

Minutes of the  
Oyster Lease Damage Evaluation Board  
August 26, 1998

A meeting of the Oyster Lease Damage Evaluation Board was held on Wednesday, August 26, 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 the Chair, Vivian Guillory.

Board members present:

Vivian B. Guillory, ALJ, Chair

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

Don Briggs, representing LIOGA and Louisiana Landowners Assn.

Ralph Pausina, representing the Oyster Dealers and Growers Assn.

Board member absent:

Mike Voisin, representing the Louisiana Oyster Task Force

DNR staff present:

James R. Hanchey, Deputy Secretary

John Waitz, Staff Attorney

Darryl Clark, Coastal Restoration Division

Rachel Sweeney, Coastal Restoration Division

Cheryl Baker, Coastal Restoration Division

Carolyn Edwards, Executive Assistant

Others present:

John Cirino, Cirino Consulting Services

Dr. Edwin W. Cake, Jr., Gulf Environmental Associates

Dr. Ronald Kilgen, Kilgen Environmental

Noel V. "Bud" Brodtmann, Jr., President, EPL

Michael Rayle, Steimle & Associates, Inc.

Richard Waldron, RAW, Inc.

Brad Robin, Oyster Dealer

In Mrs. Guillory's opening remarks she emphasized that the Sampling Methods and Uniform Evaluation Methods the Board has been trying to finalize are to be used as guidelines only; not as a textbook, and recommended not getting bogged down in details when discussing them.

Mrs. Guillory thanked Darryl Clark for all his work with the Board and announced that he had accepted a position with another agency. She introduced Mrs. Rachel Sweeney and Ms. Cheryl Baker,

two DNR Coastal Restoration Division staff members, who will be replacing Mr. Clark in providing assistance to the Board.

Mrs. Guillory mentioned that Mr. Mitchell Jurisich had requested being put on today's agenda to show a video of the work being done on his lease. The Board's secretary was advised to tell him the information would be considered at a later date at the end of the damage evaluation process.

Mrs. Guillory asked for a motion to approve the minutes of the May 29, 1998 meeting since this had not been done at the June 27<sup>th</sup> meeting. Mr. Briggs made the motion which was seconded and approved. Mrs. Guillory called for approval of the minutes of the July 27<sup>th</sup> meeting. Mr. Boydston moved for approval. This was seconded by Mr. Pausina. Motion approved.

Mrs. Guillory moved to take up Agenda Item No. 4, Sampling Methods, before Item No. 3, Uniform Evaluation Methods. Everyone agreed and Darryl Clark was called on to present his comments on the draft Sampling Methods.

Mr. Clark said that an Introduction had been added, at the suggestion of Deputy Secretary Hanchey at the July 27<sup>th</sup> meeting, in order to provide information on what the Guidelines are. On page 2, under Bottom Substrate Sampling, Mr. Clark, at Dr. Cake's suggestion, had changed the distances of bottom probes from 20-40 feet to 20-50 feet. Mr. Pausina, however, thought it should remain 20-40 feet. The Board agreed.

In the Standing Crop Sampling section, it was agreed to change the term "freshly dead" to "fresh dead," and to add in parentheses, "See attached Glossary for definitions of fresh boxes or fresh valves" to clarify the sentence "...living and recently dead (fresh dead) oysters."

Mr. Boydston asked about Item No. 5 of the Recommendations for Board Action to Finalize the Sampling Protocol. Mr. Clark said he had received from some of the biologists the recommendation to prohibit the use of vessels and/or equipment by the certified oyster biologists but had been asked to remove it on the final draft. Mr. Hanchey said he was the one who requested that it be removed, with the understanding that it first would be discussed at this meeting, because it was an item that had been argued both ways and Dr. Cake's reasons for removing it seemed persuasive to him. Dr. Cake gave some of the reasons for removing it and Mr. Mike Rayle gave his for leaving it in. The Board felt that the data gathered by the biologists are more important than how they're gathered. Mrs. Guillory recommended removing Item 5 and the Board agreed.

Regarding the use of mechanical tongs, Mr. Brodtmann pointed out that the biologists would have to get a license from the Department of Wildlife and Fisheries. Mrs. Guillory said that if the biologists felt that's what they needed to do the work, it was their responsibility to get a license.

Mr. Boydston moved to accept the changes to the sampling methods document agreed upon by the

Board, and add the Glossary. The motion was seconded by Mr. Pausina and passed unanimously.

Uniform Evaluation Methods was the next item opened for discussion. Mr. Clark said he had taken the draft, combined it with Mr. Pausina's "Another Method" and come up with the present document. He explained that the Sampling Methods are how to sample leases, but the Evaluation Methods are how to come up with what the lease is worth once it is sampled. These calculations are based on the bottom substrates and living resources the oyster leaseholder has.

Mr. Pausina asked that the word "functional" in the first paragraph of the Bottom Substrate section on Page 2 be changed to "actual" to agree with the statute. In further discussion, it was decided that Mr. Clark would re-word the next two sentences to read something like, "If both parties agree to another method of returning the bottom substrate to pre-damaged condition, the Board will consider the other method used - bringing it back to its functional equivalent." Mr. Pausina also asked that in the first paragraph of Page 4, all references to what the Department of Wildlife and Fisheries does be removed because its purpose is not the same as the Board's. Mr. Hanchey suggested putting off discussion of the Uniform Evaluation Methods until the next meeting in order to give those biologists and others who haven't seen the draft in its current form an opportunity to provide the Board with some comments, allow the Board to review it, work the draft one more time, distribute it before the next meeting, and take final action at that time. It was agreed to table the Uniform Evaluation Methods until the next meeting, making Bottom Substrate a separate item on the agenda.

On the subject of New Business, Mrs. Guillory brought up the Ethics issue and the fact that, in one of the cases to come before the Board, a Board member was an employee of one of the parties. She said a letter had been written from LL&E to the Department asking for guidance on the issue of possible conflict of interest. Mr. Hanchey said the Board was set up as an arbitration board, purposefully provided with two members from the oil industry and two from the oyster industry, in order to provide some balance. If one or more of these members has to recuse himself because of a perceived potential conflict of interest, there is some concern as to what it does to this balance of the Board and whether it can be effective if all members are not able to participate fully in the activities of the Board. Warren Fleet, Chief Counsel for the Department, is looking into this issue and is consulting with the Ethics Commission. There is no resolution to the problem yet. Mr. Hanchey said that probably by the next meeting the Board would have a position on what action it wants to take for it to act most effectively.

Mr. Pausina offered two resolutions for consideration. The first was that the paperwork for any request for arbitration be complete (all blanks filled in) prior to the arbitration hearing and that the requesting party must have a representative present at that hearing. Mr. Waitz asked if having a representative present meant at the initial bond setting or at the final determination of damages. By statute a representative is required to be present at the arbitration for final damages. Mr. Pausina said, "both." Mr. Boydston said DNR staff should be responsible for ensuring that the applications are complete. Mr. Hanchey said he thought there had been some confusion as to whether or not the application had to be submitted in advance or could be brought to the meeting. He suggested having a policy stating

how many days in advance of the arbitration hearing that the applications must be received and that the burden should be on the Department to receive them and advise the chairman when they are complete and the Board can then meet. Mrs. Sweeney asked if any guidance is issued to the applicants regarding how to fill out the applications. She said three pages of guidelines now accompany Coastal Use Permit applications explaining exactly what kind of information is needed. Since the guidelines have been sent with the applications, the quality of the applications has gotten a lot better and they are more likely to be deemed complete. The answer was "no." Mr. Boydston and Mr. Hanchey said they thought instructions should be included and Mr. Hanchey suggested the Board ask the Department to prepare something similar to the guidelines issued with the Coastal Use Permit applications explaining what to fill out, what needs to accompany the application, when it needs to be sent in, and the issue of who the applicant needs to have present can be included as well. This way the Board can either recommend or require that the applicant have someone present who can provide information the Board might deem necessary. This can be put together in one package and be made available to everybody and eliminate a lot of these questions. In view of this, Mr. Pausina modified his resolution to read, "Both sides must be represented and present, applications must be complete, and a guideline package prepared by staff be included with the applications." Mrs. Guillory called for a vote and the resolution passed with no opposition.

The date of the next meeting was set for Wednesday, September 30, 1998 at 9:00 a.m.

Mrs. Guillory asked that the Board look at the Uniform Evaluation Methods document and try to bring it to closure at the next meeting.

Mrs. Guillory called for a motion to adjourn . The motion was made by Mr. Boydston and everyone was in favor. Meeting adjourned.