

**EXPLORING COASTAL MANAGEMENT LEGAL ISSUES THROUGH
A GRANT COMPETITION**

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In 2007, the National Sea Grant Law Center at the University of Mississippi held a grant competition to facilitate the development and implementation of legal research and outreach projects in the field of ocean and coastal law. The objectives of the grant competition were two-fold: increase the legal capacity of the Sea Grant College Program and provide funding to tackle ongoing management dilemmas and conduct public outreach and education. Four of the eleven funded projects focused on coastal management.

**Legal and Policy Tools for the Protection of Coastal Access
in Maine and the Nation**

Throughout the country and in Maine in particular, unprecedented challenges face those from all sectors of society trying to gain access to the coast. The causes of these challenges are many, including rising coastal property values, patterns of development and urban/suburban sprawl, privatization of piers, wharves and launch sites, conversion of waterfront property to second home and/or condominium development, and lack of regulatory structure or other incentives to maintain access. These changes affect coastal community constituents from commercial fishermen to local recreational boaters, from waterfront landowners to water-dependent businesses, and from out-of-state beach tourists to the long-time residents.

As a state where coastal property owners hold title to the intertidal zone, coastal access challenges are particularly acute in Maine. The nature of this problem in our state compels Maine to assume a national leadership role in devising proactive approaches such as the creation of a current-use taxation program for working waterfront properties and the designation of \$2 million bond for a pilot program in obtaining working-waterfront access. While the availability of these innovative legal tools in Maine is significant, the current challenge lies in successfully applying these and others in the field. In addition, they are only a part of the legal or policy options available to protect coastal access for all users.

The need now is for legal research and translation toward producing clear, useful information and tools delivered in a format that targets specific coastal users groups, from fishermen to recreational boaters, from coastal landowners to municipalities. Maine Sea Grant partnered with the Marine Law Institute, Maine Coastal Program, and Island Institute to conduct legal research and

outreach focused on three areas identified as providing the greatest potential for meeting coastal access needs: (1) cooperative agreement models for coastal access; (2) legal tools for the conservation of and access to coastal lands; (3) and regulatory and tax program options.

Our researchers, based at the Marine Law Institute, defined a robust list of tools available to address coastal access from a variety of perspectives. Though important new tools, such as current use taxation, have been developed, the types of tools available to address coastal access have only expanded moderately over the last couple decades. It is rather the context within which these tools can be used for access, and the nature of the conflicts themselves, that have changed dramatically.

Indeed, the issue of coastal access is becoming increasingly complex, and the diversity of stakeholders is forever expanding. The knowledge-base of people searching for information about coastal access policy or legal options is quite varied which necessitated a unique and robust outreach mechanism. Most people who face coastal access challenges have many questions but are often not sure where to begin their research. For example, landowners may want information about their responsibilities to users; clambers may be seeking options when they have lost traditional access over private property; or municipalities may be exploring regulatory options to address declining access for local water-dependent businesses. In each case, there are a handful of tools that the individual or group would benefit from exploring.

In traditional communications products, the whole suite of tools is presented in a website or series of booklets, leaving it up to the reader to decipher which tools are appropriate for them. This is an arduous and often times overwhelming task for the stakeholder who has a very specific need. In this project, we make use of the interactive nature of the Web to enable stakeholders of all knowledge levels get the help they need. We reframed the question to allow people to surf through an interactive website that approaches coastal access issues from a problem solving framework rather than tools approach. (“I’m a surfer and can’t find parking close to the beach where I could easily change into and transport my gear. What can I do?”) The idea is that we ask users to first define themselves by working their way through a series of questions (modeled on a flow chart, or dichotomous key). This approach helps immediately narrow down to a much shorter list of tools that specifically addresses an individual’s needs.

This web-based outreach model was piloted with several stakeholder groups and the research itself was presented to several audiences, including the 2008 Maine Fisherman’s Forum. The feedback generated from coastal stakeholders helped inform the final website delivery. The website itself is slated to come online in early summer 2008.

Examining the Evolving Public Trust in South Carolina

The South Carolina Office of Ocean and Coastal Resource Management (OCRM) developed a competitive Coastal Law Fellowship to host a law student from a state university on a part-time basis at the coastal program headquarters in Charleston, South Carolina for one year. The first fellow was selected from the University of South Carolina to conduct research and complete the following tasks: (1) identify the potential impacts of a submerged lands leasing program (economic impacts of rental fees for private, commercial, community docks; examining the range of activities for which lease might apply, potential legal challenges, etc.); (2) examining the conveyances of private rights to public trust lands (e.g. assessing the likely extent of future King's grant claims, identifying the number and scale of "dockominiums" in the state's coastal zone); and (3) working with staff of OCRM to organize an interagency workshop for state and local regulatory agencies to address and discuss the applied aspects of the Public Trust Doctrine in South Carolina.

Three "State of the Knowledge Reports" were prepared by the fellow for OCRM. The first report examined the legal implications of federal, state, and local policies concerning submerged lands in South Carolina to provide an overview of inter-related areas of the public trust doctrine. The second report analyzed of the possibilities of the conveyance of private use rights of trust resources in South Carolina. Topics such as the viability of an adverse possession claim and the limitations on conveying trust resources to private individuals are presented, and the implications for management. The present state of dock permitting, "dockominiums," and impoundments in South Carolina was explored to illustrate how they are potentially infringing on the public trust doctrine through a discussion of public exclusivity, compensation, and balancing competing interests. The third report examined the feasibility of a submerged lands leasing program in South Carolina. This report contains a legal analysis of the statutory and regulatory changes that would need to be made in order to effectuate such a program in South Carolina, using another state's leasing program as a model. The results of these reports were disseminated to state and local regulatory agencies through a workshop in June 2008.

Developing a Consortium for an Adaptive Management Strategy in the Gulf of Mexico

Richard McLaughlin (Harte Research Institute for Gulf of Mexico Studies), Wyndilyn Von Zharen (Texas A&M University Galveston), and the late Ralph Rayburn (Texas Sea Grant) examined the issues, challenges, and gaps in strategy associated with the current ocean and coastal governance structure in the Gulf of Mexico (GoM) and recommended methods and tools to move toward a more holistic, adaptive, and cooperative management model for the GoM marine ecosystem. To gain practical insight and information on these topics, the Co-PIs joined the Environmental Law Institute to host a consortium of marine

law, policy, and management researchers and practitioners on November 1-2, 2007 in Corpus Christi, Texas. The agenda of the workshop focused on how to make necessary tradeoffs, address cumulative impacts, and achieve conservation and sustainability of ocean and coastal resources in the GoM.

Prior to the workshop, three graduate students from Texas A&M University Galveston and Texas A&M University Corpus Christi, conducted a review of secondary literature, selecting articles that pertain to collaborative, ecosystem-based management of the GoM. For each relevant article, they composed original summaries suitable for posting on Gulfbase, a website hosted by the Harte Research Institute for Gulf of Mexico studies, devoted to study of the GoM. This phase of the project was completed by October 2007. Since that time, metadata about the selected articles has been collected and a database built that stores the summaries, keywords, citations, and guidance on accessing the full text of articles. Potential users of the final product will be able to search by area of interest and read the non-proprietary summaries to determine which articles to read in full. Given the volume of research-based literature and the time and expense required to evaluate them, a well-designed tool for reviewing pre-screened literature would expedite research for stakeholders and policy makers. This resource is intended to facilitate the rapid deployment of research-based information in the interest of fostering more effective governance of the GoM.

As a result of these combined efforts, some of the key challenges facing the GoM were identified and include: rapid population growth, intense coastal development pressure, freshwater inflows (water quantity), nutrient over-enrichment (water quality causing hypoxia and other problems), coastal wetlands loss, over-fishing, shifting baselines, lack of institutional and legal mechanisms to work with Mexico and Cuba, and a need to get commitment for change from voters so that leadership action translates to votes.

Potential approaches to move the process forward include: creating innovative visualization tools that will provide an easily accessible information source for integrating law, policy, human dimensions and science, identifying small groups and NGOs to partner with as these are often drivers for change, partner with the National Estuary Programs as they may be best suited as test beds because they are at the right scale, and the Gulf of Mexico States Alliance has the potential to assist with these efforts because it builds upon existing programs and resources and adds tasks that lead to small incremental changes and has strong federal political support.

Monumental Questions: Governing the NWHI Marine National Monument

On June 15, 2006, the United States created the largest fully protected marine conservation area in the world under the authority of the Antiquities Act of

1906, a law which historically has been used to set aside land areas and land-based geographic features. The Northwestern Hawaiian Islands Marine National Monument represents an unprecedented opportunity to preserve and study a marine ecosystem of exceptional diversity and significance and to demonstrate best practices in the governance of large, fully protected marine reserves. To ensure the Monument has the greatest chance of meeting its promise, a number of legal and policy questions require analysis and public consideration.

Researchers at the University of Hawaii-Manoa examined a number of specific legal and policy questions including: (1) whether new federal legislation to congressionally establish the NWHI Marine National Monument would provide a more stable platform for governing the Monument; (2) whether the process for sanctuary designation at the NWHI can or should be completed in order to provide the planning and management functions and enforcement authority that the Antiquities Act does not provide; (3) whether the legislative authorities of the government trustees would allow the inclusion of a mediation based dispute resolution process to deal with interagency disagreements and contested Monument access permits within a unified permitting program under consideration by the Monument's trustees, with special consideration for scientific research permits.

The researchers also examined the legal basis and processes for involving the Native Hawaiian community meaningfully in the state and federal permit processes, including whether the trustees could delegate decision-making regarding access to the Monument for Native Hawaiian cultural practices to members of the Native Hawaiian community or to a Native Hawaiian governing entity. The legal authority of the United States to take action (a) to reduce the amount of marine debris and derelict fishing gear that becomes entrained in the North Pacific; (b) to exclude international navigation by vessels less than 1000 gross tons from the waters of the Monument and/or to establish a mandatory ship reporting system; and (c) to ensure that fisheries managed by international fishery bodies such as the Inter-American Tropical Tunas Commission and the Western and Central Pacific Fisheries Commission are managed to protect the foraging, nesting and nursery habitats of the seabird, Hawaiian monk seal, and sea turtle populations within the Monument was also included in their survey.

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