

# **The National Sea Grant Law Center:**

## ***Reducing Barriers and Conflicts through Legal Extension***

Stephanie Showalter, Director

Ralph Rayburn Beltway Brown Bag Series

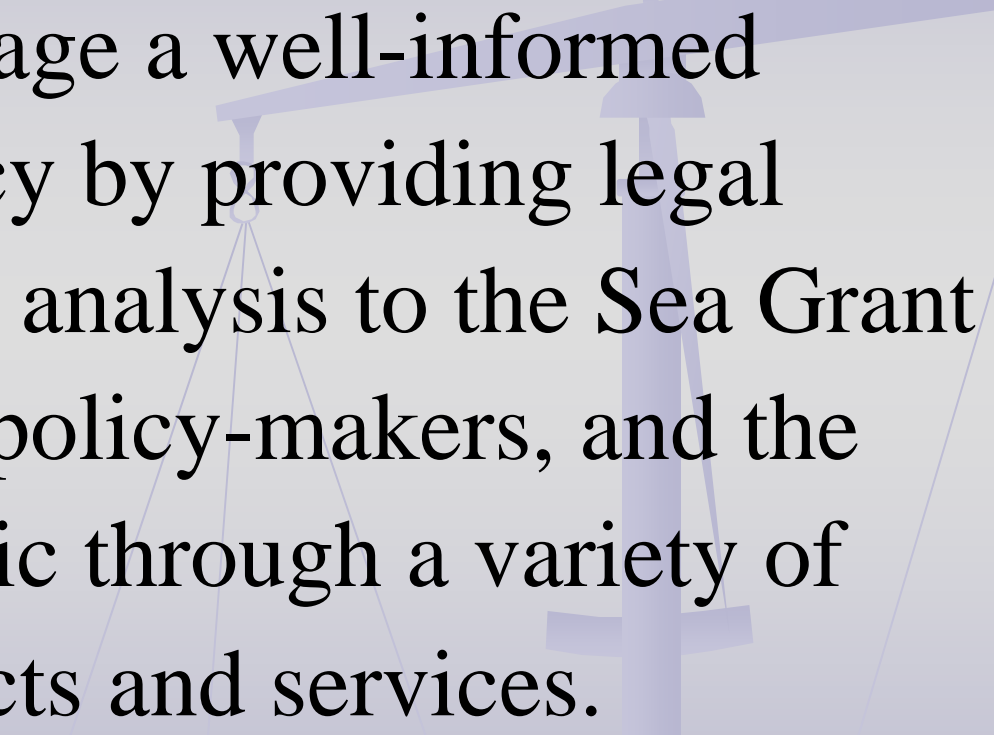
December 4, 2008

# Establishment

- In 2001, the National Sea Grant Office issued an RFP calling for “the creation of a law center to coordinate and enhance Sea Grant’s activities in legal scholarship and outreach related to coastal and ocean law issues.”
- At the time, three Sea Grant Programs (Louisiana, North Carolina, and Mississippi-Alabama) had state legal programs.
- University of Mississippi hosts the National Sea Grant Law Center.

# Mission

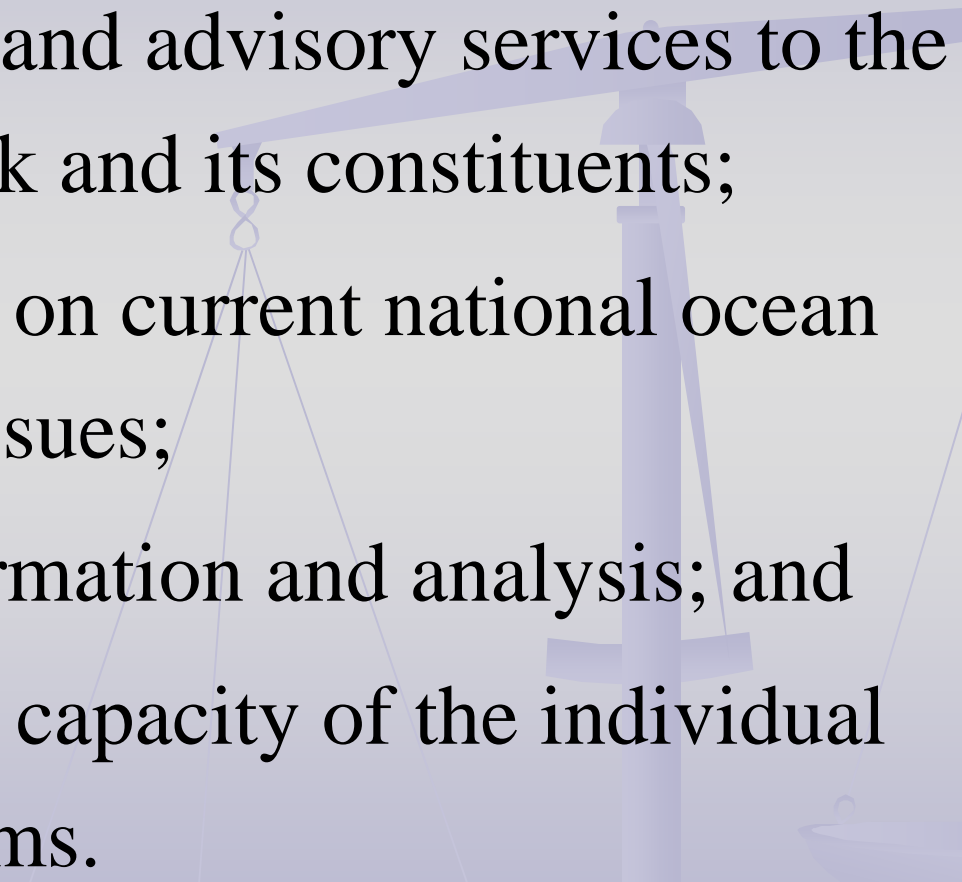
To encourage a well-informed constituency by providing legal information and analysis to the Sea Grant community, policy-makers, and the general public through a variety of products and services.



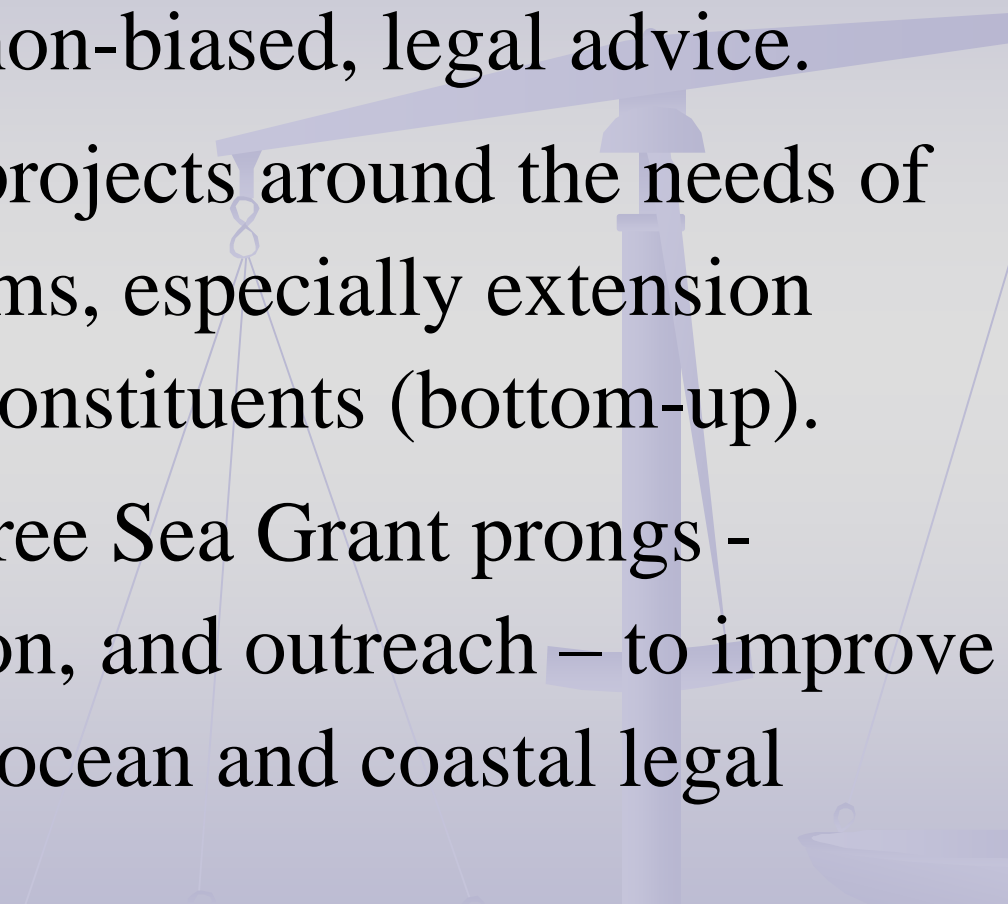
# Funding

- Currently \$310,000 per year from Sea Grant.
  - An additional \$155,000 per year is provided through state matching funds.
- Sea Grant Law Center Staff
  - Director
  - Staff Attorney
  - Web Developer / Publications Manager
  - Law Student Research Associates

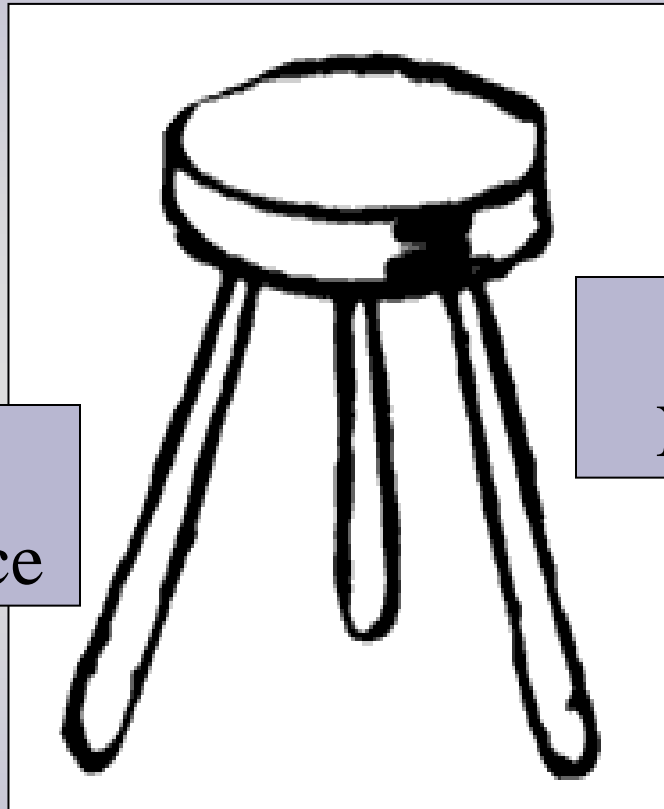
# Major Responsibilities

- Provide outreach and advisory services to the Sea Grant network and its constituents;
  - Conduct research on current national ocean and coastal law issues;
  - Disseminate information and analysis; and
  - Increase the legal capacity of the individual Sea Grant programs.
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# Guiding Principles

- Provide neutral, non-biased, legal advice.
  - Design research projects around the needs of Sea Grant programs, especially extension agents and their constituents (bottom-up).
  - Incorporate all three Sea Grant prongs - research, education, and outreach – to improve understanding of ocean and coastal legal issues.
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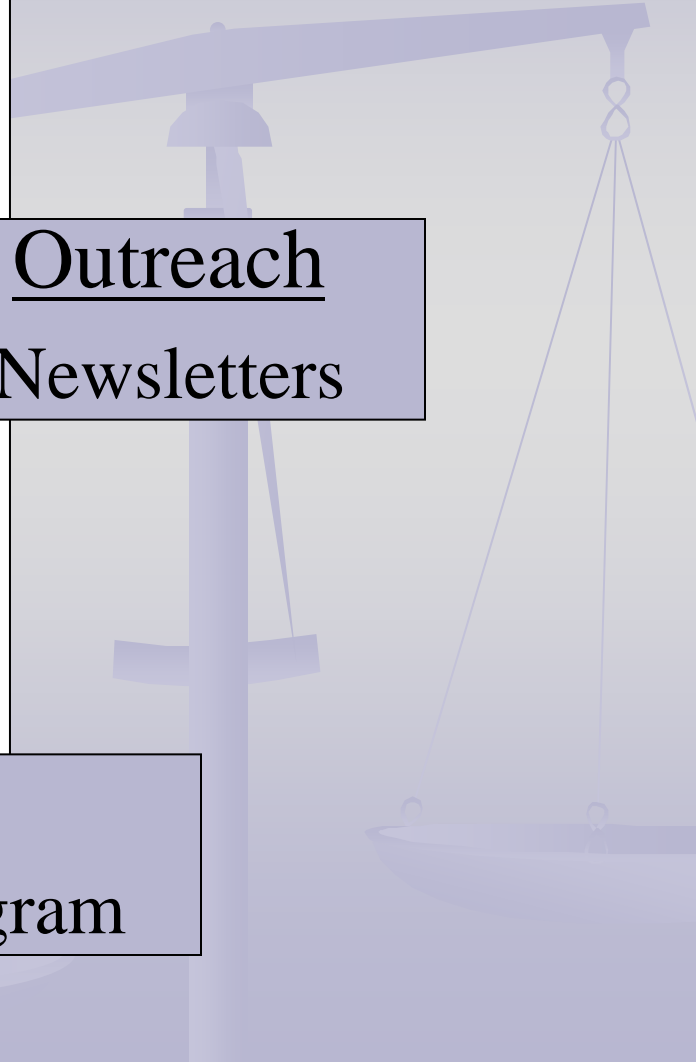
# Law Center Components



Research  
Advisory Service

Outreach  
Newsletters

Education  
Research Associate Program



# Research

- S. Showalter, *The United States and Rising Shrimp Imports from Asia and Central America: An Economic or Environmental Issue?*, 29 Vermont Law Review 847 – 876 (2005).
- S. Showalter and T. Bowling, *Michigan's New Ballast Water Regime: Navigating the Treacherous Waters of States' Rights, Federal Preemption, and International Commerce*, 19 Aquatic Invaders 1-2 (2008).
- S. Showalter and D. Bergeron, *Second State Proposes Ballast Water Discharge Permit*, 37:1 Great Lakes Seaway Review 6 – 11 (2008).
- T. Bowling, *From Rip Currents to Flying Umbrellas: Beach Liability Basics and Recent Cases*, 38 Env. Law Reporter 10452 - 10459 (2008).



# Outreach - Publications



## The SandBar

Summarizes cases impacting ocean and coastal resource management.

Published quarterly.

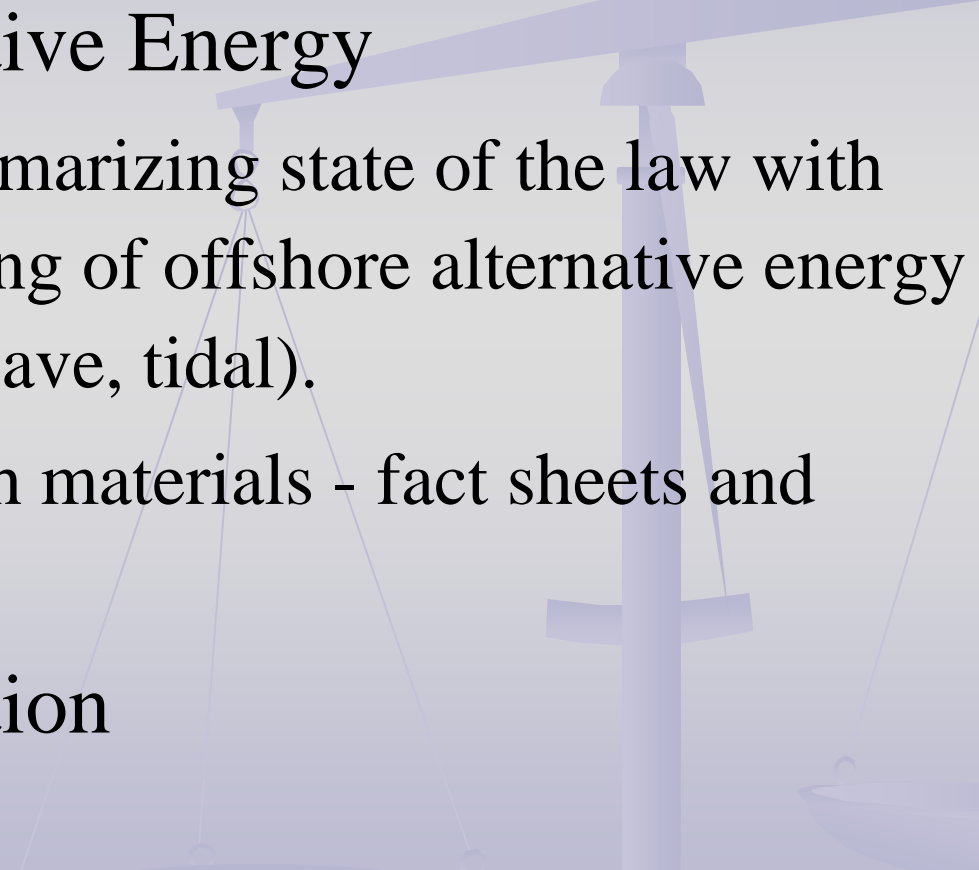


## Fact Sheets

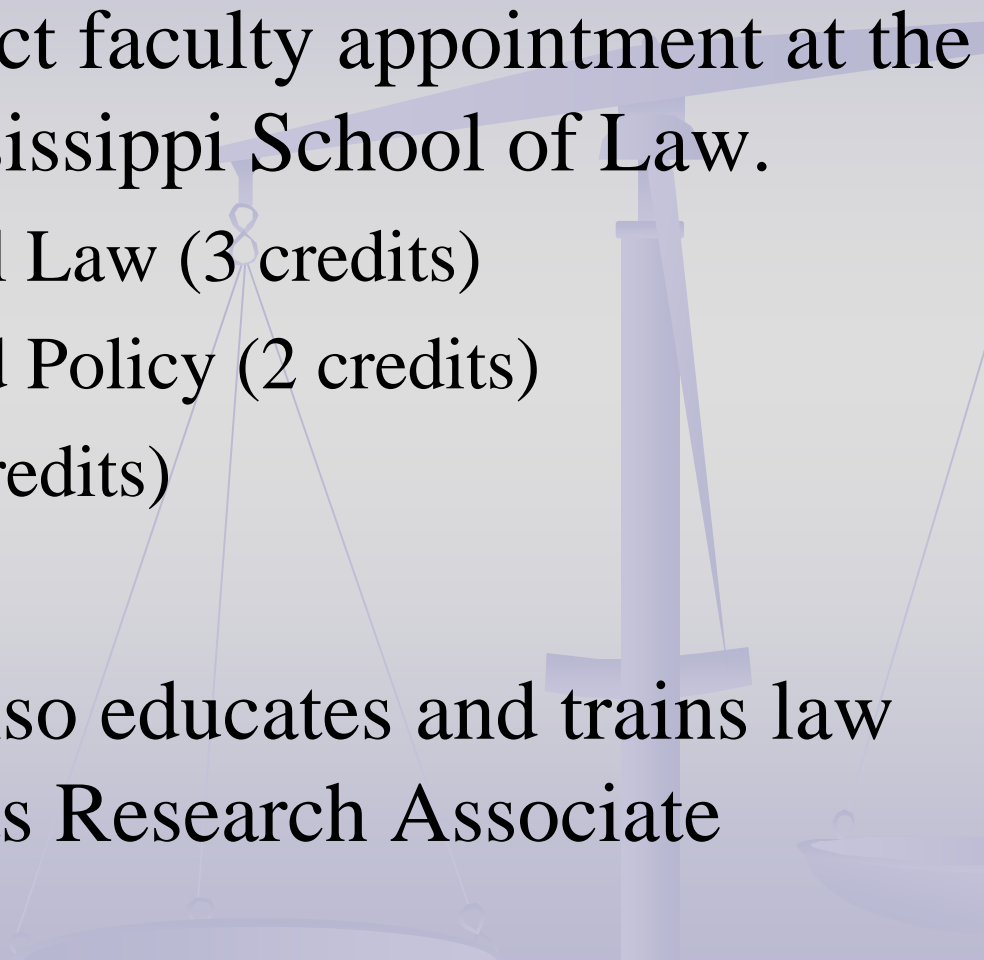
Provide information on new legislation and regulations.

Published as needed.

# Current Research and Outreach Projects

- Offshore Alternative Energy
    - White Paper summarizing state of the law with respect to the siting of offshore alternative energy projects (wind, wave, tidal).
    - Targeted outreach materials - fact sheets and presentations.
  - Seafood Substitution
  - Ballast Water
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# Education

- Director has adjunct faculty appointment at the University of Mississippi School of Law.
    - Ocean and Coastal Law (3 credits)
    - Wetlands Law and Policy (2 credits)
    - Wildlife Law (2 credits)
  - The Law Center also educates and trains law students through its Research Associate Program.
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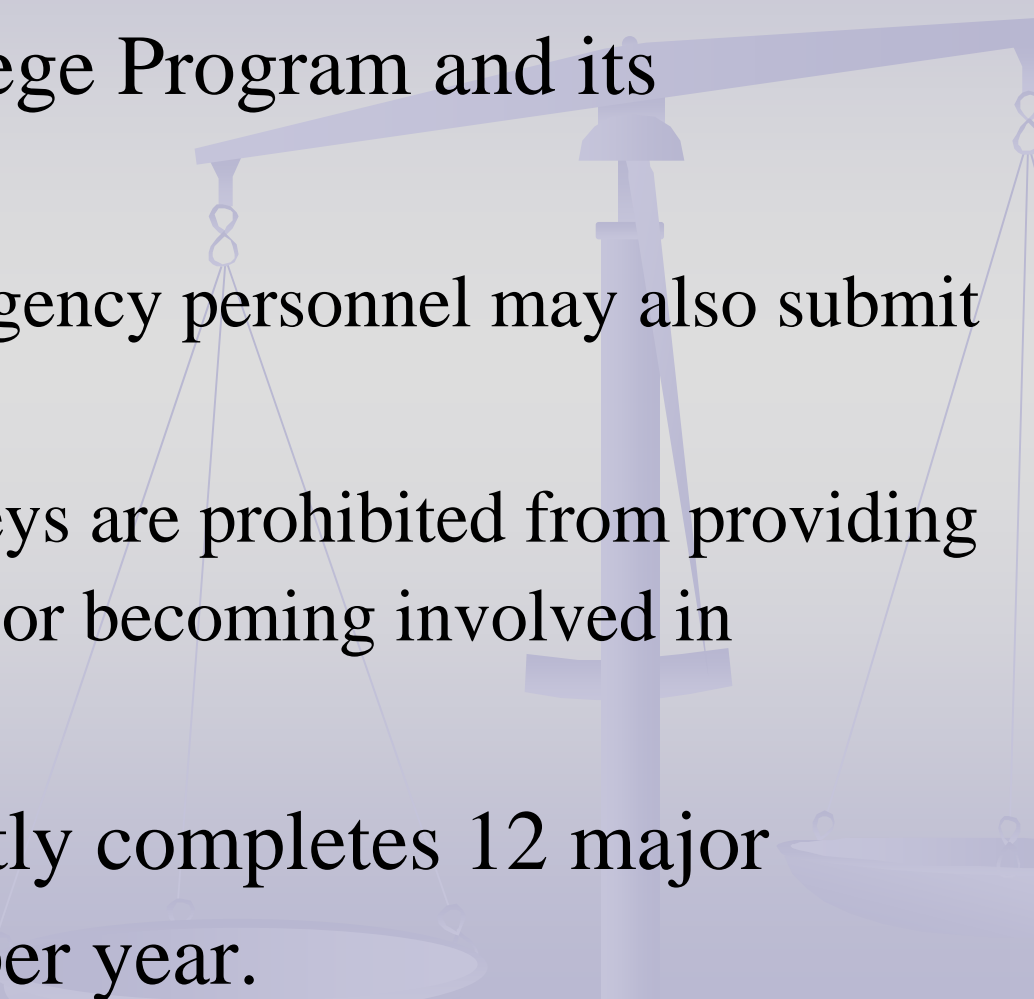
# Research Associate Program

- Law students, known as Research Associates, work closely with Law Center attorneys on research projects and contribute articles to Law Center publications.
- Research Associates are drawn from the University of Mississippi and law schools across the country.
  - 1 - 2 students per year are in remote locations.

# 2007 Grant Competition

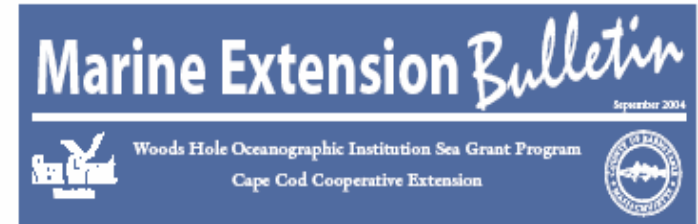
- In 2007, the Law Center was the recipient of a federal earmark.
  - Allocated \$550,000 to run a grant competition to fund legal research and outreach projects.
- 11 projects were selected from around the country including
  - “Accessing the Maine Coast” website
  - Model Coastal Management Ordinances for Great Lakes Coastal Communities
  - Cooperative Harvesting Agreements Workshop

# Advisory Service

- Legal research service provided free of charge to the Sea Grant College Program and its constituents.
    - Federal and state agency personnel may also submit requests.
    - Law Center attorneys are prohibited from providing actual legal advice or becoming involved in litigation.
  - Law Center currently completes 12 major advisory requests per year.
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# Advisory Request Process

1. Constituent (management agency, extension agent, private citizen) contacts Law Center.
2. Law Center attorneys work with constituent to identify discrete legal question.
3. Research conducted by attorney and law students.
4. Final product prepared – memorandum of law, joint publication with constituent, etc.



## Some Liability Issues for Massachusetts Shellfish Farmers

As Massachusetts' shellfish aquaculture industry continues to grow, issues of risk and liability may arise. This bulletin describes some of the potential risks and liabilities, while providing some tips for protecting shellfish farmers, shellfish consumers, and the public from harm.

It takes a great deal of time and energy to get a shellfish farm up and running, from getting an area licensed, planting the juvenile shellfish, to pulling nets and scrubbing gear. When the time comes to harvest those shellfish, it's also time to think about what is at stake and how risks can be minimized. What are some of the liabilities associated with a shellfish farm? For example, what happens if a member of the public is injured on a licensed area? What responsibilities do shellfish farmers have for employee

injuries? What happens if a customer becomes ill after consuming cultured shellfish?

### Some Background

In Massachusetts, licensed aquaculturists are granted the exclusive use of an area for the purposes of growing shellfish (§ 57 of Chapter 130, Massachusetts General Laws). Under the law, the public has reserved the right to use the waters and lands as long as that use is compatible with aquaculture. What does that mean? It means that no one without the consent of the license holder can take shellfish from that area, disturb the area or the growth of the shellfish, discharge any substances that injure the shellfish, or willfully destroy or remove the gear. And if they do! Violators may be sued by

the license holder for triple damages and costs under § 63 of Chapter 130, Massachusetts General Laws.

In the event of a lawsuit, proper documentation is critical for both the plaintiff and the defendant. Licensee should be completely documented, including the specific extent of damage caused, any costs incurred, and any steps taken to repair the damages. In addition to written records and receipts, it is advisable to seek professional legal advice. It is also a good idea to notify the shellfish officer and the town, as the town may choose to pursue the matter.

### Injury to a Member of the Public

Responsible shellfish farmers should do their best to maintain a safe and clean shellfish farm. Still, the Massachusetts



Many shellfish aquaculturists head out to work their farm when the tide is out and their farms are exposed.

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Cape Cod Cooperative Extension, Deed & Probate Building, P.O. Box 367, Barnstable, MA 02630-0367 • (508) 375-6690



# California Department of Fish and Game

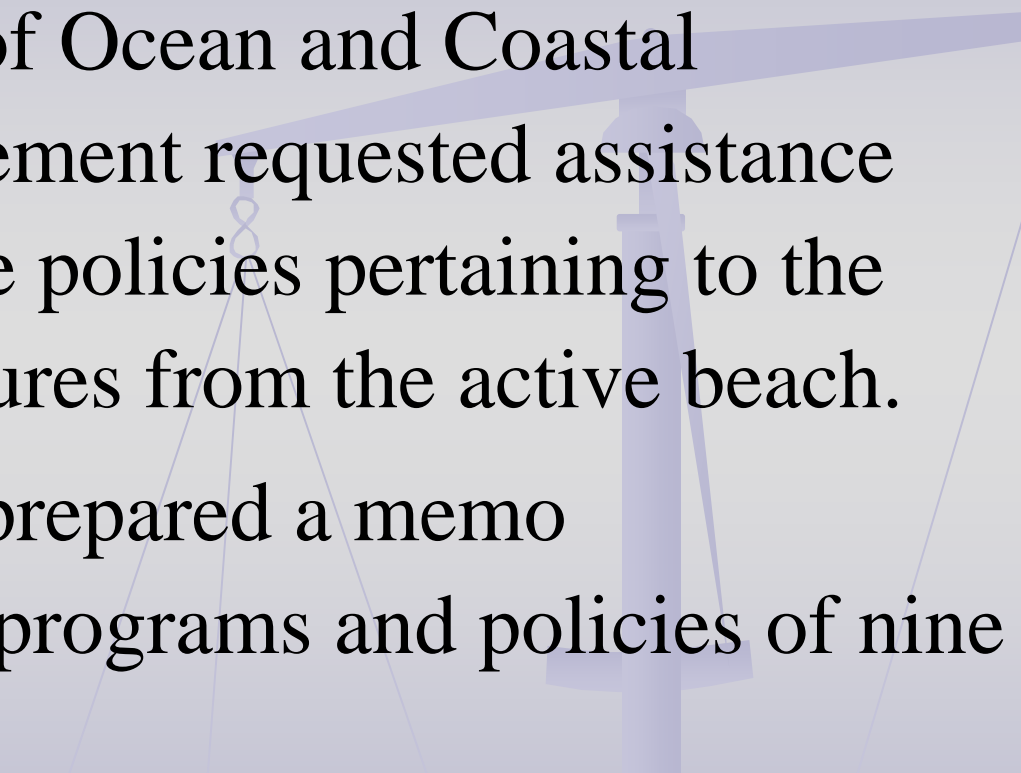
- A California Sea Grant extension agent, on behalf of the California DFG, requested information about the application of state law to aquaculture facilities in federal waters.
- The Law Center prepared two memos:
  - Summary of the extraterritorial jurisdiction of states
  - Discussion of the authority of California with respect to escapes and conflicts with other states.
- Memos assisted agency personnel in assessing feasibility of requiring state registration of facilities in federal waters.



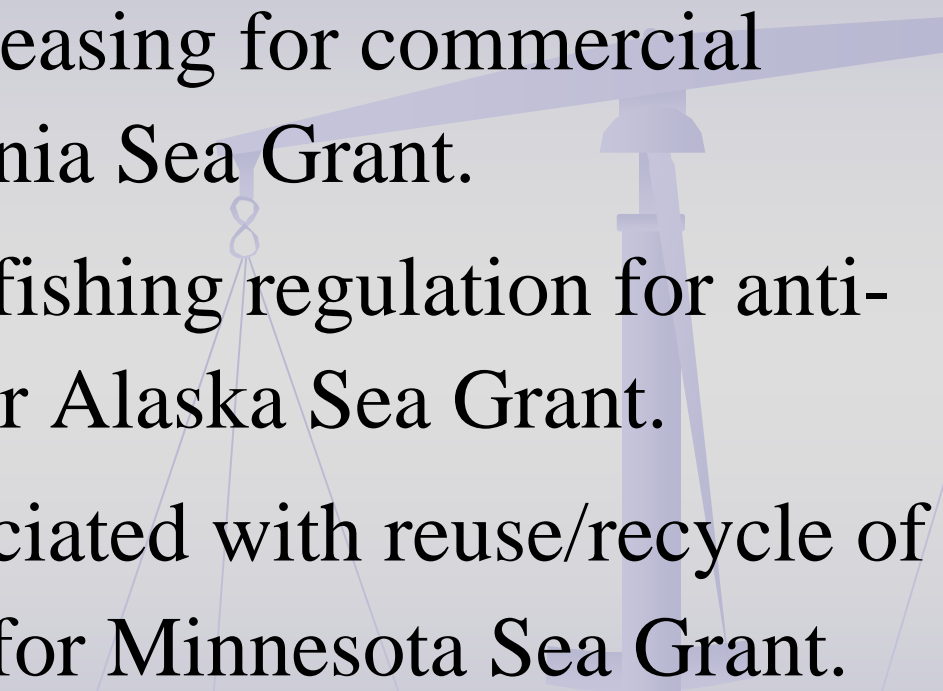
# EPA

- The Scientific and Technical Advisory Committee for EPA's Chesapeake Bay Program asked the Law Center to investigate the legal issues that may emerge as Pennsylvania begins to implement its nutrient trading policy.
- The Law Center prepared a white paper and presented our results at a STAC meeting in December 2007.
- Improved the STAC's engagement during the comment period.

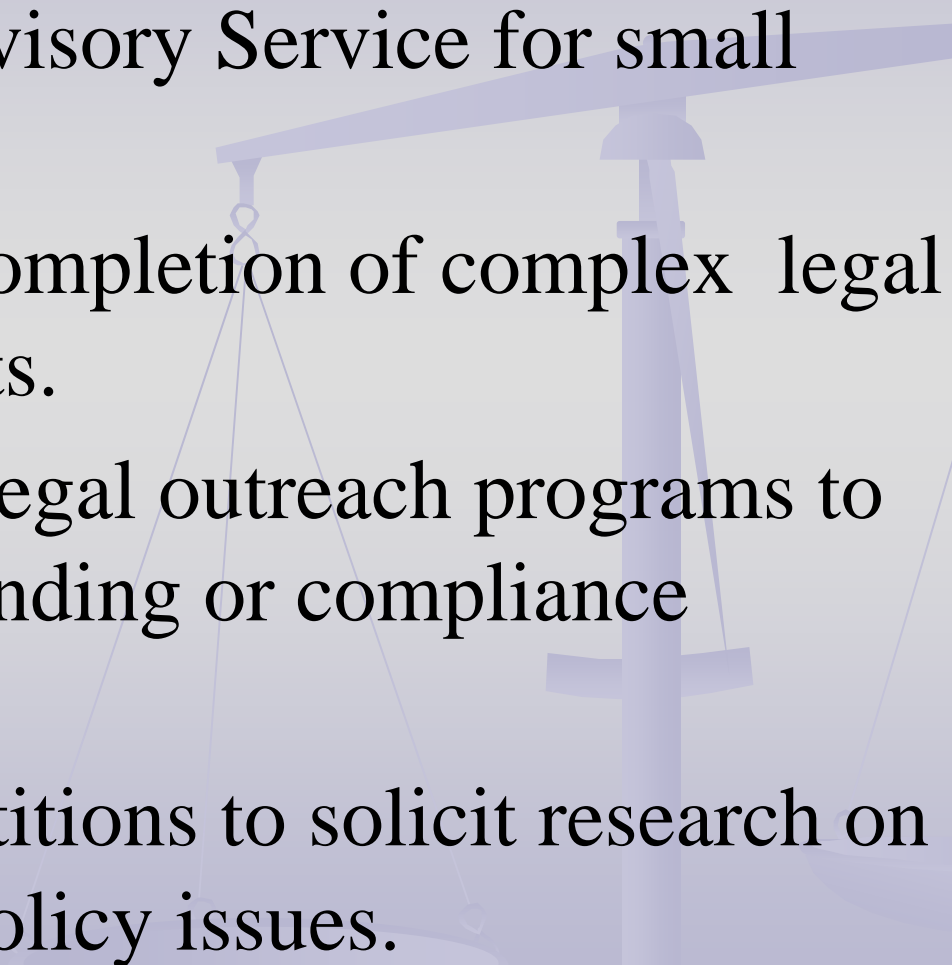
# OCRM

- NOAA's Office of Ocean and Coastal Resource Management requested assistance investigating state policies pertaining to the removal of structures from the active beach.
  - The Law Center prepared a memo summarizing the programs and policies of nine coastal states.
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# Current Requests

- Submerged land leasing for commercial marinas for Virginia Sea Grant.
  - Analysis of state fishing regulation for anti-trust violations for Alaska Sea Grant.
  - Legal issues associated with reuse/recycle of dredge materials for Minnesota Sea Grant.
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# Partnership Opportunities

- Utilization of Advisory Service for small research requests.
  - Contracting for completion of complex legal studies and reports.
  - Development of legal outreach programs to increase understanding or compliance (fisheries).
  - Run grant competitions to solicit research on pressing law or policy issues.
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# Contact Information



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