

Minutes of the
Oyster Lease Damage Evaluation Board
March 18, 1998

A meeting of the Oyster Lease Damage Evaluation Board was held on Wednesday, March 18, 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 and roll was taken.

Board members present:

Vivian B. Guillory, ALJ, Chair

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 Oyster Task Force

Don Briggs, representing LIOGA and Louisiana Landowners Assn.

DNR staff present:

John Waitz, Staff Attorney

Darryl Clark, Coastal Restoration Division

Carolyn Edwards, Executive Assistant

Others present:

Ed Cake, Gulf Environmental Assoc.

John Cirino, Cirino Consulting Services

Ron Kilgen, Consultant

Bud Brodtmann, Consultant, EPL

Mike Rayle, Steimle & Associates

Marilyn Kilgen, Nicholls State University

John Supan, Louisiana Sea Grant

Rick Waldron, Robert P. Waldron Inc.

Mrs. Guillory announced that she had received a letter from Dr. Earl Melancon with comments on the evaluation methods and that each Board member had been given a copy. She said she hoped everyone would have an opportunity to look at and consider his comments.

Mrs. Guillory asked for approval of the minutes of the last meeting. Since no one had any comments on them, Mr. Boydston moved for adoption. This was seconded by Mr. Briggs and the minutes were adopted.

Mr. Clark repeated from the February 18 meeting his presentation on the Uniform Evaluation Methods. Two items were brought up for discussion - the time issue (how many years it takes for an oyster to reach marketable size) and the substrate issue.

Mr. Rayle asked for a legal view on the time issue. Mr. Waitz said the courts have said three years for an oyster to reach marketable size from spat so they have allowed damages for three years of future production. He suggested it would be reasonable to adopt this to be consistent with current case law. The Board doesn't have to do this, but if it did, there wouldn't be an appealable argument to the district court. In the Uniform Evaluation Methods the number of years used as the average time needed to grow mature marketable oysters from spat is two.

Dr. Cake challenged the two year time saying it is arbitrary and should depend on what's on the reef. It should be based on one year and on what the consultant says is the standing stock.

Mr. Brodtmann said he is going to provide the Board with his written comments when they are completed and asked if he could move to the water bottom issue. He said trying to apply the Wildlife and Fisheries quantities of cultch materials to actually restoring water bottom that has been destroyed is not going to work. He said he shared the Board's uneasiness about restoring water bottom that has never been productive or hasn't been productive in ten years. It's the state's water bottom. The oysterman hasn't invested in doing anything to improve that water bottom, yet prior to the oil and gas activity it could have been productive water bottom; therefore, don't give the oysterman or the lessee cash to restore the water bottom, restore it back to where it could grow oysters again. On the other hand, he said, if there is a lessee who can demonstrate an investment over the prior year or over a number of years, give him the opportunity to accept the money or the cultch material. This would relieve some of the Board's problems in paying someone for something in which they have no investment.

Mr. Boydston said he didn't know if it was appropriate for an oil and gas activity to restore a water bottom to the condition at which it was prior to the oil or gas activity because the state mandates that this is an activity that is in the best interest of the state. The courts will have to decide this.

Mr. Briggs said there are so many variables that he didn't believe the Board would be able to come up with one formula to use when a biologist evaluates a property. He felt the Board had basic formulas for arriving at values.

Mr. Pausina said he agreed with Mr. Briggs. He said he was going to go home and write another proposal so the Board could have something more simple to look at.

Mr. Supan said the Board should focus on standardization of technique of the biologists.

Mr. Rayle agreed with Mr. Supan's comments but said none of the biologists does things the same.

The Board needs a set of data that are uniform.

Mr. Boydston said it was his impression that the Board was going to leave this to the biologists to bring data to the Board and if the Board didn't like the way the biologist was operating, it would take him off the list. The Board was looking to the biologist to set the standard. It would then evaluate and debate from the oil and gas and oyster industries perspectives to see if the data the biologist brought to the table was legitimate.

Mr. Pausina said what the Board wants to know is how many oysters are there, not what an average per lease is. It might be a good idea to have the biologists submit to the Board what they think is the best method for determining what is on a lease.

Mrs. Guillory suggested getting out a letter asking the biologists for this and getting it back to the Board about a week before the next meeting so that it can be evaluated.

Mr. Boydston said the Board needs to know what it wants first.

Mr. Pausina said he liked the idea of the biologists giving their methods of sampling, but thought the Board needed give them some guidelines. He told the biologists present that "for this Board, 190 oysters is a sack. When you count oysters, you count them by size groups. Greater than 3" is one group, less than 2" is another group, and in between 2" and 3" is another group. We want three size groups. Market price today is an average of \$17.00 a sack for oysters from a reef. This is the dockside value." He pointed out the item on the Initial Biological Survey Summary that states, "The biologist, at his discretion, may include any other information he deems pertinent in determining his evaluation of the oyster lease." This will give the biologists some leeway in unusual circumstances, but the Board is going to give as much direction as possible to make it as uniform as possible, understanding that it will never be completely uniform.

Dr. Cake asked if the number 190 oysters per sack is the 3" to 4" size. Mr. Pausina said they are to be separated by size: there are so many sacks of oysters larger than 3", so many between 2" and 3", and so many smaller than 2".

It was decided that a letter would be sent to all the biologists requesting their methodology for evaluating an oyster lease. Mr. Clark agreed to assist Mrs. Guillory in drafting the letter and sending a copy of the draft to the Board. When the letter is sent to the biologists and responses received, copies of the responses will be sent to the Board as well.

Mrs. Guillory said the Board would have to pass on the other agenda items, "Discussion of Forms" and "The Liability Issue" in order to keep the meeting to two hours. Mrs. Guillory asked for a motion to adjourn. Mr. Briggs so moved and the motion was seconded by Mr. Boydston. Meeting adjourned.