OYSTER SEED GROUND VESSEL PERMIT APPEALS BOARD MEETING

LOUISIANA ROOM LDWF

Tuesday March 31, 2009

9:00 a.m.

**KAREN FOOTE:** Welcome. You are here because of Act 922 of last year’s legislature. I know that you have memorized all that and Patrick will be going over that it a little while. You have the agenda in front of you. I am going to run the meeting as a facilitator until we get to elected any chairs. Is there anything you see that you want to see added to the agenda? Then, if not, we will go ahead and continue with the agenda. Ok. We are going to do roll call. One person will be late. Here is a list of attendees:

 Wilbert Collins, Dan Coulon, Buddy Daisy, Byron Encalade, Brad Robin (5 members)

If you could introduce yourself--

Buddy Daisy—Terrebonne Oyster Organization

Brad Robin -United Commercial Fisherman, St. Bernard

Dan Coulon – Farm Bureau

Wilbert Collins – Louisiana Oyster Dealers & Growers Association

Byron Encalade- Louisiana Oystermen’s Association

You are also permit holders which is another part of the requirements of the Act. We are going to start off with an overview of both the public records act and the open meetings law and Don and/or Fred are going to help us walk through those. These are important because the act says you are subject to these laws. It is important to understand them right up front before we get started. (Someone talks in the background awhile).

Patrick is prepared to walk us through the overview of the appeals board function, duties, and responsibilities. You have information that Patrick is going to be referring to.

**PATRICK BANKS:** Thanks, Karen.

**PATRICK BANKS:** What I’ll start with is a brief overview of what the appeals board will represent according to the act. Each of you were provided with a copy of the act and a copy of the administrator rules in the mail last week and I also made more copies today. Refer to act 922 page 3 of 5. Starting at line 6 on that page. It talks about the creation of the oyster seed ground vessel permit appeals board. As Karen said, it would be composed of Louisiana licensed oyster harvesters. Oysters harvesters will also hold an oyster seed ground vessel permit so that not only did we have to verify that you were oyster harvest but also verify that you held the proper license as well. Then, much of the rest of that page goes over the membership of the board which I don’t necessarily think we need to re-hash at this point, but if you move over to page 4 on the next page, line 8. It starts telling what the function of the appeals board is. It says the appeals board is established to hear appeals of the public oyster seed ground vessel permit applications denied by the department.

**KAREN FOOTE:** (Jakov Jurisic enters) Jakov Jurisic is now here. Now, we have six members present. Here is an information packet for you. (He is told where we are on the agenda)

 **PATRICK BANKS:** On page 4 of 5 of the act starting on line 8 the seed ground vessel permit appeals board was set to hear appeals of the seed ground vessel permits denied by the department. The board shall be limited to determination of eligibility of the permit applicant or permit and to instances where the permit may be issued based on the determination of hardship, so in summary you are required to hear appeals based on the claim by the appellant that we incorrectly denied him a permit or that he didn’t qualify for a permit because of some hardship that happened to him. For instance, he might not have had the necessary trip ticket landings during those qualifying years because he had a debilitating injury or sickness and he was out of the industry for several years because he was trying to recouperate. Maybe he lost his boat in a fire and then he was trying to re-build it during that time. Those are 2 of the instances that the appeals board was set up to hear.

**JAKOV JURISC**: May I?

**PATRICK BANKS:** Sure.

**JAKOV JURISC**: What was the first one again?

**PATRICK BANKS:** The first one was a claim by the appellant that the department incorrectly denied him a permit. The second one was the claim by the appellant didn’t properly qualify because of a hardship.

**JAKOV JURISC**: Let me ask you this. The second part—is it clearly defined in the statute that you mentioned prior . . .

**KAREN FOOTE:** We are going to walk through that part of the rule. Can you hold on to that question until we walk though it? See if you still have the question.

**PATRICK BANKS:** The law does not specifically spell it out but the administrative rules that the commission passed. We’ll get to that. It does say on line 12 that the commission shall come up with the guidelines to be used by the board to determine the applicant’s eligibility and whether or not an applicant shall be granted a permit. Such determination shall require a favorable vote of the majority of the appointed board members and a record of the decision shall clearly state the reasons and rational for granting or denying the permit. Then on line 17 the board shall be subject to the open meeting law and the public records act that Don will get into in just a minute. A quorum is required to conduct business. Vacancies shall be filled in the same manner as the original appointment. And so, let’s move on to the administrative rules that were passed by the commission as directed by the law. The resolution that is dated October 2, 2008 - which you can thumb through to part F which is on 6th page. It says “Appeals.” It says that an applicant may appeal a decision of the department denying a permit to the oyster seed ground vessel permit appeals board. An appeal must be received by the department no later than 30 days after the date of the denial by the department on a form prescribed by the department. Later on down the agenda, we are going to go through some examples of the appeals hearing request and at that time the licensing section will come in and give you a brief overview of the steps in which they go about issuing the permit and also denying a permit. They will show you the form that is provided to the person if they are denied. So that’s what this part of the commission rule is describing. The appeal must include a statement as to why the applicant believes that the department incorrectly determined the applicant to be ineligible for the permit or why the applicant is entitled to a permit based on the determination of hardship. So those were the two issues that the board is allowed to look into. And of course, the appeals shall include any documentation. Let’s move on to the next page. The board’s decision shall be limited to a determination of whether the department incorrectly determined that the applicant was ineligible or based on the determination of hardship. The board shall review all the information provided and after deliberation determine whether or not he shall be issued a permit. The decision to issue a permit shall be upon a favorable vote of the majority of the appointed board members. The board shall issue a written decision which clearly states the rational for the decision. So not only does the law direct the board but also the commission action directs the board to provide a written decision as to why they think that person should be or should not be issued a permit. And then the board shall make a decision within 60 days of the date of the appeal.

**DAN COULON**: The word “favorable vote” refers to a majority?

**PATRICK BANKS:** That’s correct. That’s actually the part of the rule comes straight from the law. It has to be a majority of the appointed board members not a majority of the quorum. So a quorum may be five members but if only five members show up then all five members would have to vote to issue the permit in that case.

**JAKOV JURISIC**: Question, Patrick, if I may. I talked to you already regards to voting. Fact is in all meetings . . . may be a question for Don.

**PATRICK BANKS**: That takes care of the first administrative rule. Now, the second administrative rule that has the term “appeals board” underlined and is dated November 6, 2008. And it’s fairly lengthy so I don’t know that I need to read the entire thing but I’ll touch on some of the high points.

**PATRICK BANKS**: Turn over to the second page where the actual administrative rules begin. Part A said that any person that on the application was denied is able to appeal that denial to the appeals board. Based on the following procedures the appeal board may recommend to the secretary that a permit be issued. One way that the denial can be appealed is through the determination of a hardship and it goes over hardship on part 1. The appeals board may recommend the issuance of a permit based on the decision of a hardship. Flip to the 3rd page it talks about some of the necessary information that the appellant must provide in order to qualify to appeal that decision. For instance, in part I there, it states that an applicant must have legally harvested oysters from the public seed grounds for either for marketing or seed during at least two of the licensed years of 04, 05, 06, 07, or 08 and this evidence may be from trip ticket information or a notarized written statement of two Louisiana licensed oyster harvesters. That will be part of the proof of that appellant will bring to the appeal hearing. Actually they’ve already submitted that or supposed to have already submitted that with their appeals request to us. If the applicant is an individual, the applicant shall have held certain licenses at least two of those years. Here’s the key points to the hardship. Part III were the following conditions preventing the applicant’s ability to otherwise meet the statutory eligibility requirements for the permit:

a) Went through a divorce proceeding.

b) Was involved in a bankruptcy or bank foreclosure

c) Was involved in the dissolution of an oyster harvesting business partnership

d) The applicant’s current or former vessel was part of a lawsuit

e) The applicant was involved in military service

f) He had a serious medical condition

g) Applicant’s current or former vessel was damaged or destroyed in a fire or a natural disaster, a sinking, or another accident

So these are the clear hardship situations. A person may come in and say I’ve been deployed to Iraq for the last 6 years and that’s why I didn’t qualify.

**JOHN ROUSSEL**: I want to point out that the way the rule was structured they have to meet little i and they have to be meet little double i and they have to meet at least one of the trip cards. If you read the one skipped over statement that to qualify you’ve got to meet all of the following: Little I, double little I and at least one of the triple little I’s. So you have to prove you had a landing, prove you have the right licenses and then at least one of these - divorce, etc. (interruption on tape-something bad happened – **KAREN FOOTE** says). I just want to point that out. So that you can clear your minds. It’s like a checklist you go through.

**DON PUCKETT**: I would reiterate one of the same here too. If any or one of those conditions a-g occurs they must prove that happens but they still have to prove that it prevented their ability to meet the eligibility. In other words, if I had a divorce but I had absolutely no event for liability to meet the eligibility, I still wouldn’t apply so I must have at least some testimony that event affected their ability to become eligible. I can’t just say I had a divorce.

**PATRICK BANKS:** On the following page, half of it is meeting on an appeal based on a denial of a renewal or reissuance permit application shall provide clear evidence of one of the following prevented the applicant from otherwise meeting the eligibility requirements for renewal or re-issuance. Now this is a part of the administrative rules that I think possibly will be handled down the road. At this point, we haven’t gotten past the first year of issuing permits so there’s not any kind of renewal situation happening yet. So I am not so sure that you guys will see any of these instances at least for quite some time. The possibility of a denial on a re-issuance permit may occur, but certainly not an issue of a renewal—not quite yet—not until this calendar year is over. The number 2 talks about eligibility if a person is denied a permit based on eligibility and he wants to appeal and basically say that the department incorrectly determined his eligibility, he must set forth in detail the facts contending or that shows that he does in fact meet the eligibility requirements for a permit. The appeal application shall include the application submitted to and denied by the department. The appeal application shall include the applicant’s name and all pertinent information, vessel registration, which is key, and then number 4 on the next page makes the clear statement that no other appeal shall be considered by the board unless additional rules are promulgated by the Commission. Number 5 after consideration, of course the appeals board may recommend to the secretary that the department issue a permit, but only in an affirmative vote of the majority of the members of the board. That’s in general the law and the rules that govern which you guys are able to do.

One other document that was in your packet that we’ve updated just since the one I mailed to you guys. The updated form was provided at the table when you came in today. It is called the public oyster seed ground vessel permit appeals board general information. It’s just a bullet list of the general information. We can step through this general information as well and most. . . the majority of this is taken directly from the act or the administrative rules. Of course the name of the board is the Seed Ground Vessel Appeals Board. The board’s purpose is to hear appeals from the permit vessel applications that have been denied by the department and to make recommendations to the secretary as to a previously denied permit application should be granted. The board is limited to determinations which we talked about several times. It is limited to determinations of eligibility of a permit applicant and to instances to where the permit may be issued based on the determination of hardship. So, again those are the two types of appeals you guys can hear. The board shall only be allowed to offer recommendations on permit issuance to the secretary. The board shall operate under the authority of LDWF and shall be governed by policies and regulations. The board shall operate under the open meeting law, the public records act, the transfer of agencies to LDWF, the Oyster Seed Ground Vessel Permits Law and the administrative rules that we already went over. The board is a nine member board as you know 5 members constitute a quorum and a quorum is required to conduct business. The designation of prophesies is not allowed. Board meetings shall be conducted in accordance with the Robert Rules of order and so I think most of you guys have been involved with the Oyster Task Force Meetings which is conducted under Robert Rules of Order as well so you are somewhat familiar with that. If we get off track, we have a nice new version of it right here. Meetings shall be held on an as needed basis by you guys, the board. The board shall elect a chairman and vice chairman whom shall serve a term for one year and provide leadership for the board. Other staff shall be provided by wildlife & fisheries as necessary. Then some of these next points just talk about sort of the general flow of the meetings. And we may find that this needs to be modified somewhat as we get into these meetings. They may need to be changed up a bit so they work better. At the beginning of each appeal hearing, the department shall present the facts of the permit application and denial. Basically, we will let you guys know what information we received from the applicant, why we denied and what information has been provided by the applicant back in an appeal to us. The appellant will then be allowed to come before you and present their testimony as to why they feel like we incorrectly denied the permit or why they should be granted a permit based on their hardship situation. Public comment will be accepted but only in the form of witness testimony before the appellant or the department. Each Appellant shall identify all witnesses at the beginning of this case and that will help you guys know at least the chairman to know who you will hear from. After the hearing the appeal testimony, each board member will provide a written recommendation on the permit issuance to the chairman on the forms provided. The chairman will announce the majority recommendation to the appellant. After hearing the appeal information a motion and a second must be made before a vote can be taken on the recommendation of the permit issuance. Voting will be via a roll call vote and each member’s vote is presented to the public and recorded. The chairman shall after combining the written recommendations from each member, fill out the summary checklist recommendation form. I gave this to you guys in your packet that I mailed to you. This checklist is a good way for the chairman to go down and be able to check off all the requirements to make sure the appellant has first of all, he is able to say is the appellant’s claim to the department incorrectly denied the permit or is the appellant claiming hardship? And you can check that off. Then number 2, did he provide the necessary evidence as required by the administrative rules. We did this checklist so that you guys can go through and be sure the appellant is providing all of the information required by the law and the rules. Then, the second page shows the roll call vote and the written rational for the decision. This information can then be provided to the secretary of the department as the recommendation of the board.

**JAKOV JURISIC**: Can I get a copy of the checklist?

**PATRICK BANKS:** Sure

**PATRICK BANKS:** The determination of an appeal’s request again shall apply a favorable vote of the majority of the appointed members which is five members, not the majority of the quorum. A quorum is 5 so if there are only five members present at any meeting, then all five have to vote in favor to recommend the permits.

**WILBERT COLLINS**: Every time we vote, we have to fill out the checklist?

**PATRICK BANKS:** The chairman will fill that out. One of the things we have set up as a possibility was for each person to have a form to provide their recommendation to the chairman. Now, I haven’t made that form up yet because I wasn’t sure if that’s how the board . . . . Yes, the chairman will need to fill out that checklist and summary recommendation as a document to provide for our secretary saying this is what the board recommends you do with this appeal application and here’s why. It is not necessary that each of you guys have that checklist. The chairman will be responsible for that. So, I guess with that, that’s all the information I have.

**KAREN FOOTE:** Do we have any questions for Patrick? Or we could have questions after we hear Don’s and Courtney’s presentation. Don.

**DON PUCKETT:** Welcome gentlemen. Nice to see all of you. I am Don Puckett. I am general counsel for the department. I have contacted most of you at one time or another. My presentation is regarding the open meeting laws, public records act and pretty short and is pretty simple. Basically, everything you do, every deliberation you make, every piece of paper you look at, every piece of paper you generate becomes open in public. Specific papers with respect to open meetings law, each one of your meetings has to be formally announced and noticed as it was today, just like the Louisiana Wildlife & Fisheries commission meetings, it’s advertized in the press as a standard procedure for doing that at least 24 hours notice before each meeting. We’d rather it much more than that. Your board is a little different. Most of the boards with the exception of the commission that we have are advisory in nature that is that may have major resource issues and may be looking at grass carp or giant salvinia, and you are familiar with the oyster task force and their roll and ultimately they will deliberate the substance of an issue usually make recommendations to the Wildlife & Fisheries commission if it’s to be in the form of a rule or regulation if there’s a need for legislation they will make recommendations to the department and ultimately act on that and put a bill in the legislature. You are more in the realm of adjudicatory body ultimately the decision is the secretary’s, but you are the first step in that process. You have to make a recommendation to the secretary on one of these fields should be granted or denied. So I kind of view you more as an adjudicatory body rather than an administrative or regulatory body—more like a court. You are going to hear testimony. You are going to have documents and probably testimony from department staff because obviously nobody’s going to be here before you unless they’ve been denied. If they got their permit, they are happy and they’re fishing. But obviously there is some disagreement between the permitee and the department or they wouldn’t be before you so are going to hear both sides in terms of testimony and documents. All these things are noticed. They are all open to the public. The department can be here. He or she can have anyone here. The public can sit in and watch it if they want to. Unlike the normal administrative bodies, I felt it is only appropriate that if someone from the public is going to speak but do so in the form of a testimony for the appellant, but not just Joe Smoe sitting in the background saying hey I think you folks will be fine. I just don’t think that’s appropriate for the adjudicatory body but the appellant can have as many witnesses as they want. All Testimony would be in public. I think it should be kept at an informal low level and everyone speak their peace and have a chance to say their mind but I don’t think this needs to be the supreme court. Give everybody a chance to put in whatever papers they have, say their peace, and likewise you may want to hear what the position is but again it’s all done in open. It’s done in public. You can’t deliberate in secret and you can’t deliberate in private. You can’t excuse everybody from the room or a debate. All your debate has to be up there in front of the appellant and anybody else that’s in the room. All of your votes as Patrick said it’s by roll call. All of your votes on each one of the permits has to be reported. How did you vote on this particular permit application? So, roll call is the easiest way to do that. It is an open and public vote. There’s no secret voting. That’s in fulfillment of the open meetings law. Public records act again very simple- any document that the staff generates or any document that is filed by the appellant as far as his appeal, any document you generate for final ruling of the board or the chairman generates based upon your input is all public records. There won’t be any exceptions to that. So, just basically it’s a wide open process of deliberation & paper. Etc., It’s a pretty simple rule to follow but that’s pretty much the way I envision this. If you have any specific questions, I would be happy to take those.

**WILBERT COLLINS**: Being that this is going to occur, who is going to be watching us?

**KAREN FOOTE:** The staff will be here. I’ll probably be here, John will probably be here. Patrick will be here. Might have some attorneys here if we need them.

**WILBERT COLLINS**: Just to keep us in line, this is going to be over and new for us.

**KAREN FOOTE:** We’re counting on You keeping yourselves in line, but we’re here to help. It is brand new. Just think of it as everything is wide open. If you make a note, that’s a public record on the testimony. In the department that’s the way all of our stuff is. It’s wide open. I emphasize the key part about not dismissing everybody or meeting in private about it. You read cases in the paper every day where somebody violated the open meetings law and it won’t be this group. I promise you. I know that you want to do this right. Pause.Dan.

**DAN COULON:** The permits are only available until the end of 09, how long after that can you file an appeal? And my other question is we seem to be time limited on this panel/body, is time limited based on the availability of time to make appeals? Is that correct? Well, I’ll say they can’t come back come months later—I’ll say in June 2010 and file an appeal.

**PATRICK BANKS:** I would like to for Don and maybe Fred maybe to just make sure I’m saying this in a correct way, but because we do have a provision in the law and the rules for the renewals and re-issuance of permits and if for some reason a renewal or a re-issuance permit was denied by the department then that’s something that could qualify for an appeals as well. So, I’m not so sure that your role is just limited to just this calendar year because of that issue. We may have a situation where when none of those were denied or nobody appeals those denials and we don’t have to meet for the board to act on anything.

**DAN COULON**: The answer to my question I had is on new requests that would be limited appeals for new requests would be only those denied in 2009. So. . .

**PATRICK BANKS:** Right. No new applications can be received after December 31, 2009.

**KAREN FOOTE:** I don’t know what day December 31st is but if somebody is denied on the 31st of December of 2009, I would think that you would here his appeal just like you are going to hear ones that were denied in January.

**DAN COULON**: He would have to make that with a reasonable period.

**PATRICK BANKS:** Yeah. Within 30 days.

**FRED WHITROCK**: He has 30 days from the day of the denial. Whenever that appellant came in, and when he submits his application of denial, the latest it could possibly be would be the early part of 2010.

**DAN COULON**: Then, it would only be on renewals.

**FRED WHITROCK**: Right

**JOHN ROUSSEL**: It may or may not have to . . . I would suspect that the majority of the cases You hear would be in the next 12 months. And then after that you may not get anymore. If you do, it would probably be a very small number. And to give you a sense, Patrick, at the current time we have how many people that have filed?

**PATRICK BANKS:** I think in the neighborhood of 30.

**JOHN ROUSSEL:**  And I would think maybe with oyster season coming up next fall it might be another little rush of them that didn’t try in this last season. So, in the first 12 months, you may have (I’m guessing) 50 or so maximum and after that just a handful.

**BUDDY DAISY**: Most of them come in before the season.

**BYRON ENCALADE:** So, am I . . . I bet we are going to have guys coming back and applying for licenses based on the hardships from hurricanes . . . Katrina . . . and you know what I mean. It’s going to happen in the future to. The Wildlife & Fisheries can grant those licenses based on that without coming to an appeals board.

**PATRICK BANKS**: Not a hardship.

**BYRON ENCALADE**: I mean in a. . . ok. . . so all the vessels that were destroyed in a hurricane or in a natural disaster. They are going to get turned down automatically basically.

**KAREN FOOTE:** If they had landings, no. If they had landings and can prove landings before that, they might have a permit today.

**PATRICK BANKS**: That’s correct. If you had one boat, Byron, and you fished it in 04 that had oyster landings and it got destroyed in Katrina and you have not gotten that boat back up and running until just recently, you can still come to the department and if our records show that you have landings in 04 before Katrina, you qualify to get that permit.

**BYRON ENCALADE:** So as most types of limitations on how long do you have to wait to after that disaster?

**KAREN FOOTE:** You need to have your original permit by the end of 09.

**DON PUCKETT**: Just a quick note to your question. That is an excellent question. We deliberated that ourselves. The hardship was set up- the hardship criteria and the regulations but the law did not recognize that this person was one criteria shy of meeting it and this hardship kept him from meeting it, but we don’t have the discretion to waive that before it does. So that’s what’s different.

**JACKOV JURISIC**: There are some questions that I had, Don, to ask, and that’s in regards to voting, and Puckett and I discussed at length what I’m about to say is. Suppose for a moment I guess hypothetically speaking someone comes before us with a criminal record and he doesn’t meet all the requirements but he might in his twisted mind he thinks he does. And then my vote is no and I am exposing myself to certain risk- burning my boat, burning my house, killing my family in what not, so with this voting process I have problems because why can’t we vote on a secret ballot?

**DON PUCKETT**: It’s real simple. It is the open meetings law won’t allow you to do that won’t allow any folks in the body to vote. It’s got to all be open and recorded. I understand your concern I understand the fashions of some of the people that may be appearing before you but the open meetings law does not take that into account. This is the simple answer.

**BRAD ROBIN**: In the position we are going to take at we have the benefit up to them. . . it’s up to them to prove their case to us. We can oversee that. I understand your point.

**JAKOV JURISIC**: I understand that part. Again if you notice I tried to present a person in his twisted mind who thinks he is right. People with a twisted mind can- God knows what is going on in and out of their heads. But as a consequence I am hoping I might not end up being beaten to death in his territory. Do you know what I mean?

**DAN COULON**: I have questioned that since they brought that up if the open meetings law allows us to vote and how many ways that we discussed and yes or no. Is there an abstention and other votes?

**DON PUCKETT**: You can abstain. That is done, but what you may run into (and I guess Courtney may get into some of this in her presentation) is a personal conflict of interest or something that looks like a conflict of interest. What are your rights or priorities under the ethics code which is another law that you are subject to. I’m going to defer to her on that but generally speaking I would say you could abstain, having said that I wouldn’t encourage it because the abstensions for the functions of the board falls down- unless there is some real conflict.

**DAN COULON**: The only conflict now is that by these rules, it gives you the options and the open meetings law they don’t.

**DON PUCKETT**: I’m sorry the option

**DAN COULON**: I think you have the option of abstaining from a vote by these rules

**KAREN FOOTE:** But he’s saying you could abstain according to the open meetings law so he’s encouraging you not to unless you have a conflict, a direct conflict.

**JOHN ROUSSEL**: For example, if you like an appeal, it would be reasonable to assume abstaining from voting on your own appeal

**DON PUCKETT**: Or an appeal from immediate family. . . that’s where the ethics code comes in. Generally speaking, I would discourage that. I really just thinking off the top of my head. I know have been extensions on the wildlife & fisheries end at one time or another, but that’s pretty rare. I don’t think that the open meeting law forbids that. I can’t tell you that I specifically researched that. That will be the first thing I do when I go back upstairs. But again, there is formally on the end of the ethics code (and again I am getting on thin ice) Formally under the ethics code, you couldn’t abstain. I think there was a change in the law on certain instances to allow that now, but again I’m going to defer to Courtney.

**PATRICK BANKS:** One example where it may cause some problems like Don was describing is if you have a guy who is asking for you guys to recommend a permit when he gets four votes yes and you abstain. Essentially that’s serves the same purpose as a no vote.

**FRED WHITROCK:** What I am saying about the abstention is essentially a no vote. If there are six people and five vote yes and I abstain that doesn’t change anything. If you have five people and you get all five votes and you abstain it’s essentially a no vote—the whole purposes of the board is to volunteer in one form or another to be members to make a decision of an appeal and it doesn’t meet its whole purpose if the board allows people to make a decision to decide to abstain for other than possibly another goal or a conflict of interest.

**KAREN FOOTE:** Jakov do you have a question?

**JAKOV JURISIC:** Yes. I’ll be specific. My brother-in-law is appealing, so do I recuse myself from that particular instance?

**KAREN FOOTE:** I think that Courtney’s presentation will answer that. We have one more presentation. That’s it. You have any other questions on the open meetings or public records act right now?

**JAKOV JURISIC**: Basically this is what I had. I hope that they might be directed to Don but . . .

**DON PUCKETT**: That will really be an issue as to what you can do or what you have to do whenever it is a family member.

**KAREN FOOTE:** Byron, you have a follow up question?

**BYRON ENCALADE**: No. No. I was just waking up.

**KAREN FOOTE:** Maybe after Courtney’s presentation we’ll take a short break.

**JOHN ROUSSEL**: Maybe we can go back and actually ask a whole batch of questions. (Several people talk at once here. . . can’t hear clearly)

**KEITH LACAZE:** Before we get to that, I want to ask Don- testimony and documents submitted by the appellant, is their testimony going to be under oath? Do we have true testimony and true documents?

**DON PUCKETT**: Well, at this point, I haven’t envisioned sworn testimony. Just simply try to keep it as informal as possible. Yes there is the risk of untrue statements. If it’s un-sworn too of course there is sworn too, but that was my feeling to start and that again is a real issue then

**KEITH LACAZE**: And I am more concerned with the documents than about the testimony.

**BYRON ENCALADE**: Speaking of making an appeals request, I think there is noticing it, that it has to be notarized by a justice of peace or something that can handle that.

**PATRICK BANKS:** Well not the form itself, but when you provide sworn statements from other fishermen then (tape ended).

*Tape Side 2:*

**DON PUCKETT:** We are trying to keep it from becoming highly formal, but if that’s a problem and as far as a recommendation the board can certainly make their own choice, but if it looks like that becomes a problem, in the future, I think the board can remove that.

**KAREN FOOTE**: Any other questions on this matter?

**JAKOV JURISIC**: I guess my question is going to be can you require that the person, be that a witness or appellant, that he be sworn. . . can we make that a requirement?

**DON PUCKETT**: I think you can. Whatever procedure you adopt would have to be uniform across the board so if you decide as a board that you want to go to sworn testimony that can be done but that’s something that you will have to deliberate

**KAREN FOOTE:** Mr. Buddy.

**BUDDY DAISY:** OK. . . if somebody comes to us with an appeals and we grant him an appeal and he goes into state grounds, he is doing wrong. You go out there and pull his permit. The following year his is going to get another permit to go back into the state grounds or does he have to come back to the appeals board?

**KAREN FOOTE:** Right now there’s no enforcement action. Related to this.

**JOHN ROUSSEL:** If I am recalling correctly there is no provisions to revoke or repeal an amendment.

**BUDDY DAISY:** I think there should be something to appeal-some kind of violation for doing wrong

**KAREN FOOTE:** That’s something for the legislature to consider. Jakov?

**JAKOV JURISIC:** Is there a provision in which a license can be removed?

**DON PUCKETT**: There is provision for license ratification and it depends on what your (somebody coughs. . .missed some words) classes are and that may have the same effect to determine ratification.

**KEITH LACAZE:** Exactly. It’s very, very unusual to see that because the courts are hesitant to remove means of livelihood. I can’t recall ever actually seeing somebody’s commercial license actually being revoked as part of the penalty.

**JOHN ROUSSEL**: I have the statute to make sure you interpreted it. It outlines the penalty and it basically says that it’s a class 2, bear in mind.

**JAKOV JURISIC**: Excuse me sir. I have a question. You might keep finding it irrelevant but to me it is very relevant. In Avenal case, was his license revoked. The case in Mississippi that the guy got . . . he was cited for, I think 60 or 70 different violations.

**BRAD ROBIN**: No, that was Billy Epperson.

**JAKOV JURISIC**: I am sorry. . . Ok I got the wrong person. . . I know he got some time in federal prison.

**KEITH LACAZE**: Or time in prison. . . I mean that was that was very, very high number of counts and offenses and over a long period of serious criminal activity for a lot of money and a lot of criminal activity involved. That was a very severe case and that case was in federal court because of the involvement in two state courts on the state line. But, those types of cases that can be a serious case will go to court.

**JAKOV JURISIC**: Ok. . . can he apply for a license and obtain one?

**KEITH LACAZE**: I don’t know. I would have to look at the complete penalty imposed by the judge. I know he was sentenced to prison. He had a lot of fines to pay and I don’t recall if the judge addressed the ability to obtain a license or not. I don’t know.

**JAKOV JURISIC**: Let me ask one more question. Can he apply for a seed ground permit? I guess not since he is in prison.

**PATRICK BANKS:** He can apply

**JAKOV JURISIC**: I mean can he. . . that’s the wrong question. . . can he be granted a seed ground permit?

**PATRICK BANKS:** We’d have to research it

**KEITH LACAZE**: We would have to see if he made any of those landings (several people talking)

**JAKOV JURISIC**: He wouldn’t be able to meet the trip tickets requirements?

**PATRICK BANKS**: Probably not.

**BRAD ROBIN**: He’s doing contract work now. He’s out now on the coast and he met me down the road and did some work down there, but eventually he is going to get back into the business but I think he’s more . . . . I was the one after him all the time so he’s . . . . (unclear. People laughing and talking.)

**KAREN FOOTE:** Guys, I’d like to just stop your discussion for a little bit and let Ms. Courtney Jackson with the ethics board present. Thank you for your patience and you’ve probably learned a whole lot about what the board’s about.

**COURTNEY JACKSON:** I did.

**KAREN FOOTE:** Courtney’s been spending a quite a bit lot of time training all the boards and commissions around the state on the new ethics law and what’s important for us to follow. There will probably be a lot of questions after her presentation.

**JAKOV JURISIC**: I guess she’s got her work cut out for her.

**KAREN FOOTE:** Thank you Courtney.

**COURTNEY JACKSON:** Good morning. Ethics law. The first thing that I am going to address is the money in which those financial disclosure requirements. I don’t know if you are familiar with the packet but it’s just a packet of legislation that past last year that requires these forms. These forms disclose certain personal financial information that we have to re-file each year. Just reviewing your legislation I guess the politics about and listening to what you said. Legislation today could prevent it. My formal opinion in this I have to admit my formal opinion was to drop by and form a board. . . my informal opinion is that the members of the board would not do something with the financial disclosure requirement simply because I don’t think this board has the authority to as you can see expand, disburse, or grant at least $10,000 a fiscal year. I don’t think. . . I don’t know . . . it’s your puppy. . the correct balance of this board has the authority in terms of contracts or to really to enter into any financial agreements whatsoever so I don’t think that board will be subject. This is a form of an opinion and if you were to form an opinion from the board, you would have to go through the advisory opinion mechanism that I can discuss with you in a moment. So, my point is that you wouldn’t be subject to that. But you are subject to the Ethics Code because you are now considered public employees by virtue of your service on this board. And as you can see compensation is not required. I’m sure you are aware you are on this board without pay but this is a public body and you will engage in performance of a government function of the department of wildlife & fisheries due to your service on the board so now you are subject to the ethics code. I’m not going to go deeply into what the ethic board does, since you do offer advisory opinions, and I will touch on that just briefly. If you ever have a question arise under the code whether or not you do a particular action or taking a particular action on behalf of this board, you can go directly to Louisiana board of ethics. Tell them what it is you are trying to do and they will send you a letter letting you know whether or not what you are trying to do will be a conflict of interest under the code. I’m sure that if you wanted to do that you could go through the legal department here and they will help you with that. But you have to do that before you take the action. So if you want to know whether or not to go on to the topic and I don’t know how far in advance you will know about the appeal letter, but it’s something that you must request before you take the action, rather than after take the action. The Louisiana Board of Ethics also conducts investigations that violate the ethics code. There are penalties for violating the ethics code. They are voluntary. Generally speaking, you are subject to a penalty of up to $10,000 per violation of the code. Just keep that in mind there are penalties for violating the ethics code that our board would administer, of course. Section 11.13 this is provision of law that specifically relates to appointed some members of boards and commissions . . that would include all of you on this board. What this provision says is if you as board members or members of your immediate family and any company in which you or your immediate family members have an economic interest cannot basically interact or do transactions with this board. Now, we don’t (unclear) of subcontracts of which you have no financial authority but you do have transactions that each appeal you will review and make a decision on when we get to the transaction. I’m in section 11.13b. You do not have the right to recuse yourself which means if you have a conflict of interest derived under section 11.13b, you’re only alternate would be to resign from the board. So, recusal is not an option. Obviously with the statute you are all permit holders with no violations because the statute requires that. However if any of you were individually denied a permit, you want to appeal the permit, this is the body you have to go through to appeal the denial of the permit, you will not be allowed to appeal the denial of your own permit to this body while you sit on this body, so if you were going to appeal because your permit is denied and you want to apply for an appeal to this body, you will have to resign from the board to apply for an appeal. The same thing goes for your family members. There is no conflict of interest with immediate family members holding a permit, but if they want to make an appeal to the board, it is my opinion that the application of the statute that you have to resign your position on the board so that they can formally apply for an appeal. You cannot be on this board while your immediate family members are completing this transaction with this agency which will include making an appeal or making a hardship determination whichever fashion it would come up before this board.

**DAN COULON**: If you were to have to resign, would it be for the duration of that appeal of that particular family member and then rejoin the board or will you be out permanently?

**COURTNEY JACKSON:** You would have to resign. We had situations before where people try to resign from the beginning of a meeting because their family member will come and at the end of that meeting, they’ll try to take their position back on the board. That’s not going to be sufficient. They will have to do whatever it takes to do a formal resignation. You have to officially resign. Now, once that appeal is completed, can you be reappointed in the future? Yes. You have to go through the process from the beginning. You have to go through the reappointment process. You can’t just simply show up at the next meeting and take your position back. You have to formally resign and then you are appointed and go through that particular process.

**JAKOV JURISIC**: I stated earlier that my brother in law is going to appeal. And the question was, could I just recuse myself or do I have to resign completely so that he can log his appeal?

**COURTNEY JACKSON:** Well, one question that I have for you is your definition of an immediate family member? They do include the stock of your brothers and sisters. I don’t know if this is your wife’s husband or your wife’s brother…..

**JAKOV JURISIC**: My wife’s sister’s husband.

**COURTNEY JACKSON:** Then, under the definition, he does not qualify as an immediate family member. Immediate family members are only the people that you see on this list. Your children, their spouses, your son-n-law, your daughter-n-law, your brothers and sisters, their spouses. If it was your sister’s husband, then it would be an immediate family according to this list. But that’s not the case here. This is your wife’s sister’s husband. That is not what we consider your immediate family. In that case, since he is not immediate family, he is allowed to enter into an appeal and actually under the ethics code, you don’t even have to recuse yourself. You could actually vote on it.

**JAKOV JURISIC**: Ok.

**COURTNEY JACKSON:** Now you may choose to for your own personal reasons, you certainly can choose to abstain from voting. Under the ethics code would not require you to. However, if they were someone on this list, in my opinion, would have to recuse yourself …..and then be reappointed….again, your children, their spouses, your brothers and sisters, their spouses, your parents, your spouse and the parents of your spouse…your mother-in-law and your father-in-law; these are all your immediate family members under the code. So your grandchildren, your aunts, your uncles, your nieces, nephews, cousins, are not immediate family members. So if any of these members file an appeal, that’s fine, they are not considered immediate family members and you do not have to step off the board and technically you don’t even have to recuse yourself.

**JAKOV JURISIC**: Okay, another question. Can we get list of who we can or cannot vote for?

**KAREN FOOTE**: She can send us this PowerPoint…she can send us a copy of this. Would that help?

**JAKOV JURISIC**: Probably so, but I mean I definitely want to have that. I don’t want to expose myself to any wrongdoing, not even knowingly.

**COURTNEY JACKSON:** If it’s not on this list, then it is not considered immediate family. Also the board says that step parents and step children are not immediate family so if you have a step child, or step parent then they would not be considered your immediate family but if you have a half brother or a half sister then they are considered part of your immediate family. So if you have let’s say a sibling and you have one parent the same you have same father and different mothers something like that they are still considered your immediate family. You will not be allowed to stay on the board if they are going to lodge an appeal.

**WILBERT COLLINS**: I got a question. I went in for a permit for one of my vessels; what I gotta do?

**COURTNEY JACKSON**: You mean a permit of the….

**KAREN FOOTE**: He’s filed for an appeal and it’s been denied. He filed for a permit and one of his vessels has been denied.

**COURTNEY JACKSON**: Right, if you were going to file an appeal I think that under the provisions of this code, I don’t think that you will be able to serve on this board once that appeal is going to be heard by the board. I think you’ll have to resign. Once you’re going to appeal your own vessel permit. And then again, as I said, once you go through the process and if you are reappointed later in time, then that’s fine, but you are going to have to officially resign. And wait to be reappointed before you can come back on this board.

**KAREN FOOTE**: What if his appeal was not heard until two meetings from now? Could he serve between now and two meetings from now or would he need to….

**COURTNEY JACKSON**: That’s up to interpretation. When does the transaction begin…and I assume you’ve already lodged your appeal . . . that you’ve already taken the steps to lodge your appeal, huh?

**KAREN FOOTE:** You have a pending appeal? (Asked to Wilbert Collins)

**WILBERT COLLINS**: Yeah.

**PATRICK BANKS**: He has, because the law says he had to do it within 30 days.

**COURTNEY JACKSON**: I mean under the most broad construction of this law, you could say that the month he filed his appeal, he entered into a transaction because it’s going to be a future subject. On a more narrow construction of that you could say until his appeal got to be heard by the board, he can continue to serve. It’s a matter of statutory interpretation. The safe way to interpret that is always the broader sense. I don’t want to have to tell anybody to resign today when it’s not necessary to resign. I think that because we have a potential conflict coming up that you would be wise to request an opinion as to whether or not you should resign from the board until your appeal term.

**KAREN FOOTE:** And who would he request that opinion of?

**COURTNEY JACKSON**: Directly to the Board of Ethics. And to request is not complicated; he would just simply write a letter to the Board of Ethics, I’ll give you the address and our phone numbers…you can fax it or mail it in to us. We will submit that to the Board at our monthly board meeting…the board only meets once a month…and we’ll review your letter and they will make a determination as to whether or not.... And for any of you, if that comes up again in the future, the opinion he will get will be advisory for all of you so you will know how to handle those issues. And certainly once the matter comes before this board, certainly you’re not going to be able to remain on the board. Without a doubt.

**JAKOV JURISIC**: I have a question; it may not be relevant to this board but it may be relevant to oyster task force that I’m a member of, but it’s also a board. Now, correct me if I’m wrong, you said I couldn’t vote, or rather couldn’t serve on the board if my decision was affecting my personal or business interests. Correct?

**COURTNEY JACKSON**: Well, I’m not going to push to it that broadly, but in this case we have you, individually, or a vessel that you own individually, asking this board for an appeal. Basically, asking this board to overturn a decision that was made by the department. It’s a very specific transaction between you and the board. I mean, you’re asking this board…..for us to make a determination.

**JAKOV JURISIC**: This questions that I’m asking may not be relevant to this board, but very much could be relevant to me serving on the Oyster Task Force. Now, every decision that I make, every vote that I log, on that board, affects my personal business.

**COURTNEY JACKSON**: Right, well, and I really don’t want to give an opinion because I really haven’t looked at the legislation that creates the oyster task force, like I’ve had a chance to do with this board, I mean I’m familiar with it somewhat, but I haven’t looked at this particular legislation. I’m assuming, and I don’t know if I’m correct or not, I’m assuming that the legislation for the oyster task force requires certain industry representatives to be on that board. It doesn’t affect the industry in general… If you are making a decision that would affect you the same way it affects everyone else, that would not be a problem. But that’s all that we have here…we have this board….and I’m not talking about the oyster task force, I’m talking about this permit board…you’re making very specific case by case determinations. And what I’m telling you is that if you have to make a case by case determination that concerns you or your immediate family members, you’re going to have a problem with that. So, that’s completely different.

**KAREN FOOTE:** And at the next oyster task force meeting, they’ve scheduled a time for someone from the ethics board to come and make a presentation. I don’t think Courtney’s going to be able to make it but Michael’s coming.

**BYRON ENCALADE**: We’re looking at this board as a board under the state laws…ethic filing…but are we considered decision makers because we simply have the power to recommend to the secretary; we’re not basically making a decision, the secretary really has the right not to accept our recommendation; we’re not a league or law board that’s gonna really make a decision to determine the outcome of anything, the secretary of the wildlife and fisheries will make that determination. So we’re not a determinating board, am I right?

**COURTNEY JACKSON**: Well, I understand what you’re saying. You don’t have the ability to make a final decision. Every decision that you make is just a recommendation…the secretary has the final authority as to whether or not to grant…ultimately. But you are making a recommendation, and I’m sure that your recommendations will be considered seriously. I’m sure he doesn’t have to follow your recommendations, but he will have to give them serious consideration. And if the question is where or not you are subject to the ethics code just because you don’t have the final decision making authority, then I think the answer is yes, without a doubt, you are subject to the ethics code. You are still part of the department and still exercising a function of the department…the function that you are exercising is to make recommendations to the secretary.

Okay, Section 1115 deals with gifts; basically what it says is that you cannot accepts gifts or anything of economic value from certain classes of people. Now this is a very narrow…your functions are very limited so numbers one and two on the….where you don’t really have the ability to enter into any business contracts or have any business relationships, but #3 would be applicable…..you’re not allowed to accept anything of economic value from a person who has substantial economic interest that can be affected by the performance or non-performance of your job duties and as such when someone has an appeal that’s coming before the board, they can be affected by the decision of the board. Now, I know what you’re saying, the secretary is the one that ultimately makes the decision, but this board has to make a recommendation to the secretary, so what I’m saying is that anyone who is going to make an appeal to this board is going to become what we call prohibitive source, meaning they cannot give you anything, and obviously we don’t want people offering to give you something and try to sway your vote, but if someone is going to be coming before this board, just know that in general they are not allowed to give you anything and you cannot accept anything from them.

A couple exceptions to that, #1, promotional items with no substantial resale value, very small items that may have a company logo on them things like a pen, pencil, t-shirt, baseball cap, coffee mug. Something with a very small value items that have a company logo on it, you will be allowed to accept, not withstanding the fact that the person is making an appeal to the board. There is also a specific exception for food and drink. Anyone is allowed to give you food and drink. They can take you out to a meal. The only requirement is that they have to be present with you while they do this. Technically, it is not an ethics violation if someone had some matter appealed before this board, could they take you out to a meal? Technically, yes. Under the ethics code they could. For your own personal reasons, you may not want to do that. If I were you, I wouldn’t do that. It doesn’t look good if you do that, but the law of the ethics code. They can take you out for food and drink as long as they are present. They cannot mail you food and drink. They cannot send things to your office. They cannot send it to your home. The only food and drink you can have is in their presence. And then there’s

**JAKOV JURISIC:** I have a question with regards to contracts.

**COURTNEY JACKSON:** Yes.

**JAKOV JURISIC:** Now. I am an oyster fisherman. That’s no secret and I do business with boaters and harvesters. Hypothetically speaking, Patrick is a processor. He is logging an appeal. I am selling oysters to Patrick. What do I do?

**COURTNEY JACKSON:** That brings us to section 112 of your participation packet. If someone owes you money or they owe money to a company that you own more than 25% of or they are under a contractual relationship with you, then you have to recuse yourself.

**JAKOV JURISIC**: So, I can recuse. I don’t have to step down.

**COURTNEY JACKSON**: You can recuse yourself. You don’t have to step down in that situation. You can recuse. When we say recusal to appointed members of a board of commissions, it has to be a complete recusal. You can’t discuss the issue. You can’t make a motion on it. You can’t make a recommendation. You can’t talk about it.

**JAKOV JURISIC**: Walk out of the room?

**COURTNEY JACKSON:** You can sit in the room. You have to remain silent and don’t talk about it and cannot discuss the issues. If you want to continue to sit there, there is no problem with that. You certainly can’t make a motion and try to influence your fellow board members about the issue. You have to completely recuse yourself. Let the matter go forth, let them vote on it and then you can be on the board for the next issue. The same would apply . . . . individuals of your immediate family I don’t think you should recusal is sufficient on the board but for other categories of people or customers whom you are negotiating your special employment. For example if you are trying to go to work for someone, a company or an individual in the future and you are trying to negotiate that future employment relationship that they allow to appeal to this board and you come before this board, you have to recuse yourself. If you are an active employee of that company or individual, again, you will have to recuse yourself. You will not be allowed to discuss the issue. A person in which you are an officer or director or trustee. If you say you have ownership of a company and serve on a board as an officer or director of that certain company or entity and that entity again came before this board, you will have to recuse yourself. In those situations a recusal is sufficient, but you or immediate family members or the businesses that you own or vessels which you or your immediate family members own. A recusal will not be sufficient in my opinion. Again if you want request an advisory opinion from the [ethics] board, maybe the board will see it differently although I doubt that they will in which you will have to resign from the board. Let’s see. Going back to what I was saying earlier, in general section 111a1, I said that you can’t receive anything from someone who currently, as a gift of gratuity, any type of anything from someone who has an appeal currently being lodged with this board. Also, 111a1, no one at all should give you anything just because you are a member of this board or so anyone who is just a member of the public or anybody at all offers to give you something just because you are a member of this board in general, you should not accept that. And . . . Let’s talk about the recusal again. It is a complete recusal. This only went into effect recently. Before that you just had to step off the board in all instances. But the one we just talked about, you can recuse yourself. Please don’t get that confused with yourself and your immediate family members. I know I’m being redundant. If it is you or your immediate family members, a recusal will not be sufficient. I think you should resign from the board. I don’t think that these employment restrictions will be applicable to you but because this board does not have the authority to contract. For two years after you leave this board, you do have certain restrictions. You can’t contract with this board commission. Again, this board does not issue contracts so I don’t think this will be a problem. You can’t be employed by this board commission. Again, I don’t think this board has its own authority. I think they just have the department for you. You can’t be appointed into any position by this board or commission. I don’t think that’s a problem. You don’t need to worry about any of these restrictions. It’s is not a big problem. Does anybody have any questions?

**KAREN FOOTE:** The address for the . . . .

**COURTNEY JACKSON:** The address for the Louisiana Board of Ethics if you want to request our advice or opinion is: P. O. Box 4368 (Several people interrupt). I do have a card.

**BYRON ENCALADE**: We are going to request . . . I am a constable, so you know talk about the things I have to deal with as far as law enforcement. To me this is more than judicial type board than what the ethics board is addressing. You know what I mean? Because it is judicial. Think of every judge. . . every state appointed judge. If family came to court in a courtroom and he had to resign his court, we wouldn’t have any judges in the state of Louisiana. All of the sudden anybody that you do business with you would never enforce the law.

**COURTNEY JACKSON:** Well judges in general also make rulings.

**BYRON ENCALADE**: This is what I’m saying and that’s why we’re asking about the judicial because this board falls more under judicial because herein the case and whether it is engaging or performing its duties of the government. You understand what I’m saying?

**COURTNEY JACKSON:** I know what you’re saying but this is not a part of the judicial branch. You are in the executive branch because you’re under the Department of Wildlife and Fisheries.

**BYRON ENCALADE**: Well, I understand that but when we look at it that why we are going to ask an opinion to look at us because of that.

**KAREN FOOTE:** Any other questions? Let’s take a 5 minute break for coffee.

**KAREN FOOTE:** Anybody interested in considering chairman?

**BYRON ENCALADE**: I can’t.

**DAN COULON**: Do we have to, by the rules of order, we will have to open up nominations?

**KAREN FOOTE:** Yes if the board chooses to you can open up to nominations but that’s up to You.

**BYRON ENCALADE**: I think maybe we should probably try to have a full board

**BUDDY DAISY:** I make a motion that we wait until we set our first hearing.

**KAREN FOOTE:** There is a motion on the floor. Is there a second to that? Any discussion?

**JAKOV JURISIC**: Same, as before again let me ask you this, when we set the meeting to hear the first case, that is we have to have another meeting as a board.

**KAREN FOOTE:** No, we will try to train the other three as best we can between now and then.

**JOHN ROUSSEL:** That’s when you elect a chairman next time that you try to pick somebody that already has the background somebody who was at the first meeting if you elect a chairman

**JAKOV JURISIC**: I mean what I’m saying is I guess why we are here, Let’s get it on and get it over with. That’s basically what I’m doing. I think the ones that are here. Let’s do as much work as possible today as opposed to and sweep it under the rug and then clean it next time.

**KAREN FOOTE:** Any other discussion? The motion on the floor (Daisy’s motion) is to delay the election of a chair and vice chair until the next meeting. All in favor . . . Do we have a second? We do? (Wilbert Collin’s second) All in favor please raise your hand. To delay it. Ok. That’s four. All opposed. That’s two. Ok. The motion passed. So, the election has been deferred to the next meeting.

**DON PUCKETT**: That election should take place at the very beginning before the appeals start.

**WILBERT COLLINS**: If we have a quorum . . . At the next meeting we are going to vote?

**KAREN FOOTE:** At this meeting, we have set it up for the next meeting. After we hear these examples of hearing requests just to get you trained up on that part, then we are going to set that next appeals board date. Next, is out of state examples of appeals hearing requests. We just want to walk you through what some of the department looks at. We have some of the staff from licensing who have devoted their hearts and souls to this for several months. We have Patrick Banks that will start us off.

**PATRICK BANKS:** I have think it may be best to have licensing first to give us a rundown of exactly the steps they take when a person comes through the door and asks for a permit. And what types of things they look at to determine whether or not a person is eligible or not and then if a person is not eligible what kind of information they give to that person to help that person file an appeal. So, I would like to defer to them first.

**KAREN FOOTE:** Ok. Please come up a little closer to the microphone and bring your chair because we are recording all of this. We might just send the tapes to the three people who weren’t here today.

**JUDY BRUETTING:** Basically we were supplied a listing of trip tickets and boat landings that are in the prescribed time period so that is the first piece of information that we look at. There are actually three ways that the owner can apply and get the permit. Basically we use the listed supply of trip tickets when the form came in and their boat is on there and they have landings there is no problem or issue to get the seed ground permit. We have issued about 500 of them at this time. In the cases where their boat is not on the listing, that’s when we start talking to them about why they are not on the listing and what the situation is. They may think they filed under another category where they were issued a permit and then if so we look at those cases. The ones whose boats were on the listing, we verify that they had ownership of the boat and that they had a license for that time period. We did consult with Patrick on a number of cases as they happened or encountered. We try to resolve any cases we could while we were there. Then we issued anyone who also had grounds for an appeal, we issued an appeal form that we put together from legal—what they had come up with. What we did was check off the reason at the bottom where initially the vessel had no trip ticket recorded landings—that was the most common reason. We initialed it and dated it. Then, they had the form in which they could file their appeal.

**KAREN FOOTE:** Would you mind passing that form around? I don’t know if they have copies of it.

**JAKOV JURISC**: That’s what I was looking for.

**KAREN FOOTE:** If we could just pass it around. Do you have any question for Judy about what they did at the window?

**PATRICK BANKS:** Let me just add one other point that Judy mentioned that if the person and the vessel don’t necessarily fall into the list of trip ticket landings during the time period. Judy will then talk to the person and then try to determine if maybe that person falls into one of the other categories and what she means by that is if a person has a vessel that is under construction naturally that vessel wouldn’t have any oyster landings in the qualifying period but a vessel under construction is allowed for by the law but the owner has to provide proof that it was at least 50 percent complete by a certain date. So, that’s the kind of information that Judy would talk to that person about and find out if that person has the necessary proof to show that the vessel was 50 percent complete by that certain date. And the proof is in two ways: If the person is paying another corporation or another person to build that boat for them, he has to provide a notarized statement from the boat builder that the vessel was at least 50 percent complete by a certain date. If the person is building the vessel himself, he has to go out and hire a marine surveyor to come in and certify that the boat was at least 50 percent completed in construction by that date. That’s another situation where a boat may not have fallen into our list of trip ticket approved persons and vessels but then still could possibly get a permit. So that’s one of the things we had to check on as well.

**JAKOV JURISIC:** Just want to side track a second. Can we get copies of those appeal requests.

**KAREN FOOTE:** You mean the ones that they filled out. Yes. We’ll get you a copy before you go.

**JAKOV JURISIC:** Because I know they call it I want to be able to when I come home to study the form as much as I can before we have our next meeting and an actual hearing.

**DAN COULON**: You were talking about a marine survey. Where would you find that guy? And what kind of qualifications do they have if you have this done?

**PATRICK BANKS:** Well I’ll be honest

**DAN COULON**: I’ve never heard of just a marine surveyor.

**PATRICK BANKS:** A marine surveyor by the way the administrative rules are spelled out has to be qualified or accredited by two different marine survey associations and you can actually go on line and find out which marine surveyors are accredited by these organizations and you can print out a list of them. You can do it by zip code, by city and they will print you out a list of these marine surveyors and I couldn’t tell you very much exactly what all a marine surveyor does, but one of the things he does is verify the drafts of vessels and verifies that it is being constructed according with coast guard regulations things like that. So, the industry members that helped us work out these administrative rules advised us that a marine surveyor could also provide a certification to the time of construction for certain vessels as well. So, that’s why the rule is written that way.

**BRAD ROBIN**: Do we have a starting date? I mean a like a guide. I mean some of them take 2 or 3 years to build a boat, a big boat. They start it and do it a little at the time. Do they have a starting and a stopping?

**KAREN FOOTE:** It just needed to be 50 percent complete by that one date.

**JAKOV JURISIC:** I have a question. What is considered to be 50 percent on an oyster boat?

**PATRICK BANKS:**. That’s up to the surveyor or up to the boat builder who is building it.

**JAKOV JURISIC:** Ok. Can I ask another question? Do you have any examples to which a boat was constructed at 50 percent and say when they think it is 50 percent? A marine surveyor doesn’t necessarily know as much as we do. What is 50 percent on an oyster boat.

**KAREN FOOTE:** Well, that’s the way that the industry group that helped write those rules. That’s what they advised us was the best thing to do.

**PATRICK BANKS:** When you say examples, do you mean pictures of a vessel that is 50 percent?

**JAKOV JURISIC:** Any picture or statement an individual submitted to licensing.

**PATRICK BANKS:** I’ve got some examples of statements provided but I don’t think that anybody has submitted actual pictures.

**KAREN FOOTE:** We don’t have the standard that they need to have the prop hooked up or it has to have a battery in it. There’s no standards we are looking at.

**JAKOV JURISIC:** That’s in my opinion that wouldn’t be a problem. The problem might be somebody might have a capable boat and has a bad structure and siding and everything and you might think that it was halfway done but it might not actually be running and what I am trying to say. In a picture it may look like it is halfway done but far from it. Sometimes the devil is in the details.

**JOHN ROUSSEL**: Do we know if there is any appeal that has been filed that’s challenging the 50 percent rule?

**PATRICK BANKS:** Not that I can think of.

**JOHN ROUSSEL**: So, we may be talking about something that may not come up? I think that this is a different question but I hate for us to get involved now when it may not be something that needs a whole lot of time . . If that issue comes up, I think that that kind of question needs to be addressed to give all the background to that member

**PATRICK BANKS:** In general, Jakov, we’ve been able to make those determinations upon the submittal of such information by the applicant for the permit. If they provided the necessary information that showed that it was 50 percent complete as per the letter of the law of the administrative rules, then we granted the permit. I don’t think that we denied a permit and now that’s been appealed like that. If we have, I just can’t think of one in the 30 or so that we’ve got.

**KAREN FOOTE:** Should we step through an example?

**PATRICK BANKS:** I wasn’t going to step through one on the screen but I want to talk about some general examples and types of appeals that we’ve received. So, is there anything else that you can think of that we need to add to as far as the process? Any other questions for the process for licensing?

**BYRON ENCALADE**: Judy, I want to ask just one question. On boats that’s replacement I mean Jakov may decide that well look this boat no longer I need to take it. I’m going to take this equipment and put it on another boat and transfer my permit to that boat—do away with that boat. Do you have to go through the appeals process or can you determine right then at licensing?

**JUDY BRUETTING:** If you surrender the permit to us, we can grant you a permit to the new +boat.

**BYRON ENCALADE**: Even though it is a new boat, right?

**JUDY BRUETTING:** Actually, you have to surrendering the one that the permit if for we can re-issue a permit. (Several People talk)

**BRAD ROBIN**: How about if I sell the boat and I it takes me a year to get another one, how long do I have (if I surrender) before I can put it back in service. Do we have a time?

**JUDY BRUETTING:** I am not aware of any time that was set.

**PATRICK BANKS:** The only problem I can see there, Brad, and I will have to get together with licensing and enforcement and legal about this, if you got rid of a boat but kept your permit in anticipation of putting it on the new boat you were constructing and all the sudden that permit came up for renewal. At that time of the renewal you would have no boat to put it on so you may be in a situation there where you are in trouble because you can’t renew a permit for a boat you no longer have and you can’t all of the sudden put that re-issuance permit on a boat you don’t have yet so that may be an issue where we might have to talk about(fades out)

**FRED WHITROCK**: You can have a permit for one year and you may not get it renewed for another year and then come back the following year and try to get it. Basically you have to do that in a year’s time.

**JAKOV JURSISIC:** I have a question. If say I have two boats and I have a permit for one

(tape 1 side 2 ends)

**JAKOV JURISIC:** ….I decide I want oyster boat and I build one, again, can I transfer from this one again, give it up on this one and get it on this one again.

**KAREN FOOTE:** It’s another reissue.

**JAKOV JURISIC:** How many times I can do that?

**KAREN FOOTE:** How much can you afford?

**JAKOV JURISIC:** It might be something not practical, but I would be surprised that we meet something like this along the way. That’s why I ask how many times I can do this. A limited number of times…one time or twice?

**KAREN FOOTE:** I don’t think there’s a limit, there’s a cost and paperwork each time you do that. But it’s not a geometic increase; you can’t go from one to a hundred.

**JAKOV JURISIC:** But I mean one at a time is all I’m saying.

 It’s one for one. According to the regulations, the one you are transferring from, you’re getting rid of is no longer in service.

**WILBERT COLLINS:** When you look at trip tickets, You don’t look at the backlog of the license, the state license to fish oysters? The harvester’s license?

**KAREN FOOTE:** They don’t look at the harvester’s license; they look at the commercial fisherman’s license number that’s on that trip ticket.

**WILBERT COLLINS:** For the boat license?

**PATRICK BANKS:** I’m not following exactly what you’re asking now. You’re saying as part of qualifying criteria do we look at licenses?

**WILBERT COLLINS:** Yeah. On a boat/vessel?

**PATRICK BANKS:** We do because it does have to be properly licensed in certain situations under the qualifying criteria, that’s correct.

**KAREN FOOTE:** Do you have an example?

**WILBERT COLLINS:** Like my boat, the one I don’t have a permit for, but I’ve been buying licenses for the last 30-40 years.

**PATRICK BANKS:** Well, a license alone does not qualify the boat. It is part of the qualifying criteria in some instances, but that alone does not get you qualified.

**JAKOV JURISIC**: Can you name one instance when license is qualifying criteria?

**PATRICK BANKS:** A boat, you own the boat, and you sold it in October to me. I started fishing with the boat but I never got the boat transferred properly into my name as far as licenses go. And then when the renewal for that boat, the license renewal for that boat, came out at the beginning of next year, that’s when I went in and got a new license for it. So, I didn’t properly license that boat, so therefore I don’t qualify for the permit because while the boat had the qualifying trip tickets, I hadn’t properly licensed it in my name. While I had the qualifying trip tickets according to our records, it was still licensed to you. So therefore I don’t qualify for a permit for that boat. And we’ve had those situations. And that’s a difficult situation. A person in my situation I just described comes in and he knows the boat’s been fishing oysters, he’s been fishing oysters with it, he just didn’t get the proper licenses until the renewal period came up and under the letter of the law, he’s out.

**JANIS LANDRY**: Patrick, we’ve had a situation where they’ve used one boat on the trip tickets and don’t use each boat. That is another big issue because when that boat comes in to be permitted, there’s no record that it ever had landed so it automatically gets disqualified. There’s no landing record. All the landing records are on the other boats they’ve been landing on.

**DAN COULON**: Yeah, well, I got that problem.

**WILBERT COLLINS:** Me, too.

**JAKOV JURISIC**: I know somebody else that has that problem.

**KAREN FOOTE:** Thank you very much, Licensing, for everything you’ve done.

PATRICK BANKS: Yes, these ladies have been under tremendous pressure. At one time, we were keeping a “cursing counter” because of how many times we were getting cursed out.

**JAKOV JURISIC**: There’s was some questions for these ladies for Ciblic case when his widow had to get the permit. The problem was with the registration of his boat.

**PATRICK BANKS:** And that’s another example where even not having the proper registration can hurt a person, because according to us if it’s not registered in your name, you don’t own it. Because a permit is a vessel owner, that’s a key component to being qualified.

**JAKOV JURISIC**: Right, this was unique situation and I hope we don’t have one like that ever.

**PATRICK BANKS:** It seems like we were running up against unique situations every day for a while. Well, just a couple of examples, and I don’t want to walk through a specific one just yet, but we’ve had a number of folks come in with situations similar to something like, “Patrick, I’ve been in the oyster industry, the commercial fishing industry my entire life, I’ve spent many years fishing oysters. The last six or seven years I’ve spent fishing shrimp. I finally realized I can’t make a living fishing shrimp anymore, so I’m back in the last half of 2007, I completely redid my boat, spent tens of thousands of dollars outfitting it to fish oysters the last half of 2007.” That’s a key component of this example. “So, I’ve spent tens of thousands of dollars to outfit my former shrimping vessel to fish oysters again. I’ve fished the public grounds the last half of 2007 and all of 2008. Landed oysters with that vessel that I’ve spent all this money on. Now all of a sudden this vessel permit is required in 2009 and in order to get that vessel permit, it’s based on qualifications of oyster landings between 2004 and the first half of 2007.” This person didn’t start fishing oysters with that vessel until the second part of 2007. So he’s been back in the oyster industry for the last year and a half, spent a lot of money on a vessel to get it back into the industry; been a commercial fisherman his entire life and now he sits in front of us and I tell him he can’t go to work tomorrow. That’s a prime example. So that person, while we feel like we correctly denied this person a permit under the letter of the law, he feels like we have not, and this person may show up in front of You saying, “ I deserve to have a permit because I’ve been a commercial fisherman my entire life, I deserve to have a permit. “ And he’s going to make the claim that we incorrectly denied him, which I would argue that we did not incorrectly deny him. While his situation is tragic, yes. We followed the letter of the law in denying him a permit because he had no oyster landings on that vessel between 04 and the first half of 2007. So, that’s an example of someone who may come to you and want to appeal that decision and say that we incorrectly denied him and we would present the facts to show we did not.

**JAKOV JURISIC**: Question: On newly constructed vessel, could this gentleman fall under this category?

**PATRICK BANKS:** That’s a very good question; he cannot. And the reason why is because a newly constructed vessel part of the law (rule) says that that vessel cannot be previously registered. That boat was previously registered. It is not a situation where he can change the look of the boat and he’s got a newly constructed vessel; it comes back to the registration and whether he’s previously registered or documented that boat. And if he has then it does not fall under newly constructed boat.

**JAKOV JURISIC**: And if it’s registered for what?

**PATRICK BANKS:** The law does not speak to what it was registered for.

**JAKOV JURISIC**: What I’m getting at is, in my situation we have a vessel that was never used for oyster fish, and it’s 50% complete. But this vessel was in use for shrimping and was more than 50% complete that could also be used for oysters. And the only thing he did for them was build the tables and put the dredges on. So my question is why this couldn’t be looked at as a vessel that was 50% complete prior to this cutoff point.

**PATRICK BANKS:** In this situation it’s because that boat had been used previously to fish for shrimp, so obviously it was a registered vessel. So it was previously registered.

**JAKOV JURISIC**: That’s correct. But also was not used for oysters, but was complete for oystering prior to cutoff date.

**PATRICK BANKS:** I guess I’d have to ask our legal staff to speak a little more to it, but as I understand previously registered vessels do not fall under newly constructed vessel which is the . . . . .

**KAREN FOOTE:** That’s just the way the law is written.

**BRAD ROBIN**: Okay, since incidence that these guys had documentation boats, now You requested them to put LA boat. Now that boat is a new …… LA doc boat, how would that classify?

**PATRICK BANKS:** The regulations speak to documented or registered boats. So, it covers both of those. It may not have been previously registered, but it was previously documented.

**KAREN FOOTE:** I guess that was put into law to keep everybody from turning a shrimp boat into an oyster boat.

**JAKOV JURISIC**: Apparently this gentleman was already there; I’m not trying to decide his case today, but I mean, I’m just trying to clarify and see how we can help this guy.

**PATRICK BANKS:** I will say that there’s been a number of people originally denied, that think that they qualify, that they’ve done a very good job of finding these little cracks in the law and so, I think if there’s was a spot for him to fit in, even in the smallest of crack, people have fit in those cracks. So, we’re pretty aware of all the possible angles for people to get permits because the industry has brought those issues to us.

**BRAD ROBIN**: If we had, say for instance, myself at the time I was changing companies going into LLC’s, and I’m going to swap some boats from a name to a different thing and it don’t affect swapping a permit from a individual to….

**PATRICK BANKS:** We may have to look into that closely, but I would imagine it would be same way as if you sold the boat to Buddy. You’re basically selling from your personal name to your LLC name so you’d have to come in and re-register the boat in the new name. You as Brad Robin would have to relinquish your permit for that boat and the department can reissue the permit for that boat in the name of the LLC because it’s now the rightful owner; that’d be a reissuance.

Some inaudible background discussion…

**BRAD ROBIN**: Yep, if it had a permit right now and we were changing it to a different corporation or LLC

…more inaudible conversation.

**FRED WHITROCK:** I think it’s safe to say that since you actually have a permit, it’s going to be very difficult not to get a reissuance permit no matter what we do. If you change boats…..

inaudible.

**DAN COULON:** As I understood from the discussion there’s a time cutoff period which you had to get that accomplished. You can’t, like, sell a boat, don’t do anything about the permit, and come back a few years later and say, “I got another boat and I want that permit to apply on it.”

**FRED WHITROCK**: Yeah, you do have to, once you get the initial permit you have to keep current on that.

**DAN COULON**: The problem being, if you don’t have a boat you can’t renew.

**PATRICK BANKS**: That’s correct.

**DON PUCKETT**: And it has to be without a break.

**KAREN FOOTE:** Any other questions?

**BYRON ENCALADE**: Under the appeals board, and this was a clear case, WLF didn’t make a mistake, licensing didn’t make a mistake. In most of these cases, they’re denying them not that the license is wrong, but it’s because of these glitches like this hardship. So how we as a board, I mean, if I can’t see how the WLF was wrong, how can I recommend to issue this person a license when clearly the WLF was right in denying it because they followed the letter of the law.

**PATRICK BANKS:** That’s exactly what I think your role in this process is. If we deny a permit, and the applicant believes we incorrectly denied him a permit, then he has an opportunity to come to you to convince you of his side of the story. And if he doesn’t convince you, if you think we’ve correctly denied it, then I would imagine you would vote that conscience.

**BYRON ENCALADE**: Yeah, well, the voting would be…I mean…I could…this guy a hardship…been fishing all his life, grew up on the bayou, 3rd generation of fisherman, okay. Or it could be Yako’s son. You know, I mean, and the WLF correctly denied him a license….I mean, under the hardship, I mean……I don’t want to sit here as a board and say the WL was wrong, but we still want to give him a license even though you were correct.

**PATRICK BANKS:** In that case, Byron, if he does come in front of this board and not…even though we correctly denied him he doesn’t come in and say, “I believe they incorrectly denied me,” he may come to the board and say, “I didn’t qualify,” and rightly so, but I didn’t qualify because I had this hardship. And if he makes that case to you and you truly believe he did have that hardship, then you could vote your conscience that way. In that example I gave, I didn’t speak about him possibly having a hardship, but that could be another…..

**KAREN FOOTE:** We want to make sure that they have a chance to air…for us to be heard….we might make an error.

**BYRON ENCALADE**: Yeah, well I don’t want to base our decision….saying that the WLF was wrong in denying the license when I know clearly they were right in denying the license.

**KAREN FOOTE:** That’s where you look for your hardship.

**JOHN ROUSSEL**: He can first question whether the department correctly applied the law in denying him a permit. In that case you guys have an opportunity to make sure the department correctly applied the law. Separate from that, he can claim he had a hardship. The law didn’t give the department any kind of authority to acknowledge a hardship and take action on a hardship, but it gave YOU the authority to evaluate the hardship and make a recommendation. And then the rule, gives you guidance on what is a hardship and how to make that hardship evaluation. That’s how I look at it, in my mind.

**JAKOV JURISIC**: He would have to document his argument.

**KAREN FOOTE:** It might get real personal; it’s going to be a little touchy, you know.

**DON PUCKETT**: Let me make one point that I think is very important here, that Patrick gave you, kind of looks and smells like a hardship because this guy can’t buy a break, I mean he did everything, almost everything right, and he’s been in a catch for qualifying, but he didn’t quite get there. If You believe that we correctly determined eligibility there, you should…I mean I can’t tell you how to vote, but the proper vote would be to affirm the department’s decision. You can’t leap from that to, “gee, this guy can’t buy a break,” therefore I’m going to call it a hardship.” unless he demonstrates one of those specifically enumerated….the divorce, military service, one of those six or seven reasons…in other words, you kind of have to keep a wall between eligibility and hardship. And that’s really the point I wanted to make. And some of these are heart-breaking because they’re so close to qualifying that you want to call it hardship, but unless it fits within the hardship category, it ain’t.

**DAN COULON**: So in either case we still have the law that we have to follow. We have to follow a law that describes not giving it and the law that describes how to give it under hardship. So it can’t be just our own personal feelings. That’s where we would have problems with people, if we couldn’t explain to them that this is the law and we have to abide by it, rather us saying well, we felt this way that it should or should not be given. I wouldn’t want to be in that position.

**PATRICK BANKS:** What other little small detail in what John just talked about…about the two roads you can take…if the person claims that we incorrectly determined his eligibility, and as you heard from licensing, the main thing we look at is trip ticket recorded landings…if we don’t show that there’s trip ticket recorded landings and the gentleman shows up with actual copies of trip ticket recorded landings that maybe the dealer hadn’t correctly submitted for him, or something like that, that could be a possible way in which he may be able to prove that in fact he does qualify when our records show that he didn’t. So, that’s an example that could fit within John’s…..

**BYRON ENCALADE**: We got some cases like that; one of them turned it…and I know for a fact that I had some tickets of mine that I recently got on a dealer for not turning them in.

**PATRICK BANKS:** And that could happen….

**KAREN FOOTE:** And we appreciate you doing that.

**PATRICK BANKS:** But the only way we would know of that, of course, is if somebody came to us and showed us that situation.

**JAKOV JURISIC**: To tickets not turned in, how do you further qualify that?

**PATRICK BANKS:** That what he’s showing us is authentic and accurate….you’d have to ask our trip ticket person about that.

**BRAD ROBIN**: Isn’t that a violation of guilt that he hasn’t turned it in….that he would be self-incriminating…

Inaudible…..

**BUDDY DAISY**: . . . .for a long time, and he applies for a permit, he don’t have trip tickets for his boat and You deny his permit. Is it any possible way that he could show something that he just bought the boat, and that you would issue him a permit or something on that?

**PATRICK BANKS:** As of right now, it doesn’t sound like that person would qualify. Even though he’s got permits on the other of his boats, right now we would treat that as that boat does not qualify. There is some question as to that, and we’ve asked for some further guidance from the attorney general’s office on that example, but we haven’t received that guidance quite yet, so as of right now we’re treating it like that boat would not qualify for a permit.

**BUDDY DAISY**: I don’t think it’s right for us to deny him a permit and for you t o deny him a permit, which the boat has been fishing oysters and before he bought it……

**PATRICK BANKS:** The only thing I can think, Buddy, in that case is if he could somehow prove to this board…to you…that some sort of a hardship, as spelled out in the rules prevented him from qualifying for a permit for that boat. He can come in and make that case to you guys.

**BRAD ROBIN**: Were one of the things, someone like Jakov or Byron seen that boat working out there for the last few years…the boat hasn’t been working in a few years.

**BUDDY DAISY**: The fellow sold his boat to buy that boat because it was a bigger boat. And he can’t get a permit.

**PATRICK BANKS:** Well, this is what option he does have…and you didn’t spell this out in the example…but he could take one of his permitted boats out of service and relinquish the permit for the out of service boat and we could reissue that permit for the new boat.

**JAKOV JURISIC:** I have another question. I’m unclear as to cutoff date for trip tickets….if anybody get denied permit because of lack of trip ticket information because of certain dealers not filing trip tickets and being sanctioned for it.

**PATRICK BANKS:** Not that I’m aware of at this time, and the only way we may be aware of that is if the applicant that was denied helped to bring that to our attention and I don’t recall a situation like that.

**JAKOV JURISIC:** The reason I am asking is because, for example, how many cases were in Plaquemines parish because of Eddie not reporting trip tickets. You know the reason I’m asking this question, I don’t even know how long it’s been since, so when we’re talking about trip tickets, I just want to make sure that nobody gets denied because of this.

**PATRICK BANKS:** Well, I can’t say that it hasn’t happened, because we may not necessarily know that you may be one of the fishermen that this dealer didn’t fill out correct trip tickets for. Unless you would have come to the department and brought it to our attention or some other way we would have found out about it.

**BRAD ROBIN**: Can that guy use his harvest sheet to back up that he was fishing…that shows that he was fishing and the dealer didn’t put up his trip tickets?

**KAREN FOOTE:** Trip tickets are what justifies the permit. It’s all based on trip-tickets

**PATRICK BANKS:** That may be part of his proof to you guys.

**JAKOV JURISIC:** Let me ask you this, providing the gentleman don’t have a trip ticket, you don’t have in your archives the trip tickets, but he has his invoices, his log book and to further document or rather authenticate his logbook and his invoice, he can provide copy of being paid for those oysters for say five years ago. Would that be sufficient?

**PATRICK BANKS:** Not if I’m remembering the information that is required during the appeal process. The appeal process says that you either have to provide proof via trip tickets or a notarized statement from other harvesters that you have been working on the public ground and harvesting on the public grounds. So those are the two ways.

**JAKOV JURISIC:** He could have sold oysters from anywhere, not necessarily from seed ground but from his private lease five years ago. And from five years ago he provides log book, he provides invoice, provides a static copy from the bank of a check that he was paid by five years ago. That would be sufficient…say dealer failed to file his trip tickets, but he can prove his participation in this way.

**KAREN FOOTE:** The rule doesn’t provide for allowing that.

**PATRICK BANKS:** Now the only way I could see that, Yakov, is maybe by all the information you’re talking about there, he’s able to somehow to go back and find trip tickets that were filled out and just not submitted correctly…I don’t know. But if somehow that lead to trip tickets….

**KAREN FOOTE:** Like maybe if he was one number off on his commercial fishing license ….

**PATRICK BANKS:** Right, that’s where I was going. Somehow if that showed the department that maybe trip tickets were filled out and maybe one number on the commercial fisherman’s license was filled out incorrectly and we’re able to go back and actually find those trip tickets that corresponds to all of that, you know, and then all of a sudden, trip tickets are there and we can use that. But those by themselves, are not allowable.

**JAKOV JURISIC:** But shouldn’t money trail be more sufficient than . . . .

**PATRICK BANKS:** Whether it should or shouldn’t Jakov, the fact is that it’s just now allowed for in the law.

**JAKOV JURISIC:** Can we get the guidance based on court cases?

**DON PUCKETT**: Well, you are kind of forging new grounds here. I don’t know if there’s any precedent for this in court cases. This is a brand new board and nothing like it exactly that I’m aware of, at least in this state.

**JAKOV JURISIC:** You’re the lawyer; can you do the research?

**DON PUCKETT:** I don’t think there’s anything out there. You’re saying can you vary what the regs say in order to determine eligibility even though the regs say trip tickets, cannot take other evidence into account.

**JAKOV JURISIC:** But the intent of the law was, correct me if I’m wrong, and stop me if you think I’m going too far, but what I’m trying to do in my head, I want to…people that truly qualifies on one hand, but on the other hand, according to these strict guidelines…they are not…can we somehow compare the two and then accept it as a part of those guidelines.

**DON PUCKETT**: Your question is a good one. I’m just not in a position where I can say yeah you can vary from the regs and you can take other evidence into account.

**JAKOV JURISIC:** Is there any way we could do some research and see was there anything in any court case somewhere, I don’t know where? Mars?

**DON PUCKETT**: There’s no question in here; you’re stuck with the rules and I need to reiterate, the rules were not something….I mean you had the law first and it setup some pretty rigid guidelines but then the regulations put some meat on the bone and those regulations were drafted literally line by line with industry at the table for how tight or how narrow…and you were there for some of those…and these things were all debated…”what do we accept as proof,” you know, how wide do we expand it or how narrow and that was a policy choice made in every instance and these were all referred in by industry representatives. So I couldn’t turn around now and say yes you can consider other evidence, I can’t even officially tell you can do that when the rules set out this particular piece of evidence.

**JAKOV JURISIC:** So that would be then, if person was in this situation, the only other avenue he could explore is court of law.

**DON PUCKETT**: If he’s ultimately denied by the Secretary after you rule and the Secretary rules, I mean certainly that may occur. The courts are wide open and open for business. I can’t tell you how the court would proceed with this. You know ultimately that may happen.

**KAREN FOOTE:** Sir, I’m going to recognize you after our next agenda item, we’ll have a public comment period. Any other comments?

**WILBERT COLLINS**: I gotta question for Don. You gonna write to the ethics board if I can stay on or I got to do it?

**DON PUCKETT**: That’s on that recusal issue….resignation? That’s also the pending case?

**KAREN FOOTE:** She said that if they had an appeal themselves or an immediate family member, that they would need to resign from the board and the timing of that resignation she wasn’t sure about, but they couldn’t just recuse themselves. That they would need to resign, in her unofficial opinion. But to get it officially, they should write the Ethics Board for an opinion. And there’s a couple of them that may apply to.

**JOHN ROUSSEL**: It wasn’t a question of whether he needed to resign; that was black and white. He needed to resign before his appeal could be heard. The question was, could he serve at the first meeting or two and dispose of a few other details before he resigned or did he have to immediately resign. She said that’s where people are questioning.

**DON PUCKETT**: Well, that’s one scenario; is there another scenario with either a personal appeal or family member appeal that was discussed?

**KAREN FOOTE:** That was it; either a personal or family member, she said they would need to resign from the board. The other one was if it was somebody they were in a business transaction with, they would, at a minimum, need to recuse themselves from the entire situation.

**DON PUCKETT**: She said recusal would work in a business scenario.

**KAREN FOOTE:** As long as it wasn’t an immediate family or themselves. But if they selling to a dealer and the dealer had boats that were coming up here, they should recuse themselves. But the question was of resignation.

**DON PUCKETT**: If you have your own personal appeal or family member…

**KAREN FOOTE:** Yes, and the timing of that resignation; it was black and white…she said you had to resign.

**DON PUCKETT**: Now, we can….I can get with you and Patrick and we can formulate some general questions that will incorporate Wilbert’s issue and incorporate everything else that’s been presented to the board members and I can talk to the port managers and guide her on drafting that, so we’ll handle that.

**KAREN FOOTE:** I think that may be key to handling the next agenda item, which is setting the next meeting. We’re open to whenever you want to meet; we can meet here, we can meet in the New Orleans office. There’s appeals from east of the river, from the central coast so we’re willing to hold those hearings, some here, some there. What do you think of the timing of the next meeting? Let’s sort that first.

**BUDDY DAISY**: I think we need to hold the meetings here and not hold it before…a month before the state ground open.

Discussion . . .

**BRAD ROBIN**: Oh no, we got to do it before that. Yeah, cuz we got 60 days of prior to, so some of these guys are gonna want to be on that state ground.

**KAREN FOOTE:** So that sets you back to at least July 1; you want to be done by the hearing by that time?

**DAN COULON**: I won’t be able to attend if it’s a Wednesday or a Thursday, but I agree we should have no later than the middle of June, perhaps.

**KAREN FOOTE:** That’s to finish out, because you’re going to need two meetings, at least. Two meetings to hear…if you have 30 cases, they’re going to want to talk to you more than a minute. I would say three meetings.

**JAKOV JURISIC:** If not more; I give you this situation. You might have one case where someone comes with a lawyer, then you preside over that preceding, then he might have five or ten different witnesses and then he might question each, then we have to ask questions as well. Just like we have to ask questions today to clarify in your mind what is right and wrong; whether the testimonies are in order or not. In the other hand, I don’t want to cut to the meeting and hear 20 cases and be tied up all day. So 30 cases to hear, I don’t think you can hear more than five or six cases in a day….

**DAN COULON**: So, what you’re saying, May? Next month?

**JAKOV JURISIC:** You have a task force meeting with senate, I believe. I would say no later than third week of April that we have to hear some cases.

**KAREN FOOTE:** April 20 is a Monday. Any days of that week? Dan can’t meet on Wednesdays or Thursdays…so the 20th or the 21st of April?

(After much discussion, the date was decided as Tuesday, May 5, New Orleans, 9:00 am.)

**JAKOV JURISIC:** Please, whoever picks the number of cases we need to hear….let’s see how everything is gonna flow that first meeting…how long each one is going to take and then we can see what we’re up against.

**PATRICK BANKS:** I think there’s around 30 cases.

**BUDDY DAISY**: Let’s take maybe 10 the first day.

**JAKOV JURISIC**: I wouldn’t want to go that far. Let’s say maybe five or six and see what we’re up against. We don’t know how long each is going to take.

**KAREN FOOTE:** We’re deciding how many right now. Is there a motion…we can pass it right now.

**DAN COULON**: Wait a minute. In general, before you decide how many, shouldn’t you prescribe a time period for the appeal…say half an hour.

**KAREN FOOTE:** I think you might get some that are very detailed.

**DAN COULON**: I understand, but if you’re going to specify certain numbers and invite people here, you’d need to have an idea that you can accomplish the ones you’ve asked to come here.

**DON PUCKETT**: Realistically, just based upon my own experience, I don’t think I’ve ever tried the tiniest of cases in under an hour. Now that’s just reality; human nature being what it is, people like to talk, their livelihoods’ are at stake. That’s been my experience. You have to walk a fine line between letting someone go on all day and giving them their day in court, so to speak…there’s always a balance.

**DAN COULON**: Can we say, half an hour, 45 minutes? And extend it, but present it in a way that they know there is a time limit?

**DON PUCKETT**: That would be nice if you could do that, generally, if you look at what a court does, they don’t say you got two hours to try this case. Basically, what the judge does during the course of the case, if somebody’s running off at the mouth, they cut them off at that point, so when they get into redundancy they kind of do it in little bits in the part of the case. But not so much as saying you’ve got this much to put on your case cuz you may get halfway through and this was a detailed case and I didn’t get….that get’s troublesome.

**KAREN FOOTE:** I think it depends on the chairman on how they want to handle that.

(More discussion about how many cases to hear and the time limit for each.)

**KAREN FOOTE:** So is there a consensus for about five? Seems like there is….

(Food was discussed)

**DON PUCKETT**: It might help, if it’s possible, to get documentation on these cases in advance and read it ahead of time and then we’d have to review what the appellant submitted beforehand. Just a thought, but at least so you knew what the case is when you came in.

**KAREN FOOTE:** We’re attempting to train these appellants that these are open records, just remember it’s sensitive, that what you have about that divorce preceding is extremely sensitive, but it is an open record, but special consideration to not spread it around more than we need to.

**JAKOV JURISIC:** Let me ask you this. If any appellant mention that he/she coming with an attorney?

**PATRICK BANKS:** Nobody has mentioned that to me directly, but I’ve certainly had conversations with people who have been denied about getting their attorney. So nobody has called me and said they were bringing their attorney, no, but I would doubt if someone didn’t show up with a lawyer present.

**JAKOV JURISIC:** Let me ask you this. During the first hearing, John will you be there?

**DON PUCKETT**: At the first meeting either Fred (Whitrock) or myself will be there.

**JAKOV JURISIC:** Is there any possible way, anybody, whenever you send out notice hearings, would you please note in that letter that they have to notify you well ahead of time if they are coming with an attorney or not.

**DON PUCKETT:** Let me say this, and this was a point that Fred was just making. And it kinda goes back to Keith’s question and why I feel like we shouldn’t start out with sworn testimony. You don’t want this board to evolve into the Supreme Court. The whole point should be to keep this informal. The appellant presents their papers, tell us about our divorce, etc. If you start getting into attorneys, cross-examining witnesses, I don’t think it should be allowed. You may be one day for each appeal.

**JAKOV JURISIC:** But how do we deny him if he chooses to bring an attorney?

**FRED WHITROCK**: This is an informal opportunity for someone to come in and provide information that says the department either made a mistake…..inaudible…..they can bring an attorney, nobody can stop them from brining an attorney. But it doesn’t mean the board has to give that attorney the . . . inaudible . . . . You can sit here and say present what you have, you got 15 minutes to do that. Let them do that….inaudible…..but there may be a little give and take on that if they have an attorney and he may ask questions to the board at the appropriate time about something that was said, or you may ask questions, or you may allow or not allow…..inaudible….of what you think is appropriate. But there this is not a trial, this is not that at all.

**JAKOV JURISIC:** The reason why I’m asking all these question, I would feel whole lot better…an appellant would come with attorney that we have one of you guys at hand should we need any answers to any legal questions from your perspective, understand what I’m getting? I don’t want to sound too complicated, but once I go in that hearing I want to be armed with knowledge. So the only way when legal question comes about that might be, I don’t know, I’m not lawyer that’s why I’m asking all of this. And if someone comes with a lawyer I want to have someone on my side who can clarify even more for me should I have any questions.

**WILBERT COLLINS**: If a lawyer comes with one of them over here to present his case, and if we deny him, well there’s nothing he can do. Then he can take us in another court, take the Department in court. But he can’t do nothing to us.

**DON PUCKETT**: Whoever becomes chairman, we’re going to arm the chairman with certain guidelines as to what the chairman can do or cannot do and what kind of leeway he can give to attorneys or not attorneys. Like I say, we will be there, at least at the first meeting, to see how this goes, but we…very pointedly, and I’ll tell the chairman this…are not going to allow this to turn into some all-day affair because attorneys are involved. It was not intended to be that; it’s supposed to be an informal procedure basically a jury of your peers, because You are all peers of the gentlemen who will be appearing before you to fairly judge eligibility and hardship and not to turn into the O.J. Simpson trial.

**DAN COULON**: I notice you guys use the word “deny”, but that’s not what we’re going to be doing; we’re going to be giving a recommendation.

**DON PUCKETT**: You’re still have to vote, but it’ll be a vote to recommend. Jakov, I understand what you’re saying, that you don’t want to be at a disadvantage…..

**JAKOV JURISIC:** Exactly, when I cut something I want to cut it down completely, without any hesitation.

**DON PUCKETT**: We’ll be there for the first meeting, maybe all of them, it’s my hope that we don’t have to, but in any event the chairman will be armed with sufficient knowledge to know how to deal with that. And to keep an attorney from trying to grab a hold of the board and running away with it, because I know they’re capable of doing that.

**JAKOV JURISIC**: Absolutely.

**KAREN FOOTE:** Okay, we’re going to move on to #8 now, Receiving Public Funds. Sir, you had your hand up. (He changed his mind) Are you sure? Okay, is there a motion to adjourn?

**KAREN FOOTE:** Second? No opposition. Thank you.

MEETING ADJOURNED