserves the right to accept a bid which offers in excess of the minimum and is considered most advantageous to the State of Louisiana. Bidders may submit bids which are equal to or greater than either or both the minimum fractional portion ( ) and the minimum "selling price of the shell produced" ( ).

The provisions of this notice or advertisement and the relevant statutes establish the material considerations necessary for the formulation of proper bids, and this notice or advertisement shall not be deemed to be modified, enlarged or diminished by resolutions or policy expressions of the Commission not incorporated herein expressly or by reference.

Copies of the proposed lease are available to any interested bidders at the Office of the Undersecretary, Department of Wildlife and Fisheries prior to the opening of the bids on the tract, and prospective bidders should carefully examine the same prior to submitting any bid therefor.

The lease tract is situated in the Louisiana Coastal Zone as defined by Act 361 of 1978 (LSA R.S. 49:213), and as such is subject to the guidelines and regulations promulgated by the Coastal Management Section of the Department of Natural Resources. Further, the tract is subject to review and permitting by the United States Army, Corps of Engineers, and may be subject to the review, guidelines, regulations and permits of other state and federal agencies.

All leases awarded shall be executed upon terms and conditions provided in the current State lease forms, including, but not limited to, provisions as follows: Should LESSEE fail to begin the actual dredging on the lease premises within ninety (90) days from the date of the lease, the lease may terminate as to both parties to the lease; provided, however that the Louisiana Wildlife and Fisheries Commission may extend this period if LESSEE'S failure to begin dredging is due to delays in issuance of applicable permits which LESSEE has demonstrated

a due and diligent effort to obtain. The lease shall contain provisions against the assignment or sublease of the lease unless approved by the Louisiana Department of Wildlife and Fisheries.

A bid bond in the amount of \_\_\_\_\_ (or in a proportionately smaller amount if a portion bid is submitted) shall be submitted with each bid, which bid bond shall be written on forms prepared by the Commission and available to prospective bidders at the office of the Department of Wildlife and Fisheries, and shall ensure the commitment of each bidder to enter into and execute the leases, if selected as high bidder. Said bid bond shall be in favor of the Louisiana Department of Wildlife and Fisheries. In lieu of the bid bond and in the same amount thereof, bidders may tender with their bid, cash payments in the form of a certified check, cashier's check, or bank money order payable to the Louisiana Department of Wildlife and Fisheries, and the certified check, cashiers check or bank money order accompanying the bid of the successful bidder shall be immediately negotiated by the Louisiana Department of Wildlife and Fisheries and the proceeds thereof deposited in the Conservation Fund. This cash payment shall be credited to the LESSEE and applied to the cubic yard royalties and/or guaranteed annual minimum royalties as the case may be.

No bid submitted with the above bid bond or cash payment may be thereafter withdrawn or cancelled. The successful bidder(s) to whom the lease is awarded on the date of the lease shall return the written lease, duly executed, within TWENTY (20) DAYS after bidder's receipt of same under penalty of forfeiture of the lease and the aforesaid bid bond or cash payment previously tendered in the event of failure to do so; provided, however, that in the case of a successful bidder who has applied for all necessary and applicable permits but who has not received all necessary and applicable permits by the end of the twenty (20) day period, the Secretary may, in his discretion (a) extend this twenty (20) day

period and/or (b) waive all or part of the bid bond.

Bids may be for the whole or any particularly described portion of the water bottoms advertised; however, bidders are advised that the Commission desires to lease the entirety of the water bottoms herein described and bidders are encouraged to submit bids for an entire tract. All bidders are hereby notified that bids on portions of tracts should be described by metes and bounds and be accompanied by a transparent plat outlining thereon the portion bid upon. The scale of the plat should be 1 inch = 4,000 feet. Bidders are further notified that bids may be submitted for both tracts in globo.

At the time of the submission of their bids, all bidders are to contact Barney Barrett at 765-2372, to arrange for the submission of a geological and geophysical evaluation of the tract, prepared in accordance with the bidder's usual procedure, along with data relative to any exposed reefs (above the mud line). Any of the above information designated as proprietary by the bidder shall be treated in a confidential manner by the Department.

The Louisiana Wildlife and Fisheries Commission reserves the right to reject any and all bids or to grant a lease on any portion of an advertised tract and to withdraw the remainder of the tract.

Any lease for shell dredging awarded by the Commission requires the approval and countersignature of the State Mineral Board and the Commissioner of the Division of Administration.

Office of Mineral Resources  
On Behalf of the Louisiana  
Wildlife and Fisheries  
Commission

Published in the Baton Rouge "State Times" on \_\_\_\_\_, 1994, and  
the Official Journal of the Parishes in which the property is located.

LOUISIANA WILDLIFE AND FISHERIES COMMISSION BID FORM

\_\_\_\_\_, 1994

CHECK ONE:

TRACT 1:

TRACT 2:

Entire Tract  
Approximately \_\_\_\_\_ acres

Entire Tract  
Approximately \_\_\_\_\_ acres

Portion of Tract 1  
Approximately \_\_\_\_\_ acres

Portion of Tract 2  
Approximately \_\_\_\_\_ acres

-----  
 TRACTS 1 and 2 in globo  
Approximately \_\_\_\_\_ acres

Bidder: \_\_\_\_\_  
(Name to appear on lease contract,  
if lease is awarded)

For a three (3) year lease.

ROYALTY BID:

\_\_\_\_\_ (fractional portion) of the "selling price of the shell produced," which is defined as the price of the shell FOB dredge site, exclusive of any transportation costs; be it further provided that for purposes of this bid, and throughout the term of the lease, the "selling price of the shell produced" shall be deemed to be never less than \_\_\_\_\_ DOLLARS AND \_\_\_\_\_ CENTS (\$ \_\_\_\_\_) per cubic yard.

[Mathematical computation of the minimal contractual per cubic yard royalty - to be completed by bidder:

\_\_\_\_ / \_\_\_\_ (fractional portion) x \$\_\_\_\_.\_\_\_\_ ("selling price")  
= \$\_\_\_\_.\_\_\_\_ /cubic yard

In the event of mathematical error in the above computation, the figures submitted in the bid itself will govern.]

Metes and bounds description as follows: (REQUIRED FOR PORTION BID ONLY) -  
(Plat showing portion outlined in red is attached).

In the event of a "Joint bid", the undivided interest of each bidder is as follows:

The lease contract is to be drafted on such terms as are provided for and written in the current lease form approved by the Louisiana Wildlife and Fisheries Commission for shell dredging leases.

In the event this bid is accepted, the lease contract should name \_\_\_\_\_ as lessee or lessees, of the following domicile(s) or residence(s) \_\_\_\_\_ (address(es) to be used on the lease form itself) acting herein on his, its, their own behalf or through \_\_\_\_\_, agent.

The Louisiana Wildlife and Fisheries Commission should mail the contract to:

-----  
----- at the  
following address: -----  
----- attention of  
-----

The undersigned acknowledges that the bid bond or certified check, cashier's check or bank money order, payable to the Louisiana Department of Wildlife and Fisheries, for five percent (5%) of the performance bond amount as determined by the Commission and set out in the lease forms, shall accompany and be submitted with each bid, and no bid thus submitted may be thereafter withdrawn or cancelled and the certified check, cashier's check or bank money order accompanying the bid of the successful bidder shall be immediately negotiated and endorsed by the Louisiana Department of Wildlife and Fisheries, and the proceeds thereof deposited immediately in the Conservation Fund. The undersigned further acknowledges that the successful bidder, to whom the lease is awarded on the date of the lease sale, shall return the written lease, duly executed, within TWENTY (20) DAYS after his receipt of same. In the event this bid is rejected, said certified check, cashier's check or bank money order shall be returned.

Bidder acknowledges that this bid shall be binding for a period of sixty (60) days from the date of the official opening of bids.

Respectfully submitted,

\_\_\_\_\_

NOTE:

Bid bond, certified check, cashier's check or bank money for the required amount should be attached. Checks should be made payable to Louisiana Department of Wildlife and Fisheries.

The tract number of the tract on which the bid is made should appear on the envelope sealing this bid.

BID BOND

-----  
\_\_\_\_\_, as Principal (Bidder) and  
\_\_\_\_\_, as Surety, are bound unto the  
State of Louisiana, Department of Wildlife and Fisheries, (hereinafter called the  
Department) in the sum of \_\_\_\_\_  
DOLLARS (\$\_\_\_\_\_) for payment of which the Principal and Surety bind  
themselves, their heirs, executors, administrators, successors and assigns,  
jointly and severally.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

The condition of this obligation is such that, whereas the Principal has  
submitted a bid to the Department on a lease for the dredging of fossil shell,  
if the said lease is awarded to the Principal and the Principal, within the  
specified time, enters into the lease in writing and gives bond with Surety  
acceptable to the Department for performance of said lease, this obligation shall  
be voided; otherwise to remain in effect for a period of sixty (60) days from the  
date of the official opening of bids.

\_\_\_\_\_  
Principal (Bidder)

\_\_\_\_\_  
Surety

BY \_\_\_\_\_  
Authorized Officer -  
Owner - Partner

BY \_\_\_\_\_  
Agent or Attorney-in-Fact  
(Seal)

\_\_\_\_\_  
TYPED OR PRINTED NAME

I certify that I am, as of the date of this bond, a licensed Resident Agent of the State of Louisiana in good standing with the Louisiana Insurance Commission and authorized to countersign this bond on behalf of the Surety.

BY \_\_\_\_\_

\_\_\_\_\_  
Name of Agency

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Agent License Number

CENTRAL COAST, EAST

Shell Lease: Central Coast - Tract #1

(To be announced.)

Shell Lease: Central Coast - Tract #2

(To be announced.)

LEASE FOR FOSSIL SHELL EXTRACTION  
FROM STATE OWNED WATER BOTTOMS

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

SHELL LEASE: Central Coast

WHEREAS, under the provisions of Section 441 of Title 56 of the Louisiana Revised Statutes of 1950, as amended, and other applicable laws, the Louisiana Wildlife and Fisheries Commission advertised for the bids for a lease covering fossil shells on the property described below; and

WHEREAS, in response to required advertisements, bids were received and duly opened in the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and the Minerals Committee of the Louisiana Wildlife and Fisheries Commission having reviewed and evaluated same; and,

WHEREAS by resolution duly adopted, the Louisiana Wildlife and Fisheries Commission accepted the bid of \_\_\_\_\_ whose mailing address is \_\_\_\_\_ (hereinafter referred to as "Lessee") as being the most advantageous to the State of Louisiana:

NOW, THEREFORE, be it known and remembered the Louisiana Wildlife and Fisheries Commission (hereinafter referred to as the Commission) acting under said authority for and in behalf of the State of Louisiana, as Lessor, does hereby lease unto the said Lessee, the property described below for the purpose of extracting fossil shells and fossil shell material.

In connection therewith Lessee shall have the right to use as much of the property as may be reasonably necessary for such

operations, subject to restrictions contained in this lease or applicable permits. The leased property, situated in the State of Louisiana, is more fully described on Exhibit "A" which is attached hereto and made a part hereof.

Notwithstanding any provisions to the contrary in this Lease, this Lease is granted and accepted without any warranty of title and without any recourse against Lessor whatsoever, either expressed or implied. It is expressly agreed that the Lessor shall not be required to return any payments received hereunder or be otherwise responsible to Lessee therefor.

The State Mineral Board, herein represented by its Chairman, appears herein for the purpose of indicating its approval of said lease.

The State of Louisiana represented herein by the Commissioner of the Division of Administration, appears herein pursuant to the provisions of Act 282 of 1989.

#### 1. TERM

The rights and privileges herein granted shall be for a term period of three (3) years beginning November 1, 1994 and ending October 31, 1997- (hereinafter called "term"). This lease shall be subject to all existing and future oil and gas pipeline rights-of-way, mineral leases and servitudes granted by third parties and the State of Louisiana through the Department of Natural Resources, the Division of Administration, and the State Mineral Board located in the area hereinabove described. Nothing herein shall preclude the State of Louisiana from granting future oil and gas pipeline rights-of-way, mineral leases and servitudes to third parties.

## 2. ROYALTY

As consideration under this lease, LESSEE shall pay the Department of Wildlife and Fisheries, (hereinafter referred to as the Department), a royalty of \_\_\_\_\_ of the "selling price of the shell produced", from the above described water bottoms which is defined as the price of the shell free on board (FOB) dredge site, exclusive of any transportation costs. Such price must represent a fair market price as would be determined by a negotiated arms length agreement between two independent parties. Be it further provided that for purposes of this lease, and throughout the term of this lease, the "selling price of the shell produced" shall be deemed to be never less than \_\_\_\_\_ per cubic yard.

Lessee shall be required to report at intervals specified by the Department the posted barge price, as well as any changes thereof and any sales that take place from the barge.

Payment in full of royalties for all shells and/or deposits removed by the LESSEE during any one calendar month shall be made on or before the 15th day of the succeeding month, all in a manner consistent with the applicable law of the State of Louisiana. Any unpaid royalties shall be subject to legal interest which shall begin to accrue on the date said royalties are due.

For purposes of this lease, measurements of cubic yards of shell on barges shall be calculated as follows:

$$\text{Volume} = \frac{L (A + d + 4M)}{162} = \text{cubic yards}$$

Where A = Area of top

d = Area of base

M = Area of cross section midway  
between top and base

L = Height

### 3. DATA; AUDIT AND INSPECTION

LESSEE, on or before the 15th day of each month, shall furnish the Department any or all of the following types of data relating to shell production: (1) type of material removed, (2) dates removed, (3) name of vessel, (4) area of dredging, (5) cubic yards removed, and (6) royalty due.

LESSEE shall periodically and in a manner and on such forms specified by the Department, report to the Department purchasers of the shell dredged and the prices paid thereon.

These data shall not be deemed conclusive and the Department reserves the right, and LESSEE so agrees, to permit the Department's authorized representative and/or agents and representatives of the Legislative Auditor's Office or the Inspector General's Office to examine any and all of LESSEE'S books, records and memoranda of whatever kind or nature, pertaining to or having any connection whatever with the removal or sale of said shells.

The Department further reserves the right, and LESSEE agrees, to have the Department's agents or representatives and/or agents and representatives of the Legislative Auditor's Office or the Inspector General's Office inspect the barges, boats, and dredges, etc., in which the said shells are removed, and to keep a check on the number thereof, and also to determine by whatever means it may deem necessary, the number of cubic yards of shells which have been removed from the hereinabove described beds or water bottoms, and to require the payment therefor.

LESSEE shall permit routine field inspections by the above personnel for the purposes of verifying:

- a) location of dredges,

- b) direction of effluent discharge,
- c) measurements of quantity of shell aboard, and
- d) compliance with all Department of Wildlife and Fisheries regulations pertaining to shell dredging.

For the purposes of this inspection, the LESSEE shall allow the above personnel to board vessels for inspection of documents and records pertinent to the leases and regulations, positioning equipment, shell cargo, any other operations of the dredge and/or its supporting equipment, and to retrieve Loran-C tapes from recording instruments.

#### 4. EQUIPMENT AND PERSONNEL

LESSEE warrants that it has currently under its exclusive ownership and/or control, or will have by the effective date of this lease, an adequate supply of dredges, adequately powered tow boats for the operating conditions, barges, cranes, machinery, tools and implements of every kind or character which may be necessary to the taking and removal of shell and/or shell deposits under the terms of this Agreement.

LESSEE further warrants that it has in its employ a number of skilled personnel sufficient to adequately perform the requirements of this contract. LESSEE also warrants that it has, or will acquire, valid permits issued by the United States Army Corps of Engineers, the Louisiana Department of Natural Resources, and any other agencies as may be required by law.

#### 5. LIABILITY, HOLD-HARMLESS, DEFENSE AND INSURANCE

It is expressly understood that the State of Louisiana, all of its departments, agencies, boards, commissions and

employees, including the Department and the Commission shall incur no liability or expense of any kind in connection with the ownership, control and operation of such equipment by LESSEE, including but not limited to all court costs, cost of defense and any judgments arising from any claims, actions or causes of action by all third parties, LESSEE, its employees, agents, officers, directors, successors and assigns, their employees, agents, officers and directors caused by LESSEE, its employees, agents, successors and assigns in the exercise of the dredging rights and privileges granted by this lease.

LESSEE agrees that it shall be liable and responsible for property damage or personal injury, whether to property of the State of Louisiana or of any individual, firm or corporation, or to any person or persons, caused by the negligence or breach of contract of LESSEE or by its agents, directors or employees of any kind. LESSEE, its successors and assigns agree to indemnify and hold harmless the State of Louisiana, all of its departments, agencies, boards, commissions and employees, including the Department and the Commission and their officers and employees from all such damage or damages caused by such LESSEE, including assuming the cost and expense of defending all claims, actions, or causes of action which are or may be filed seeking such damage or damages.

It is expressly provided that the State of Louisiana, all of its departments, agencies, boards, commissions and employees, including the Department and the Commission shall have no responsibility or liability relative to navigation of LESSEE'S vessels, nor any responsibility or liability to inform or advise LESSEE as to the existence or location of any pipelines, drilling platforms, bridges, causeways, docks, piers or other structures, located on the property which is included within this lease. It is further expressly provided that LESSEE shall bear sole responsibility for the navigation of its vessels and for

determining the existence and location of all pipelines, drilling platforms, bridges, causeways, docks, piers or other structures which may be located on or within the property leased herein.

It is further provided that LESSEE will defend, indemnify and hold harmless the State of Louisiana, all of its departments, agencies, boards, commissions and employees, including the Department and the Commission and their officers and employees for any claims, demands, liabilities or causes of action arising out of LESSEE'S taking of shells, including those arising out of the navigation of LESSEE'S vessels, or collisions between LESSEE'S vessels and other vessels, pipelines, drilling platforms, bridges, causeways, docks, piers or other structures, even if such action is alleged to have been brought about solely, or in part, by the negligence of the Department. It is expressly provided, however, that LESSEE shall not be obligated to defend, indemnify and hold the Department or Commission harmless for any claim which does not directly involve LESSEE'S vessels, equipment and/or operations. It is further provided that LESSEE shall not be obligated to defend, indemnify and hold harmless the Department or Commission for any claim for worker's compensation filed by any of their employees; provided, however that nothing herein shall preclude the Department or the Commission from maintaining an action for recovery against the LESSEE under the laws of the State of Louisiana, including LSA R.S. 23:1101 et seq. LESSEE shall specifically obtain insurance coverage of this indemnity provision and shall furnish the Department with satisfactory evidence of such coverage, from a company that A. M. Best and Company has given a "B" or better rating, of not less than FIFTEEN MILLION (\$15,000,000.00) DOLLARS. LESSEE agrees to name the State of Louisiana, all of its departments, agencies, boards, commissions, and employees, including the Department and the Commission and their officers and employees as an additional insured under this policy of insurance, and to furnish the Department a copy of same.

In all suits arising out of this contract, the parties hereto agree that Louisiana law shall govern.

6. OPERATION, LOCATION AND MOVEMENT OF VESSELS

LESSEE further agrees, binds and obligates itself before commencing operations in accordance with this lease, to furnish the Department a map, plat or chart to scale as specified by the Department, of the major areas of the beds and water bottoms hereinabove described and from which LESSEE shall take and remove shells and/or shell deposits, which map, plat or chart shall have marked thereon the location at which LESSEE shall commence its operations; and LESSEE shall notify the Department, in writing, of any and every major change of location of its operations, and by correcting said map, plat or chart aforesaid by marking its new major areas of operation as well as each and every former major area of operation under this lease.

LESSEE shall notify the Department in writing, at least ten (10) days prior to putting into actual service any dredge, barge or tow boat used in the removal of shells and/or shell deposits, together with the capacity of each, and the Department may thereupon verify the measurements of said barges. In case the giving of such notice by the LESSEE becomes impractical, the LESSEE shall give written notice as soon as practicable after such vessel is placed in service.

Each operating dredge shall be required to have a tamper-proof device, as specified by the Department, installed on board which will plot, map and record all movements and locations of the dredge vessel. Location of the dredge shall, at a minimum, be recorded on an hourly basis in ~~Uran~~<sup>or</sup> coordinates

*or Lat. + Longitude*  
*GPS*

Each operating dredge shall be required to have on board at all times a person with the authority to stop and/or move the dredge and/or other equipment upon notification by the designated representative(s) of the Department.

LESSEE shall report on a calendar weekly basis, on a form provided by the Department, the daily location(s) of dredging activities and any other information required by the Department. A calendar week shall be defined as Sunday through Saturday. These report forms shall be delivered to the Department on the Monday following the end of the calendar week, or postmarked by that date.

For purposes of this section the term "Department" shall include the Department, its agents, offices, and employees and its authorized representatives.

#### **7. ADHERENCE TO APPLICABLE PROVISIONS; RESTRICTED ZONES**

LESSEE binds and obligates itself to strict adherence to all applicable state and federal permit stipulations, environmental laws, rules, and regulations and not to dredge within three hundred (300') feet of any other shell dredging operations or within any area designated as a restricted zone.

Effluent shall be directed back into the dredged area via a discharge conduit. The affected water bottoms shall, to the extent reasonably possible of accomplishment, be returned or restored to a condition as near equivalent to that which existed before said operations were conducted.

Dredging operations shall not be conducted within restricted areas as shown on the zone chart (Exhibit A) nor within 1,500 feet of natural land masses or exposed reefs.

No subaqueous reefs shall be dredged. LESSEE shall provide independent third party verification consistent with traditional survey methods employed in the industry, that no subaqueous (submerged) reefs are being dredged. This verification shall be provided periodically as required by the Department.

Before commencing operations in any given zone the LESSEE shall notify the Department in writing at least ten (10) days in advance as to its proposed zone of the operations and to the best extent possible, the approximate location within the zone. Zones identified in this notice shall correspond with the zone chart which is attached hereto and identified as Exhibit A.

Dredged areas shall be surveyed with a recording fathometer and copies of each depth profile shall be submitted to the Department of Wildlife and Fisheries on or before the 15th day of the succeeding month. Maximum depth along with the vertical scale shall be indicated on each profile. Location of depth profiles shall be specified using precise ~~loran c~~ coordinates (i.e. <sup>GPS</sup> latitude or longitude) reported to the nearest 0.1 of the line of position/T.D.).

**8. GUARANTEED ANNUAL MINIMUM ROYALTY**

LESSEE agrees that the quantity of shells removed by it will yield to the Department guaranteed royalties of no less than \_\_\_\_\_ per year, starting with the year beginning on the date hereof, and continuing therefrom throughout the ~~life of this lease term~~. LESSEE further agrees that in the event for any reason LESSEE does not remove sufficient shells to aggregate in total, at the price per yard stipulated above, the guaranteed yield to the Department of \_\_\_\_\_ per year, LESSEE will pay to the Department an amount sufficient to produce the minimum sum of \_\_\_\_\_ per year as stipulated.

Should this lease be terminated at any time other than the end of any lease year, then the \_\_\_\_\_ annual minimum guaranty shall be reduced by the amount of royalty paid by LESSEE to the Department during such lease year, but prior to such termination, to the end that LESSEE in the lease year of termination shall pay not less than the \_\_\_\_\_ minimum annual guaranty. After making said calculation, should it be determined that any part of said annual guaranty shall be due and owing, then such amount shall be immediately paid to the Department. The words "lease year", wherever used in this lease, shall mean an annual period beginning **November 1**, and ending **October 31**.

LESSEE'S obligation to pay this guaranteed annual minimum royalty shall not be relieved or reduced as a result of any force majeure, as defined in Paragraph 15 herein.

The Commission may consider a proportional reduction of the guaranteed annual minimum royalty in the event that an order, or permit condition that arises subsequent to the effective date of this lease, of the Department or other governmental agency, or order of court suspends LESSEE'S operations and thereby results in a substantial reduction of shell production; provided however that in no event shall the Commission consider such a reduction when the suspension order is due wholly to LESSEE'S own fault or a violation of the provisions of this lease, any applicable permit or any applicable state or federal laws, rules or regulations.

#### 9. TERMINATION FOR CAUSE

In case LESSEE fails to make payment according to the

reservations, terms and conditions hereinabove stipulated within the time provided in this agreement, or should LESSEE fail or refuse to comply with any provisions in this agreement, on and after ten (10) days from the date said payments are due, or from the date of said failure or refusal to comply herewith, this lease may be revoked, terminated and cancelled; provided that the LESSEE shall be given written notice of any such failure to comply with a provision of this lease, and LESSEE shall have five (5) days after receipt of such notice in which to correct such default. In the event such default is not cured within the said five (5) day period, then this lease may be terminated without further formality, except for a written notice of such revocation and termination to be forwarded by the Secretary for the Department to LESSEE at its domicile and to the Clerks of Court in the Parishes wherein the hereinabove described water bottoms are located, by United States mail, postage prepaid. Nothing to the contrary withstanding, the provisions of this paragraph shall not release or relieve LESSEE, its successors and assigns from the liability assumed and established in this lease, arising on or before the date of cancellation or forfeiture of the rights and privileges herein provided.

If actual dredging operations are not commenced hereunder on the leased premises in good faith on or before ninety (90) days from the date hereof, this lease shall then terminate, subject to the above procedure. Be it further provided that if all applicable permits have not been issued within the above ninety day period, the Commission may extend this period upon a showing that LESSEE has made and is making a due and diligent effort to obtain the issuance of same.

Within ninety (90) days after expiration or termination by its own terms of this lease or any portion thereof, either during or after the primary term hereof, LESSEE shall execute and record an appropriate release evidencing such expiration or

termination, and shall also supply the Department with a copy or copies thereof properly certified by the recorder or recorders of the parish or parishes in which the leased premises are located. In the event LESSEE fails to timely comply therewith, LESSEE shall be liable for reasonable attorney fees and court costs incurred in bringing a successful suit for such cancellation, and for all damages resulting therefrom. It is agreed, however, that damages to be paid by LESSEE to the Department shall be one hundred dollars (\$100.00) per day for each day of non-compliance after expiration of said ninety (90) day period, regardless of whether suit is filed for cancellation, and for such additional compensatory damages as the Department may prove.

It is further provided that the suspension of dredging activities shall not constitute a breach by LESSEE of this agreement if said suspension comes about as a result of an order of the Department or another agency of government or court, and is not due to any fault of LESSEE or any violation of the provisions of this lease or any applicable state or federal permit, statute, rule or regulation.

#### 10. ASSIGNMENT AND SUBCONTRACT

There shall be no assignment or subcontract of this lease or the rights and privileges hereunder without the express written consent of the Department; provided however that such approval shall not be required if such assignment and all rights hereunder are made to a bona fide successor or subsidiary of said LESSEE. Be it further provided that if assignment is made to a bona fide successor or subsidiary of LESSEE, then LESSEE shall give the Department written notice thereof within five (5) days of the date of said assignment. It is expressly understood, that LESSEE, with the written approval of the Department, may assign to or subcontract to any person, firm or corporation, from time to time,

and at any time, the right to take and remove shells and shell deposits from the area covered hereby, and in such event, the LESSEE shall contract with such assignee or sublessee to take or remove shells and shell deposits from the area covered hereby and said LESSEE shall remain liable for the performance of all duties and obligations herein imposed. It is further provided that in no event shall LESSEE assign or subcontract the rights to remove more than fifty (50%) of the shells or shell material to be removed under this lease.

#### 11. PERFORMANCE BOND

LESSEE further agrees and obligates itself to execute, simultaneously with the execution of this lease, in favor of the Department, in the manner prescribed by law, a performance bond in the sum of \_\_\_\_\_ with a solvent surety company authorized to do business in Louisiana as surety thereon, conditioned that LESSEE will faithfully, promptly and diligently carry out and perform all of the conditions and obligations herein imposed, described and assumed by this lease, which bond shall be renewable annually during the base term of this lease or any extended period thereof. This bond shall not be released except with written permission of the Commission. If written permission is not granted by the Commission within sixty (60) days after termination of this lease, such permission shall be presumed.

#### 12. RELINQUISHMENT OF DATA

Upon termination of this lease, either by the expiration of its term or by forfeiture or revocation, or for any other cause, LESSEE agrees and binds itself immediately to turn over to the State Mineral Board all maps, records of borings, and other data

relative to said shells and/or shell deposits which it may have obtained, and such maps, records, and other data shall be and remain the property of the State Mineral Board. Any information furnished by LESSEE to the State Mineral Board or otherwise examined and studied by the Department shall be retained in confidence. Nothing in this Article shall require that LESSEE furnish or permit inspection of any interpretation of any of the types of data referred to above, and nothing herein shall be construed as requiring LESSEE to secure any such data solely for the purposes of this Article. The Department's representatives shall have access at all reasonable times to examine and inspect LESSEE'S records and operations pertaining to the leased premises therewith.

#### 13. REMOVAL OF SHELLS FOR SEEDING PURPOSES

The Department specially reserves the right to permit oyster growers to remove such oyster and/or clam shells from any of said water bottoms or reefs within the area above described in this lease as may be required by such oyster growers for seeding purposes only, and with which reservation LESSEE acquiesces and consents.

LESSEE agrees that in the event the Department shall desire to permit oyster growers to remove oyster and/or clam shells as provided, the Department will furnish to such oyster growers a written order to the aforesaid LESSEE authorizing and directing LESSEE to permit the removal of oyster and/or clam shells by said oyster and/or clam growers.

#### 14. RULES AND REGULATIONS; SUSPENSION OF OPERATIONS

The Department specifically reserves the right to

establish rules and regulations on dredging areas in the interest of living resources. The Department further specifically reserves the right to suspend the removal of shells and/or other shell deposits from the above described beds or water bottoms by LESSEE and its successors and assigns in the event that the dredging operations by LESSEE and its successors and assigns violate said regulations. Additionally, the Department and the State Mineral Board, acting jointly, specifically reserves the right to suspend the removal of shell and/or shell deposits from the above described beds or water bottoms in the event that detrimental environmental impacts occur or threaten to occur. ~~The determination that detrimental environmental impacts occur or threaten to occur shall be made jointly by the Department and the State Mineral Board.~~ The suspension aforesaid shall remain effective and in full force and effect until the Department determines that continued for such duration or period of time as said dredging operations would not continue to be in violation of said regulations, or cause or produce the detrimental environmental impacts damage or damages herein provided, and until corrected by LESSEE, and its successors and assigns, to the complete satisfaction of the Department.

#### 15. FORCE MAJEURE

No failure or omission by any of the parties hereto in the performance of any obligation imposed by this lease shall be deemed a breach of this lease or create any liability for damages if the same shall arise from any cause or causes beyond the control of such party and without the fault or negligence of such party, including acts of God, acts of the public enemy, war, rebellion, sabotage, insurrection, riot, invasion or strike.

#### 16. SHELL PLANTS

The Department shall have the right to negotiate with the LESSEE for the planting of shells for oyster cultivation and to require the LESSEE to deduct the cost of such planting of shells from the royalties due the Department by LESSEE. LESSEE agrees in good faith to negotiate with the Department for the planting of shells for oyster cultivation and the quantities and value of said shell shall be determined at the time of purchase.

#### 17. IN-KIND ROYALTY

At the option of the Department and/or the State Mineral Board, in lieu of payment of royalty as specified in paragraph 2, Lessee shall provide to the Department, or its designee, in-kind all of any portion due as royalty of any fossil shell and fossil shell material removed pursuant to this lease.

The Department shall exercise this in-kind royalty option by written notice to Lessee at any time and from time to time while this lease is in effect.

The Mineral Board may exercise this in-kind option only after providing reasonable evidence to the Commission that exercise of the in-kind royalty option shall be, at a minimum, revenue neutral to the Department taking into account all administrative and other costs, and shall result in a positive economic benefit to the State. Be it further provided that the Mineral Board, shall cancel and annul its invocation of this in-kind royalty provision should experience, over a reasonable period of time, demonstrate that in fact the result to the Department is less than revenue neutral or that it does not result in a positive economic benefit to the State.

The amount of in-kind royalty due shall be determined

pursuant to the provisions of paragraph 2.

In-kind royalties shall be accepted by the Department, or the Department's designee, FOB dredge site or the usual offloading site, at the option of the Department, or such other site as mutually agreed by the Department and Lessee. In the event the Department chooses to accept the shell at the usual offloading site, LESSEE may deduct all actual costs, including transportation.

Nothing contained in this lease or any attachments shall be interpreted as limiting or waiving this royalty in-kind option. Amendment of this in-kind royalty option shall require express approval by the State Mineral Board and any amendment without such approval shall be null and void.

#### 18. OFFSITE RESTORATION

As compensation for disturbance of the water bottom during dredging, the LESSEE shall, at its sole expense, undertake offsite restoration for improvement of the marine environment. Such restoration shall be as follows:

1. One (1) acre of shell reef one (1) foot thick for every 200,000 cubic yards dredged from the permitted area;
2. Restoration reefs shall be no less than one (1) acre in size and shall be located in areas which are restricted from shell dredging.

The location and size of such reefs shall be determined by the Department and all expense, including transportation and deposition shall be borne by LESSEE.

It is further provided that any offsite restoration undertaken by Lessee pursuant to the conditions of any permits issued by the Department of Natural Resources or any other State or Federal agency shall constitute partial or complete satisfaction of the above requirement, in a proportional amount based upon the amount of offsite restoration provided. The Department shall determine, in writing, the level of reduction of the amount of above requirement.

#### **19. SEVERABILITY OF PROVISIONS**

If any provisions of this lease shall be decreed invalid or unenforceable, the remainder of the lease agreement shall continue in full force and effect.

#### **20. VENUE FOR SUITS**

Any lawsuit contesting the validity of this lease or any of the provisions thereof, or asserting any right granted or seeking the performance of any duty imposed herein, or in any manner arising out of or connected to this lease or any provision thereof, shall be maintained only in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana.

#### **21. AMENDMENT OR TERMINATION BY AGREEMENT OF PARTIES**

This document contains the entire agreement between the parties and cannot be changed or terminated orally but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is

sought.

22. NOTICES

All notices under this lease shall be sent United States mail, postage prepaid, Certified Return Receipt Requested as follows:

LESSOR:

Joe L. Herring, Secretary  
Department of Wildlife and Fisheries  
P. O. Box 98000  
Baton Rouge, LA 70898-9000

LESSEE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THUS DONE, READ, ACCEPTED, AND SIGNED by the parties hereto in the presence of the respective undersigned witnesses, as of this \_\_\_\_ day of \_\_\_\_\_, 1994, which shall be the date of this lease for all purposes.

WITNESSES

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WILDLIFE AND FISHERIES  
COMMISSION

BY: \_\_\_\_\_  
Joe L. Herring  
SECRETARY

\_\_\_\_\_  
(Company)

BY: \_\_\_\_\_

APPROVED BY:

STATE MINERAL BOARD

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
CHAIRMAN

STATE OF LOUISIANA

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
COMMISSIONER, DIVISION OF  
ADMINISTRATION

WITNESS FORM OF  
ACKNOWLEDGEMENT FOR WILDLIFE AND FISHERIES COMMISSION

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority came and appeared  
\_\_\_\_\_, who by me being first duly sworn,  
deposed and said:

That he is one of the witnesses to the execution of the  
foregoing instrument and that he saw Joe L. Herring, sign said  
instrument as Secretary of the Louisiana Department of Wildlife and  
Fisheries for and on behalf of the Wildlife and Fisheries  
Commission and State of Louisiana, in the presence of appearer and  
\_\_\_\_\_, the other subscribing witness.

\_\_\_\_\_  
APPEARER

Sworn to and subscribed before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public

WITNESS FORM OF  
ACKNOWLEDGEMENT FOR LESSEE

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority came and appeared \_\_\_\_\_, who by me being first duly sworn, deposed and said:

That he is one of the witnesses to the execution of the foregoing instrument and that he saw \_\_\_\_\_ sign said instrument as \_\_\_\_\_ of \_\_\_\_\_ as the free act and deed of said lessee in the presence of appearer and \_\_\_\_\_, the other subscribing witness.

\_\_\_\_\_  
APPEARER

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public

WITNESS FORM OF  
ACKNOWLEDGEMENT FOR STATE MINERAL BOARD

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority came and appeared  
\_\_\_\_\_, who by me being first duly sworn,  
deposed and said:

That he is one of the witnesses to the execution of the  
foregoing instrument and that he saw John Schober, sign said  
instrument as Chairman of the State Mineral Board for and on behalf  
of the State of Louisiana, in the presence of appearer and  
\_\_\_\_\_, the other subscribing witness.

\_\_\_\_\_  
APPEARER

Sworn to and subscribed before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public

WITNESS FORM OF  
ACKNOWLEDGEMENT FOR STATE OF LOUISIANA

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority came and appeared  
\_\_\_\_\_, who by me being first duly sworn,  
deposed and said:

That he is one of the witnesses to the execution of the  
foregoing instrument and that he saw Raymond Laborde sign said  
instrument as Commissioner for and on behalf of the State of  
Louisiana, in the presence of appearer and  
\_\_\_\_\_, the other subscribing witness.

\_\_\_\_\_  
APPEARER

Sworn to and subscribed before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public

EXHIBIT "A"

Shell Lease: Central Coast - Tract #1

(To be announced.)

EXHIBIT "A"

Shell Lease: Central Coast - Tract #2

(To be announced.)

ENTRY NO. 23559 RECORDED IN CONVEYANCE BOOK 34-P AT FOLIO 641

LEASE FOR FOSSIL SHELL EXTRACTION  
FROM STATE OWNED WATER BOTTOMS

STATE OF LOUISIANA

SEP 13 1991

PARISH OF EAST BATON ROUGE

SHELL LEASE: Central Coast

WHEREAS, under the provisions of Section 441 of Title 56 of the Louisiana Revised Statutes of 1950, as amended, and other applicable laws, the Louisiana Wildlife and Fisheries Commission advertised for the bids for a lease covering fossil shells on the property described below; and

WHEREAS, in response to required advertisements, bids were received and duly opened in the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana on the 1st day of August, 1991, and the Minerals Committee of the Louisiana Wildlife and Fisheries Commission having reviewed and evaluated same; and,

WHEREAS by resolution duly adopted, the Louisiana Wildlife and Fisheries Commission accepted the bid of LOUISIANA DREDGING COMPANY whose mailing address is POST OFFICE BOX 8214, NEW ORLEANS, LOUISIANA 70182, ATTN: ROBIN B. DURANT (hereinafter referred to as "Lessee") as being the most advantageous to the State of Louisiana:

NOW, THEREFORE, be it known and remembered the Louisiana Wildlife and Fisheries Commission acting under said authority for and in behalf of the State of Louisiana, as Lessor, does hereby lease unto the said Lessee, the property described below for the purpose of extracting fossil shells and fossil shell material.

In connection therewith Lessee shall have the right to use as much of the property as may be reasonably necessary for such operations, subject to restrictions contained in this lease or

applicable permits. The leased property, situated in the State of Louisiana, is more fully described on Exhibit "A" which is attached hereto and made a part hereof.

Notwithstanding any provisions to the contrary in this Lease, this Lease is granted and accepted without any warranty of title and without any recourse against Lessor whatsoever, either expressed or implied. It is expressly agreed that the Lessor shall not be required to return any payments received hereunder or be otherwise responsible to Lessee therefor.

The State Mineral Board, herein represented by its Chairman, appears herein for the purpose of indicating its approval of said lease.

The State of Louisiana represented herein by the Commissioner of the Division of Administration, appears herein pursuant to the provisions of Act 282 of 1989.

#### 1. TERM

The rights and privileges herein granted shall be for a period of three (3) years beginning November 1, 1991 and ending October 31, 1994. This lease shall be subject to all existing and future oil and gas pipeline rights-of-way, mineral leases and servitudes granted by third parties and the State of Louisiana through the Department of Natural Resources, the Division of Administration, and the State Mineral Board located in the area hereinabove described. Nothing herein shall preclude the State of Louisiana from granting future oil and gas pipeline rights-of-way, mineral leases and servitudes to third parties.

## 2. ROYALTY

As consideration under this lease, LESSEE shall pay the Department of Wildlife and Fisheries, (hereinafter referred to as the Department), a royalty of one eighth (1/8) of the "selling price of the shell produced", from the above described water bottoms which is defined as the price of the shell free on board (FOB) dredge site, exclusive of any transportation costs. Such price must represent a fair market price as would be determined by a negotiated arms length agreement between two independent parties. Be it further provided that for purposes of this lease, and throughout the term of this lease, the "selling price of the shell produced" shall be deemed to be never less than TWENTY-ONE DOLLARS AND THIRTY-SIX CENTS (\$21.36) per cubic yard.

Lessee shall be required to report at intervals specified by the Department the posted barge price, as well as any changes thereof and any sales that take place from the barge.

Payment in full of royalties for all shells and/or deposits removed by the LESSEE during any one calendar month shall be made on or before the 15th day of the succeeding month, all in a manner consistent with the applicable law of the State of Louisiana. Any unpaid royalties shall be subject to legal interest which shall begin to accrue on the date said royalties are due.

For purposes of this lease, measurements of cubic yards of shell on barges shall be calculated as follows:

$$\text{Volume} = \frac{L(A + d + 4M)}{162} = \text{cubic yards}$$

Where A = Area of top

d = Area of base

M = Area of cross section midway  
between top and base

L = Height

### 3. DATA; AUDIT AND INSPECTION

LESSEE, on or before the 15th day of each month, shall furnish the Department any or all of the following types of data relating to shell production: (1) type of material removed, (2) dates removed, (3) name of vessel, (4) area of dredging, (5) cubic yards removed, and (6) royalty due.

LESSEE shall periodically and in a manner and on such forms specified by the Department, report to the Department purchasers of the shell dredged and the prices paid thereon.

These data shall not be deemed conclusive and the Department reserves the right, and LESSEE so agrees, to permit the Department's authorized representative and/or agents and representatives of the Legislative Auditor's Office or the Inspector General's Office to examine any and all of LESSEE'S books, records and memoranda of whatever kind or nature, pertaining to or having any connection whatever with the removal or sale of said shells.

The Department further reserves the right, and LESSEE agrees, to have the Department's agents or representatives and/or agents and representatives of the Legislative Auditor's Office or the Inspector General's Office inspect the barges, boats, and dredges, etc., in which the said shells are removed, and to keep a check on the number thereof, and also to determine by whatever means it may deem necessary, the number of cubic yards of shells which have been removed from the hereinabove described beds or water bottoms, and to require the payment therefor.

LESSEE shall permit routine field inspections by the above personnel for the purposes of verifying:

- a) location of dredges,
- b) direction of effluent discharge,

- c) measurements of quantity of shell aboard, and
- d) compliance with all Department of Wildlife and Fisheries regulations pertaining to shell dredging.

For the purposes of this inspection, the LESSEE shall allow the above personnel to board vessels for inspection of documents and records pertinent to the leases and regulations, positioning equipment, shell cargo, any other operations of the dredge and/or its supporting equipment, and to retrieve Loran-C tapes from recording instruments.

#### 4. EQUIPMENT AND PERSONNEL

LESSEE warrants that it has currently under its exclusive ownership and/or control, or will have by the effective date of this lease, an adequate supply of dredges, adequately powered tow boats for the operating conditions, barges, cranes, machinery, tools and implements of every kind or character which may be necessary to the taking and removal of shell and/or shell deposits under the terms of this Agreement.

LESSEE further warrants that it has in its employ a number of skilled personnel sufficient to adequately perform the requirements of this contract. LESSEE also warrants that it has, or will acquire, valid permits issued by the United States Army Corps of Engineers, the Louisiana Department of Natural Resources, and any other agencies as may be required by law.

#### 5. LIABILITY, HOLD-HARMLESS, DEFENSE AND INSURANCE

It is expressly understood that the State of Louisiana, all of its departments, agencies, boards, commissions and employees, including the Department and the Commission shall

incur no liability or expense of any kind in connection with the ownership, control and operation of such equipment by LESSEE, including but not limited to all court costs, cost of defense and any judgments arising from any claims, actions or causes of action by all third parties, LESSEE, its employees, agents, officers, directors, successors and assigns, their employees, agents, officers and directors caused by LESSEE, its employees, agents, successors and assigns in the exercise of the dredging rights and privileges granted by this lease.

LESSEE agrees that it shall be liable and responsible for property damage or personal injury, whether to property of the State of Louisiana or of any individual, firm or corporation, or to any person or persons, caused by the negligence or breach of contract of LESSEE or by its agents, directors or employees of any kind. LESSEE, its successors and assigns agree to indemnify and hold harmless the State of Louisiana, all of its departments, agencies, boards, commissions and employees, including the Department and the Commission and their officers and employees from all such damage or damages caused by such LESSEE, including assuming the cost and expense of defending all claims, actions, or causes of action which are or may be filed seeking such damage or damages.

It is expressly provided that the State of Louisiana, all of its departments, agencies, boards, commissions and employees, including the Department and the Commission shall have no responsibility or liability relative to navigation of LESSEE'S vessels, nor any responsibility or liability to inform or advise LESSEE as to the existence or location of any pipelines, drilling platforms, bridges, causeways, docks, piers or other structures, located on the property which is included within this lease. It is further expressly provided that LESSEE shall bear sole responsibility for the navigation of its vessels and for determining the existence and location of all pipelines, drilling

platforms, bridges, causeways, docks, piers or other structures which may be located on or within the property leased herein.

It is further provided that LESSEE will defend, indemnify and hold harmless the State of Louisiana, all of its departments, agencies, boards, commissions and employees, including the Department and the Commission and their officers and employees for any claims, demands, liabilities or causes of action arising out of LESSEE'S taking of shells, including those arising out of the navigation of LESSEE'S vessels, or collisions between LESSEE'S vessels and other vessels, pipelines, drilling platforms, bridges, causeways, docks, piers or other structures, even if such action is alleged to have been brought about solely, or in part, by the negligence of the Department. It is expressly provided, however, that LESSEE shall not be obligated to defend, indemnify and hold the Department or Commission harmless for any claim which does not directly involve LESSEE'S vessels, equipment and/or operations. It is further provided that LESSEE shall not be obligated to defend, indemnify and hold harmless the Department or Commission for any claim for worker's compensation filed by any of their employees; provided, however that nothing herein shall preclude the Department or the Commission from maintaining an action for recovery against the LESSEE under the laws of the State of Louisiana, including LSA R.S. 23:1101 et seq. LESSEE shall specifically obtain insurance coverage of this indemnity provision and shall furnish the Department with satisfactory evidence of such coverage, from a company that A. M. Best and Company has given a "B" or better rating, of not less than FIFTEEN MILLION (\$15,000,000.00) DOLLARS. LESSEE agrees to name the State of Louisiana, all of its departments, agencies, boards, commissions, and employees, including the Department and the Commission and their officers and employees as an additional insured under this policy of insurance, and to furnish the Department a copy of same.

In all suits arising out of this contract, the parties hereto agree that Louisiana law shall govern.

**6. OPERATION, LOCATION AND MOVEMENT OF VESSELS**

LESSEE further agrees, binds and obligates itself before commencing operations in accordance with this lease, to furnish the Department a map, plat or chart to scale as specified by the Department, of the major areas of the beds and water bottoms hereinabove described and from which LESSEE shall take and remove shells and/or shell deposits, which map, plat or chart shall have marked thereon the location at which LESSEE shall commence its operations; and LESSEE shall notify the Department, in writing, of any and every major change of location of its operations, and by correcting said map, plat or chart aforesaid by marking its new major areas of operation as well as each and every former major area of operation under this lease.

LESSEE shall notify the Department in writing, at least ten (10) days prior to putting into actual service any dredge, barge or tow boat used in the removal of shells and/or shell deposits, together with the capacity of each, and the Department may thereupon verify the measurements of said barges. In case the giving of such notice by the LESSEE becomes impractical, the LESSEE shall give written notice as soon as practicable after such vessel is placed in service.

Each operating dredge shall be required to have a tamper-proof device, as specified by the Department, installed on board which will plot, map and record all movements and locations of the dredge vessel. Location of the dredge shall, at a minimum, be recorded on an hourly basis in Loran-C coordinates.

Each operating dredge shall be required to have on board at all times a person with the authority to stop and/or move the dredge and/or other equipment upon notification by the designated representative(s) of the Department.

LESSEE shall report on a calendar weekly basis, on a form provided by the Department, the daily location(s) of dredging activities and any other information required by the Department. A calendar week shall be defined as Sunday through Saturday. These report forms shall be delivered to the Department on the Monday following the end of the calendar week, or postmarked by that date.

For purposes of this section the term "Department" shall include the Department, its agents, offices, and employees and its authorized representatives.

#### 7. ADHERENCE TO APPLICABLE PROVISIONS; RESTRICTED ZONES

LESSEE binds and obligates itself to strict adherence to all applicable state and federal permit stipulations, environmental laws, rules, and regulations and not to dredge within three hundred (300') feet of any other shell dredging operations or within any area designated as a restricted zone.

Effluent shall be directed back into the dredged area via a discharge conduit. The affected water bottoms shall, to the extent reasonably possible of accomplishment, be returned or restored to a condition as near equivalent to that which existed before said operations were conducted.

Dredging operations shall not be conducted within restricted areas as shown on the zone chart (Exhibit A) nor within 1,500 feet of natural land masses or exposed reefs.

No subaqueous reefs shall be dredged. LESSEE shall provide independent third party verification consistent with traditional survey methods employed in the industry, that no subaqueous (submerged) reefs are being dredged. This verification shall be provided periodically as required by the Department.

Before commencing operations in any given zone the LESSEE shall notify the Department in writing at least ten (10) days in advance as to its proposed zone of the operations and to the best extent possible, the approximate location within the zone. Zones identified in this notice shall correspond with the zone chart which is attached hereto and identified as Exhibit A.

Dredged areas shall be surveyed with a recording fathometer and copies of each depth profile shall be submitted to the Department of Wildlife and Fisheries on or before the 15th day of the succeeding month. Maximum depth along with the vertical scale shall be indicated on each profile. Location of depth profiles shall be specified using precise Loran-C coordinates (i.e. reported to the nearest 0.1 of the line of position/T.D.).

#### 8. GUARANTEED ANNUAL MINIMUM ROYALTY

LESSEE agrees that the quantity of shells removed by it will yield to the Department guaranteed royalties of no less than EIGHT HUNDRED THOUSAND DOLLARS (\$800,000) per year, starting with the year beginning on the date hereof, and continuing therefrom throughout the life of this lease. LESSEE further agrees that in the event for any reason LESSEE does not remove sufficient shells to aggregate in total, at the price per yard stipulated above, the guaranteed yield to the Department of EIGHT HUNDRED THOUSAND DOLLARS (\$800,000) per year, LESSEE will pay to the Department an amount sufficient to produce the minimum sum of EIGHT HUNDRED THOUSAND DOLLARS (\$800,000) per year as stipulated.

Should this lease be terminated at any time other than the end of any lease year, then the EIGHT HUNDRED THOUSAND DOLLARS (\$800,000) annual minimum guaranty shall be reduced by the amount of royalty paid by LESSEE to the Department during such lease year, but prior to such termination, to the end that LESSEE in the lease year of termination shall pay not less than the EIGHT HUNDRED THOUSAND DOLLARS (\$800,000) minimum annual guaranty. After making said calculation, should it be determined that any part of said annual guaranty shall be due and owing, then such amount shall be immediately paid to the Department. The words "lease year", wherever used in this lease, shall mean an annual period beginning November 1, and ending October 31.

LESSEE'S obligation to pay this guaranteed annual minimum royalty shall not be relieved or reduced as a result of any force majeure, as defined in Paragraph 15 herein.

The Commission may consider a proportional reduction of the guaranteed annual minimum royalty in the event that an order, or permit condition that arises subsequent to the effective date of this lease, of the Department or other governmental agency, or order of court suspends LESSEE'S operations and thereby results in a substantial reduction of shell production; provided however that in no event shall the Commission consider such a reduction when the suspension order is due wholly to LESSEE'S own fault or a violation of the provisions of this lease, any applicable permit or any applicable state or federal laws, rules or regulations.

#### 9. TERMINATION FOR CAUSE

In case LESSEE fails to make payment according to the reservations, terms and conditions hereinabove stipulated within the time provided in this agreement, or should LESSEE fail or

refuse to comply with any provisions in this agreement, on and after ten (10) days from the date said payments are due, or from the date of said failure or refusal to comply herewith, this lease may be revoked, terminated and cancelled; provided that the LESSEE shall be given written notice of any such failure to comply with a provision of this lease, and LESSEE shall have five (5) days after receipt of such notice in which to correct such default. In the event such default is not cured within the said five (5) day period, then this lease may be terminated without further formality, except for a written notice of such revocation and termination to be forwarded by the Secretary for the Department to LESSEE at its domicile and to the Clerks of Court in the Parishes wherein the hereinabove described water bottoms are located, by United States mail, postage prepaid. Nothing to the contrary withstanding, the provisions of this paragraph shall not release or relieve LESSEE, its successors and assigns from the liability assumed and established in this lease, arising on or before the date of cancellation or forfeiture of the rights and privileges herein provided.

If actual dredging operations are not commenced hereunder on the leased premises in good faith on or before ninety (90) days from the date hereof, this lease shall then terminate, subject to the above procedure. Be it further provided that if all applicable permits have not been issued within the above ninety day period, the Commission may extend this period upon a showing that LESSEE has made and is making a due and diligent effort to obtain the issuance of same.

Within ninety (90) days after expiration or termination by its own terms of this lease or any portion thereof, either during or after the primary term hereof, LESSEE shall execute and record an appropriate release evidencing such expiration or termination, and shall also supply the Department with a copy or copies thereof properly certified by the recorder or recorders of

the parish or parishes in which the leased premises are located. In the event LESSEE fails to timely comply therewith, LESSEE shall be liable for reasonable attorney fees and court costs incurred in bringing a successful suit for such cancellation, and for all damages resulting therefrom. It is agreed, however, that damages to be paid by LESSEE to the Department shall be one hundred dollars (\$100.00) per day for each day of non-compliance after expiration of said ninety (90) day period, regardless of whether suit is filed for cancellation, and for such additional compensatory damages as the Department may prove.

It is further provided that the suspension of dredging activities shall not constitute a breach by LESSEE of this agreement if said suspension comes about as a result of an order of the Department or another agency of government or court, and is not due to any fault of LESSEE or any violation of the provisions of this lease or any applicable state or federal permit, statute, rule or regulation.

#### 10. ASSIGNMENT AND SUBCONTRACT

There shall be no assignment or subcontract of this lease or the rights and privileges hereunder without the express written consent of the Department; provided however that such approval shall not be required if such assignment and all rights hereunder are made to a bona fide successor or subsidiary of said LESSEE. Be it further provided that if assignment is made to a bona fide successor or subsidiary of LESSEE, then LESSEE shall give the Department written notice thereof within five (5) days of the date of said assignment. It is expressly understood, that LESSEE, with the written approval of the Department, may assign to or subcontract to any person, firm or corporation, from time to time, and at any time, the right to take and remove shells and shell deposits from the area covered hereby, and in such event, the

LESSEE shall contract with such assignee or sublessee to take or remove shells and shell deposits from the area covered hereby and said LESSEE shall remain liable for the performance of all duties and obligations herein imposed. It is further provided that in no event shall LESSEE assign or subcontract the rights to remove more than fifty (50%) of the shells or shell material to be removed under this lease.

#### 11. PERFORMANCE BOND

LESSEE further agrees and obligates itself to execute, simultaneously with the execution of this lease, in favor of the Department, in the manner prescribed by law, a performance bond in the sum of TWO MILLION FOUR HUNDRED THOUSAND DOLLARS (\$2,400,000) with a solvent surety company authorized to do business in Louisiana as surety thereon, conditioned that LESSEE will faithfully, promptly and diligently carry out and perform all of the conditions and obligations herein imposed, described and assumed by this lease, which bond shall be renewable annually during the base term of this lease or any extended period thereof. This bond shall not be released except with written permission of the Commission. If written permission is not granted by the Commission within sixty (60) days after termination of this lease, such permission shall be presumed.

#### 12. RELINQUISHMENT OF DATA

Upon termination of this lease, either by the expiration of its term or by forfeiture or revocation, or for any other cause, LESSEE agrees and binds itself immediately to turn over to the State Mineral Board all maps, records of borings, and other data relative to said shells and/or shell deposits which it may have obtained, and such maps, records, and other data shall be and

remain the property of the State Mineral Board. Any information furnished by LESSEE to the State Mineral Board or otherwise examined and studied by the Department shall be retained in confidence. Nothing in this Article shall require that LESSEE furnish or permit inspection of any interpretation of any of the types of data referred to above, and nothing herein shall be construed as requiring LESSEE to secure any such data solely for the purposes of this Article. The Department's representatives shall have access at all reasonable times to examine and inspect LESSEE'S records and operations pertaining to the leased premises therewith.

### 13. REMOVAL OF SHELLS FOR SEEDING PURPOSES

The Department specially reserves the right to permit oyster growers to remove such oyster and/or clam shells from any of said water bottoms or reefs within the area above described in this lease as may be required by such oyster growers for seeding purposes only, and with which reservation LESSEE acquiesces and consents.

LESSEE agrees that in the event the Department shall desire to permit oyster growers to remove oyster and/or clam shells as provided, the Department will furnish to such oyster growers a written order to the aforesaid LESSEE authorizing and directing LESSEE to permit the removal of oyster and/or clam shells by said oyster and/or clam growers.

### 14. RULES AND REGULATIONS; SUSPENSION OF OPERATIONS

The Department specifically reserves the right to establish rules and regulations on dredging areas in the interest of living resources. The Department further specifically reserves

the right to suspend the removal of shells and/or other shell deposits from the above described beds or water bottoms by LESSEE and its successors and assigns in the event that the dredging operations by LESSEE and its successors and assigns violate said regulations. Additionally, the Department and the State Mineral Board, acting jointly, specifically reserve the right to suspend the removal of shell and/or shell deposits from the above described beds or water bottoms in the event that detrimental environmental impacts occur or threaten to occur. The determination that detrimental environmental impacts occur or threaten to occur shall be made jointly by the Department and the State Mineral Board. The suspension aforesaid shall remain effective and in full force and effect for such duration or period of time as said dredging operations continue to be in violation of said regulations, cause or produce the damage or damages herein provided and until corrected by LESSEE, and its successors and assigns, to the complete satisfaction of the Department.

#### 15. FORCE MAJEURE

No failure or omission by any of the parties hereto in the performance of any obligation imposed by this lease shall be deemed a breach of this lease or create any liability for damages if the same shall arise from any cause or causes beyond the control of such party and without the fault or negligence of such party, including acts of God, acts of the public enemy, war, rebellion, sabotage, insurrection, riot, invasion or strike.

#### 16. SHELL PLANTS

The Department shall have the right to negotiate with the LESSEE for the planting of shells for oyster cultivation and to require the LESSEE to deduct the cost of such planting of shells

from the royalties due the Department by LESSEE. LESSEE agrees in good faith to negotiate with the Department for the planting of shells for oyster cultivation and the quantities and value of said shell shall be determined at the time of purchase.

#### 17. IN-KIND ROYALTY

At the option of the Department and/or the State Mineral Board, in lieu of payment of royalty as specified in paragraph 2, Lessee shall provide to the Department, or its designee, in-kind all of any portion due as royalty of any fossil shell and fossil shell material removed pursuant to this lease.

The Department shall exercise this in-kind royalty option by written notice to Lessee at any time and from time to time while this lease is in effect.

The Mineral Board may exercise this in-kind option only after providing reasonable evidence to the Commission that exercise of the in-kind royalty option shall be, at a minimum, revenue neutral to the Department taking into account all administrative and other costs, and shall result in a positive economic benefit to the State. Be it further provided that the Mineral Board, shall cancel and annul its invocation of this in-kind royalty provision should experience, over a reasonable period of time, demonstrate that in fact the result to the Department is less than revenue neutral or that it does not result in a positive economic benefit to the State.

The amount of in-kind royalty due shall be determined pursuant to the provisions of paragraph 2.

In-kind royalties shall be accepted by the Department, or the Department's designee, FOB dredge site or the usual offloading site, at the option of the Department, or such other site as mutually agreed by the Department and Lessee. In the event the Department chooses to accept the shell at the usual offloading site, LESSEE may deduct all actual costs, including transportation.

Nothing contained in this lease or any attachments shall be interpreted as limiting or waiving this royalty in-kind option. Amendment of this in-kind royalty option shall require express approval by the State Mineral Board and any amendment without such approval shall be null and void.

#### 18. OFFSITE RESTORATION

As compensation for disturbance of the water bottom during dredging, the LESSEE shall, at its sole expense, undertake offsite restoration for improvement of the marine environment. Such restoration shall be as follows:

1. One (1) acre of shell reef one (1) foot thick for every 200,000 cubic yards dredged from the permitted area;
2. Restoration reefs shall be no less than one (1) acre in size and shall be located in areas which are restricted from shell dredging.

The location and size of such reefs shall be determined by the Department and all expense, including transportation and deposition shall be borne by LESSEE.

It is further provided that any offsite restoration undertaken by Lessee pursuant to the conditions of any permits

issued by the Department of Natural Resources or any other State or Federal agency shall constitute partial or complete satisfaction of the above requirement, in a proportional amount based upon the amount of offsite restoration provided. The Department shall determine, in writing, the level of reduction of the amount of above requirement.

#### 19. SEVERABILITY OF PROVISIONS

If any provisions of this lease shall be decreed invalid or unenforceable, the remainder of the lease agreement shall continue in full force and effect.

#### 20. VENUE FOR SUITS

Any lawsuit contesting the validity of this lease or any of the provisions thereof, or asserting any right granted or seeking the performance of any duty imposed herein, or in any manner arising out of or connected to this lease or any provision thereof, shall be maintained only in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana.

#### 21. AMENDMENT OR TERMINATION BY AGREEMENT OF PARTIES

This document contains the entire agreement between the parties and cannot be changed or terminated orally but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

22. NOTICES

All notices under this lease shall be sent United States mail, postage prepaid, Certified Return Receipt Requested as follows:

LESSOR:

A. Kell McInnis, III, Acting Secretary  
Department of Wildlife and Fisheries  
P. O. Box 98000  
Baton Rouge, LA 70898-9000

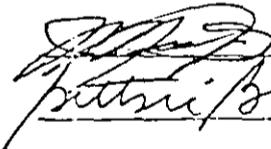
LESSEE:

Robin B. Durant  
Louisiana Dredging Company  
Post Office Box 8214  
New Orleans, LA 70182

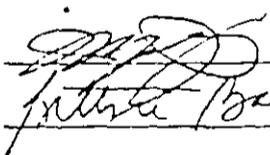
THUS DONE, READ, ACCEPTED, AND SIGNED by the parties hereto in the presence of the respective undersigned witnesses, as of this 5<sup>th</sup> day of September, 1991, which shall be the date of this lease for all purposes.

WITNESSES

WILDLIFE AND FISHERIES  
COMMISSION

  
\_\_\_\_\_

BY: A. Kell McInnis, III  
A. KELL MCINNIS, III  
ACTING SECRETARY

  
\_\_\_\_\_

LOUISIANA DREDGING COMPANY

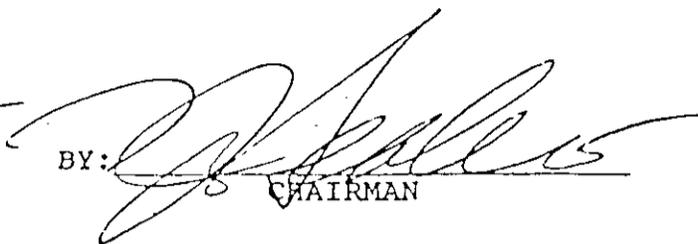
BY: RB Durant  
\_\_\_\_\_

APPROVED BY:

STATE MINERAL BOARD

Edmond P. Pacey  
Dina Cooper

BY:

  
CHAIRMAN

STATE OF LOUISIANA

Karen C. Bueche  
Aprilus Galman

BY:

  
COMMISSIONER, DIVISION OF  
ADMINISTRATION

WITNESS FORM OF  
ACKNOWLEDGEMENT FOR WILDLIFE AND FISHERIES COMMISSION

STATE OF LOUISIANA

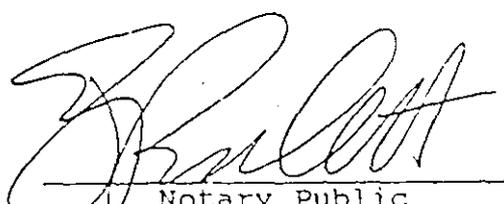
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority came and appeared  
Bettsie Baker, who by me being first duly sworn,  
deposed and said:

That she is one of the witnesses to the execution of the  
foregoing instrument and that she saw A. Kell McInnis, III, sign  
said instrument as Acting Secretary of the Louisiana Department of  
Wildlife and Fisheries for and on behalf of the Wildlife and  
Fisheries Commission and State of Louisiana, in the presence of  
appearer and James H. "Jimmy" Jenkins, Jr., the other subscribing  
witness.

  
\_\_\_\_\_  
APPEARER

Sworn to and subscribed before me this 5th day of  
September, 1991.

  
\_\_\_\_\_  
Notary Public



STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared EDWARD P. CAMP, who by me being first duly sworn, deposed and said: That she is one of the witnesses to the execution of the foregoing instrument and that she saw T. JAY SEALF III sign said instrument as CHAIRMAN of the STATE MINERAL BOARD, in the presence of appearer and DEBRA COOPER the other subscribing witness.

Edward P. Camp

SWORN TO AND SUBSCRIBED before me on this  
the 11<sup>th</sup> day of September, 1991

Richard King  
Notary Public

WITNESS FORM OF  
ACKNOWLEDGEMENT FOR STATE OF LOUISIANA

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority came and appeared  
Karen C. Bueche, who by me being first duly sworn,  
deposed and said:

That she is one of the witnesses to the execution of the  
foregoing instrument and that he saw Dennis Stine sign said  
instrument as Commissioner for and on behalf of the State of  
Louisiana, in the presence of appearer and  
Cynthia Galmon, the other subscribing witness.

Karen C. Bueche  
APPEARER

Sworn to and subscribed before me this 6th day of  
September 6, 19 91.

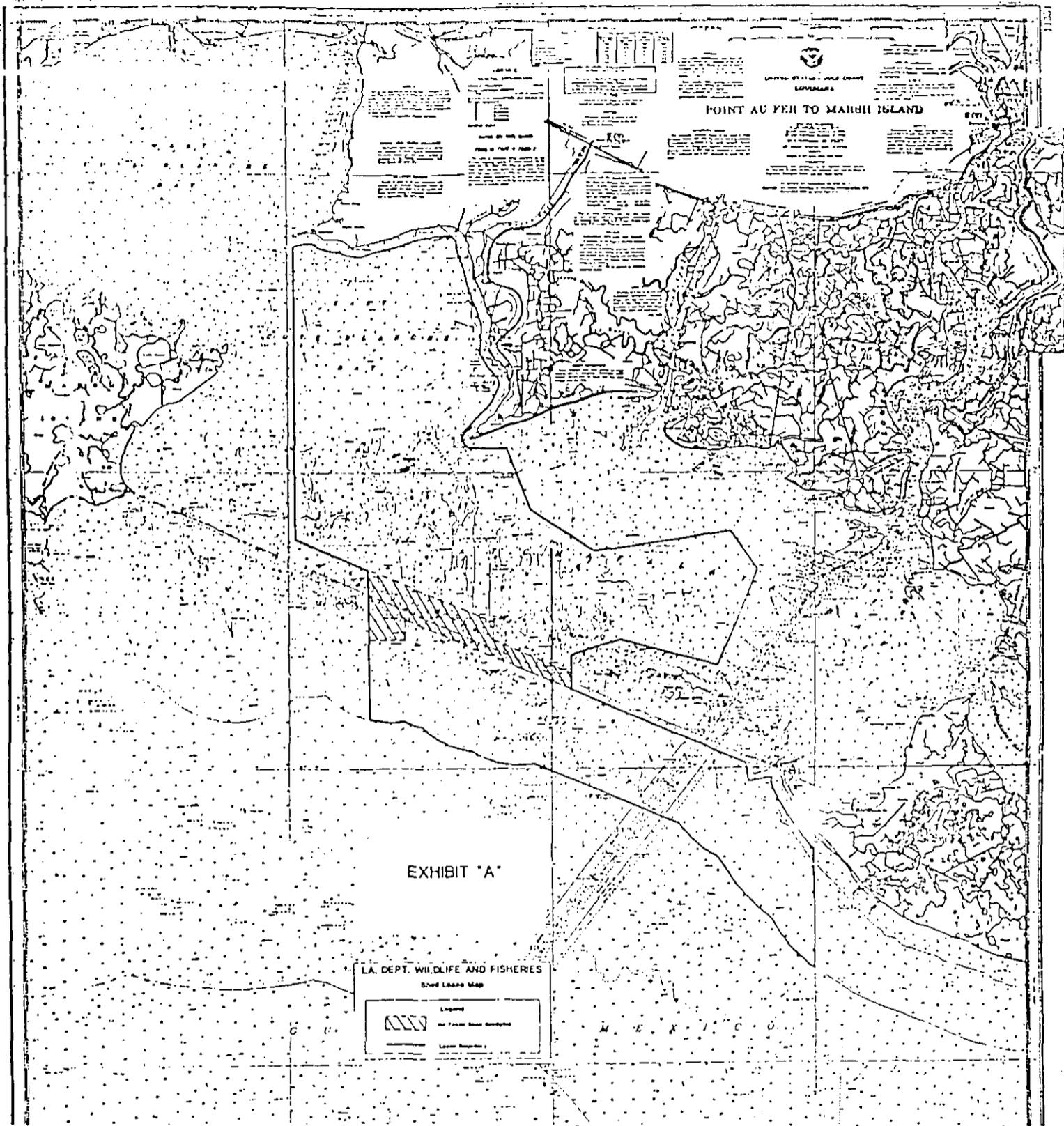
Kenneth P. Jones  
Notary Public

EXHIBIT "A"

SHELL LEASE CENTRAL COAST

All water bottoms located in the Parishes of St. Mary, Terrebonne and Iberia, which lie within an area defined as follows: Beginning at a point in East Cote Blanche Bay 1500 feet South of the shoreline below Point Marone at Latitude 29 degrees 37 minutes 38 seconds North, Longitude 91 degrees 39 minutes 48 seconds West; thence in an Easterly direction and along a line running parallel to and 1500 feet seaward of the shoreline to Latitude 29 degrees 37 minutes 55 seconds North, Longitude 91 degrees 33 minutes 38 seconds West; thence in a Southerly direction and along a line running parallel to and 1500 feet seaward of the shoreline to Latitude 29 degrees 30 minutes 48 seconds North, Longitude 91 degrees 33 minutes 06 seconds West; thence East to Latitude 29 degrees 30 minutes 50 seconds North, Longitude 91 degrees 31 minutes 42 seconds West; thence Southeasterly to Latitude 29 degrees 28 minutes 48 seconds North, Longitude 91 degrees 30 minutes 51 seconds West; thence Southeasterly to Latitude 29 degrees 27 minutes 23 seconds North, Longitude 91 degrees 28 minutes 29 seconds West; thence Easterly to Latitude 29 degrees 28 minutes 00 seconds North, Longitude 91 degrees 23 minutes 18 seconds West; thence Southeasterly to Latitude 29 degrees 26 minutes 42 seconds North, Longitude 91 degrees 22 minutes 13 seconds West; thence Southwesterly to Latitude 29 degrees 23 minutes 35 seconds North, Longitude 91 degrees 23 minutes 45 seconds West; thence Northwesterly to Latitude 29 degrees 24 minutes 24 seconds North, Longitude 91 degrees 27 minutes 30 seconds West; thence Southwesterly to Latitude 29 degrees 23 minutes 53 seconds North, Longitude 91 degrees 29 minutes 18 seconds West; thence South to Latitude 29 degrees 22 minutes 45 seconds North, Longitude 91 degrees 29 minutes 13 seconds West; thence Southeasterly to Latitude 29 degrees 20 minutes 11 seconds North, Longitude 91 degrees 22 minutes 42 seconds West; thence Southerly to Latitude 29 degrees 19 minutes 32 seconds North, Longitude 91 degrees 22 minutes 36 seconds West; thence Easterly

to Latitude 29 degrees 19 minutes 41 seconds North, Longitude 91 degrees 21 minutes 39 seconds West; thence Southeasterly along a line running parallel to and 1500 feet seaward of the shoreline to Longitude 91 degrees 20 minutes 00 seconds West; thence South to its intersection with the outer boundary of the State of Louisiana, thence northwesterly along the outer boundary of the State of Louisiana to its intersection with Longitude 91 degrees 37 minutes 00 seconds West; thence North along Longitude 91 degrees 37 minutes 00 seconds West to its intersection with Latitude 29 degrees 26 minutes 42 seconds North; thence Northwesterly along a line to Latitude 29 degrees 27 minutes 45 seconds North, Longitude 91 degrees 39 minutes 48 seconds West; thence North along Longitude 91 degrees 39 minutes 48 seconds West to the point of beginning, containing approximately 129,952 acres, and as further shown on the attached chart designated as Exhibit A.



CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

DIVISION "B"

DOCKET 4

NO. 83-2669

SIERRA CLUB, ET AL.

VERSUS

LOUISIANA DEPARTMENT OF WILDLIFE & FISHERIES

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CONSENT JUDGMENT

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Considering the stipulation and consent of the under-  
signed counsel:

IT IS ORDERED, ADJUDGED AND DECREED that (a) Shell Lease No. 1, executed on September 26, 1988 between the Louisiana Wildlife & Fisheries Commission ("Commission") as lessor and Dravo Basic Materials Company, Inc. ("Dravo") as lessee, covering Lake Pontchartrain (DWF Exhibit No. 60), and (b) Shell Lease No. 2, also executed the same date between the same parties, covering Atchafalaya Bay and adjacent waters in the central coast area of Louisiana (DWF Exhibit No. 61), are both hereby declared to be valid, binding and enforceable in accordance with their terms and subject to the provisions of this Consent Judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the preliminary injunction issued herein on September 26, 1988 is hereby DISSOLVED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Shell Lease No. 1 as identified above is hereby amended and reformed to delete Lake Maurepas.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Shell Lease No. 2 as identified above is hereby amended and reformed to delete Four League Bay, and the entire portion of Atchafalaya Bay east of the mouth of the Atchafalaya River identified as Department of Wildlife & Fisheries Zone 1.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Shell Leases Nos. 1 and 2 as identified above are hereby amended and reformed as of the date of this judgment to stipulate a minimum royalty of one-eighth of the "selling price of shell," defined as the price of shell FOB Dravo's dredge site, exclusive of any transportation costs, which Dravo represents is currently \$11.00 per cubic yard in Lake Pontchartrain and \$7.00 per cubic yard in the central coast area. Dravo will notify the Louisiana Department of Wildlife & Fisheries ("DWF") in writing upon any change in the "selling price of shell" as defined above. The actual royalty will be the greater of the contractually stipulated figure or the minimum royalty as calculated herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any lease or leases of state waterbottoms for shell dredging hereafter granted by the Commission and/or DWF shall be subject to the following conditions:

- 1 - In the central coast area, a geological and geophysical evaluation of the area covered by the lease, in accordance with the prospective lessee's usual procedure, and all information possessed by the prospective lessee including existing surveys, maps, computer data and information showing any exposed reefs (i.e., reefs protruding above the mud line), will be provided to DWF with respect to any tract or tracts to be leased.
- 2 - DWF will consider the geological and geophysical data provided by the prospective lessee, will seek such other geologic and geophysical information needed to evaluate the tracts, and will determine and define any tracts to be leased taking into account areas necessary for the efficient and economical operation of the industry, as well as the fostering of competition and free enterprise and

environmental controls and factors and all other relevant factors.

- 3 - The minimum royalty for any future leases shall in no case be less than the minimum one-eighth royalty.
- 4 - The form of future leases will be submitted by DWF to the Louisiana State Mineral Board ("the Mineral Board") for approval and will be deemed approved if not acted upon by the Mineral Board within 60 days. Final shell leases awarded by the Commission will be submitted to the Mineral Board for counter-signature and will be deemed approved if not acted upon by the conclusion of the second meeting of the Mineral Board following submission.

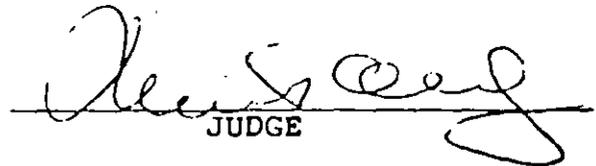
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that DWF, the Legislative Auditor's Office or an independent audit company shall annually perform an audit in accordance with generally accepted auditing standards. The audit shall include examining, on a test basis, evidence supporting the methodology used in calculating and the accuracy of the amount of royalties paid sufficient to form an opinion that the practices followed by Dravo in computing and paying royalties are in compliance with the lease.

If after performing such audit, the auditor is of the opinion that the practices followed by Dravo in calculating and paying royalties are not in accordance with the requirements of the lease, a full and complete audit of Dravo's shell production during the year in question shall be undertaken at Dravo's expense, and such adjustments to the royalties paid by Dravo as such audit might disclose shall forthwith be paid by Dravo to DWF.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any new leases of waterbottoms for shell dredging issued by DWF shall be limited to areas presently under shell dredging lease or permit.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all claims, demands and motions of the Sierra Club, Harold Schoeffler, the State of Louisiana, the Louisiana Departments of Justice and Wildlife & Fisheries, Dravo Basic Materials Company, Inc. and Pontchartrain Materials Corporation asserted in, arising out of or in any way connected with this litigation be, and they are hereby, DISMISSED with prejudice.

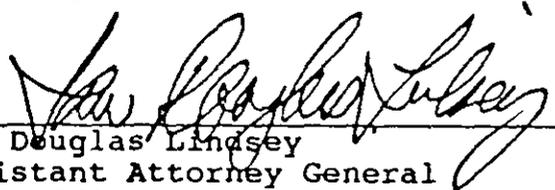
JUDGMENT READ, RENDERED AND SIGNED in open Court, New Orleans, Louisiana this 15<sup>n</sup> day of June, 1990.

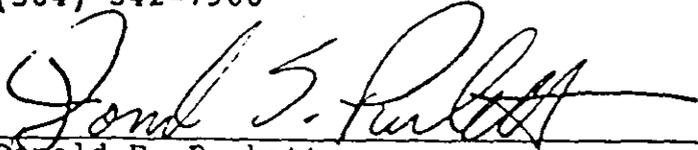
  
JUDGE

Submitted by:

  
Michael Osborne #10259  
Christopher Gobert #14293  
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3439 Prytania Street  
New Orleans, Louisiana 70115  
(504) 891-4418  
Attorneys for Sierra Club and  
Harold Schoeffler

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Attorney General

BY:   
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Assistant Attorney General  
Post Office Box 94095  
Baton Rouge, Louisiana 70804-9095  
(504) 342-7900

  
Donald E. Puckett  
Attorney for Louisiana Department of  
Wildlife and Fisheries and  
Louisiana Wildlife and Fisheries  
Commission  
P. O. Box 98000  
Baton Rouge, Louisiana 70898-9000  
(504) 765-2971

A TRUE COPY

  
DEPUTY CLERK, CIVIL DISTRICT COURT  
PARISH OF ORLEANS  
STATE OF LA.



## Court of Appeal

FOURTH CIRCUIT  
STATE OF LOUISIANA

210 CIVIL COURTS BUILDING  
421 LOYOLA AVENUE  
NEW ORLEANS, LOUISIANA 70112

DANIELLE A. SCHOTT  
CLERK OF COURT

WILLIAM V. REDMANN  
CHIEF JUDGE

JAMES C. GULOTTA  
PATRICK M. SCHOTT  
JIM GARRISON  
DENIS A. BARRY  
ROBERT J. KLEES  
WILLIAM H. BYRNES, III  
PHILIP C. CIACCIO  
ROBERT L. LOBRANO  
CHARLES R. WARD  
DAVID R. M. WILLIAMS  
JOAN BERNARD ARMSTRONG  
JUDGES

### NOTICE

PLEASE REFER TO ART. 2166 OF THE CODE OF CIVIL PROCEDURE AS AMENDED BY ACT 451 OF 1983 (EFFECTIVE AUGUST 30, 1983) REDUCING FROM THIRTY (30) TO FOURTEEN (14) DAYS THE TIME FOR APPLYING FOR REHEARING.

ACT 208 (PASSED BY THE LEGISLATURE AND SIGNED BY THE GOVERNOR DURING THE 1984 SESSION) PROVIDES THAT THE CLERK OF AN APPELLATE COURT SHALL CHARGE A FEE OF \$70 FOR AN APPLICATION FOR REHEARING.

(EFFECTIVE IMMEDIATELY)

SIERRA CLUB, ET AL

\*

NO. CA-8022

VERSUS

\*

COURT OF APPEAL

LOUISIANA DEPARTMENT OF  
WILDLIFE & FISHERIES, ET AL

\*

FOURTH CIRCUIT

\*

STATE OF LOUISIANA

\* \* \* \* \*

AN APPEAL FROM THE  
CIVIL DISTRICT COURT, FOR THE PARISH OF ORLEANS  
NO. 82-2669  
HONORABLE ROBERT A. KATZ  
JUDGE

\* \* \* \* \*

JAMES C. GULOTTA  
CHIEF JUDGE

(Court composed of Chief Judge James C. Gulotta and Judges Charles  
R. Ward and David R.M. Williams)

Donald E. Puckett  
Baton Rouge, Louisiana 70895  
Attorney for Appellant, Louisiana Dept. of Wildlife & Fisheries

Joseph E. LeBlanc, Jr.  
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New Orleans, Louisiana 70170  
Attorney for Intervenor and Appellant

Michael Osborne  
OSBORNE & McCOMISKEY  
New Orleans, Louisiana 70115  
Attorney for Appellees

JAN 14 1988

WILLIAM J. GUSTE, JR., ATTORNEY GENERAL  
GARY L. KEYSER, ASST. ATTORNEY GENERAL  
JOHN B. SHEPPARD, JR., ASST. ATTORNEY GENERAL  
IAN DOUGLAS LINDSEY, ASST. ATTORNEY GENERAL  
WILLIAM G. DAVIS, ASST. ATTORNEY GENERAL  
New Orleans, Louisiana 70112  
Attorneys for Intervenor, State of Louisiana

AFFIRMED IN PART;  
REVERSED IN PART.

ES  
CW  
DMM

The primary question confronting us in this appeal is whether the Louisiana Wildlife and Fisheries Commission must follow public bidding procedures before it grants a party the right to take fossil clam and oyster shell deposits from State owned water bottoms. Because we conclude that these contracts involve mineral rights which must be leased through public bids, we affirm that portion of a judgment declaring three negotiated leases unlawful.

The lakes and coastal waters of Louisiana are rich in deposits of fossil oyster and clam shells. When dredged and processed, these shells are commercially useful, especially as a building material for roads and levees. A large industry has developed to exploit this resource, and the Wildlife and Fisheries Commission, as the agency empowered to manage State

owned water bottoms, has granted exclusive rights to private companies to extract the shells in return for paying royalties to the State at a stated price per cubic yard of material taken. For decades, the Commission has conducted these dredging leases by negotiating directly with the companies without publicly advertising for bids from all interested parties.

As a public interest group concerned with Louisiana's natural resources, the Sierra Club filed this suit for declaratory judgment to invalidate three shell dredging leases granted by the Commission.<sup>1</sup> Plaintiffs alleged that the leases were void on three grounds: (1) that the Commission had granted the dredging rights without public bidding as required by LSA-R.S. 41:1211 et seq., the Public Lease Law;

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1. Two of the leases involve shell dredging in Louisiana's central coast area including Atchalalaya, Vermilion, Four League and East and West Cote Blanche Bays in Vermilion, New Iberia, St. Mary, and Terrebonne Parishes. The first lease, dated September 29, 1981, was granted to Radcliff Materials, Inc., whose successor is Dravo Basic Materials Company, Inc. The second lease, dated May 18, 1982, was granted to Radcliff (now Dravo) and Lake Charles Dredging and Towing Company, Inc.

The third lease, dated May 18, 1982, involves shell dredging in Lake Pontchartrain and Lake Maurepas. The lessees are Radcliff (now Dravo), Louisiana Materials Company, Inc., and Pontchartrain Materials Corp.

All the leases have fifteen year terms with options in favor of the lessees to extend the leases for two successive five year periods.

(2) that one of the lessees was an Alabama corporation contrary to LSA-R.S. 56:425, which restricts leases of State owned water bottoms to Louisiana residents and corporations; and (3) that the leases unlawfully permitted the lessees to remove shells from water bottoms instead of only reef formations as provided by LSA-R.S. 56:441(B).

In a motion for summary judgment, plaintiffs also argued that the leases affected an area in excess of "one million seven hundred forty thousand acres" and thereby violated LSA-R.S. 56:432, which limits leases of water bottoms to no more than one thousand acres to any person, partnership, or corporation. In further support of their arguments for public bidding, plaintiffs contended that clam and oyster shell deposits on State water bottoms are "mineral resources" that can only be leased pursuant to LSA-Const. Art. IX, §5 and LSA-R.S. 30:156, which require public bidding for minerals and mineral rights owned by the State and its agencies.

In opposition to plaintiffs' motion and in support of their own cross motion for summary judgment, the intervening shell dredging companies and the Commission contended that the leases had been validly effected pursuant to a statutory exception to the public bidding laws. According to the companies, LSA-R.S. 56:441 sets forth a detailed procedure for the Commission to follow in granting shell dredging leases to "any person", without any public bidding requirements or limitation on the area to be leased.<sup>2</sup> They also cited LSA-R.S. 56:471 as a statutory basis for dredging Rangia clam shells.<sup>3</sup> The companies contended that these statutes authorize the Commission to negotiate agreements to remove both clam and oyster shell deposits from State owned reefs as well as water bottoms.

2. LSA-R.S. 56:441. Grant of right to take oyster shell deposits from shell reefs; duration of grant; renewal; charges; damages; forfeiture of right; bond

A. The commission may sell and grant to any person the right and privilege of taking shell deposits from any of the shell reefs within the boundaries of this state and located in or on the borders of the Gulf of Mexico, or any of the bays, lakes, inlets, or waterways connected with or emptying into the Gulf, or into any of such bays, lakes or inlets.

B. These rights and privileges described in Subsection A may be sold and granted by the commission for a primary term not in excess of fifteen years, and at the discretion of the commission, with the privilege of renewing the contract for a period not exceeding an additional ten years, at a fixed price for each cubic yard of shell which may be taken from the reef. The price shall not be less than seven and one-half cents per cubic yard. Payment for the shells taken each month shall be made during the succeeding month. The person to whom the right and privilege is sold and granted shall supply and provide all of the boats, barges, machinery, tools, and implements necessary to take and remove shells from the reefs without cost, expense, or liability of any kind to the commission. The person to whom the right or privilege is sold and granted is responsible for all damage of any kind by him, his agents, directors, employees, whether the damage is to the property of the state or to the property of any person. The contract shall provide for the forfeiture of the right and privilege upon the failure of the person to whom it is sold and granted to make payment under the terms and within the time provided in the contract for the shells or shell deposits which may be taken from the reef. The commission shall make such other stipulations in the contract as deemed necessary or proper to protect the interest and property of the state, to enforce the rights of the state, and to compel compliance with the obligations assumed or to be assumed. The commission shall require a bond of not less than one thousand dollars, executed by the surety company authorized to do business in this state, to secure the faithful performance by the persons of the obligations assumed.

3. LSA-R.S. 56:471. Ownership of water bottoms

A. All water bottoms suitable for clamming within the state shall remain public with respect to clams and shall be subject to any and all restrictions contained herein.

B. Nothing in this Subpart shall in any way affect the dredging of Rangia clam shells as presently authorized.

On the motions for summary judgment, the trial judge held the three leases unlawful based on the following declarations of law: (1) that LSA-R.S. 56:441 applies only to reef formations and does not vest the Commission with the right to transfer shell deposits from non-reef formations, i.e., water bottoms; (2) that the 1,000 acre territorial limitation contained in LSA-R.S. 56:432 applies to leases for removal of shell deposits granted by the Commission; (3) that the Louisiana residency requirement of LSA-R.S. 56:425(A) likewise applies to shell dredging leases; and (4) that any lease by the Commission for the taking of shell deposits is subject to the public bidding procedures set forth in LSA-R.S. 30:156, dealing with mineral leases.

On appeal by the shell dredging companies, the parties have advanced essentially the same arguments raised in the trial court. The Attorney General of Louisiana has intervened on appeal in support of plaintiffs' contentions.

#### STATUTORY AUTHORIZATION FOR SHELL DREDGING

At the outset, we find merit to the shell dredgers' contention that LSA-R.S. 56:441 and 56:471 authorize the Commission to grant any person the right to take both clam and oyster shell deposits from both reefs and water bottoms.

Although LSA-R.S. 56:441 speaks only of "reefs" and does not specifically mention "water bottoms", in Gorham v. Mathieson Alkali Works, 210 La. 462, 27 So. 2d 299 (1946), the Supreme Court held that the Conservation Commission of Louisiana had authority to grant permits for the removal of clam shell deposits from navigable water bottoms in Calcasieu Parish. The Gorham court recognized a history of letting contracts for the taking of oyster and clam shells pursuant to regulations and statutes constituting the Commission as the department of government with authority to manage the water bottoms of the

State. Among the authorities cited in the opinion was Act 42 of 1914, the precursor to LSA-R.S. 56:441. Based on the Gorham decision, we interpret LSA-R.S. 56:441 as authority for the Commission to permit shell dredging on State owned water bottoms as well as reefs.

We find further authority for shell dredging in LSA-R.S. 36:609. This statute deals with the powers and functions of the Department of Wildlife and Fisheries. In pertinent part, LSA-R.S. 36:609(C)(1) provides that the office of Coastal and Marine Resources of this Department shall:

"(1) Perform the functions of the state relating to the administration, operation, and law enforcement of programs, including research, relating to oysters, water bottoms, and seafoods, including but not limited to the regulation of the oyster, shrimp, and marine fishing industries, the leasing of and regulations of the use of water bottoms for the cultivation and propagation of oysters, and the dredging of shells, sand, gravel and fill materials...and the collection of the severance tax on shrimp, oysters, shells, sand, gravel, and fill materials severed from State water bottoms [Emphasis ours]".

Reading this statutory provision together with the Gorham opinion, LSA-R.S. 56:441 and 56:471, we conclude that the trial judge erred in declaring that LSA-R.S. 56:441 does not vest the Commission with the right to transfer the privilege of taking shell deposits from non-reef formations.

We further conclude that the trial judge erred in restricting shell dredging leases to the one thousand acre territorial limitation of LSA-R.S. 56:432 and to the Louisiana residency requirement of LSA-R.S. 56:425.

Both LSA-R.S. 56:432 and LSA-R.S. 56:425 are found in a subpart of Title 56 dealing with oyster and oyster industries. The Supreme Court has recently noted that this subsection "...provides for the leasing of water bottoms to oyster lessees and the designation and regulation of other areas for the taking of oysters without leases." State v. Powell and Jones, No. 87-KA-1424 c/w 87-KA-1425, \_\_\_ So. 2d \_\_\_ (La. 1987). Indeed, in setting forth the territorial limitation, LSA-R.S. 56:432 speaks of a "lessee who owns or operates more than one canning plant in this state". Similarly, LSA-R.S. 56:425(D) speaks of boundary disputes "between lessees of bedding grounds". This phraseology, in the context of the entire statutory scheme, demonstrates that the residency requirement and the 1,000 acre limitation apply only to the leasing of beds and grounds for oyster cultivation.

Although LSA-R.S. 56:441 is found in the same statutory sub-part dealing with oysters, it is a singular, self-contained provision addressing fossil shell dredging, an activity entirely different from the oyster cultivation. In construing LSA-R.S. 56:441, therefore, we do not read the restrictions on the live oyster industry in pari materia with this section on shell dredging since they are not "upon the same subject matter." See LSA-C.C.Art. 17. Accordingly, we conclude that the territorial limits and residency requirements for leasing water bottoms to oyster lessees do not apply to grants of rights to take shell deposits under LSA-R.S. 56:441 and LSA-R.S. 56:471.

#### PUBLIC BIDDING

The crucial issue confronting us, however, is whether the Commission must comply with public bidding procedures in exercising its statutory authority to grant persons the right of taking shell deposits.

Public bidding laws are founded on a policy of protecting the citizens and taxpayers of this State. Martin v. La. Stadium & Exposition Dist., 349 So. 2d 349 (La. App. 4th Cir. 1977). Generally, the State and its subdivisions must follow public bidding procedures,<sup>4</sup> unless a statute expressly exempts them from doing so. Arnold v. Bd. of Levee Com'rs, 366 So. 2d 1321 (La. 1978); Hall v. Rosteet, 247 La. 45, 169 So. 2d 903 (1964).

Although the parties acknowledge that public bidding is the favored method for letting State contracts, the shell dredging companies and the Commission contend that LSA-R.S. 56:441 and LSA-R.S. 56:471 are statutory exceptions to the State's general policy. According to the companies, these specific statutes empower the Commission to grant shell dredging rights through a negotiation process so long as it follows the minimum safeguards set forth in the statutes to protect the interests of the State. On the other hand, plaintiffs and the Attorney General contend that the trial judge properly required public bidding under LSA-R.S. 30:156 since the right to extract fossil shells from State owned water bottoms is a mineral right.<sup>5</sup> We find merit to the arguments in favor of public bidding.

LSA-Const. Art. IX §5 provides that no conveyance or lease involving minerals or mineral rights owned by the State shall be effected "without prior public notice or public bidding as shall be provided by law". Thus, LSA-R.S. 30:121 et seq. -- which deal with the development and production of minerals, oil, and gas on state lands, including water bottoms -- provide for public bidding when the State and its agencies lease mineral rights.

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4. Thus, under LSA-R.S. 41:1211 et seq. (the Public Lease Law), the State must follow public bidding requirements in leasing public lands for general purposes, "...other than for oil, gas, or other mineral purposes and development..." Likewise, under LSA-R.S. 38:2211 et seq. (the Public Bid and Public Contracts Law), bidding is required for public work contracts. The Attorney General's brief cites several other statutory provisions for the public bidding of contracts involving timber on State lands (Title 41), street and drainage improvements by municipalities and parishes (Title 33), navigational improvements (Title 34), and public printing (Title 43).

5. LSA-R.S. 30:156 requires public bidding for the lease of a state agency's lands for the development and production of minerals, as follows:

"A person desiring to lease from a state agency shall make application with deposit to the agency in the same manner as is set forth in R.S. 30:125 for application with deposit to the mineral board. The agency shall itself advertise, receive bids at its domicile, and lease in the same manner and subject to the same restrictions applicable to leases by the State Mineral Board under R.S. 30:126 and 30:127. The agency has the same powers over leases granted by it as are granted the State Mineral Board in R.S. 30:129."

In support of their argument that the rights to remove shell deposits are mineral rights subject to LSA-R.S. 30:156, plaintiffs cite the uncontroverted affidavit of Barry Kohl, an adjunct university professor of earth sciences, who stated that "...clam and oyster deposits in coastal Louisiana are properly considered in both geological and paleontological senses to be within the definition of minerals...[and] are also commonly referred to as minerals in informed, non-technical usage." Indeed, the shell companies' own exhibit, a report on the dredging industry compiled by the Louisiana Shell Producers Association, states that shells are "99% calcium carbonate".

Even more persuasive from a legal standpoint is LSA-R.S. 31:4, which provides that the Louisiana Mineral Code applies to rights to remove shells from the land:

"The provisions of this Code are applicable to all forms of minerals, including oil and gas. They are also applicable to rights to explore for or mine or remove from land the soil itself, gravel, shells, subterranean water, or other substances occurring naturally in or as a part of the soil or geological formations on or unlying the land."

Significantly, the Mineral Code also contains a number of provisions dealing with leases of the rights to explore for and produce minerals. See LSA-R.S. 31:114-148.

Although LSA-R.S. 31:4 does not equate shells with minerals, it is clear that the right to remove shells from the land is tantamount to a "mineral right" within the meaning of the Louisiana Mineral Code as well as LSA-Const. Art. IX §5, which provides that no conveyance or lease "...involving minerals or mineral rights owned by the State shall be effected without prior public notice or public bidding as shall be provided by law."

Accordingly, when we read LSA-Const. Art. IX, §5, LSA-R.S. 31:4, and LSA-R.S. 30:121 et seq., in pari materia, we conclude that the trial judge properly applied the public bidding requirements of LSA-R.S. 30:156 to shell dredging leases. Although certain specific provisions in LSA-R.S. Title 30 dealing with minimum royalties and delayed rentals for oil, gas, and other minerals do not apply to shell dredging, the Commission must at least adhere to the public advertising and bidding requirements for State agencies under LSA-R.S. 30:156 in granting the right to remove shell deposits.

In so holding, we distinguish Arnold v. Bd. of Levee Com'rs, supra, cited by the shell dredging companies to support their argument that the Commission may negotiate shell dredging leases under an exception to public bidding requirements. In Arnold, the Supreme Court construed LSA-R.S. 38:1235.2, which authorized the Orleans Levee Board to sell or lease its lakefront property "under such terms and conditions and by such methods as said board may deem proper...." The Court held that this statute expressly exempted the Levee Board from complying with the requirements of the Public Lease Law, and that the Board could negotiate a lease of its land without public bidding. In the instant case, LSA-R.S. 56:441 and 56:471 contain no such broad grant of authority to the Commission to dispose of the shells in any manner it deems appropriate. Furthermore, the Supreme Court in Arnold was not confronted with a grant of the State's mineral rights for which public bidding is constitutionally required. Accordingly, the Arnold case is not authority for doing away with public bidding in shell dredging contracts.

We further reject the argument that the leases in the instant case were entered into with full "public notice" within the meaning of LSA-Const. Art. IX, §5, which requires "public

notice or public bidding as shall be provided by law" when the State leases mineral rights. The exhibits attached to the motions in the trial court indicate only that the Commission issued news releases and published agendas of its meetings listing shell dredging as one of the scheduled topics for discussion by the Commission. This publication falls short of the formal public advertising and bidding procedures for mineral leases. Furthermore, the depositions, affidavits, and minutes of the meetings in the record demonstrate that the Commission negotiated only with the intervening shell dredging companies. Although we cannot speculate whether any other companies would have been willing to pay the State a higher price per cubic yard of shell extracted than intervenors, a reasonable conclusion can be reached that possibly other parties might have been interested in submitting bids for these lucrative contracts.

We likewise reject the argument of the companies and the Commission that all three departments of State government have for decades acquiesced in a system of granting shell dredging rights without public bidding. It is true that the Commission has a history of negotiating the dredging leases and that the Supreme Court in Gorham v. Mathieson Alkali Works, supra, did not address the issue of public bidding. Nonetheless, the instant case is the first one directly dealing with the public bidding of shell dredging leases since the adoption of the 1974 Constitution and the Louisiana Mineral Code. We conclude, therefore, that the Commission's prior customs and practices, no matter how well intentioned and longstanding, cannot continue when they directly conflict with current laws requiring public bidding for grants of the right to remove shell deposits.

In addition to the legal requirements for public bidding, another public policy compels us to invalidate the shell dredging leases in this case. LSA-Const. Art. IX, §1 sets forth a public policy to protect Louisiana's natural resources:

"The natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people. The legislature shall enact laws to implement this policy."

In light of this Constitutional provision, the Supreme Court has recognized that the State owns land under navigable waters within its limits in "public trust" for the people. Save Ourselves v. Louisiana Environmental Control Commission, 452 So. 2d 1152 (La. 1984).

In discharging its statutory responsibilities over state owned water bottoms, the Commission has granted exclusive, long term shell dredging leases to a few companies<sup>6</sup> without the benefit of public bidding. When the present leases in this case expire in 1996-1997, the dredging companies have options to renew their rights to exploit this valuable resource into the next century. Furthermore, the shell dredging rights granted in this state are extensive. According to an affidavit of George Douglass, Jr., the president of Louisiana's Shell Producers Association, the Louisiana shell industry annually generates approximately \$400 million in economic transactions and

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6. "The History and Regulation of the Shell Dredging Industry in Louisiana", compiled by The Louisiana Wildlife and Fisheries Commission (September, 1968). This report was filed in the record as "Appendix D" to Intervenor's brief in opposition to plaintiffs' motion for summary judgment and in support of Intervenor's cross-motion for summary judgment.

contributes \$2-3 million in royalty and severance taxes to the State. In 1985 alone, over six million cubic yards of shell were extracted from Louisiana's waterbottoms.

Because of the magnitude of these contracts, it is imperative that a State agency avoid even the slightest appearance of impropriety. Accordingly, we conclude that the Commission is required to adhere to the safeguards of public bidding to insure the best possible contracts for the benefit of the people of this State. Only by granting these long term dredging rights through public bids can our government fully protect the present and future economic interests of our State and uphold the public trust in these valuable resources for all our citizens.

Accordingly, we reverse and set aside that portion of the judgment which restricts shell dredging to reef formations only. We further reverse and set aside those portions of the judgment that apply the one thousand acre territorial limitation of LSA-R.S. 56:432 and the Louisiana residency requirement of LSA-R.S. 56:425(A) to shell removal leases granted by the Commission. In all other respects, the judgment is affirmed.

AFFIRMED IN PART;  
REVERSED IN PART