

PUBLIC OYSTER SEED GROUND VESSEL PERMIT APPEALS BOARD

MEETING MINUTES

JANUARY 10, 2012 – 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. Shane Bagala, Vice-Chairman
3. Wilbert Collins
4. Dan Coulon
5. Byron Encalade
6. Brad Robin

Board Members Absent:

1. Buddy Daisy
2. Rodney Fox
3. Peter Vujnovich, Jr.

Meeting called to order by Chairman Jurisic at 10:01am.

AGENDA

I. Approval of Minutes from Meeting of November 15, 2011

- Coulon – Motion to Approve
 - Collins – Seconded
 - MOTION CARRIED (unanimous)

II. Hearing of New Renewal/Re-Issuance Appeals

1. Emmett Adolph, Jr. (attending)

- Appealing the December 2011 denial of renewal permit application for vessel 632945, which was denied due to Adolph not having a permit for this vessel for the current or immediately previous license year of 2010.
- Vessel held 2009 permit.
- Held a 2010 Oyster Harvester license, but not a permit.
- Adolph said the need to renew his permit was overlooked when he went to LDWF to renew his licenses and it wasn't because he did not want to get the permit. He was also working as part of the response to the 2010 BP oil spill. He stated he has fished since the '60's.
- Jurisic asked Adolph if he had read the rules pertaining to renewal permits. Jurisic read the three exemptions allowed for in the rules for failure to renew a permit. Those are military service, serious medical condition or death, or vessel destroyed or damaged. Jurisic stated that

these conditions are the only ones under which the board could recommend a renewal permit be issued.

- Coulon said that he has known Mr. Adolph all of his fishing life and there will be occasions when permit renewal is overlooked. And while he knows the law lists set conditions for recommending a renewal permit be issued, he is also aware of the troubles caused by the BP oil spill and hurricanes. He will support a recommendation in favor of issuing Adolph a permit regardless.
- Robin stated that he too understood the law, but the law did not consider events such as the BP oil spill and he believes the board should “step up” in such situations and support the people affected.
- Jurisic agreed with Robin, but questioned whether or not the board could recommend in favor of permit issuance since the reason for not renewing given by Mr. Adolph does not fit under the conditions outlined in the rules. He sought input from Fred Whitrock, LDWF Legal Counsel (attending).
- Whitrock said he could not tell the board what they can and cannot do.
- Robin stated that although not included in the rules, he would be willing to put in a motion that the BP oil spill was a disaster.
- Collins stated that if the board made a recommendation in favor of issuing a permit and sent it to Baton Rouge [Sec. Robert Barham] then that is all they can do.
 - Whitrock told the board that they can make a recommendation to the Secretary who can either accept or not accept the recommendation.
- Jurisic again questioned if Adolph’s situation falls under the rules.
- Jurisic asked Whitrock what is needed to include events such as the BP oil spill in the rules.
 - Whitrock stated it would require going through the entire regulatory process, which would take about six months.
- Jurisic suggested as an option that the board defer Adolph’s appeal until the rules could be amended to cover his situation.
- Whitrock advocated the board issue a recommendation so that continued deference would not be necessary and at the same time attempt to amend the regulations.
- Jurisic asked what would happen to Adolph if Sec. Barham denied him a permit.
- Robin said the board would have done their best.
- Jurisic questioned whether or not they could keep Adolph’s appeal alive until the rules are amended.
- Encalade agreed with Jurisic and further stated that if Sec. Barham denies Adolph a permit, then Adolph’s appeal would be over and done.
- Whitrock stated that his suggestion to the Secretary would be to put decisions on appeals on hold if there were a chance the rules would be changed. He also stated that even if the Secretary denies a permit, any rule changes could be made retroactive.

- Banks asked if Adolph would be prevented from re-applying for a permit if the Secretary denied his permit and the rules were subsequently amended.
- Whitrock restated that the rules could be made retroactive.
- Encalade suggested including the BP oil spill as hardship in the regulations.
- Robin – Motion to recommend a renewal permit be issued to Mr. Adolph.
 - Collins – Seconded
 - Coulon asked that wording in the motion state that the appeal is due to hardship caused by the BP oil spill.
 - Robin and Collins accepted Coulon’s request.
 - Adolph mentioned that there was no oyster season in 2010/2011
 - MOTION CARRIED (unanimous)
- Banks explained to Adolph that the Department would inform him of the Secretary’s decision.
- Jurisic asked Adolph to attend the Oyster Task Force (OTF) meeting later in the day at 1pm in the same room to serve as support for amending the appeal rules.

2. Wilfred Cross, Jr. (attending)

- Appealing the December 2011 denial of renewal permit application for vessel LA9345AP, which was denied due to Cross not having a permit for this vessel from the current or immediately previous license year of 2010.
- Vessel held 2009 permit.
- Cross did not hold a permit, an Oyster Harvester license, or a Dredge license in 2010.
- Encalade stated he has known Cross for a long time and knows he fishes oysters and comes from an oyster fishing family. He also stated that Cross worked as part of the BP oil spill response.
- Collins stated there was no oyster season in 2010 and therefore no need for a permit.
- Jurisic said Cross’s case is the same as that of the previous appellant, Emmett Adolph, Jr.
- Robin asked why someone would spend money they don’t have on something [licenses and permits] they don’t need [referring to the lack of an oyster season in 2010].
- Robin – Motion to recommend a renewal permit be issued to Mr. Cross using the same wording as was used in the motion concerning Adolph.
 - Encalade – Seconded
 - Coulon suggested using the word hardship in the motion.
- Banks explained to Cross that the Department would inform him of the Secretary’s decision.
- Jurisic asked Cross to attend the OTF meeting later in the day at 1pm in the same room to serve as support for amending the appeal rules.

III. Hearing of New Permit Requests

1. Charles Lapeyrouse (attending)

- Banks reminded the board that Lapeyrouse attended the previous meeting [November 2011] seeking a new permit. At that meeting the board passed a motion to add Lapeyrouse to the agenda for the next meeting (i.e. this meeting).
- Coulon put forward the idea that the OTF Public and Private Oyster Ground Committee might be a better venue for addressing Lapeyrouse's situation.
 - Jurisic agreed and told Lapeyrouse that that committee was meeting at that moment. He also said there was nothing the board could do for him.
- Robin asked if Lapeyrouse's case was the same as Adolph and Cross's cases.
 - Jurisic said it was not. Adolph and Cross held permits in the past and Lapeyrouse had never held a permit.
- Jurisic reiterated that the time for submitting permit applications had passed and that there was no appeal for the board to review.
- Robin asked Lapeyrouse if he held a 2009 permit.
 - Lapeyrouse said he had not and that he had not been notified such a permit was required.
- Whitrock restated that the law precludes the Department from accepting any new applications for permits after December 31, 2009.
- Nolan Lapeyrouse, Charles' brother, asked if that included hardship cases.
 - Whitrock said it does.
- Nolan asked if the board was denying his brother's request for a permit.
 - Jurisic responded that the board was not denying his brother permit, because there is nothing for the board to deny.
- Encalade reminded Lapeyrouse that the board does not have the authority to issue permits, only the power to recommend for or against permit issuance and the final authority rests with the Secretary.
- Nolan questioned if the Secretary was able to issue a permit as the law stands now.
 - Whitrock said that there is no permit to issue since there is no application.
- Encalade reminded Lapeyrouse that court is one of the options available to him.
- Whitrock stated the law is currently set to expire in November 2013.
- Collins asked if the board could make a motion to issue a recommendation in favor of issuing Lapeyrouse a permit and let the Secretary decide whether or not to accept their recommendation.
 - Whitrock repeated that he cannot advise the board on what they can and cannot do.
- Banks told the board that the OTF Public and Private Oyster Ground Committee was not discussing Lapeyrouse's case in particular, but was

discussing changes to the permit law in general and nothing that committee does would change anything that day. He reiterated that there was no appeal for the board to review, but the board may issue a recommendation if they chose to.

- Robin asked Whitrock if the board would be out of line if they did issue a recommendation in favor of Lapeyrouse getting a permit.
 - Whitrock said that if the board wanted to send a letter of support to the Secretary they may do so.
- Robin said that individual members could sign a letter in support of Lapeyrouse instead issuing a letter as a board and that such a letter would be better than no letter.
- Jurisic stated that as chairman of the board he does not want to do anything that is not consistent with the law.
- Robin assured Encalade that there would be no mention of Lapeyrouse's "appeal" in the letter.
- Coulon offered a draft of a letter stating that Lapeyrouse was not able to secure a permit nor appeal under current law and a review of Lapeyrouse's situation would be appreciated.
 - Robin agreed with Coulon's suggestion.
- Robin – Motion to write a letter of support for Lapeyrouse.
 - Collins – Seconded
 - Jurisic and Robin stated that the letter would be for everyone's signature.
 - Banks said LDWF would draft the letter based on the discussion of the Board and will be for the signature of the members of the Board present at the meeting.
 - Jurisic asked that Lapeyrouse receive a copy of the signed letter.
 - MOTION CARRIED (unanimous)

IV. Set next meeting date

- Robin – Motion to set next meeting date in conjunction with the next OTF meeting**
 - Collins – Seconded
 - MOTION CARRIED (unanimous)

V. Adjourn

- Collins – Motion to Adjourn
 - Robin – Seconded
 - MOTION CARRIED (unanimous)

Meeting adjourned at 10:58am; Duration of Meeting: 57 min.

Minutes submitted by Ty Lindsey, LDWF Biologist

***The OTF met later the same day as scheduled and set Thursday, February 23, 2012 as their next meeting date. Therefore, the next Public Oyster Seed Ground Vessel Permit Appeals Board*

meeting is scheduled for 10:00am on Thursday, February 23, 2012 at the LDWF offices on the UNO campus.