

LSA-R.S. 56:700.10

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES
TITLE 56. WILDLIFE AND FISHERIES
CHAPTER 1. GENERAL PROVISIONS FOR WILDLIFE AND FISHERIES
PART XV. OYSTER LEASE DAMAGE EVALUATION BOARD

→ § 700.10. Purpose

With declining reserves and oil and gas becoming harder to discover it is incumbent upon the state to remove as many obstacles as it can which might impede the future exploration and development of minerals in the public waterbottoms. Oyster leases and oil and gas exploration and production have historically utilized much of the same areas in the waterways and waterbottoms on public lands in the state. The oil and gas industry has been faced with the problem of having to negotiate damages to oyster beds to conduct geophysical surveys, drilling activities, and movement of equipment to and from well sites in an uncertain and unpredictable manner which is creating an undue burden on the industry. The purpose of this Part is to effect an equitable solution to the problem which will result in fair and predictable treatment to the oil and gas industry while assuring the oyster fishermen actual compensation for damages to their oyster beds due to mineral activities. The state has a tremendous interest in preserving the viability of both industries. Since both activities are granted on public waterbottoms by the state it is the obligation of the state to resolve the problems created by this impasse; therefore, the legislature does hereby establish the Oyster Lease Damage Evaluation Board to promulgate rules and regulations to determine the method of establishing a uniform system of compensation for actual damages caused to the beds of leaseholders based on biological test data.

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→ § 700.11. Definitions

As used in this Part, unless the context requires otherwise, the terms set forth below shall have the following meanings:

- (1) "Board" means the Oyster Lease Damage Evaluation Board.
- (2) "Biological test data" means surveys of oyster beds and grounds by a certified biologist to determine the quality, condition, and value of oyster beds and grounds.
- (3) "Leaseholder" means an owner of an oyster lease granted by the Department of Wildlife and Fisheries.
- (4) "Department" means the Department of Natural Resources.
- (5) "Mineral activity" means exploration (including all seismic operations), production, transportation (of equipment or product), and any other activity associated with the production of oil and gas.
- (6) "Owner" means an owner or operator of a mineral activity.
- (7) "Secretary" means the secretary of the Department of Natural Resources, or his designee.

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→ § 700.12. Damages to oyster leases; mineral activity; settlements and claims

Notwithstanding any other law to the contrary, including but not limited to R.S. 56:423 et seq., the claim of any lessee of oyster beds or grounds who is requested to enter into a settlement for damages which may occur due to an oil and gas activity which proposes to intrude upon the leasehold may be settled in the following manner:

- (1) If the leaseholder and the owner of the oil and gas activity agree to settle for a fixed amount the settlement shall be in writing, signed by both parties, granting the activity for the agreed upon sum which shall be paid immediately.
- (2) In the event that a settlement is reached there shall be no further claims or demand for damages thereafter for the activity upon which the agreement was made.
- (3) If a settlement cannot be reached between the leaseholder and the owner, either party may file a request with the board for arbitration and final determination of the actual damages to the oyster lease due to the mineral activity thereon.
- (4) If the claim is brought before the board, the owner of the oil and gas activity shall, at its own expense, have a biological survey made of the leased premises to determine the quality and value of the beds and grounds which will be involved in the proposed operation. A biological survey shall be performed before the operations begin and upon completion of the activity.
- (5) If the claim is brought before the board, the owner of the oil and gas activity shall file the initial biological survey with the board and pay a deposit to the board based on estimated damages as determined by the board after consideration of the results of the biological survey and any other information provided to the board. After payment of the deposit, the owner may proceed with his proposed activity. Upon completion of the activity, the owner of the oil and gas activity, at his own expense, shall have another biological survey performed and filed with the board so that actual damages to the leasehold may be determined by the board.
- (6) All claims shall be evaluated expeditiously based on biological test data done before and after the activity over or on the beds occurs, and upon determining actual damages the claim shall be immediately paid to the board by the owner for the benefit of the leaseholder. Upon payment of the damages by the owner there shall be a presumption created in favor of the owner that actual damages are paid in full.
- (7) If the leaseholder or owner is not satisfied with the decision of the board he may obtain judicial review by a suit in district court of the parish where the leasehold improvements are situated. The burden of proof for liability and damages and all costs shall be borne by the party seeking judicial review. If the district court upholds the findings of damages by the board the party seeking judicial review shall pay all costs and attorney fees of the other party.

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→ § 700.13. Establishment of the board

A. There is hereby established within the office of the secretary of the Department of Natural Resources the Oyster Lease Damage Evaluation Board, hereinafter known as the board.

B. The board shall include five members consisting of one member nominated by the Louisiana Oyster Dealers and Growers Association, one member nominated by the Louisiana Oyster Task Force, two members nominated jointly by the Louisiana Independent Oil and Gas Association, Louisiana Mid-Continent Oil and Gas Association and the Louisiana Landowners Association, and one member, selected by the other four members of the board, who is a practicing administrative law judge.

C. The board shall develop a list of qualified biologists to provide biological test data in determining the quality, condition, and value of oyster beds and grounds. The secretary, in conjunction with the board, shall develop a list of qualifications for these biologists. When an owner of an oil and gas activity is required under the provisions of R.S. 56:700.12(4) to perform a biological survey, he shall choose a biologist to conduct the survey from the list of qualified biologists supplied by the board. The secretary, in conjunction with the board, shall adopt rules providing for a regular rotation of the names on this list.

D. The board members shall evaluate the information regarding damage to the beds and make the final determination in awarding damages to claimants. The secretary, upon receiving this determination of damages, may reject the damage award and send the matter back to the board. The board may then either revise the damage award or, by a two-thirds vote, affirm the original damage determination. If the board fails to either revise the damage award or affirm the original damage determination, the arbitration process provided in this Part shall conclude without a final determination of damages.

E. The determinations of damages by the board shall be based on the values shown in the biological survey and shall reflect true and actual damages.

F. Notwithstanding the provisions of R.S. 56:424, representatives or assigns of the owner of the oil and gas activity may remove, as a sample, oysters from an oyster lease on state water bottoms in order to make determinations in matters before the Oyster Lease Damage Evaluation Board. In order to take such samples, the representatives or assigns of the owner of the oil and gas activity shall first submit written notice to the leaseholder. If the leaseholder has not granted permission within fifteen days after the written request for permission was submitted, the representatives or assigns of the owner of the oil and gas activity shall notify the leaseholder of the date and time that the lease will be surveyed. The leaseholder may accompany the biologist during the survey or may authorize another person to accompany the biologist during the survey.

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→ § 700.14. Rules and regulations

A. In carrying out this Part, the secretary, in conjunction with the board, shall prescribe, and from time to time amend, regulations for the filing, processing, and the fair and expeditious settlement of claims pursuant to this Part, including a time limitation on the filing of such claims. These regulations shall insure that the whole claim procedure is as simple and as expeditious as possible. In no case shall the claim procedure exceed ninety days from the date the request for arbitration is filed with the board. Any designee of the secretary authorized to prescribe and amend such rules and regulations shall do so under the overall supervision and control of the secretary.

B. In the formulation of regulations pursuant to this Part, the secretary, in conjunction with the board, shall establish a procedure whereby an oyster fisherman may recover for actual damages to his oyster beds or grounds caused by oil and gas activities.

C. Any rule, regulation, and fees for the administration of this Part shall be proposed or adopted pursuant to the rulemaking procedures set forth in the Administrative Procedure Act [FN1] and shall be subject to approval by the Senate Committee on Natural Resources and the House Committee on Natural Resources.

D. The secretary, in conjunction with the board, shall promulgate rules for developing a uniform evaluation method to be used in the biological surveys to determine the estimated value of the leasehold before the activity takes place and the estimated damages or loss to the leasehold after the activity is completed.

E. The secretary, in conjunction with the board, shall promulgate regulations implementing the Oyster Lease Damage Evaluation Board's procedures and methods of operation on or before October 1, 1997.

[FN1] In subsec. C, R.S. 49:950 et seq.

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