



Legal Programs Newsletter

Programmatic Updates

June , 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

In June, the Law Center conducted research for Minnesota Sea Grant on its proposal to conduct a symposium entitled *Genetic Biocontrol of Invasive Fish and Mussels* in June 2010. Minnesota Sea Grant wanted to know if any states (especially Great Lakes states) have laws that prohibit the release of genetically modified fish or mussels into public waters. The advisory request memo is available at <http://www.olemiss.edu/orgs/SGLC/National/GMO%20Request.pdf> .

Stephanie Showalter and Justin Manley, who works for Battelle, submitted a proposal to present a joint paper at OCEANS 2009, which will be held in Biloxi, Mississippi in October. The working title is “Legal and Engineering Challenges to Developing Technical Standards for Unmanned Maritime Vehicles.” Stephanie and Justin will be working to compile a panel of legal, engineering, and technical experts to discuss the development of international technical standards for UMVs.

Stephanie Showalter spent the week of June 22 teaching the “Law of the Sea” component of the U.S. Navy’s Fleet Survey Team’s 2009 International Hydrographic Management and Engineering Program. Showalter provided information to nine naval officers from five countries on the U.N. Convention on the Law of the Sea, the delimitation of maritime boundaries, the liability of chartmakers, and environmental impact studies.

In addition, Stephanie was asked to submit two entries for the forthcoming “Encyclopedia for American Environmental History.” Her entries discussed the environmental history of U.S. commercial fisheries and the oceans.

Research Counsel Terra Bowling edited *SandBar* 8.2 and Case Alert for June. She is currently completing a report on federal protection for coral reef ecosystems for the U.S. Coral Reef Task Force.

Louisiana Sea Grant Law and Policy Program

The Louisiana Sea Grant Law and Policy Program is happy to announce that a SGLPP research project by Cole Garrett, a former legal research assistant, was awarded first place in the Louisiana State Bar Association writing contest. The paper, entitled “‘Taking’ Responsibility for Land Use Regulation,” examines the evolution of the federal Takings Doctrine in order to determine what options are available to Louisiana state and local governments to maximize hazard mitigation and risk reduction without effectuating a compensable taking. In the end, Cole argues that the best method currently available to state and local governments to achieve land use planning while avoiding inverse condemnation or regulatory takings is to proceed with the goal of “No Adverse Impact.” If anyone is interested in reading the paper, please contact Legal Coordinator Melissa Daigle (mtrosc2@tigers.lsu.edu).

In addition to assisting with the creation of a form lease agreement for ice units used by the fishing industry in the coastal area, SGLPP research assistant Beaux Jones is currently researching two projects after SGLPP constituents contacted us with their concerns. The first project involves research into a proposed subdivision with a boat slip that the landowners are seeking to build in the near future. Members of a neighboring subdivision are concerned that the proposed boat slip, which will be off of the Gulf Intracoastal Waterway, will increase the risk of flooding in the subdivision. Beaux is examining the ability of the local planning commission and the parish council to prevent the boat slip from being included in the development plan.

The second project involves research into oyster leases within Wildlife Management Areas (WMA). The Oyster Task Force contacted SGLPP because of concerns over the non-renewal of an oyster lease within a WMA. Their questions include: is the Louisiana Department of Wildlife and Fisheries able to not renew an oyster lease; if they choose not to renew, can the landowner issue a lease; and if the water bottoms are privately owned, who, if anyone, has authority to collect the oysters in that area?

From June 8 – 12, Melissa Daigle attended the Association of State Floodplain Managers conference in Orlando, Florida. The conference offered a track specifically designated to coastal issues. The sessions included topics on climate change in floodplain decisions, coastal climate change, coastal risk and resilience, and coastal mitigation.

Finally, the latest version of our Louisiana Coastal Law email update was sent out to those on our mailing list June 4. The update is available online at <http://www.lsu.edu/slegal/pubs/updates.htm>. The email update is sent out four times a year. If you are not subscribed to our mailing list, you may do so by sending an email to Melissa Daigle at mtrosc2@tigers.lsu.edu.

Mississippi-Alabama Sea Grant Legal Program

The Mississippi-Alabama Sea Grant Legal Program is pleased to welcome our newest Research Counsel, Niki Pace. Niki joined the program on June 18 taking the place of Tim Mulvaney who has moved on to a temporary teaching position at Texas Wesleyan School of Law. Niki recently received her LLM from Lewis & Clark and brings to the Legal Program over five years of legal work experience in Mississippi.

On June 2, Stephanie Showalter, the Legal Program’s Director, attended a meeting of the Alabama Waterfront Access Study Committee. During the meeting, Stephanie provided an overview of the services provided by the Legal Program and information on common legal issues with respect to preservation of working waterfronts. As the Committee moves forward with its recommendations to the Alabama Legislature, it is anticipated that the Legal Program will provide more detailed information on such issues as historic preservation laws and tax incentives.

On June 26, the Legal Program launched its disaster preparedness project by holding a Continuing Legal Education course on the subject in Moss Point, Mississippi. During the pilot phases of the project, disaster handbooks will be prepared for two local governments utilizing the American Bar Association’s *A Checklist for State and Local Government Attorneys to Prepare for Possible Disasters*. The checklist identifies issues that will likely emerge from emergency situations, such as hurricanes and other natural disasters. We anticipate that the Legal Program will be working with Gautier, Mississippi and possibly Orange Beach, Alabama to complete the checklist, providing research support as needed to address any identified problems or legal gaps.

Finally, in June, Stephanie Showalter and Niki Pace meet with the Ocean Springs, Mississippi city planner about implementing a wetland buffer ordinance.

North Carolina Coastal Resources Law, Planning and Policy Center

In June 2009, the Center formally presented its final report of the ocean policy project, “Developing a Management Strategy for North Carolina’s Coastal Ocean,” to the N.C. Coastal Resources Commission (CRC). The CRC received the document and immediately assigned a subcommittee to further study the report’s recommendations to determine both immediate and long-term actions the commission should take. An electronic version of the report and a press release are available at the Center’s website at <http://www.nccoastallaw.org>.

The Center also finalized its chapter for the wind energy feasibility study conducted by the University of North Carolina at Chapel Hill. The Center’s chapter focuses on the statutory and regulatory obstacles to wind energy development in N.C. estuarine and coastal waters and provides a summary of the newly finalized MMS regulatory framework for leasing submerged lands on the OCS for renewable energy projects and its potential impact on N.C. This study was commissioned by the N.C. General Assembly, and the Center assisted in the editing and preparation of the 400-page report. The report has been delivered to the General Assembly.

The Center has begun planning for its annual Continuing Legal Education Program called “Shape of the Coast”, which will be held this October in the city of New Bern. The program’s content has been decided and speakers have been confirmed. In conjunction with the “Shape of the Coast” program will be a one-day meeting between the Center co-directors and its advisory board.

Center co-director Lisa Schiavinato has been tapped to assist in the development of a law and policy course for East Carolina University’s Coastal Resources Management PhD program. Schiavinato lectures on the application of law and policy to coastal resource management to the CRM program’s students each fall, and the development of a formal course is another step forward in the creation of a well-round curriculum for this graduate program.

As president-elect of the professional organization The Coastal Society and as co-chair of its 22nd conference, Schiavinato has put together a planning committee to develop content for this event. A couple of others in the Sea Grant community have volunteered for the committee. Planning of the conference began in the month of June and will continue up to the conference itself, which will take place in Wilmington in June 2010.

Rhode Island Sea Grant Legal Program

Marine Affairs Institute staff present at EnergyOcean 2009 Conference

Rockport, Maine was the venue for EnergyOcean 2009, “the world’s leading conference and exhibition focused on renewable ocean energy.” Megan Higgins, Research Counsel for the Rhode Island Sea Grant Legal Program, presented her article entitled *Is Marine Renewable Energy a Viable Industry in the United States? Lessons learned from the 7th Marine Law Symposium*. Higgins introduced ocean renewable energy technologies and reviewed the current challenges (and potential solutions) for the siting, regulation, and implementation of these technologies in the U.S. as identified by the Symposium participants.

Marine Affairs Awarded Grant to Support Renewable Energy in Rhode Island

The Marine Affairs Institute is part of a successful grant awarded to communities in the East Bay region of Rhode Island. The East Bay Energy Consortium, consisting of several communities in the East Bay (including Bristol, where the Marine Affairs Institute is located) received a grant from the Renewable Energy Fund, funded in conjunction with the Rhode Island Foundation and Rhode Island Economic Development Corporation to conduct a comprehensive study to determine the feasibility of multiple terrestrial and marine sites for wind turbines within the East Bay. The Marine Affairs Institute will provide legal research and analysis to investigate the existing regulatory framework to site terrestrial and/or nearshore marine wind energy facilities in Rhode Island, and the legal issues posed by nine different municipalities desiring to act as one entity for purposes of siting and utilizing wind energy facilities. The study is anticipated to be completed in 2010.

Article to appear in the *Energy Policy* journal

An article co-authored by Research Counsel Megan Higgins will appear in *Energy Policy*. Megan’s article *Offshore wind energy development in the exclusive economic zone: Legal and policy supports and impediments in Germany and the U.S.* assesses the role of coastal nations’ domestic legal and policy frameworks in the siting of offshore renewable energy facilities in areas under federal jurisdiction, focusing on Germany and the United States. Based on a review of legal and policy documents, laws and regulations, academic literature, and interviews, this research identifies and compares factors that figure most prominently for the development of offshore renewable energy policies. Comparisons are organized under four categories: the regulatory framework, the public’s role in siting, targeted economic mechanisms, and indirect mechanisms. The paper concludes with observations about prominent supports and impediments and suggestions for further research.

For more information: [Science Direct](#)

Higgins will present this article, along with coauthor Dr. Michelle Portman, at Coastal Zone '09 in Boston, Massachusetts on Monday, July 20, 2009. For more information on Coastal Zone '09: Revolutionary Times: Catching the Wave of Change, see: <http://www.csc.noaa.gov/cz/>.