



Legal Programs Newsletter

Programmatic Updates

March 31, 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 me at sshowalt@olemiss.edu or by phone at (662) 915-7775.

National Sea Grant Law Center

The Law Center hosted its second annual Sea Grant Law and Policy Journal Symposium on March 24-25. This year's theme was "Water Quantity: Ongoing Problems and Emerging Solutions." The symposium provided attendees, many of whom were water managers from Mississippi agencies, with an opportunity to learn from the water quantity planning experiences of other states and regions. Twenty-nine individuals participated and the responses were overwhelmingly positive.

The symposium opened with a keynote address discussing the ongoing litigation between the State of Mississippi and the City of Memphis regarding water withdrawals from the Memphis Sands Aquifer. The second day included presentations on the Great Lakes compact, water supply planning in Chicago and Washington state, the incorporation of agricultural irrigation into Georgia's water planning process, a water dispute between North Carolina and South Carolina, and New Jersey's water management legislation for the Highlands Region. Papers based on the presentations will be published in the June 2009 issue of the Sea Grant Law and Policy Journal. PowerPoint presentations from the Symposium will soon be available on the *Journal's* website at <http://www.olemiss.edu/orgs/SGLC/National/SGLPJ/SGLPJ.htm>.

In addition, this month the Law Center has been working on a special issue of *The SandBar* on the topic of "Coastal Development." The issue will feature cases on coastal development issues, including public access and zoning. The Law Center also began its collaboration 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>. This project will replace one of the Law Center's on-line publications, the *Sea Grant Law and Policy Digest*.

Louisiana Sea Grant Law and Policy Program

The Louisiana Sea Grant Law & Policy Program (SGLPP) held three workshops on the Louisiana Coastal Hazard Mitigation Guidebook in coastal communities March 24-26. The workshops took place in Morgan City, located in St. Mary Parish; Houma, located in Terrebonne Parish; and Abbeville, located in Vermilion Parish. The workshops featured presentations by SGLPP Director Jim Wilkins, SGLPP Legal Coordinator Melissa Daigle, LSU AgCenter Extension Specialist and Louisiana Sea Grant Research Associate Maurice Wolcott, and Hawaii Sea Grant Faculty Member Dennis Hwang. The workshops, which covered issues ranging from storm surge modeling to legal issues surrounding land use planning, provided citizens and local government officials an opportunity to learn more about hazard mitigation through land use planning and better building practices. Additionally, members of the SGLPP staff were able to address questions and get ideas for fine-tuning future projects directly from its constituents. A similar workshop will also be given on April 1 in Baton Rouge. Other activities in March include publishing an update to the Louisiana Coastal Law Newsletter and participation in the Crab Task Force Meeting held on March 3.

Mississippi-Alabama Sea Grant Legal Program

Timothy Mulvaney is working with the Alabama Waterfront Access Study Committee, alongside MS-AL Sea Grant Director LaDon Swann, Jody Thompson of the Auburn University Marine Extension Center, and a variety of government officials, planners and members of the marina industry to address the degree of loss and potential loss of the diversity of uses along Alabama's coastal shores. He also is assisting Ms. Thompson with a grant proposal aimed at developing a coastal access tools database and website. Further, Timothy remains entrenched in his research on modern takings jurisprudence and its impact on adaptive management.

Timothy continues writing and editing MS-AL Sea Grant's quarterly publication, *Water Log*. This semester, he is teaching a course in Land Use Law at the University of Mississippi School of Law and assisting Stephanie Showalter in teaching a course entitled "Law and Policy for Hydrographers" at the University of Southern Mississippi.

The Legal Program is also pleased to announce its 2009 Summer Legal Intern, Bradley Hiatt. Bradley is a first-year law student at the University of Mississippi School of Law. Bradley has a B.A. in English, with a minor in Environmental Studies, from Southwestern University in Texas. We are excited to welcome him aboard.

North Carolina Coastal Resources Law, Planning and Policy Center

In March 2009, Center co-directors Lisa Schiavinato and Joseph Kalo and NC Division of Coastal Management staff held the final two of the four public meetings scheduled for the ocean policy study. The final two meetings were held in Raleigh and in Nags Head. The purpose of these meetings was to present the draft recommendations in the report to the public and give the public the opportunity to ask questions about the study and to comment on the recommendations in the draft report. After the public meetings period closed, the ocean policy steering committee (chaired by Schiavinato and Kalo) held its final meeting, where members discussed comments made during the public meetings and the changes that needed to be made to the draft report and then approved the recommendations that will be included in the final report. The final report will be available in early April and then formally presented to the NC Coastal Resources Commission during its spring meeting on April 29-30.

The Center submitted its final report of its law and policy analysis of wind energy siting in state coastal and estuarine waters and in federal waters to UNC General Administration. This report is part of a larger study on wind energy, in which the NC General Assembly directed and provided funding to the University of North Carolina to study the technical feasibility, law and policy issues and economic feasibility of wind energy siting and production in North Carolina's coastal and estuarine waters.

Schiavinato and Kalo submitted a draft of their law review article on wind energy to the *North Carolina Law Review*. The editing process will begin this summer, with the article's expected publication to be in the fall 2009 issue.

Schiavinato continued her participation on the wind energy technical advisory group (TAG) meeting in February. This group is charged with providing guidance to

the NC Environmental Review Commission (ERC) as it considers developing technical standards and permitting guidelines for wind energy projects in the State. As a result of the efforts of the TAG and ERC, House Bill 809 was introduced to the NC General Assembly in March. H.B. 809 establishes a permitting system for the siting of wind energy facilities in the coastal and mountain regions of the state.

Finally, the Center conducted interviews in March for its research fellowship program and is pleased to announce its research law fellows for the summer of 2009 – Jackson Mabry and Emily Scarborough. They will begin their fellowships in May, and we welcome them aboard.

Rhode Island Sea Grant Legal Program

John R. Brown Admiralty Moot Court Competition

Roger Williams University School of Law entered two teams in the Sixteenth Annual John R. Brown Admiralty Moot Court Competition, held in Charleston, S.C. this past weekend. One of the teams, consisting of 3Ls Brian Eisenhower and Ben Susman, secured the first win for RWU SOL with a split decision for the oral argument portion and a decisive Best Brief award. **Sea Grant Law Fellow Amanda Argentieri** contributed to the brief and shared the win with her team members. The team prepared intensely, under the guidance of Maritime Law expert Bob Falvey of Falvey Cargo Underwriting and Professor Jonathan Gutoff. **Susan Farady, Director** and **Megan Higgins, Research Counsel** of the RI Sea Grant Legal Program served as judges at moot court practices, asking the students tough questions regarding the availability of punitive damages under general maritime law for injuries suffered by a seaman while at sea. Brian and Ben beat the University of Richmond in the semis and LSU in the finals, with Brian receiving a perfect score from the federal judges on the final panel.

Global Marine Renewable Energy Conference (<http://www.globalmarinerenewable.com/>)

Commercialization and the New Renewable Energy Economy

Megan Higgins will be attending and presenting a poster at the second annual Global Marine Renewable Energy Conference, sponsored by the National Renewable Energy Laboratory, the Minerals Management Service, the Foundation for Ocean Renewables and the Ocean Renewable Energy Coalition. Experts, leaders, and innovators will give presentations on commercialization and the new renewable energy economy.

Megan will present the lessons learned from the 7th Marine Law Symposium: *A Viable Marine Renewable Energy Industry: Solutions to Legal, Economic, and Policy Challenges*. Given that the marine renewable energy industry in the United States faces many challenges, the Marine Law Symposium examined these challenges and identified possible solutions to help the industry become a viable part of our energy future. The poster will highlight the current status, lessons learned and future needs for issues such as environmental and social considerations, developing strategies for marine renewable energy regulation, integration (engineering, market and policy), and financing.

Ocean Special Area Management Plan (<http://seagrant.gso.uri.edu/oceansamp/>)

The RI Sea Grant Legal Program continues to be engaged in the Ocean Special Area Management Plan (SAMP) by providing legal analysis of the state and federal permitting process for marine renewable energy projects and how that analysis lends itself to the development of state policies and regulations for the SAMP. The SAMP will define use zones for Rhode Island's ocean waters through a research and planning process that integrates the best available science with open public input and involvement.

Megan Higgins will present the Legal Program's findings at an upcoming conference, entitled Rhode Island's Offshore Marine Ecosystem and the Potential Impacts of Alternative Energy Development. The conference will be held on Thursday, April 23, 2009 to convene scientists, government managers, community leaders, and the general public to discuss many of the issues targeted by the Ocean SAMP, including RI's offshore ecosystem and responses to development of offshore wind farms or other large projects. The event will feature talks and posters by scientists from Europe and North America. This 13th annual ecology conference is organized by the Rhode Island Natural History Survey and is being sponsored by the Rhode Island Ocean SAMP and the U.S. Fish & Wildlife Service. For more information, see: www.rinhs.org.

Center for Island Climate Adaptation and Policy (Hawai'i)

The University of Hawai'i Sea Grant College Program (UH Sea Grant) and its campus partners have established the inter-disciplinary Center for Island Climate Adaptation and Policy (ICAP). The Center's goal is to improve understanding and management of climate change impacts in Hawai'i and other island states worldwide by providing innovative research and real-world solutions in the areas of law, policy, and planning to island decision-makers in the public and private sectors. As a focal point for University of Hawai'i climate expertise, the Center will serve as a two-way conduit between the University and island communities to catalyze climate change adaptation and resiliency. For a more detailed overview, please see the attached flyer.

Associate Professor of Law Maxine Burkett is the inaugural director of ICAP. She returns to Hawai'i to direct the Center after three rewarding years at the University of Colorado Law School in Boulder. There, her research focus was in the area of climate justice – the intersection of climate science, law, policy, and impacts on vulnerable communities.

Other Sea Grant-Funded Legal Activities

Alaska Sea Grant's Exxon Valdez Anniversary Events

Alaska Sea Grant legal scholars who successfully encouraged the state to establish citizen advisory councils, conduct scientific studies, develop oil spill contingency plans, and enact other oversight and safeguard measures in the wake of the 1989 Exxon Valdez oil spill (EVOS) were reunited in Alaska March 19-24 by Alaska Sea Grant to mark the spill's 20th anniversary and discuss steps still needed to protect Alaska's seas and coasts.

Following the 1989 Exxon Valdez oil spill, Alaska Sea Grant convened a four-person legal research team that made a series of recommendations to the Alaska Oil Spill Commission (AOSC) aimed at helping the state exercise greater regulatory authority and influence the content of the landmark federal Oil Pollution Act of 1990.

"The legal team worked closely with the Alaska Oil Spill Commission to frame the debate and craft the final report on many specific sectors of policy and law," said Zygmunt Plater, legal team member and professor at Boston College Law School. "Some specific ideas recommended by the Alaska Sea Grant team and the Commission have been judicially or legislatively adopted, such as the establishment of regional citizen advisory councils, the state's Citizens' Advisory Commission on Hazardous Substances (now disbanded), legal preemption advisory, tank farm management reforms, and provisions in the federal Oil Pollution Act of 1990."

The AOSC used the Alaska Sea Grant team for far more than their legal reports, Plater said. The Alaska Sea Grant researchers were involved in virtually every design and implementation decision made by the AOSC. A systemic chart, created by Harvard Law School students under Prof. Plater's guidance, mapped critical focus points in the entire marine and terrestrial Alaska oil transport system, characterizing the incident as far more than a marine transport issue or a problem with the captain of the Exxon Valdez. That overarching perspective shaped the AOSC report to the Alaska governor and State Legislature.

Prior to EVOS and formation of the ASG Legal Research Team, ASG Marine Advisory agent for Prince William Sound, Rick Steiner, in 1986-1987 first outlined to the oil industry and to Alaska's junior U.S. Senator, Frank Murkowski, the urgent need for citizen oversight bodies. The Prince William Sound Citizens' Advisory Council and the Cook Inlet Regional Citizens Advisory Council can find their roots in Steiner's work coupled with the ASG Legal Team's recommendations

adopted by the AOSC and eventually codified by the State of Alaska. Oil spill contingency plans are also part of the current state and federal regulatory process, thanks in large part to Steiner's prescient urgings and the ASG Legal Team's recommendations adopted by the AOSC.

Four public events, three in Anchorage and one in Fairbanks, conceived and organized by ASG Education Services Manager, Kurt Byers, and funded by the National Sea Grant Law Center, reunited members of the ASG Legal Team and others who played critical roles that helped Alaska strengthen its marine transportation standards. ASG and the National Sea Grant Law Center sponsored the events in cooperation with the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC).

In Fairbanks on March 19 at the University of Alaska Fairbanks (UAF), ASG Legal Team members Plater, Harry Bader from the Betula Group, a private consulting firm specializing in international resource management issues in physically and socially challenging environments and former UAF professor; and Charlie Cole, former Alaska attorney general immediately following EVOS, presented a special seminar on citizen involvement in marine transportation safety and recounted behind-the-scenes legal negotiations with Exxon leaders.

On Monday, March 23 in Anchorage, ASG Legal Team members Plater, Bader, and Prof. Alison Rieser, from the University of Hawai'i at Manoa, anchored a seminar titled *Oil Spills in the North Pacific and Arctic*, that discussed the history of oil spills in arctic seas and the growing threat of more spills due to increased international shipping through increasingly ice-free arctic waters. Also on the panel was former AOSC chair, Walter Parker, and prominent Alaska journalist, Steven Lindbeck, who wrote the AOSC report and reported heavily on EVOS. This panel was primarily sponsored by the NGO, Pacific Environment.

On March 24 in Anchorage, legal team members Plater, Bader, and Rieser, together with Parker and former Alaska attorney general, John Havelock and current Deputy Attorney General, Craig Tillery, recounted the ASG Legal Team's 1990 recommendations and how they were adopted by the AOSC and ultimately by the State of Alaska to improve the safety and reliability of marine transport of crude oil and other hazardous substances.

"In the decade after EVOS, Alaska became the nation's gold standard on how to incorporate public interaction in resource development decision making, review, and oversight; now Alaska is the copper standard," warned Bader at the March 24 EVOS anniversary seminar in Anchorage. Bader added "Often we listen to speakers who energize us with acrimony. I think that Sea Grant is an incredible resource in helping the public make an educated decision." John Havelock, former Alaska attorney general and Anchorage Daily News political columnist who participated on the ASG panel, noted that "Love of wealth drives people to make compromises that they shouldn't. How much money can I make on my watch is the big concern, leading corporations to discount risk."

Also on March 24, at the University of Alaska Anchorage, ASG and the PWSRCAC screened a new retrospective video about the Exxon spill, titled "Then and Now: The Alaska Oil Spill at 20." The half-hour DVD showing was followed by discussion with PWSRCAC officials and ASG Legal Research Team members Plater and Bader, focusing on citizen oversight and other regulatory aspects of marine transport of hazardous substances and high latitude shipping safety. The DVD is available free of charge from PWSRCAC <http://www.pwsrcac.org/>

For a copy of the ASG Legal Research Team's 1989 report and more information on the Legal Team and the EVOS anniversary events, please visit Alaska Sea Grant's website at <http://seagrant.uaf.edu/conferences/2009/evos-anniversary/index.html>