**PUBLIC OYSTER SEED GROUND VESSEL PERMIT APPEALS BOARD**

MEETING MINUTES

NOVEMBER 15, 2011 – 10:00 A.M.

2ND FLOOR CONFERENCE ROOM

LDWF OFFICE IN THE UNO ADVANCED TECHNOLOGY BUILDING

2021 LAKESHORE DRIVE, NEW ORLEANS, LA 70122

Board Members Present:

1. Jakov Jurisic, Chairman
2. Wilbert Collins
3. Dan Coulon
4. Byron Encalade
5. Peter Vujnovich, Jr.

Board Members Absent:

1. Shane Bagala, Vice-Chairman
2. Buddy Daisy
3. Rodney Fox
4. Brad Robin

Meeting called to order by Chairman Jurisic at 10:02am.

AGENDA

1. Approval of Minutes from Meeting of January 25, 2011

* Vujnovich – Motion to Approve
  + Collins – Seconded
  + MOTION CARRIED (unanimous)

1. Hearing of New Appeals
   1. Walton E. Dardar, Jr. (not attending)

* Appealing the September 2011 denial of renewal permit for vessel LA9314ET, which was denied due to Dardar not having a permit for this vessel from the current or immediately previous license year of 2010.
* Vessel held 2009 permit
* Dardar claimed a natural disaster in the form of the 2010 BP oil spill off the coast of Louisiana prevented him from renewing his permit in 2010.
* Jurisic asked if Dardar had given an explanation for his absence.
  + Ty Lindsey, LDWF Biologist, stated Dardar phoned LDWF prior to the meeting and indicated that circumstances had changed which would prevent him from attending.
* Jurisic suggested to the board that a letter be sent to Dardar by LDWF informing him that the board members lost work in order to review his case and that Dardar’s presence at the next meeting is strongly encouraged.
* Coulon questioned the use of the BP oil spill as a natural disaster.
* Encalade agreed with Coulon’s view.
* Encalade – Motion to Defer Appeal to next meeting
  + Coulon – Seconded
  + MOTION CARRIED (unanimous)

1. Set next meeting date

* Vujnovich – Motion to set next meeting date in conjunction with the next Oyster Task Force (OTF) meeting \*\*
  + Coulon – Seconded
  + MOTION CARRIED (unanimous)
* Encalade – Motion to add discussion of new permit request from Charles Lapeyrouse to today’s agenda.
  + Collins – Seconded
  + MOTION CARRIED (unanimous)
* Lapeyrouse (attending) said he was told by board member Brad Robin (not attending) to come before the board to present his case even though it could not be added to the agenda since he has no appeal. Stated he did not know such a permit existed until the second day of the 2011/2012 season at which time he was cited by LDWF Enforcement agents for not possessing a permit.
* Banks explained that the law creating the permit was passed in 2008 and became effective during the 2009 license year. Notices were mailed by LDWF during two license years to every commercial oyster harvester license holder and every commercial vessel license holder to the address on file Encalade asked Lapeyrouse for his current address.
  + Lapeyrouse gave 2904 Mayflower St., Meraux, LA in response.
  + Encalade thought it may be worth looking into the address on record to determine where notices were sent.
* Nolan Lapeyrouse (brother of Charles Lapeyrouse) said his interpretation of the law is the board can vote on hardship cases. Stated LDWF does not interpret the law as he does and LDWF suggested he take the Department to court.
* Cole Garrett (LDWF legal counsel) explained that by law LDWF cannot accept applications for new permits after December 31, 2009. Since Lapeyrouse has not previously held a permit, he is seeking a new permit. Because LDWF cannot accept his application for a new permit, it is unable to deny him a permit, therefore there can be no appeal. The Department has reviewed Lapeyrouse’s case and the rules and laws and found no option for Lapeyrouse to obtain a new permit other than bringing litigation against the Department, as provided for in the law.
* Encalade asked for clarification on the hardship appeal option.
  + Garrett stated that because there is no appeal, the hardship option does not come into play.
* Collins clarified that Lapeyrouse could not submit an appeal as Dardar had done.
  + Garrett verified Collins’ statement.
* Banks presented additional options, other than litigation, available to Lapeyrouse such as fishing private oyster leases, captaining a vessel that does have a permit, or acquire a vessel that has a permit which the current owner is willing to relinquish his permit to the Department, which could then re-issue the permit to Lapeyrouse for the vessel he aquired. After acquiring the vessel and the permit, Lapeyrouse could use the acquired vessel or transfer the permit to his current vessel and transfer ownership of the acquired vessel back to the previous owner. Precedent exists for such a scenario.
* Banks stated the Department has issued almost 800 permits.
* N. Lapeyrouse asked how someone could get a “hardship permit.”
  + Garrett explained a person would have to have submitted an application to the Department for a new permit by December 31, 2009, be denied a permit, apply for appeal within 30 days of being denied, come before the board and prove a hardship existed as defined by law and regulation.
  + Lapeyrouse asked if hardship stipulations were established within the law.
  + Garrett confirmed they were.
* Melissa Keif (sp?), audience member, asked if Lapeyrouse could apply for a permit if he could prove he did not receive a notice by mail.
  + Garrett reaffirmed that Lapeyrouse’s only option for a new permit was litigation.
* C. Lapeyrouse asked if notice was sent via registered mail.
  + Banks stated notices were not sent as registered (certified) letter.
* N. Lapeyrouse asked what it takes to change regulations approved by the Louisiana Wildlife and Fisheries Commission that are not explicitly stated in the law to accommodate cases that fall through the cracks.
  + Garrett said changing regulations would require a notice of intent be presented to the Commission, followed by a 90-day public comment period, followed by a 30-day legislative oversight review period after which time any change would become effective.
  + Garrett further explained that the law has the same stipulations concerning the December 31, 2009 application deadline and it would not be possible to allow those seeking their initial permit to apply for a permit by attempting to change the regulations since the regulations must follow the law.
  + Lapeyrouse asked if State Representative Wooton, the author of the permit bill, was consulted by LDWF while drafting the regulations.
    - Garrett said Wooton had not been consulted by the Department that he was aware of.
* Garrett stated the Department’s hands are tied by the law in this particular instance.
* Encalade asked when the law becomes void.
  + Garrett/Banks stated November 15, 2013 [as the law currently exists].
* Encalade suggested Lapeyrouse bring his case before the Oyster Task Force so suggested changes to the law can be drafted now.
* Jurisic suggested Lapeyrouse take up his plea with whoever replaces Wooton as state representative since his term will be up at the first of the year.
* Jurisic stated that St. Bernard oyster fishermen were well represented during the drafting of the wording of what would eventually become part of the law that created the permit.
* Collins pointed out that changing the law would not help Lapeyrouse this year and asked Garrett what the fastest alternative to a permit Lapeyrouse was.
  + Garrett did not believe there was quick pathway to a new permit was available and referred back to the options previously presented by both himself and Banks.
* Vujnovich asked what the outcome of going to court would be.
  + Garrett told Vujnovich that if the judge interpreted the law differently than the Department, then the Department would follow the judge’s interpretation going forward.
* Encalade thought the Department has obtained a court’s opinion on laws in the past.
* Banks reminded the board that there are those who watch the Department to make sure it follows the law and if a new permit was issued it would not be in the spirit of the law.
* N. Lapeyrouse asked if Charles would still have to come before the board if a judge issued a favorable interpretation of the law.
  + Garrett said it depended on the judge’s interpretation.
  + Encalade suggested a judge may tell the Department to issue a permit [thereby bypassing the board]
* Encalade expressed the need to put Lapeyrouse’s case on the agenda for the next meeting as an action item at which time the board could draft a letter to Secretary of Wildlife and Fisheries Robert Barham stating their support of Lapeyrouse having a new permit issued to him.

1. Adjourn

* Encalade – Motion to Adjourn
  + Collins – Seconded
  + MOTION CARRIED (unanimous)

Meeting adjourned at 11:24am

Duration of Meeting: 1hr. 22 min.

Minutes submitted by Ty Lindsey, LDWF Biologist

\*\*The OTF met later the same day as scheduled and set Tuesday, January 10, 2012 as their next meeting date. Therefore, the next Public Oyster Seed Ground Vessel Permit Appeals Board meeting is scheduled for 10:00am on Tuesday, January 10, 2012 at the LDWF offices on the UNO campus.