



Legal Programs Newsletter

Programmatic Updates

September, 2008

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WELCOME

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 or by phone at (662) 915-7775.

National Sea Grant Law Center

This month's activities centered on the Sea Grant extension network. Director Stephanie Showalter attended the Sea Grant Assembly meeting in Seattle, Washington to provide an update on the Law Center's services and products. The Law Center recently became an *ex-officio* member of the Assembly of Extension Sea Grant Program Leaders, and our staff looks forward to this new working relationship. During the meeting, Showalter announced the Law Center's major research project for FY 2009 - Offshore Alternative Energy. The Law Center will produce a "state of the law" report early next year followed by tailored outreach and education publications for interested Sea Grant programs. The Law Center also began work on an advisory request related to the USDA's new rule restricting interstate transport of fish in the Great Lakes due to VHS. We will be preparing a fact sheet on the new rule and a memo addressing some of the extension agents' legal questions.

The Law Center's newest publication, *Facing Uncertainty: Local Government and the Precautionary Principle*, went on-line this month. In its strategic plan for 2006-2011, NOAA identified ecosystem-based management as one of its five goals. In keeping with the spirit of implementing ecosystem-based management through a local government approach, this publication is intended to help coastal communities to incorporate one ecosystem-based management and sustainable development principle, the Precautionary Principle, into planning and management. *Facing Uncertainty* is available at <http://www.olemiss.edu/orgs/SGLC/National/Precautionary%20Principle.pdf>. A limited number of hard copies are available. If you are interested in receiving a copy, please send an email to Stephanie Showalter at sshowalt@olemiss.edu.

Our students have been hard at work preparing articles for the next issue of *The SandBar*, due out early next month. Some of the highlights include an article on a district court decision allowing an offshore aquaculture project to proceed in Buzzards Bay and the Supreme Court's ruling in the *Exxon Valdez* litigation.

Louisiana Sea Grant Law and Policy Program

This month, Director Jim Wilkins is teaching Coastal Zone Management to 17 undergraduate and graduate students. The Law and Policy Program is also conducting workshops to explain the concepts contained in the "Louisiana Coastal Hazard Mitigation Guidebook," released last month, to local government officials, homeowners, and the public. A schedule of the workshops is available upon request. Jim, LaDon Swann of the Mississippi-Alabama Sea Grant Consortium, and others are negotiating with sponsors to produce a homeowner's hazard mitigation guidebook. Jim is also working on the effects of property rights on coastal restoration projects and on migrant worker issues affecting the oyster industry.

Mississippi-Alabama Sea Grant Legal Program

Tim Mulvaney submitted a draft report to the Mississippi Department of Wildlife, Fisheries and Parks with respect to the Department's instream flow management policy. Tim continues to research instream flow policy, focusing on the viability of relying upon the public trust doctrine for the protection of aquatic life in non-navigable, non-tidal waterways. In addition to work on Sea Grant legal publications, *Sand Bar* and *Water Log*, he also began research projects on (1) emergency preparedness for state and local governments, and (2) the special benefits doctrine in the context of protecting against the threat of natural disasters in light of the fear of economic vulnerability under current partial constitutional takings jurisprudence. Currently teaching a trial practice course at the University of Mississippi School of Law, Tim is slated to teach a course in modern land use or a related topic next semester.

NC Coastal Resources Law, Planning and Policy Center

The month of September was productive for the NC Coastal Resources Law, Planning and Policy Center. Co-directors Schiavinato and Kalo joined a project team at the University of North Carolina to study the technical, legal and economic feasibility of wind energy development in the Albermarle and Pamlico Sounds. The study was commissioned by the NC General Assembly, and Phase I on the efforts of Louisiana Sea Grant (where she of the project will take place over the next year. The Center will research the statutory and regulatory framework that will need to be in place in order to permit wind energy development projects in State sound waters.

Schiavinato and Kalo also gave a presentation before the NC Coastal Resources Commission in Sunset Beach, NC on the legal and regulatory barriers to wind energy development in coastal waters. This presentation was among of series of talks from various State agencies, non-profit groups, local governments and the federal government to provide information to the CRC on the complexity of this issue. The State has begun to seriously consider this form of renewable energy development, and the Center is glad to have joined the dialogue at both the State and local levels. The Center looks forward to providing informational assistance to the State and coastal communities as needed.

The Center continues its work with the NC Division of Coastal Management on the emerging ocean resources policy project. Further meetings with the steering committee have taken place, and the Center and committee are nearing completion of a draft report that will be available for public comment this fall.

Schiavinato participated on a panel on the role of Sea Grant Extension in assisting communities after a natural disaster at the Galaxy III conference in Indianapolis, Indiana. T the Joint Council of Extension Professionals planned and hosted the conference. Schiavinato's presentation focused

previously served as Legal Coordinator of its law and policy program) to assist communities affected by Hurricanes Katrina and Rita. The Extension Disaster Education Network (EDEN) and Purdue University sponsored Schiavinato's travel and conference registration. Many thanks to them.

Schiavinato also was selected to serve on the planning committee for the NC State Extension conference, which will take place in Raleigh in February 2009. NC Sea Grant has long been a sponsor of this biennial conference and is planning to host sessions highlighting the connections between Sea Grant Extension and Cooperative Extension and training sessions for NC Sea Grant Extension professionals.

Rhode Island Sea Grant Legal Program

State Announces Developer of Offshore Wind Farm for Rhode Island

Governor Donald Carcieri (R-RI) officially announced the successful bidder to develop the state's first offshore wind farm. According to the Governor's press release, Deepwater Wind has been selected to develop an offshore wind farm expected to cost more than \$1 billion and provide about 15 percent of the state's electricity. The wind farm is expected to generate about 1.3 million megawatt-hours a year.

In preparation for siting a wind farm, the RI Sea Grant Legal Program is taking part in Ocean Special Area Management Plan, or Ocean SAMP, led by the R.I. Coastal Resources Management Council, 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. This process will also protect current uses and habitats through zones for commercial fishing; critical habitats for fish, marine animals, and birds; marine transport; and more.

The Legal Program will analyze the state and federal permitting process for marine renewable energy projects (e.g., offshore wind farms), contact members of the legal community highlighting legal and policy challenges and solutions for implementing renewable energy in Rhode Island, and distribute legal findings to the Sea Grant Legal Program/Roger Williams University School of Law's Marine Affairs Institute's constituents, including various sectors of the marine renewable energy community. In addition, the Program will provide legal research and analysis of ocean zoning and other relevant issues to support the development of policies and regulations for the Ocean SAMP. For more information, see: www.seagrants.gso.uri.edu/oceansamp.

Two New Sea Grant Law Fellows Chosen for Fall 2008 Semester

Ashley Medeiros, 3L, will undertake a research request from The Nature Conservancy's Global Marine Team (TNC) to analyze the Interstate Shellfish Sanitation Conference (ISSC) policies and procedures related to Shellfish Conservation and Restoration Efforts. While answering the question of, "Do ISSC guidelines

necessarily prohibit restoration and conservation of shellfish in 'closed' waters?," Ashley will be contributing to a national shellfish conservation and restoration initiative. The initiative is a collaboration among TNC, NOAA's Restoration Center, NOAA's Habitat Protection Division, and the National Fish and Wildlife Foundation. Consequently, the report produced as a result of the research will be widely circulated, will likely be cited in coming literature, and will warrant national exposure in the field of conservation.

Steve Surdut, 2L, will conduct title searches for potential rights of way identified by the Harbor Management Commission in the Town of Warren while simultaneously gaining approval from the state's coastal zone management agency, the RI Coastal Resources Management Council, via the Adopt an Access Program.

RWU Environmental Moot Court Team Prepares for National Competition

The problem for the 2009 National Environmental Law Moot Court Competition will be issued on October 3, 2008. The three students competing in this year's competition are **Greg Klipp**, 3L, **Ashley Medeiros**, 3L, and **Jackson Parmenter**, 2L. The team will begin writing its brief and file its brief for its respective party in early December and travel to the Pace campus in February for the oral phase of the Competition. The Competition draws in excess of 200 competitors from diverse law schools and 200 attorneys who serve as judges for three days of oral arguments. Those with the highest combined scores for both the written brief and oral argument advance to succeeding rounds. The Competition will be held on Thursday, February 19 through Saturday, February 21, at Pace Law School, White Plains, New York. Good luck!