

Minutes of the  
Oyster Lease Damage Evaluation Board  
February 4, 1998

A meeting of the Oyster Lease Damage Evaluation Board was held on Wednesday, February 4, 1998, at 9:00 a.m. in the Mineral Board Docket Room, Fourth Floor, State Land and Natural Resources Building, Baton Rouge, Louisiana.

The meeting was called to order by Chairman Vivian Guillory. A written roll was taken.

Board members present:

Vivian B. Guillory, ALJ, Chair

Don Briggs, representing LIOGA and Louisiana Landowners Assn.

Phillip E. Boydston, Burlington Resources, representing Mid-Continent Oil & Gas Assn. and Louisiana Landowners Assn.

Ralph Pausina, representing the Louisiana Oyster Dealers & Growers Assn.

Mike Voisin, representing the Louisiana Oyster Task Force

DNR staff present:

Jack C. Caldwell, Secretary

John Waitz, Staff Attorney

Bill Pittman, Permit Coordinator, Coastal Management Division

Carolyn Edwards, Executive Assistant

Mrs. Guillory mentioned that the Board was scheduled to have met on the third Wednesday of January, but there would not have been a quorum because three Board members could not have attended the meeting, therefore a special meeting was convened today. She also said that she had received a letter from former Deputy Secretary, Steve Mathies, offering his assistance to the Board if it is needed.

Mrs. Guillory asked if there were any changes to the minutes of the last meeting. There were none.

Mr. Briggs moved to accept. The motion was seconded by Mr. Boydston and the minutes were approved.

Mr. Pausina moved that when prior to a Coastal Use Permit being issued, and an oil and gas operator would like to utilize the Oyster Lease Damage Evaluation Board's process, they request the list of three biologists, be required to select one of those, and use the Initial Biological Summary forms that the Board would approve in their Coastal Use Permit application so that the Board is looking at consistent information.

Mr. Boydston suggested that a descriptive letter accompany the Coastal Use Permit packet explaining the new procedures.

Secretary Caldwell said that the Coastal Use Permit people may want some additional information,

also, and want to make it clear that it's a supplement to the Board's information which is not necessarily identical, but is to be in the Board's form so that it can be used for the Board's purposes. He requested that John Waitz get with the Permit people and prepare a standard letter that can be sent out with the Permit information as part of the Permit package.

Mr. Voisin suggested that Wildlife and Fisheries also be contacted to send a letter to all the leaseholders, once the Board has a packet of information available, letting them know what they can do.

Mrs. Guillory asked for a vote on the motion. It was unanimously approved.

Mr. Boydston asked if a chronological history of the evolution of this process could be written, including such things as when the bill was introduced and passed, when the Rules were published and approved, when the Board started meeting, and continue whenever there are highlights. Mr. Voisin suggested that this be included with the suggested letter that is put in the Coastal Use Permit application package. Mr. Waitz agreed to handle this.

Mrs. Guillory, at the request of Mr. Waitz, skipped the next agenda item, "Discussion of liability issue," because Mr. Waitz felt finalizing the forms needed to be accomplished at this meeting. Everyone agreed and moved to that item.

Secretary Caldwell suggested that on the Request for Arbitration form there should be introductory language such as, "Pursuant to Act so-and-so, the undersigned hereby requests arbitration and support thereof submits the following information." Mr. Waitz said the statute requires that they send us a letter requesting arbitration before they can get the form. Secretary Caldwell said the term "request for arbitration" has certain legal consequences, such as timing, etc. So there won't be any question about it, this should be the date of the request - when it is filed, rather than the letter. Mr. Waitz agreed to add this language.

Regarding numbering the requests, it was decided that the year would be first and then consecutive numbers, such as, 98-1.

Mrs. Guillory said the date the agency receives it should be stamped on the form and the party requesting arbitration should also put the date they are requesting it.

Other changes to the Request for Arbitration form were: No. 1 - to change the wording from "Owner or operator of mineral action," to "Owner or operator of the mineral activity," and to add "Contact person, Address and Phone." Mr. Pausina changed the word "Owner" to "Owners" on No. 2. In No. 4 the words "No. 2" were added so that it would read "...and all parties listed in No. 2 and No. 3..."

Bill Pittman, Permit Coordinator with DNR's Coastal Management Division was called in to answer certain questions Board members had on No. 6.

Mr. Boydston asked if the package submitted by an operator for a Coastal Use Permit (CUP), included some delineation of the oyster leases possibly impacted. Mr. Pittman answered that at some point in time it will. If there's an oyster lease present, DNR provides that information to Wildlife and Fisheries. Fred Dunham, an employee of Wildlife and Fisheries, currently reviews the application to determine whether or not he thinks there would be adverse impacts to the oyster lease. He usually requires that an oyster assessment be conducted by a professional biologist (a third party) and that person goes out and does a survey of the oyster resources in the area and reports back in a formal report and DNR includes that as part of the application packet.

Mr. Voisin said that the Board is developing a process for arbitration and two people could apply to have arbitration done: an operator (or owner) who would apply for the CUP, or the oyster leaseholder. One of the Board's requirements is that it identify the CUP, or application, and provide detailed descriptions with drawings of the proposed oil and gas activity. Those provided during the CUP application are acceptable. He asked if it is a public document and if the leaseholder can request a copy to include in his Request for Arbitration.

Mr. Pittman said it is a public document and can be obtained from the Coastal Management Division.

Mr. Voisin asked if there is a completion date identified on the permit. He said the operator may have a good concept of the completion date but the oyster leaseholder may not. If he has to put it in his Request for Arbitration, is it in that information? Mr. Pittman answered that there is a date that the application was approved and the activity was authorized under a CUP or some other type of authorization document, but the proposed completion is not available to Coastal Management. With the exception of some of the general permits, the approximate time that the work will begin is usually provided but, generally speaking, when the permit or other authorization is issued, they have two years to begin the work and a total of five years to complete the work.

Mr. Briggs said the oil and gas operator who goes into a project can give a raw estimate of how long it will take. The board decided to leave No. 6 as written.

The word "identification" was removed from No. 8.

Mr. Pausina asked if "fee was paid" can appear somewhere on the application. It was agreed that this would be added.

Mr. Voisin moved for adoption of modifications to the Request for Arbitration form. Seconded by Mr. Briggs. Motion unanimously adopted.

Mrs. Guillory asked that a place for the signature of the applicant and certification be included in the Request for Arbitration form. Mr. Waitz said he would probably put it in the introductory language.

Mrs. Guillory asked if there were any changes to the Initial Biological Survey Summary form.

Mr. Pausina said there should be a column indicating the percentage of bottom type and pointed out that in the third column the word "standby" should be "standing," and "by size groups" should be added. He suggested that the columns should have a "total" line.

On the first question, Secretary Caldwell said that the word "estimate" should be "estimated," and Mr. Waitz suggested the words "using the Uniform Evaluation Methods" be removed. It was agreed to make these changes

When questions arose about what is "production potential," Secretary Caldwell said that this is an art term, it's not a self-evident term, and asked the Board if they had talked about this issue before.

Mr. Waitz said they had not because Steve Mathies and Darryl Clark had worked on it. Mr. Clark had been prepared to do a presentation on it, but because of full agendas and time running out at each meeting, it had never come up.

Secretary Caldwell suggested that the Board postpone work on the Initial Biological Survey Summary until the Uniform Evaluation Methods are finalized because the biologists aren't going to know what the Board is doing and that the Board would be "heading into deep water." He urged the Board to "get on it real quick." He said he thought the term should be left in incomplete rather than left out because there is an active case and it could be an item; the Board can do with it whatever it wants and amend it later. Secretary Caldwell asked Mr. Waitz to follow up with Mr. Clark and tell him that this is urgently needed. He also asked that this be put on the agenda for the next meeting so that Mr. Clark can explain how "production potential" is measured.

On No. 1 the question arose as to what is the area of the Impact Zone. After much discussion, it was decided to let the biologist determine the impact area in light of the proposed operation. The language, "expected to be affected by the proposed oil and gas activity?" was added. It was also agreed to add this language to Nos. 2 and 3.

Nos. 4, 5 were removed because they duplicated the first and second questions and Mr. Pausina made a motion to delete No. 6 and reword it to read, "The biologist, at his discretion, may include any other information he deems pertinent in determining his evaluation of the oyster lease."

No. 7 was removed and reworded to read, "The value of the beds to be affected is...."

It was agreed to add, "including bottom and crop," to No. 2 making it read, "What is the estimate of

production potential, including bottom and crop, expected to be affected by the proposed oil and gas activity?"

It was decided to postpone discussion of the Final Biological Survey Summary.

The date of the next meeting will be Wednesday, February 18, 1998 at 9:00 a.m.

Mrs. Guillory mentioned that Mr. Voisin had requested that someone from the oil and gas industry make a presentation to the Board, similar to that of Dr. Earl Melancon's regarding oysters. She asked Mr. Briggs and Mr. Boydston to think about it and let the Board know what would be a good date for that presentation.

Mr. Boydston made a motion to accept all the changes made to the Request for Arbitration and Initial Biological Survey Summary forms. Seconded by Mr. Pausina. Motion approved. Mr. Waitz will make all the changes and mail copies to members as soon as possible.

Regarding agenda Item No. VI, Mr. Voisin didn't feel Board members needed to get involved in developing a form letter for giving names of the three certified biologists in the rotation schedule and moved to authorize that the Chairman work with DNR staff to develop this letter. Seconded by Mr. Boydston. Motion approved.

Meeting adjourned.