

Minutes
of the
Oyster Lease Damage Evaluation Board
October 1, 1997

A meeting of the Oyster Lease Damage Evaluation Board was held on Wednesday, October 1, 1997, at 1:30 p.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 Mr. Jack Caldwell and Celeste Bordelon called the roll.

Board members present:

Vivian B. Guillory, ALJ, Chairman

Don Briggs, LIOGA, representing LIOGA, Mid-Continent Oil & Gas Assn., and Louisiana Landowners Assn.

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

Mike Voisin, representing the Louisiana Oyster Task Force

DNR staff present:

Jack C. Caldwell, Secretary

Steve Mathies, Deputy Secretary

Celeste Bordelon, Assistant to the Secretary

John Waitz, Staff Attorney

Darryl Clark, Coastal Restoration Division

Board member absent:

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

The meeting began with a discussion of the Rules Governing Proceedings. There were no changes made to Pages 1, 2 or 3. On Page 4, under Certification and Selection of Biologists, Mr. Voisin expressed concern that biologists are not economists and are not trained to make monetary evaluations. He asked if something should be added that says, "and has a certified number of college credit hours in economics." He said he thought this would help uphold the Board's stand in the event of a challenge. Mr. Caldwell said that the statute says nothing about economics and that a biologist doesn't have to be an economist to determine damages. He said that if the Board determines that an applicant is not qualified to be a biologist because of certain deficiencies, the Board is protected. In response to Mr. Caldwell, John Waitz said that there are several AG opinions on this and that there is no exposure by the Board. Mr. Pausina said the purpose of the biologist that the Board picks is to get biological information, but if the Board decides it needs some economic information nothing would preclude it from asking an economist, or someone with that kind of information, to give some general guidelines just as if the Board would ask an attorney for legal advice.

Mr. Voisin asked what would happen if a biological surveyor could not or would not have the time to do a project if selected. What happens to his name? Mr. Caldwell said the Board would have to decide that in individual circumstances because it does not want to tie itself down, but felt that that

biologist would be taken off the list and would go on the next list. As long as he is still certified, he can go back into the rotation. Mr. Voisin asked if the Board should require that the biologists be Louisiana residents. Mr. Caldwell said, "no."

Ms. Guillory asked if anyone had any more comments or wanted further discussion on the rules. Mr. Voisin moved to adopt. His motion was seconded by Mr. Briggs and unanimously adopted.

Mr. Pausina made a request for the Board that the Department always have an attorney present during Board meetings. Mr. Caldwell said John Waitz probably will be that attorney because he has been assigned to the Board.

Mr. Voisin asked if projects would officially come before the Board only after the rules have been published. Mr. Caldwell said that as of now there are no limitations. The Board is in business for all claims.

On the liability issue, Mr. Caldwell summarized an Attorney General's opinion stating that as long as the Board is acting within the scope of its authority and in good faith, it has nothing to worry about.

The next topic to be discussed was Uniform Evaluation Methods. Mr. Caldwell said that he had assigned the task of developing these to Steve Mathies and Darryl Clark, that they were in draft form only and asked that the Board not attempt to adopt them today.

Dr. Mathies explained that there are two components to be considered in the Evaluation Methods: 1) direct damage to the lease, and 2) damage to marketable oysters for a certain period of time. It is up to the Board to calculate these damages and to try not to over or underestimate them, but to be realistic. Dr. Mathies asked the Board to review the Evaluation Methods, pass them on to their constituencies and bring any comments back to the next meeting. He emphasized that his purpose is to assist the Board in developing the methods.

Mr. Clark then explained the evaluation formula and answered questions regarding it. Dr. Mathies said that in developing the formula the things they struggled with were not just how many sacks of oysters could be expected to come off of an area, but trying to fairly compensate the oyster fisherman for the total damage to oysters from the time the activity began to the time the lease recovered and was again producing oysters as it had been before the activity occurred. The Board will have to decide how much of the production it is going to pay the oystermen for and for how many years it is going to pay that. Mr. Caldwell added that all the statute requires is a uniform evaluation method and that the Board adopt a methodology of how it goes about evaluating these cases. The oyster biologists need a method so their reports will be uniform in content if not in specific measurements.

Dr. Mathies passed out information to be incorporated into the application form and asked Board members to review and send their comments to him by October 15. He will then prepare a draft and mail to each member prior to the next meeting for discussion at that meeting. Mr. Voisin suggested that a public hearing or two regarding the application form be held after the Board agrees on a final draft.

Mr. Caldwell said he recently became aware of all this preliminary work that is done way ahead of

time. Before anything is filed or goes to Wildlife and Fisheries a bottom survey will already have been made. He mentioned dovetailing that in with the Board's selection of biologists off the list and said there are two ways to do it: 1) if somebody sees one of these activities coming up he can pick his biologist ahead of time. If he wants to use a particular person, the Board will give him his free personal list to pick his name off of so there will be no duplication, or 2) let the person who is picked adopt whatever he wants to out of that prior material that's been done, if he's willing to certify it, or do whatever he thinks needs re-doing. He said he has no problem with one biologist adopting another biologist's work if that biologist is satisfied with the way it's done. Mr. Voisin asked about a time period. Are they looking at a proposed project that's as far as a year away? Mr. Mathies said the first thing that will be done is to apply for a Coastal Use Permit to make sure they can do the work. That should take no more than 90 days and the owner is going to try to settle with the oysterman at that point. Mr. Clark said that before the owner gets a permit, he has to have an oyster survey done if he's going to affect an oyster lease. Mr. Mathies said it is Mr. Caldwell's idea that if a company knows it's going to do this work and is applying for a permit, they know what's going to have to be in the initial biological survey. If they can't settle with an oyster fisherman, why don't they pick one of our certified biologists to go out and do that survey one time and gather all the information at the beginning when they apply for a permit and begin negotiating with the oyster fisherman. If they can't reach a negotiation, when they come before the Board, the survey is already done. Mr. Voisin said that the Board might want to in some way make everybody aware and then the Board can begin certifying biologists so that oil companies that normally now come in for project development can start getting their list of three and it potentially will save them money because if they're doing it now, they've got to hire somebody to do it down the road. Mr. Caldwell said a letter will go out to oyster biologists requesting them to make application to become certified by the Board to perform biological surveys of oyster leases. He said we will proceed as though the regulations were in effect.

A question was raised about drafting the by-laws. Mr. Waitz said we'd rather get some continuity as to where we're going and then adopt them rather than adopting them and having to stick to them.

It was tentatively agreed that meetings would be held on the first Wednesday of each month at 1:30 p.m. and that the next meeting would be on Wednesday, November 5 at 1:30 in the 4th floor Mineral Board Docket Room.

There being no further business, motion was made by Mr. Briggs to adjourn. Seconded by Mr. Pausina. Meeting adjourned.