



Legal Programs Newsletter

Programmatic Updates

January, 2009

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WELCOME

Happy New Year! If it is any comfort to those dealing with ice and snow this morning, I had to drive through freezing rain yesterday to get to my office in Oxford, Mississippi! Oh, the joys of winter!

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 me at sshowalt@olemiss.edu or by phone at (662) 915-7775.

National Sea Grant Law Center

The pace is definitely picking up here at the Law Center now that classes are back in session. Earlier this month, the Law Center distributed copies of our 2008 Annual Report to the individual Sea Grant programs. If you haven't seen it and would like more information about the advisory requests we filled last year and the results of the 2007 grant competition, the report is available on-line at http://www.olemiss.edu/orgs/SGLC/Annual_Report_2008.pdf.

Planning continues for the Sea Grant Law and Policy Journal's March 24-25, 2009 Symposium entitled "Water Quantity: Ongoing Problems and Emerging Solutions." The Symposium, which will be held in Oxford, Mississippi, opening with a dinner and keynote address by Alan Cameron, an Oxford attorney representing the state of Mississippi in its lawsuit against the City of Memphis for allegedly misappropriating water from an underground aquifer. On March 25, six speakers from across the country will address legal and policy issues related to water quantity, including the new Great Lakes Compact, the Georgia drought, and local government planning efforts. The agenda and registration form will be circulated next week. For additional information, please contact Stephanie Showalter.

The second issue of the Law and Policy Journal is almost ready for posting to the web. This issue features five articles authored by law students who wrote on a variety of topics, including the constitutionality of the federal fishery management councils, the feasibility of NMFS designation of open ocean waters as critical habitat under the Endangered Species Act, and the U.S. ratification of MARPOL Annex VI. The articles will be available on-line at <http://www.olemiss.edu/orgs/SGLC/National/SGLPJ/SGLPJ.htm>.

The spring semester is always busy for Stephanie who teaches a three-credit ocean and coastal law course at the University of Mississippi School of Law and one-credit Law and Policy Course for Hydrographers at the University of Southern Mississippi. Before classes started, Stephanie had the honor of traveling to chilly Madison, Wisconsin to serve on Wisconsin Sea Grant's preproposal review panel.

In December, Terra Bowling edited the final issue of the *Sea Grant Law and Policy Digest*. In the future, the Law Center will work with the Harte Research Institute to present summaries of recently published research in the fields of ocean and coastal law and policy on the GulfBase web site, <http://www.gulfbase.org>. The web site hosts the InfoHub search engine, which contains summaries of articles on the laws, science, and socioeconomic issues relevant to management and use of the Gulf of Mexico. Terra also edited *SandBar* 7.4 and Case Alerts for December and January. She is completing a report on royalties charged by states for the use of submerged lands and is researching offshore wind energy permitting in the United States.

Mississippi-Alabama Sea Grant Legal Program

Tim Mulvaney recently made a presentation entitled "Coastal Land Trusts and the Law" as part of an Auburn University Marine Extension & Research Center workshop in Mobile, Alabama. In December, he attended a logic model training workshop in Biloxi, Mississippi.

Tim continues writing and editing MS-AL Sea Grant's quarterly publication, *Water Log*. The forthcoming edition of *Water Log* includes articles on an Eleventh Circuit decision on the Clean Water Act, a Fifth Circuit ruling on third party liability for erroneous pre-Katrina flood-zone designation, and a Florida state court holding addressing environmental standing.

Tim's current research focuses on constitutional takings jurisprudence. This semester, Tim is teaching a course in land use law at the University of Mississippi School of Law and assisting Stephanie Showalter in teaching Law and Policy for Hydrographers at the University of Southern Mississippi. He also is serving on a Coastal Storms Program grant proposal review panel.

NC Coastal Resources Law, Planning and Policy Center

In December 2008, Center co-director Lisa Schiavinato was elected president-elect of The Coastal Society, a nonprofit professional organization for those who work in the coastal management field. Schiavinato began her tenure as president-elect on January 1, 2009 and will begin her tenure as president on January 1, 2011. In December, Schiavinato completed her work as a member of the board of directors. In addition to her duties as president-elect, she will continue her role as conference co-chair for the organization's 2010 conference.

Schiavinato also was invited to join the NC Environmental Management Commission's (EMC) technical advisory group (TAG) on wind energy. The EMC is working to develop recommendations for evaluating and regulating renewable energy technologies. To accomplish this goal, the EMC formed a renewable energy committee (REC), which is currently focusing on legislative recommendations for wind energy facility permitting. The TAG will assist the REC to define the criteria and standards necessary and useful to best ensure that wind energy development is consistent with protection of the environment, health and safety, and cultural resources of the State.

Schiavinato joined a RFP review committee for Maine Sea Grant. Maine Sea Grant has been awarded funds from the National Sea Grant Law Center to promote as a national model the "legal tools for coastal access" web site they developed. The proposals for the RFP will define how programs will use the funding to adopt the model site for application in their own states.

Rhode Island Sea Grant Legal Program

Nick Battista: Knauss Fellow in Representative Chellie Pingree's Office

Nick Battista '08, a Knauss Fellow, was recently assigned his fellowship as Legislative Assistant for Representative Chellie Pingree, the newly elected congresswoman from Maine. He will primarily be working on ocean and coastal issues, as well as issues in the area of environmental, natural resources, and land management. In addition, Nick will be contributing to research in other areas such as energy, tax, and judicial issues. Most of his day will be spent analyzing legislation, talking to constituents, and helping the Congresswoman develop policy. This placement is particularly exciting because Congresswoman Pingree lives on an island 12 miles off the coast of Maine, attended College of the Atlantic, and thoroughly understands both the issues themselves and their importance. All of this work leaves little time for one of the most difficult parts of the job – developing a broad and in-depth knowledge of Maine's coastal delicacies. Thus far, this has consisted of sampling lobster stew, smoked Maine shrimp, and raw oysters grown near the Congresswoman's home on North Haven.

Ocean SAMP update

RWU SOL/RI Sea Grant Legal Program are participating on the Legal Task Force in order to determine the legal and policy issues to be undertaken for completion of the Ocean SAMP. Other participants on the Task Force include Brian Goldman, Coastal Resources Management Council (Chair); Wendy Waller, Save the Bay; Cynthia Giles and Jerry Elmer, Conservation Law Foundation; and Dennis Esposito, Adler, Pollock & Sheehan. The legal research undertaken by RWU SOL/RISGLP for the Ocean SAMP is primarily focusing on state and federal consistency and the requirements of conducting an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). The Task Force is instrumental in identifying the legal issues related to the siting of an offshore renewable energy project.

URI and RWU SOL Faculty Dinner

Dr. Richard Pollnac presented research he and several of his graduate students (Sarah Smith and Azure Dee Westwood) have been conducting as a part of a project for NOAA Fisheries. The research involved using the techniques of numerical taxonomy to analyze a social science data base including both social (census) and fishery data from 1835 communities from North Carolina north to the Canadian border. The purpose was to group the communities into smaller clusters of like communities (e.g., develop a taxonomy of coastal communities that land fish commercially). It is expected that these smaller clusters can then be used for sampling purposes when information has to be collected to conduct social impact analysis for fishery management plans. He also presented the results of "ground-truthing" this taxonomy of coastal communities. This ground-truthing involved visiting a sample of the communities and collecting data to determine if the clustering technique actually resulted in sub-groupings that are different, both qualitatively and quantitatively, in terms of their social and fishery characteristics. The results indicate that the numerical taxonomy techniques did in fact result in a useful classification of coastal communities.

Louisiana Sea Grant Legal Program

The most recent edition of the Louisiana Coastal Law newsletter was published in November. Articles in this edition covered bills passed during the 2008 Regular Legislative Session and the 2008 1st and 2nd Extraordinary Sessions that affect coastal resource use and conservation, as well as a brief overview of the Guidebook. On December 8, members of Louisiana Sea Grant, including Law and Policy Director Jim Wilkins and Legal Coordinator Melissa Daigle, conducted a workshop in Lake Charles on the Louisiana Coastal Hazard Mitigation Guidebook. The workshop provided an overview of the Guidebook and allowed community members to ask questions and voice concerns related to hazard mitigation. Melissa Daigle attended the Louisiana Crab Task Force meeting on January 2, and the Louisiana Wild Caught Crawfish Task Force meeting on January 28, where she provided legal assistance to members of both task forces. Members of the Law and Policy Program, including some of the law clerks, attended seminars during the Flood Protection & Ecosystem Restoration Professional Development Program, held January 22-23. Lastly, Sea Grant hosted a seminar and multiple small group discussions with Maxine Burkett, the Director of the recently established Island Climate Center in Hawaii, regarding her future plans for the center.