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February 17, 2017

Wendy Carey  
Delaware Sea Grant College Program  
700 Pilottown Road  
Lewes, DE 19958

Re: Water Safety Brochure Publication Liability (NSGLC-17-04-01)

*This product was prepared by the National Sea Grant Law Center under award number NA140AR4170065 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce.*

Dear Wendy,

Below is the summary of research of the National Sea Grant Law Center regarding the question you posed to us by email on February 8, 2017. The following information is intended as advisory research only and does not constitute legal representation of the University of Delaware Sea Grant by the National Sea Grant Law Center. It represents our interpretations of the relevant laws and cases.

In your email, you explained that Delaware Sea Grant is funding a two-year research project on surf zone injuries in Delaware. One of the project's initiatives is the development of a brochure that includes information on wave safety. In your email, you inquired whether there would be any liability associated with the publication and distribution of a wave safety brochure produced by a University of Delaware researcher and funded by Delaware Sea Grant.

Liability in connection with educational materials would be unlikely. It would be difficult for an injured party to establish a connection between the publication of the safety brochure and an injury. In personal injury cases, a plaintiff must establish that the defendant owed a duty of care to the plaintiff, the plaintiff's injury was caused by the negligence of the defendant, and the defendant could have foreseen the likelihood of harm to the plaintiff. It would be difficult to prove that Delaware Sea Grant could foresee harm stemming from publishing general water safety information. In fact, I was unable to

find any cases in which a state, local government, or any entity was sued for publishing safety guidelines or tips that led to injury.

Despite the low risk of liability, there are ways in which Delaware Sea Grant could minimize its risk for liability when publishing this information. For example, Delaware Sea Grant should review the material to ensure that none of the instructions contained within could harm the reader. Another precaution would be to include a disclaimer in the brochure.

It should be noted that many similar brochures dealing with general water safety do not include disclaimers. For example, a brochure on "Aquatic Safety" published by the California Department of Parks and Recreation and funded by California Sea Grant does not contain a disclaimer.<sup>1</sup> Likewise, NOAA's "Break the Grip of the Rip" brochure published to educate the public regarding the dangers of rip currents does not contain a disclaimer.<sup>2</sup> Although you are not required to post a disclaimer in your publication, it is acceptable for Delaware Sea Grant to do so in this type of brochure. Examples of language that could be used include:

*The data contained herein is for informational purposes only. The University of Delaware Sea Grant College Program does not endorse the content of this publication and does not guarantee the accuracy, completeness, or usefulness of the information. Delaware Sea Grant does not accept liability for any injuries or damages caused by those acting upon or using the content contained in the brochure.*

Or,

*These tips have been provided as general information for increasing safety awareness. The [brochure title] is provided for information purposes only. Delaware Sea Grant does not accept any liability to any person for the use of the information or advice contained in the brochure.*

Thank you for approaching us with your question. Please contact us if you have additional questions regarding the above information.

Sincerely,



Terra Bowling  
Sr. Research Counsel

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<sup>1</sup> [https://cos.ucs.uri.edu/EOS\\_Linked\\_Documents/casg/casgg09002.pdf](https://cos.ucs.uri.edu/EOS_Linked_Documents/casg/casgg09002.pdf)

<sup>2</sup> [http://www.ripcurrents.noaa.gov/brochures/rip\\_brochure\\_final051309.pdf](http://www.ripcurrents.noaa.gov/brochures/rip_brochure_final051309.pdf)