

Legal Programs Newsletter

Programmatic Updates

May, 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

May was strategic planning month at the National Sea Grant Law Center. At the request of the National Sea Grant Office, the National Sea Grant Law Center submitted an alignment memo similar to those submitted by the individual Sea Grant programs, detailing how the Law Center's 2010 – 2013 strategic plan aligns with the national plan. Upon approval by NSGO, the plan will be made available on the Law Center's website.

Also in May, the Law Center revised and updated an Advisory Request for the NOAA Marine Debris Program. The revised memo contains additional information on derelict fishing gear requirements in the North Carolina blue crab pot fishery and the Alaska crab pot fisheries. The revised memo is available at <http://www.olemiss.edu/orgs/SGLC/National/marinedebris.pdf>. Law Center attorneys are currently working on a number of advisory requests, including memos on state abandoned vessel laws and federal laws protecting coral reefs.

Louisiana Sea Grant Law and Policy Program

One of the Louisiana Sea Grant Law and Policy Program's law clerks, Cole Garrett, recently completed a research paper on the West Bay Diversion Canal, which may be facing closure due to financial strain on Coastal Wetlands Planning, Protection, and Restoration Act (CWPPRA) funds. Under the Cost-Sharing Agreement between the Corps of Engineers and CWPPRA, funds were to be used to dredge any shoal material in a nearby anchorage caused by the diversion project. In the paper, Cole examines the legal impact of the agreement on diversion projects as a coastal restoration tool.

Another law clerk, Jessica Orgeron, completed two research papers. The first deals with what oil and gas companies can do voluntarily to restore coastal wetlands and what legal steps could be taken if the state decided to step in and demand some form of action. Jessica's second paper is a short summary of the Louisiana Coastal Protection and Restoration (LACPR) report, which has not been warmly received in the press. The paper is timely as the report opens for public comment on June 1.

Jessica will be submitting her paper on the oil industry for publication in a law review. Her other paper and Cole's paper on the West Bay Diversion project should be published in the Program's next Louisiana Coastal Law (LCL) update, which should be available in the next month. Congratulations to both Cole and Jessica, who graduated from LSU Law on May 28, 2009.

The Program's newest law clerk, Beaux Jones, has finished a memorandum examining the changes in Louisiana clam legislation since the passage of the original statutes in 1979. He is currently working on an article about the pending Mississippi River-Gulf Outlet decision, as well as developing contractual language that oyster leaseholders will be able to use to negotiate access to their leased land.

Finally, Legal Coordinator Melissa Daigle attended a Crab Task Force meeting on May 20, 2009, where the Louisiana Department of Wildlife and Fisheries cooperative research program and the upcoming Crab Education Day were discussed. Summaries of the 2008-2009 Louisiana shrimp and oyster laws have been posted to the Program's website. They are available at <http://www.lsu.edu/sglegal/pubs/other.htm>.

Mississippi-Alabama Sea Grant Legal Program

In collaboration with faculty and staff at the law schools of the University of Florida and Louisiana State University, as well as the Harte Research Institute for Gulf of Mexico Studies at Texas A & M University – Corpus Christi, Timothy Mulvaney submitted a full proposal in a federal grant competition to support research on the implications of takings jurisprudence on innovative planning for sea level rise in the Gulf of Mexico. He also edited and contributed to the latest edition of the Legal Program's quarterly publication, *Water Log*, which includes articles on an important appellate decision on exactions in Florida, the Mississippi Supreme Court's affirmance of a county's determination to rezone coastal property, and an overview of the ongoing takings litigation involving the Mississippi River Gulf Outlet. Mulvaney recently accepted a visiting professorship at Texas Wesleyan University School of Law for the coming academic year, where he will be teaching Property and likely either an environmental, land use or climate change seminar. Niki Pace, a native Mississippian and a recent graduate from Lewis & Clark Law School's LLM program, will join the Legal Program in late June as Timothy Mulvaney's replacement.

North Carolina Coastal Resources Law, Planning and Policy Center

In May 2009, Center co-directors Lisa Schiavinato and Joseph Kalo began a new project, with the assistance of their new research law fellows, on emerging issues for North Carolina's "inner coast." This project will be similar to the ocean policy study, in that it will identify emerging issues and suggest solutions, but the "inner coast" study will focus instead on the estuarine side of the coast.

Schiavinato and Kalo continued to work with the editorial board of the *North Carolina Law Review* to edit their upcoming law review article on legal and policy issues regarding wind energy development in North Carolina.

Schiavinato attended a "Coastal Growth Strategies" workshop in Wilmington, NC. This annual workshop was co-hosted by N.C. Sea Grant and the N.C. Coastal Federation and featured speakers on issues such as low-impact development and water resources. The course provided the audience, composed predominantly of local officials, with continuing education on coastal issues. Schiavinato also attended another meeting of the N.C. Wind Working Group and provided assistance to the group and to the N.C. Department of Environment and Natural Resources to amend HB 809 / SB 1089 regarding wind energy development throughout the State.

Schiavinato, as president-elect of The Coastal Society (TCS), attended the organization's Board of Directors retreat. At this retreat, the Board created its work plan for the next two years. During the retreat, she and NC Sea Grant's Spencer Rogers hosted a tour of beach areas around the City of Wilmington to show the Board examples of NC's diverse coastal issues. Schiavinato, who also will serve as co-chair for the 22nd international conference of TCS (to be held in Wilmington, N.C. in June 2010), worked with TCS President Jeff Benoit and the other TCS officers to finalize planning for a "Coastal Issues" luncheon. This event was held on June 1 in Wilmington and brought together coastal management professionals from a variety of sectors to engage them in conference planning efforts and receive their input on potential conference topics.

Rhode Island Sea Grant Legal Program

Congratulations, Graduates!

Lauren Engel, Gwen Hancock, and Alicia Schaffner received their Juris Doctor degrees from Roger Williams University School of Law on May 22, 2009. All three graduates are enrolled in the JD/MMA program within the School of Law and in conjunction with the University of Rhode Island's Department of Marine Affairs. The program allows students to complete the Juris Doctor and Master of Marine Affairs degrees by transferring credits between the institutions to compress the completion of the two degrees to 3 ½ years. Each will take a state bar exam (or exams!) this summer and finish her MMA degree at the conclusion of the fall semester. Well done ladies!

Marine Affairs Summer Courses

In addition to a number of elective courses offered by the School of Law, two courses focusing on ocean and coastal law are being taught by Adjunct Professors associated with the Marine Affairs Institute, Harlan Doliner (Partner at Pepe & Hazard, LLP specializing in maritime security/environment, transaction risk evaluation and support, facility siting, regulatory compliance, and strategic environmental management) and Susan Farady (Director of Marine Affairs Institute/RI Sea Grant Legal Program).

Harlan Doliner's Maritime Security Law will provide students with an opportunity to learn principles of U.S. and international maritime security law in a context of simulated client counseling by addressing the law of maritime security in the United States in the context of a post-September 11 global economy. Environmental and maritime security risk management in the practical implementation of legal principles will be considered while examining the International Ship & Port Security Code, the Maritime Transportation Security Act of 2002, and traditional statutory and regulatory schemes such as port state control and the Safety of Life at Sea Convention.

Susan Farady's Ocean Management Policy and Reform will explore the basis for contemplated and ongoing changes to ocean governance using ongoing efforts in Rhode Island, Massachusetts and other states as real-time examples, and the status of current governance reform efforts in the U.S. The historical and political background for ocean management reform, the findings of federal and state bodies regarding needed changes to ocean governance, and the status of legal, management and policy reform efforts will be covered. As ocean resource conditions have deteriorated and trends in ocean use changed, it has become clear that the existing legal and policy regime is inadequate to respond to current and future management challenges.

Sea Grant Law Fellow Projects: Summer 2009

Four Sea Grant Law Fellows have been hired for the summer to undertake a variety of research requests ranging from regulatory guidance for hydrokinetic projects to an analysis of port tariffs in greater New England. For more information on the Fellows, types of projects completed by former fellows, and how to request a law student researcher (Advisory Service Guidelines and Advisory Service Request Form) click on: <http://law.rwu.edu/sites/marineaffairs/seagrant/>.

- Pacific Energy Ventures, based in Portland, OR, is a consulting firm working on the publication of a "Siting Methodologies Handbook for Advanced Water Power Projects." The student assigned to this project will provide research and analysis of federal, state, and local policies, and regulatory requirements for siting hydrokinetic projects to assist in development of the Siting Methodologies Handbook.
- The URI Cooperative Extension, URI Nonpoint Education for Municipal Officials (RI NEMO), and Save The Bay have requested a Law Fellow to complete its publication entitled "A Local Official's Guide to Regulating Land Use in Wetland Buffers and High Water Tables to Protect Water Quality." The Law Fellow will be working with Save The Bay's Legal Counsel and Town/City Planners to research existing and potential regulations to manage land use in wetland buffers and marginal sites to protect the quality of drinking water supplies, coastal waters, and other water resources.
- Another Law Fellow will work with the Quonset Development Corporation's Legal Counsel to provide a comparative analysis of the Port of Davisville tariff process. The Law Fellow will research the legal process of the RI Administrative Procedure Act for updating the Port of Davisville tariff, including other public port tariffs and recommendations for improving the Port of Davisville's process, policies and procedures that other public ports follow when publishing their tariff rules, and recommendations for improving the process for Davisville.
- More coordination in the marine renewable energy project licensing process is necessary for projects to go forward in the United States. Organizations like the Ocean Renewable Energy Coalition are working toward that goal, among others, for its member organizations. Because a joint renewables office or task force is not likely at this time, a Law Fellow has been requested to explore the viability of using Memorandums of Understanding to facilitate agency coordination.

Fisheries and the Bench

Fisheries and the Bench, a workshop that examined the latest developments in fisheries law, policy and management, was held on Tuesday, May 19, 2009. Funded in part by the National Sea Grant Law Center and by the Sand County Foundation, the workshop brought together judges, fisheries managers and regulators, practitioners, and members of academia to obtain a keener understanding of the principles of fisheries law and the establishment of a better balance between the regulatory and economic interests involved.

The Program's curriculum and presenters combined fundamental legal principles in the context of U.S. fisheries management (including issues related to renewable energy and fisheries) with analyses of case studies and their relevance to common problems and disputes. The key topics addressed, each by lawyers and other experts in fisheries management, were: history of fisheries law; analysis of emerging issues including property rights, public trust doctrine, and status of federal legislation and regulations; management and science; and innovations (e.g., sector management) to move forward with effective fisheries management practices and consequences.

The kick-off to the event was a "regional and sustainable dinner" designed by the host of the dinner Sai Viswanath, Chef/Owner of DeWolf Tavern Restaurant, and Cathy Roheim, Director of URI's Sustainable Seafood Initiative. A concerted effort was made to design a menu from either regional and/or sustainable sources. For example, the seafood was chosen according to the *Guide to Ocean Friendly Seafood* which considers a variety of indicators such as stock, habitat, other affected species (bycatch), catch method, and landing rates to rank seafood to raise awareness of consumers by discovering the connection between a healthy ocean, fishing, and seafood, thus increasing demand for sustainable seafood. The meat chosen was from Wolfe's Neck Farm, a family farm committed to conservation and open space, which uses natural agricultural methods. Local and organic produce was served. Last but not least, the beverage choices were from local breweries and/or sustainably farmed vineyards.

*Jamy Buchanan Madeja, Esq.,
Buchanan & Associates, and Former General Counsel
for Environmental Affairs to Massachusetts Gov. Weld*



Peter Shelley, Esq., Vice President & Massachusetts Advocacy Center Director, CLF Ventures



Group: (L to R) The Hon. Gary Nickerson, The Hon. Edward Harrington, The Hon. Philip Rapoza, Susan Farady, Megan Higgins, The Hon. William Smith, and The Hon. David Mills

Center for Island Climate Adaptations and Policy (Hawaii)

In April, University of Hawaii Sea Grant College Program's Center for Island Climate Adaptation and Policy (ICAP) published its first white paper, entitled "Shoreline Impacts, Setback Policy & Sea Level Rise." ICAP prepared the paper at the request of state Senator Shan Tsutsui, whose office sought a technical evaluation of state Senate Bill 468, relating to shoreline setbacks and the impacts of rising sea levels. A full copy of the white paper can be found online at <http://www.sceest.hawaii.edu/SEAGRANT/communication/communication>.