



# Legal Programs Newsletter

## Programmatic Updates

October, 2008

If you have a problem viewing this email, please go to <http://www.olemiss.edu/orgs/SGLC/Newsletter.htm>

### W E L C O M E

To keep the network better informed about our programs and projects, the Sea Grant Legal Programs have decided to produce a monthly email newsletter. Through this newsletter we will highlight recent publications, staffing changes, and new initiatives. Feel free to contact the directors of the individual Sea Grant Legal Programs for additional information on any of the projects or products mentioned below. For information on how your program can tap into the services of the National Sea Grant Law Center, please contact Stephanie Showalter at [sshowalt@olemiss.edu](mailto:sshowalt@olemiss.edu) or by phone at (662) 915-7775.

---

#### National Sea Grant Law Center

In October, Law Center attorneys began working on our major project for this fiscal year – legal outreach on offshore alternative energy. As a first step, the Law Center is developing a white paper on the current regulatory framework for permitting and siting offshore alternative energy facilities, including wind and wave. The role of coastal states will also be discussed. The white paper should be available in early spring 2009.

Director Stephanie Showalter attended the Mid-Atlantic Sea Grant Regional Meeting on October 29 – 30 in Corolla, North Carolina. Stephanie gave a presentation on emerging legal issues in sustainability, focusing primarily on climate change litigation and the Mineral Management Service's proposed rule for offshore alternative energy leasing.

Law Center Attorney Terra Bowling began research for the Virginia Institute of Marine Science (VIMS) regarding which states charge royalties for the private use of state-owned submerged land and what types of activities are covered. She also began work on the next issues of the *Sea Grant Law and Policy Digest* and *The SandBar*.

---

#### Louisiana Sea Grant Law & Policy Program

The Louisiana Sea Grant Law & Policy Program is pleased to announce a new legal coordinator. Melissa Daigle, who graduated from LSU Law School in May, will replace Lisa Schiavinato. Melissa worked for the Program as a Legal Research Assistant for two years while she was in law school.

Last week, Director Jim Wilkins conducted two workshops on the Louisiana Coastal Hazard Mitigation Guidebook one in St. Tammany Parish and one in Jefferson Parish. Attendees were interested citizens, local government officials, state agency personnel and NGO representatives. Dennis Hwang, affiliate faculty with the Hawaii Sea Grant Program assisted with the workshops. More workshops are planned for other areas of the coast. The Program is also trying to obtain funding to produce a homeowners guidebook to assist homeowners in preparing for and dealing with hazard events. Hawaii has done this with great success and the demand there is high. Jim is hoping this will be a Gulf-wide Sea Grant project with cooperation and task sharing on common points but the books for each state will be tailored for their particular conditions and needs. The Program has generated a lot of expressed interest but the Program is awaiting funding.

---

#### Mississippi-Alabama Sea Grant Legal Program

Tim Mulvaney is working with MS-AL Extension Agents to present a December workshop on creating land trusts that can accept small parcels in non-contiguous tracts in coastal Alabama. He also is circulating for potential publication a manuscript that constructs a conceptual framework, based upon the 2000 *Wai'ahole* decision in Hawaii, suggesting that the public trust doctrine can operate independently from state water codes to protect instream flows in regulated riparian jurisdictions. Further, Tim is writing and editing the upcoming issue of the MS-AL Sea Grant publication, *Water Log*. Currently teaching a trial practice course at the University of Mississippi School of Law, Tim is scheduled to teach a land use planning course this spring.

---

#### NC Coastal Resources Law, Planning and Policy Center

During the month of October, Center co-directors Lisa Schiavinato and Joe Kalo planned and hosted its annual "Shape of the Coast" Continuing Legal Education program in New Bern, NC. This is a one-day program to educate attorneys and coastal management professionals on timely law and policy issues affecting NC's coast. This year's program included presentations on how climate change has historically affected the southern coast of NC; recent activities of the NC Coastal Resources Commission; forthcoming recommendations of the emerging ocean resources policy steering committee; an update on federal wetlands regulation; and an update on NC's coastal storm water rules. Speakers included Dr. Stanley Riggs, East Carolina University; Bob Emory, Chair, NC Coastal Resources Commission; Justin McCorcle, General Counsel, Army Corps of Engineers-Wilmington District; Clark Wright, attorney with the law firm Davis Hartman Wright; and Center co-directors Schiavinato and Kalo. Approximately 90 people attended the program, which included not only attorneys, but also agency officials, local government officials, members of academia and graduate students.

Also during October, the Center held its annual advisory board meeting in New Bern. During these meetings, Schiavinato and Kalo update the advisory board on the Center's activities for the past year and request input on the growth and direction of the Center. Advisory board members include attorneys from private law firms and government agencies, academic experts in law, planning and coastal management, members of local government and the private sector.

The Center continued its work on the NC emerging ocean resources policy study. The Center held the fifth meeting of the steering committee in October, where Schiavinato and Kalo received input from committee members on the forthcoming draft report that they had prepared. The draft report will be subject to public comment and will include policy recommendations on how to address NC's emerging ocean policy issues. A series of public meetings are in the planning stage for later in the fall.

---

#### Rhode Island Sea Grant Legal Program

**7th Marine Law Symposium: A Viable Marine Renewable Industry: Solutions to Legal, Economic, and Policy Challenges**  
(October 23-24, 2008, Bristol, RI)

The Marine Law Symposium is a biennial event organized by the Marine Affairs Institute, a partnership between Roger Williams University School of Law, the University of Rhode Island's Department of Marine Affairs, and the Rhode Island Sea Grant College Program. This year's symposium explored means to achieve a viable marine renewable energy industry for the United States with a focus on offshore wind; hydrokinetics (wave, current and tidal); and ocean thermal energy conversion.

With ever increasing interest in marine renewable energy, particularly within Rhode Island, a principle focus is how to comprehensively plan for and license these industries given the current challenges for the siting, regulating, and implementation of renewable energy projects in the marine environment. The Symposium described possible solutions that legislatures, government agencies, industry, and the public can evaluate to provide an efficient process to address siting, jurisdictional, permitting, financial, environmental and technological issues for a viable marine renewable energy industry. Federal agency representatives, including Robert LaBelle of MMS; Ann Miles of FERC; Edward LeBlanc of U.S. Coast Guard; Robert DeSista of U.S. Army Corps of Engineers; and Ralph Lopez of NOAA's National Marine Fisheries Service, discussed the current state of permitting marine renewable energy projects and identified paths to a more coordinated process for different permitting structures.

This year's Symposium was a most timely one, given Governor Donald Carcieri's recent announcement of the successful bidder to develop the state's first offshore wind farm—Deepwater Wind. In preparation for siting a wind farm, the R.I. Coastal Resources Management Council is leading the effort to develop the Ocean Special Area Management Plan (SAMP) which will define use zones for Rhode Island's offshore waters through a research and planning process that integrates the best available science with open public input and involvement. The SAMP will be completed by June 2010, making Rhode Island the first state nationally to zone its offshore waters for diverse activities including renewable energy development. The Symposium highlighted the many issues, including the legal and policy issues to be tackled by the RWU SOL's Marine Affairs Institute, to be considered within the SAMP and on a national scale. Grover Fugate, Executive Director of CRMC, discussed the state's role in implementing the SAMP.

The Symposium attendees were also fortunate to hear about "lessons learned" from the international participants who have been instrumental in developing offshore marine renewable energy projects. Carolyn Heeps, Fred.Olsen Renewables (UK); Arthouros Zervos, Chairman of Global Wind Energy Council (Greece); Raul Manzananas Ochagavia, Acciona Energia (Spain); Steve Sawyer, Global Wind Energy Council (UK); and Taylor Roark, Mainstream Renewable Power (UK) discussed their respective projects.

The overall messages from the Symposium was that producing renewable energy from the ocean is an urgent yet very complex issues. The governing system is being created on the fly, there are many unknowns around the capacity of current technology and the pace of evolving technology, and larger concerns about grid capacity extend beyond but definitely include marine renewable. There are issues regarding how public and private sources fund a nascent industry, the role of political leadership, community receptiveness to these projects, competition with existing marine uses, and much scientific information to be gathered regarding appropriate siting and the extent of environmental impacts.

The blog from the Symposium (<http://mls.rwu.edu>), the forthcoming Roger Williams University Law Review Symposium Issue, and materials presented before and during the Symposium (<http://law.rwu.edu/sites/marineaffairs/symposia/seventhMLS.aspx>) will continue the important work of this Symposium, i. e. providing a forum and opportunity to fully air these issues.