

Louisiana Oyster Task Force Meeting
Tuesday, June 25, 2019 1:00pm
Belle Chasse Auditorium
8398 LA-23, Belle Chasse, LA 70037

I. Pledge of Allegiance

II. Roll call and introduction of guests

Voting Members Present:

Shane Bagala

Dan Coulon

Byron Encalade

Jakov Jurisic

Mitch Jurisich

Brad Robin

Brandt Lafrance

Al Sunseri

John Tesvich

Sam Slavich

Peter Vujnovich

Willie Daisy

Voting Members Absent:

Tracy Collins

Leo Dyson

Non-voting Members Present:

Denise Kinsey in for Carolina Bourque

Justin Gremillion

Edward Skena

Frank Cole in for Karl Morgan

Brian Lezina

Non-voting Members Absent:

III. Peter Vujnovich motioned to approve the May 14, 2019 meeting minutes, 2nd by John Tesvich. Motion carries.

Dan Coulon motioned to approve the June 25, 2019 meeting agenda, 2nd by Byron Encalade. Motion carries.

IV. Treasury Report:

Remaining FY2019 Fund Balance- \$407,692

Remaining Budget Balance for FY2019- \$57,324

May tag sales- \$334,800

Peter Vujnovich motioned to accept the treasury report as presented, 2nd by Willie Daisy. Motion carries.

V. Committee Reports

A. Public-Private Oyster Seed Grounds Committee

Mitch Jurisich stated that he attended the Shrimp Task Force meeting representing the Oyster Task Force and went over some of the discussion items from the meeting; the Shrimp Task Force is planning to draft a joint task force resolution to the governor's office in regards to establishing a state wide fisheries emergency. The governor has already taken action in requesting the declaration of federal fisheries disaster

B. Enforcement Report

April 11th - May 8th

Region 4 (Iberia)

None

Region 5 (Iberia)

2 - Harvest Oysters from Unmarked Lease

1 - Violate sanitation code

Oysters seized- 34 Sacks

Region 6: (Terrebonne, Lafourche, Grand Isle)

Terrebonne (Sister Lake)

1- Take oysters no comm. license.

1 -Take oyster no gear.

- 1- Take oysters no oyster harvester lic.
- 3- Take oysters closed season Sister Lake.
- 3- Take oysters illegal hrs.
- 2- Violate sanitation code Log Book.
- 1- Take oysters illegal gear Diving device.

Oyster/Gear seized:

2 Dredge seized

25 sacks

Region 8: (Jefferson, Plaquemines, St. Bernard, Orleans, St. Tammany)

Plaquemines

- 1- Fail to have scrapper license in possession
- 1- Fail to have number on top of vessel (Warning)

C. Legislative Committee- no report

D. Research Committee

Dr. Earl Melancon provided the task force with a the Research Committee report- the Research and Coastal Restoration Committees held a joint meeting today, prior to the full task force meeting, to discuss the following items:

Dr. Melancon provided feedback on the research proposal titled, 'Managing Genetic Resources for the U.S. Gulf of Mexico Oyster Aquaculture Industry: A Comprehensive Integrated Approach to Sustainable Genetic Improvement.' At the last OTF meeting, the task force postponed taking action on this proposal until further information could be provided. Dr. Melancon stated that the research would focus on researching traits and characteristics of LA oysters and preserving certain genetic material in the case of a die off. The research would look into Louisiana stock oysters and looking for those oysters that have certain traits such as low salinity tolerance, resistance to heat, etc. and making sure we keep those quality oysters surviving. There is a state-of-the-art research facility and hatchery down in Grand Isle, this is where the quality stocks of oysters would be kept and bred so that these traits can be researched and stocks maintained. One of the concerns the committee had was with oysters being brought in from out of state and fixing genetic material, Dr. Melancon stated that the research would only be dealing with LA oysters and only one species. There was also concern with bringing in oyster from Alabama or Mississippi, which would be the same species, but how would one know that something is not being brought in that could be detrimental to the local stocks? Dr. Melancon stated that there is a protocol in place

to safe guard this issue this would also be vetted by the academic community. The Research Committee requested to be involved in the ongoing development and progress of this research and also requested that the task force be notified ahead of time of any oysters that would be brought in from out of state.

The second research proposal the committee discussed was, 'Helping Louisiana's Oyster Fishery Through Coupled Social- Ecological Vulnerability and Risk Assessment.' The titled was previously amended, omitting the word "adapt." Dr. Melancon clarified that the proposal does not deal with asking the industry how they plan to adapt, but rather the research will look at how oystermen addressed economic and environmental risks in the past, how they address them currently, and how they plan to in the future.

Lastly the committee discussed the impacts of reductions in salinity on the oyster industry

Committee recommendations on Research Proposals:

1. The committee's recommendation was for task force to move in support of both research proposals as they can serve as possible tools for the industry in the future, additionally requested that Dr. Melancon bring the research back to the task force if completed before implemented.
2. The committee requested that the task force have oversight to receive feedback and provide their input on these projects as they progress

Al Sunseri requested that the processing sector be included in the research

Dan Coulon provided the task force with a Coastal Restoration update from the joint committee meeting; the committee discussed the necessity of declaring a fisheries disaster by the governor, but also a declaration from the president. The committee discussed working with the Farm Bureau to get a presidential federal declaration of a fisheries disaster.

Willie Daisy motioned to accept the joint Research and Coastal Restoration Committee report and recommendations as presented, 2nd by Peter Vujnovich. **(Motion does not carry as substitute motion was passed)**

John Tesvich stated that he does not support the proposed research; expressed concern for the task force supporting research that someone else has proposed for the industry, stated that this is not research that is being proposed by the task force, but rather coming from somewhere else. At the last meeting the task force asked about

funding for a research request that the oyster industry had made in the past and the task force was told that this request did not receive support.

Dr. Melancon stated that the grants that would fund the research for both proposals would not come from state monies.

Jakov Jurisich also stated that he do not support the research after hearing other opinion

Peter Vujnovich stated that he supports the research and to his understanding this is just basic research and that while it may not have much of a benefit to the industry now, it could serve the industry in the future

John Tesvich made a substitute motion to table the approval of the joint Research and Coastal Restoration Committee report and recommendations, 2nd Jakov Jurisic

Al Sunseri stated that he is in support of the substitute motion, as he understands the frustration being expressed by the industry

Sam Slavich also expressed support for the substitute motion

The chairman called question, the substitute motion to table the approval of the joint Research and Coastal Restoration Committee report and recommendations carries with one opposed, Byron Encalade.

F. Marketing Committee- no report

G. Health Committee-

Justin Gremillion provided the board with a health update; areas 7 and 8 will remain closed due to high River levels and the outflow coming from Mardi Gras Pass, LDH plans to continue to monitor the event and the affected areas and will make decisions accordingly. Started to see an influx of calls regarding the influx of freshwater, stated that LDH's goal in the oyster harvesting areas is first and foremost to monitor and manage pollution levels (human and chemical waste) in the water ways so that when oysters reach the public they are no adverse effects.

H. Professionalism

The task force unanimously moved to remove the Professionalism Committee from the standing reports on the Oyster Task Force agenda

I. Aquaculture Committee

Steve Pollock has resigned as the committee chairman, the board is asking for replacement recommendations and plans to take names for a replacement at the next meeting

J. Joint Task Force Working Group Committee- no report

IV. New Business

- A. Denise Kinsey provided the task force with a report on oyster mortality surveys related to the 2019 flood event

Weekly sampling sites--June 19, 2019		
basin	site/reef name	seed/sack mortality
Pontchartrain	Petit Island	100%
	Grassy Island	100%
	Grand Banks	76%
	3 Mile Pass	70%
	Round Island	100%
	overall	90%
Atchafalaya	Nickel Reef	9%
	HighSpot	64%
	Big Charles	20%
	Lighthouse Pt	31%
	overall	21%
Sabine	Sabine Lake 1	3%
	Sabine Lake 4	3%
	Sabine Lake 5	28%
	overall	8%

F T

Overall Basin Mortality- Monthly sampling--June 2019

Coastal Study area	Basin	Seed/Sack Mortality
1	Pontchartrain (north of MRGO)	34%
2	Pontchartrain (south of MRGO)	n/a
3	Barataria	2%
4	Timbalier	n/a
5	Terrebonne	3%
6	Atchafalaya	7%
7	Calcasieu	14%

Denise Kinsey stated that the department will continue to do monthly samples

The task force requested LDWF give an update on oyster mortality surveys related to the 2019 flood event at the next meeting and provide the total amount of sacks and barrels of seed lost in each area and the percentages at the next meeting

B. Mitch Jurisich led discussion on an amendment to the governor's request for a federal disaster declaration for LA fisheries

The task force had concern with the request not documenting all areas across the state that have been affected beyond the areas of St. Bernard and the Bonnet Carre. Would like the request that governor amend the request to include the other areas affected (the over flow of the Mississippi and Atchafalaya Rivers and other coastal parishes)

Dan Coulon stated that he agrees that the governor's intention was to include the whole state and all affected areas and he would support soliciting the governor's office to amend the original request

Jakov Jurisic motioned to write a letter to the governor's office requesting an amendment to the original fisheries disaster declaration request to include all areas affected, 2nd by John Tesvich. Motion carries.

The task force stated that they plan to copy the secretary and assistant secretary of Wildlife and Fisheries on their letter to the governor

C. Cole Garrett led discussion on the Oyster Lease Moratorium Lifting NOI

The board requested for a representative from the Office of State Lands to attend their last meeting to answer questions regarding the criteria and requirements surrounding dual claimed land and agreements and particularly clarification on the process of establishing a proper title. A representative from the State Lands Office was unable to attend the last meeting, but did respond to the task force's request via letter.*a copy of the OSL letter to the task force can be found at the bottom of the minutes*

John Tesvich stated that the letter from the Office of State Lands did not address all of the questions and concerns of the task force; specifically dealing with title. There is all kinds of legal room for different kinds of title, what is the level of rigor will a title go through to establish validity? What documents are necessary for title, for conveyance of ownership?

Peter Vujnovich motioned that due to the lack of participation from certain state agencies to answer questions pertaining to the dual claim leasing policies, thus resulting in too many uncertainties for the Oyster Task Force to take a position. For those reasons mentioned above, the Oyster Task Force takes no action on oyster lease moratorium lifting NOI. Meaning the task force neither supports, nor opposes the NOI, but will not stand in the way of its moving forward, 2nd by Jakov Jurisic. Motion carries with 1 abstained- Al Sunseri

D. Willie Daisy addressed the board with discussion on the regulations and enforcement of oyster lease marking pole

The task force referred the discussion on the regulations and enforcement of oyster lease marking poles to the the Public-Private Oyster Seed Grounds Committee

E. Mitch Jurisich led discussion on a summer task force trip to Washington, D.C.

Al Sunseri motioned to support funding for task force travel to Washington, D.C. this summer, 2nd by Brad Robin. Motion carries.

F. Mitch Jurisich led discussion on the 2020 Louisiana Alive event in Washington, D.C.

Brad Robin motioned to fund the task force sponsorship of the 2020 LA Alive event, 2nd by Jakov Jurisic. Motion carries.

VII. Public Comment

John Zach Lea discussed the status of closing Mardi Gras Pass, would like to help the task force and proposed that the board have an item on a future agenda for further discussion

VIII. The next meeting was set for Tuesday, July 30, 2019 for 1pm at the East Bank Regional Library, located at 4747 W. Esplanade Ave. Metairie, LA 70001

IX. Jakov Jurisic motioned to adjourn, 2nd by Brandt Lafrance. Motion carries

D R A F T

State Land Office
State of Louisiana
Division of Administration

JOHN BEL EDWARDS
GOVERNOR



JAY DARDENNE
COMMISSIONER OF ADMINISTRATION

May 10, 2019

Mr. Mitch Jurisich, Chairman
Louisiana Oyster Task Force
mitchjurisich@yahoo.com

**Re: Oyster Task Force Meeting, Tuesday, May 14, 2019
Criteria and Requirements Regarding Dual Claimed Land and Agreements**

Dear Mr. Jurisich:

I am the Section Manager of the Titles & Surveys Section of the Louisiana State Land Office, and I am writing in response to your letter of May 6, 2019 asking our office to provide feedback and clarification on the criteria and requirements regarding dual claimed land and agreements before the Oyster Task Force's consideration of the Oyster Lease Moratorium Lifting NOI. I regret to inform you that I am scheduled to be in court on behalf of the State on May 14 in Harrisonburg, Louisiana. Please accept this letter in response to your request for feedback and clarification.

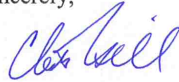
Mr. Robillard and I regularly attend the meetings of another task force created by Senate Concurrent Resolution No. 99 of the 2018 Regular Session, the Public Recreation Access Task Force. I presented comments to that legislative task force at its first meeting on September 13, 2018. Please find these comments attached; I anticipate that they will answer many of your members' questions regarding dual claimed water bottoms.

With regard to dual claimed status agreements with the State Land Office, we follow this process. If an area has been the subject of severance documents without the benefit of a survey, as described in the attached SCR 99 comments, and a person or entity holds record title to and is paying taxes on the property, but the water bottoms situated therein are claimed by the State, the record title holder need only present their title documents and proof of payment of taxes to our office with a request to reflect their title claims in our water bottom database. We will review such documents and our survey and severance records and make the appropriate changes to our database to reflect the areas to which the requester holds record title claims as dual claimed. A response will be sent to the requester with a preliminary map attached to allow him or her to raise any questions or concerns regarding the changes so they can be addressed. Any changes will be reflected on the public facing side of our water bottom GIS database after the first week of the following month.

Mr. Mitch Jurisich
May 10, 2019
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Should you have any further questions or concerns, please let me know.

Sincerely,



Cheston S. Hill
Section Manager, Titles & Surveys

Cc: Jonathan Robillard
Attachment

La. SCR 99, 2018 Reg. Session, 1st Meeting

9/13/2018 9:30 a.m.

Comments by Cheston Hill

Good morning. My name is Cheston Hill. I work for the Louisiana State Land Office and I manage the Titles and Surveys Section. I want to discuss the history and development of our inventory of State claimed water bodies. I also want to discuss some long standing policy of our office and the reasons for many of the dual claims depicted in our GIS database, and maybe try to touch on some law and policy issues that we're discussing with the Attorney General's office.

In 2004, 5 and 6, the Legislature issued a number of Senate Concurrent Resolutions directing the State Land Office to create a Statewide inventory of State-owned water bottoms, and make this inventory available to the public. This severely nuanced and difficult directive was obeyed to the best of our ability by the creation of a Geographic Information System, or GIS, database, and the development of a GIS mapping layer which, subject to a disclaimer, can be selected on an interactive map accessible online and overlain with aerial photography and other informational mapping layers maintained by the Department of Natural Resources. There was one catch: the GIS mapping layer developed by the State Land Office was not able to show State-owned water bodies unless they had been adjudicated to be State-owned by a court of law. Instead, it was developed as a State-claimed inventory. Please allow me to explain.

On April 30th of 1812 when the United States Congress created the State of Louisiana, it declared that it shall be created on an equal footing with the other States that were already a part of the Union. The United States Congress declared, as a condition upon which Louisiana was incorporated into the Union, the river Mississippi, and the navigable rivers and waters leading into it, and into the Gulf of Mexico, shall be common highways, and forever free. We call navigability as of the date of this declaration historical navigability, and our office strives to identify those waterways that could be historically navigable for the purpose of inventorying the claims of the State to such waterways pursuant to this condition of Statehood and our Legislative directive. Please understand, however, that, due to erosion, subsidence and sea level rise over the course of over 200 years, the waterways on the coast have grown and become more intricate and interconnected, and our office also strives to identify and inventory the claims of the State to these natural navigable water bodies as they have grown and changed over time. Let me stress this does not decide ownership, only claims for which the State Land Office has readily available evidence or has obtained evidence clearly supporting the State's ownership. Let me also stress that the State's claims reflect a limited opinion of this office based on internal guidance documents to allow a consistent method of review Statewide using in-house historical records and other information held at the State Land Office. This was the only financially viable way to fulfill our directive to inventory all State owned water bottoms Statewide. It is important to understand that the State Land Office's initial reviews and subsequent claims based on these records are limited by the Louisiana Constitution – the State cannot alienate naturally navigable water bottoms. The Louisiana Constitution prohibits the State from alienating naturally navigable water bottoms, so the State necessarily and in perpetuity reserves the right to seek a judicial determination of State ownership on any water body no matter what our decision on claims have been in the past, because we know we cannot possibly confirm that we have at hand when making the decision all possible pieces of evidence in existence relative to the question of navigability of every water body in every part of the State.

Several things warrant explanation. Let me explain the reasons for many of the dual claimed water bodies depicted in our GIS database and how the State Land Office operates to determine State claims and the valid dual claims to be reflected in our GIS database, particularly in coastal areas. The explanation begins with the original U.S. Government public land surveys which we call township plats because they typically cover a 36 square mile area known as a township. These United States surveys were on a township by township contract basis with U.S. deputy surveyors in the 1800s who were paid by the chain and link, these were actual 66' metal chains made of 100 links each that were required to be held tight, level and plum over every piece of land surveyed.. When doing these surveys, Federal Deputy surveyors were expected to use their own judgement to identify navigable rivers and streams and were instructed to record certain observations and measurements of them. They were instructed to record certain observations and measurements of lakes and ponds of sufficient size and depth to justify the expense. Various versions of these instructions were issued en masse to the deputy surveyors in general circulars at different times, such as the General Instructions of 1815, of 1831, and of 1855. Other circulars for General Instructions for certain States have been issued at different times and often special instructions were issued directly to specific deputy surveyors for certain survey contracts covering particular areas, directing them to take certain actions relative to surveying some of these areas based on their own judgement regarding the value of the land compared to the expense of the survey work – with regard to the coast, and the vast areas of marsh land that is often extremely difficult to walk on foot, this often resulted in unsurveyed or partially unsurveyed townships comprised of lands which were viewed in the 1800s as waste land, unfit for settlement and cultivation. For example, special instructions have been issued for surveys on the coast in the 1800s which made clear that “nothing herein contained shall require the survey of waste or useless lands” and that the surveyor “will not be paid for sectionizing lands entirely unfit for settlement and cultivation”. Clearly the opinion of the value of pristine coastal wilderness has changed over time, as today such lands are not considered waste or useless. Nevertheless, often in coastal areas, the value of the land in the 1800s did not justify the expense that would have been borne by the US Government to survey the entire 36 square mile township, so the extent to which navigable waters may have traversed these unsurveyed areas was not documented. Unfortunately, vast swaths of these unsurveyed areas on the coast were viewed as swamp lands within the meaning of the Federal swamp land grants, selected by the State as swamp lands and approved by the Federal Government, and subsequently acquired, to the extent they were susceptible of being acquired, by private persons who purchased them from the State, presumably prospectors and investors. It is the extent to which they were susceptible of being acquired by private persons that is not clear because these transactions occurred, in large part, without the benefit of a survey, and any natural navigable water bodies which traversed these unsurveyed areas were inalienable by the State and insusceptible of private ownership. The State considers those sales null and void insofar as they purport to convey navigable waters.

Due to the issuance of survey instructions such as these, which resulted in unsurveyed areas and questionable severance from the public domain into private using estimated acreages, the long standing policy of our office in areas such as these, where townships were “unsurveyed”, their interior dimensions and features being estimated, is to refer instead to the early editions of the United States Geological Survey topographic quadrangles, and in particular to those editions that were the first to utilize aerial photography, because those are the most reliable. The earliest editions of the USGS topographic maps to utilize aerial photography in most areas are the Editions of the 1930s. For these

unsurveyed areas, our policy has always been to assume those waterways depicted on the 1930s quadrangles were there in 1812, the same assumption we make with the township surveys performed on the ground in the mid-1800s. However, ownership of many of these unsurveyed lands can be and is contested by persons holding State or Federal documents that purport to sever and sell naturally navigable water bottoms. In such instances of competing claims, ownership can only be decided by a court of law. For the most part, those are the areas that we have designated dual claimed in our GIS inventory and labeled "Claimed by the State and Adjoining Landowner".

Let me explain the State's position in this regard. If the State were to rely entirely on the historical governmental survey data available in unsurveyed or partially unsurveyed townships, a great disservice to the public trust could occur as a result of situations such as this and the resultant and very questionable sale of unsurveyed areas that, unknown to the State at the time of sale, included navigable waters. It has always been a strong public policy of this State that natural navigable water bodies are to be highways of commerce and forever free, inalienable by the State and insusceptible of private ownership, held in public trust for the citizens of Louisiana. This long standing public policy was finally codified in the Louisiana Constitution in 1921, and is now identified as Article 9, Section 3 of the current Louisiana Constitution, wherein the Legislature states as follows:

"The legislature shall neither alienate nor authorize the alienation of the bed of a navigable water body, except for purposes of reclamation by the riparian owner to recover land lost through erosion. ...".

With regard to erosion, as well as subsidence and sea level rise: as Harry just discussed, Article 450 of the Louisiana Civil Code states that the waters and bottoms of natural navigable water bodies are defined as public things and belong to the people of the State. With the vast geomorphologic changes occurring on our coast due to erosion, subsidence and sea level rise, the difficulties inherent in determining the State's claim in accordance with the Louisiana Civil Code and Constitution are enormous, and involve identifying which water bodies of the expansive and rapidly growing interconnected network of bayous, lakes and bays on the coast should be claimed as navigable in fact today. We have traditionally relied on aerials for this, but these at times prove insufficient, and we have been increasing our surveyor's presence in the field for the purpose of field investigations and depth studies. With limited financial and personnel resources, vastly outmatched by the expansive coastal area of our State and its rapidly changing nature, the State Land Office strives to fulfill our duties with diligence and perseverance.

Currently, we are working together with the Attorney General's office on a number of complex law and policy issues. These issues relate to claiming and inventorying natural navigable water bodies in coastal areas that were not historically navigable, but appear to have become navigable naturally and to be currently navigable in fact.

Regardless of our work, however, this issue cannot be decided by us. No amount of identification and mapping of claimed waters will bring closure to this issue. Our office is charged with making claims and inventorying based on evidence available to us, not deciding ownership. Ownership can only be decided by a court of law.

Thank you for allowing me to speak, I appreciate your time and attention.