

**RECOMMENDATIONS FROM THE MORATORIUM LIFTING COMMITTEE and  
RECOMMENDATIONS FROM LDWF STAFF REGARDING IMPLEMENTATION STEPS**

01 April 2010

This list of recommendations from the Special Advisory Committee to the Wildlife and Fisheries Commission on Lifting the Oyster Lease Moratorium is annotated (in italics) with LDWF staff recommendations for first steps for implementation.

**1. Biological assessment of water bottoms in conjunction with coastal use permitting**

Motion Adopted on 09/16/2009.

The assessment would be valid for 2 (two) years coinciding with the life of the coastal use permit with the following exceptions:

- a) If the permit were extended, then a new updated assessment would be required.
- b) The oyster leaseholder may, after 1(one) year request that the assessment be updated. This request would include reasonable cause for the updated assessment.
- c) An updated assessment need not be a full evaluation. It can include only portions of the original assessment which could have changed.
- d) For an oyster leaseholder to be eligible to make a request for a new biological assessment, he or she must have granted permission for the original assessment to have been conducted.

Implementation would require a change in LDNR-CMD and LDWF policy regarding bottom assessments.

*This recommendation requires agreement between LDWF and LDNR-CMD to change the current policy. The current policy is memorialized in an MOU between the agencies; the MOU would have to be updated.*

**2. Ninety day landowner contest period**

When the moratorium is lifted, LDWF survey section would post new oyster lease applications on their website. Landowners would have 90 days after the website posting to protest the issuance of the lease. If a landowner protests, the State Land Office would conduct a subsequent review to include information provided by the landowner. If the lease application is not protested during the 90 day period, LDWF would process the application. Recommendation adopted 12/14/2009.

Implementation would require rulemaking by the Wildlife and Fisheries Commission and additional review by the State Lands Office.

*This recommendation requires agreement between LDWF and the State Land Office followed by rulemaking by the Wildlife and Fisheries Commission. Staff recommends that any rule changes be promulgated concurrently with lifting the moratorium.*

### **3. Ninety day lease applicant decision period**

Applicant for a new oyster lease would have 90 days after the web site posting during which time he may withdraw his application and receive a full refund of application fees. Motion adopted on 12/14/2009.

Implementation may require rulemaking by the Wildlife and Fisheries Commission or legislation.

*This recommendation may be changed by the Commission via the rulemaking process. Staff recommends that any rule changes be promulgated concurrently with lifting the moratorium.*

### **4. Rent-delinquent leases become new leases**

Rent-delinquent leases acquired at auction are to be canceled and a new lease for those same water bottoms will be issued to the successful bidder. Leases that are auctioned will be subject to all recommendations contained in this report. Recommendation adopted 01/11/2010.

Implementation may require rulemaking by the Wildlife and Fisheries Commission and/or legislation.

*This recommendation represents a substantive change in the way in which auctioned leases are treated under the law, and most likely will require legislation as well as rulemaking by the Commission. Staff recommends conferring with LDWF legal staff as a first step.*

### **5. Pre-existing oil and gas activity liability exemption**

Change the statute to stipulate that when the moratorium is lifted, the permittee for oil and gas "activity" that pre-dates a new oyster lease application would not be liable for damages occurring as a result of continued development and maintenance of that permitted oil and gas "activity." Leases reissued pursuant to section 2.B of Act 808 of the 2008 Regular Legislative Session would not be subject to this provision.

Recommendation adopted 11/16/2009, amended 12/14/2009.

Implementation would require legislation.

*This recommendation clearly requires legislation. Staff recommends conferring with LDWF legal staff as a first step. LDWF may also wish to confer with the Mineral Board and the Attorney General's office regarding this exemption from liability.*

### **6. New Lease to take up 500'**

- a. The rules adopted by the Commission for lifting the current oyster lease moratorium would include offering lease holders a new lease immediately adjacent to their existing leases prior to accepting new applications for oyster lease acreage. Such new leases would be limited to five hundred feet beyond the existing lease boundary except in cases where there is a lease held by another lease holder whose boundary line is less than five hundred feet away. In those cases, the two lease holders may agree to divide the distance equally, or if one lease holder declines a new lease, the other lease holder may lease up to the boundary line of the other lease. The opportunity to apply for new leases of immediately adjacent water bottoms would be provided for 180 days.

Recommendation adopted 12/14/2009.

Implementation may require rulemaking by the Wildlife and Fisheries Commission or legislation.

*This recommendation was addressed by Act 808 of the 2008 Regular Legislation Session. It will require rule changes by the Wildlife and Fisheries Commission. Staff recommends that any rule changes be promulgated concurrently with lifting the moratorium.*

**7. Lottery Application appointments**

- a. The rules adopted by the Commission for lifting the moratorium should include the use of a lottery system which will be developed by LDWF. Recommendation adopted 12/14/2009.

Implementation may require rulemaking by the Wildlife and Fisheries Commission and/or legislation.

*This recommendation may also require legislation as it would be a substantive change in the way LDWF addresses the application process for new leases. Staff recommends conferring with LDWF legal staff as a first step.*

**8. Reevaluate water bottom ownership**

Change statute to allow a private entity that claims water bottoms that the state has leased as state water bottoms to an oyster leaseholder to contest the oyster lease at least three years prior to its expiration. This would trigger a requirement for the LDWF and the State Land Office to review the ownership status of the land or water bottoms prior to the end of the oyster lease term and notify the leaseholder at least three years prior to its expiration that the water bottom ownership has been contested. If State Lands did not claim the water bottoms for the state, then LDWF would not renew the lease. If State Lands did claim the water bottoms for the state, then LDWF would renew the oyster lease. Recommendation adopted 12/14/2009.

Implementation may require rulemaking by the Wildlife and Fisheries Commission and/or legislation.

*This recommendation will require legislation as it would be a substantive change in the state's policy and actions regarding ownership of water bottoms. Staff recommends conferring with LDWF legal staff as a first step. LDWF may also wish to confer with the Mineral Board, the Attorney General's office, the State Land Office, LDNR, and the Governor's Office regarding this change in water bottom ownership policy.*

**SUMMARY OF IMPLEMENTATION STEPS:**

1. Recommendation 1, which is a change in policy regarding bottom assessments on privately held oyster leases, can move forward independently of the oyster moratorium lifting. The Secretaries of DNR and DWF recently signed an MOU revision; this can also be pursued via an amendment to the same MOU.
2. Recommendations that require legislative changes to state statutes:
  - a. Recommendation 4 – rent delinquent leases
  - b. Recommendation 5- pre-existing oil and gas activity liability exemption
  - c. Recommendation 7 – lottery for application appointments upon lifting the moratorium
  - d. Recommendation 8 – reevaluate water bottom ownership

Recommendation 8, which requires the state to reevaluate ownership of contested water bottoms, will require a cooperative approach from the Mineral Board, the Attorney General's

Office, the State Lands Office, DNR, and the Governor's Office on the state side. It has the potential to change the state's policies toward water bottom ownership and mineral interests in a major way. This recommendation will likely be the most time consuming, and should get a high priority so that the moratorium lifting is not delayed even longer.

Recommendation 5 would grant an exemption to pre-existing oil and gas activity from oyster lease holders' claims for damages. It will require cooperation at least from DNR and DWF to develop a reliable system of determining whether there is pre-existing oil and gas activity. This should also get a high priority.

Recommendation 4 requires reclassifying the rent delinquent leases. LDWF staff should begin to develop the necessary language for statute and rule changes.

Recommendation 7 requires a lottery for application appointments to open leasing when the moratorium is lifted. Staff should begin to develop the protocols.

3. Recommendations that require only rulemaking:
  - a. Recommendation 2- 90 day landowner contest period
  - b. Recommendation 3 – 90 day lease applicant period
  - c. Recommendation 6 – 500' take up of current leases

Staff has recommended that these rulemaking changes be promulgated concurrently with lifting the moratorium. Before LDWF pursues Recommendation #2, some agreement with the State Lands Office on protocol for handling landowners' contests of state ownership of water bottoms is required. This can be pursued in the before the legislative items