



Legal Programs Newsletter

Programmatic Updates

July 2009

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WELCOME

For information on how your program can utilize the services of the National Sea Grant Law Center, please contact Stephanie Showalter, Director, at sshowalt@olemiss.edu or by phone at (662) 915-7775.

National Sea Grant Law Center

The National Sea Grant Law Center is pleased to announce the availability of three new publications. The June 2009 volume of the *Sea Grant Law and Policy Journal* features articles from the Law Center's March 2009 symposium on water quantity. The articles discuss water supply planning in Chicago; managing agricultural water use in Georgia during drought; the dispute between North Carolina and South Carolina regarding the Catawba River; managing water resources on Vashon-Muury Island in Washington State; and the New Jersey Highlands Water Protection and Planning Act. The entire volume of the Journal and individual articles can be downloaded at <http://www.olemiss.edu/orgs/SGLC/National/SGLPJ/SGLPJ.htm>.

The Law Center also released its *Offshore Renewable Energy Regulatory Primer*. The *Primer* was written for a non-legal audience to provide a broad overview of the legal framework governing the development of offshore renewable energy such as wind, wave, tidal, and ocean thermal energy conversion. The *Primer* also contains information on the state authority and local concerns. It can be accessed at <http://www.olemiss.edu/orgs/SGLC/National/offshore.pdf>.

Finally, the final report for the Law Center's 2007 grant competition is now available at <http://www.olemiss.edu/orgs/SGLC/National/2007%20Grant%20Final%20Report.pdf>. This short report provides an overview of the ten funded projects, highlights success stories, and provides links to key reports and additional information.

In July, Director Stephanie Showalter put the finishing touches on an article examining the authority of states to regulate aquaculture in federal waters. The article has been submitted for publication to a number of law reviews. Stephanie also attended Coastal Zone'09 in Boston the week of July 19. In addition to visiting with all the NOAA and Sea Grant employees in attendance, Stephanie gave a presentation entitled "Nutrient Trading in the Chesapeake Bay: Legal Issues and Challenges." Her PowerPoint slides can be viewed at <http://www.olemiss.edu/orgs/SGLC/National/CZ09%20Presentation.pdf>. Stephanie also attended a training organized by the Sea Grant Sustainable Coastal Community Development extension group and the group's business meeting.

Terra completed an advisory request for the U.S Coral Reef Task Force regarding federal protection available to protect coral reef ecosystems. She continues to edit *The SandBar*, the *Ocean and Coastal Case Alert*, and submissions for InfoHub. Terra also attended Coastal Zone'09 in Boston and the training organized by the Sea Grant Sustainable Coastal Community Development extension group and the group's business meeting.

Louisiana Sea Grant Law and Policy Program

As one of the two lead contacts for Louisiana Sea Grant's Resiliency and Climate Change initiatives, Melissa Daigle and other members of La. Sea Grant participated in NOAA's online climate change training presentation entitled "Climate Change: Fitting the Pieces Together" (available online at http://www.meted.ucar.edu/bmet_training.php). The program offers videos and quizzes and provides a wealth of information regarding the science behind and impact of climate change and sea-level rise. Additionally, Melissa and other Sea Grant employees watched the five-part documentary *Building a Resilient Coast: Maine Confronts Climate Change* produced by Oregon Sea Grant (available online at <http://www.seagrants.umaine.edu/extension/coastal-community-resilience>). The documentary focuses on coastal communities that are facing sea-level rise, coastal flooding, and erosion and covers the steps they are taking now to reduce damages in the future and make the communities more resilient. As the Louisiana resiliency contact person, Melissa sat in on a conference call led by Tracie Sempier (Mississippi-Alabama Sea Grant Consortium) regarding the Coastal Resilience Index created by Dr. Rodney Emmer. The coastal resiliency index is a self-assessment tool that community leaders can use to predict if their community will reach and maintain an acceptable level of functioning and structure after a disaster. While Dr. Emmer was able only to see the project through the draft stage, Tracie and others are excited to continue the work and are hoping to begin running tests with the revised draft soon.

On July 15, a \$300,000 grant was presented to LSU by the America's WETLAND Foundation and Chevron. The grant was used to create the LSU Coastal Sustainability Studio, a project in which both Jim Wilkins and Melissa Daigle are involved. The studio will select a project in the coastal zone area. The team will then use a multi-disciplinary approach to come up with a response to the problem that bridges the state's coastal restoration and protection master plan on wetland loss reduction and hurricane protection with the Louisiana Speaks plan, which focuses on the redevelopment of communities. The studio features faculty from engineering, landscape architecture, law, and hurricane research. Jim and Melissa attended the most recent studio meeting on July 22, where potential projects were discussed.

Finally, we would like to welcome our newest law clerk, Seth Bagwell, from LSU's Law School. Seth is currently working on two projects. The first is a look into the legal implications related to placing a wind energy farm in Louisiana's coastal area, specifically liability issues should the farm cause damage, whether structural or environmental, to other property as a result of it becoming wind-blown debris during a hurricane or other severe storm. The second project is an examination of the current coastal zone boundary in Louisiana. The current coastal zone boundary was created in 1978 and has never been updated, even though the coast has seen many changes in the last thirty-one years. The areas of inclusion, or exclusion, from the coastal zone are confusing and even illogical in many locations across the state. Senate Concurrent Resolution 60 calls for an evaluation of the coastal zone using a science-based methodology. The Department of Natural Resources has asked for input from the SGLLP on the coastal boundary. Currently, Seth is examining how other states have delineated their coastal zone boundaries and comparing

them to the current Louisiana system, as well as looking at other boundaries set in the state, such as the boundary used in the recently released draft LACPR report.

Mississippi-Alabama Sea Grant Legal Program

In July, Mississippi-Alabama Sea Grant continued the disaster preparedness project launched in June. MASGLP will be working with Orange Beach, Alabama. We are currently seeking a Mississippi coastal city to participate in the project at the local level. MASGLP anticipates creating a web-based project at the state level for both Mississippi and Alabama and is currently focused on statewide issues.

Niki Pace completed an advisory request regarding use of wetland buffers for the City of Ocean Springs, Miss. and compiled research related to shellfish aquaculture permitting in Alabama. This project will likely result in a permitting guide for Alabama. Niki also began preliminary planning for an upcoming CLE event in October. Throughout July, Niki continued work on the August edition of *Water Log*.

North Carolina Coastal Resources Law, Planning and Policy Center

In July 2009, Center co-director Lisa Schiavinato traveled to Boston, MA to attend the Coastal Zone '09. At the conference, she presented on "North Carolina's Emerging Ocean Policy Challenges." As the Southeast regional representative and Secretary-Treasurer of the Sustainable Coastal Community Development network, Schiavinato attend the group's annual business meeting while at Coastal Zone. Also at Coastal Zone, she assisted in the planning of the annual members meeting of The Coastal Society and attended as the organization's president-elect.

The Center completed an article for the upcoming issue of its *Legal Tides* newsletter. The article will focus on the contentious use of sandbags by homeowners to slow the impacts of erosion along the North Carolina coast and explore the complex legal and policy issues that spring forth from long-term use of what state regulations intend to be at temporary erosion control measure.

Ms. Schiavinato partnered with East Carolina University's Coastal Resources Management PhD program to develop an ocean and coastal law course to include as part of its curriculum. Schiavinato and the director of the PhD program completed a draft proposal in July, which will be put forth to ECU administration this fall.

Center research law fellows Jackson Mabry and Emily Scarborough were engaged in conducting interviews with coastal resource managers and state and local officials on emerging policy concerns for NC's estuarine shoreline. In addition, Mabry is conducting research on NC's water allocation issues and LEED certification as part of the Center's ongoing community assistance program for local officials.

Rhode Island Sea Grant Legal Program

Sea Grant Law Fellow instrumental in Right-of-Way Designations

Sea Grant Law Fellow Steven Surdut, in coordination with the Warren Harbor Management Commission, has undertaken legal research to document rights-of-way (ROWs) so they can be formally recognized by the state's coastal zone management agency, RI Coastal Resources Management Council. Rhode Island, as codified in Article 1, Section 17 of the Rhode Island Constitution, is one of the few states in which citizens have access to the shore as long as the land is below the mean high tide mark. Due to shoreline construction and a lack of upkeep on the ROW pathways, citizens are having trouble utilizing the waterfront for fishing, clamming, and boating.

Town records on the ROWs in Warren, RI have been lost and CRMC and the town recognize overlapping and differing sites at ROWs. To re-certify these ROWs, Surdut submitted files containing the town clerk's digitized town maps, results of title searches, and historical uses of proposed ROWs to CRMC for its designation approval. The fruits of Surdut's labor will be seen at the next Commission meeting, scheduled for August 4th, when members of the Commission will formally map out which additional sites should be inducted.

For more information, see: <http://www.eastbayri.com/detail/130309.html>.