



**The North Carolina Coastal Resources
Law, Planning and Policy Center**
North Carolina State University • Box 8605
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919-515-1895 • www.nccoastallaw.org



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North Carolina Coastal Resources Law, Planning and Policy Center 2009-2010 Annual Report

Introduction

During the past year the North Carolina Coastal Law, Planning and Policy Center's primary project has been obtaining funding for, and doing background research, for the study of issues relating to the inner coast of North Carolina. This study is discussed in more detail below. In addition, Co-Directors Lisa Schiavinato and Joseph Kalo have been engaged in a number of activities related to the mission of the Center. Of special note is that, in recognition of her work on ocean and coastal-related issues, Lisa was awarded the Governor's Conservation Achievement Award for Natural Resources Scientist of the Year for 2009. She and the other winners received their awards at a banquet held in Durham on September 18, 2010.

It is also noteworthy that in response to the work the Center did on the ocean policy study (in partnership with the NC Division of Coastal Management (DCM) and Ocean Policy Steering Committee) and for the UNC Wind Feasibility Study, the NC Coastal Resources Commission (CRC) and DCM are in the process of making regulatory amendments in direct response to recommendations made in the study's final report, "Developing a Management Strategy for North Carolina's Coastal Ocean". The rule changes will focus on wind energy development in coastal waters. The draft amendments are: wind Energy Facility Amendments to 15A NCAC 7M .0400 (Coastal Energy Policies); 15A NCAC 7H .0208 (Use Standards); and 15A NCAC 7H .0106 (General Definitions). Discussion began at the October 2009 CRC meeting, continued through the month of December and an update will be provided at the January 2010 CRC meeting. Also during the October 2009 CRC meeting, commissioners agreed to consider utility-grade wind turbines as water-dependent structures. This reversed 2005 CRC guidance that wind turbines were non-water dependent structures, which meant that wind turbines could be permitted in coastal AECs only through a variance. This also is in response to a recommendation in the ocean policy study's final report. This reversal allowed for DCM to move ahead with drafting language for the aforementioned regulation amendments. Another recommendation in the 2009 ocean policy study report is in the process of being implemented by the CRC.

The ocean policy report also included a recommendation that the CRC add a sea level rise component to CAMA land-use plans, which each coastal county under CAMA are



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required to have in place. DCM has prepared a draft of a rule on sea level rise policy, and this policy includes a section that would implement this recommendation. The rule was discussed at the CRC's September meeting, and the DCM is in the process of hosting stakeholder meetings to receive input on the draft rule.

Major Center Project for 2009-2010: Inner Coast Emerging Issues Study

The Inner Coast Emerging Issues study is the Center's major current project. In 2009, Co-Director Lisa Schiavinato submitted a proposal to the National Sea Grant Law Center as part of its 2010 grants program. The National Sea Grant Law Center, housed at the University of Mississippi, administers a grants program that is unique in that it funds law and policy research and outreach. There are very few sources that fund this type of work. In its proposal, the Center requested funds for a two-year study relating to strategies for managing North Carolina estuarine shorelines. In early 2010, the Center was notified that it would be a recipient for one of the competitive grants. The UNC School of Law's Center for Law, Environment, Adaptation and Resources (CLEAR) and the North Carolina Sea Grant College Program are also financial partners for the study and will provide some funds for the Center's research law fellows.

The study has three major objectives: (1) identify the emerging natural resource issues that will impact North Carolina's estuarine shoreline over the next 15-20 years; (2) provide technical information on the factors associated with these issues; and (3) recommend to relevant state agencies' and commissions' management strategies as to how the state might best address these issues. A copy of the proposal to the National Sea Grant Law Center, containing a full description of the study, is attached to this report.

This will be a two-year study, with the National Sea Grant Law Center and CLEAR funding the first year, and the North Carolina Sea Grant College Program and CLEAR providing funding during the second year. The study will produce three types of outcome documents. The first is a report similar to the ocean policy study report, which will provide background and technical information on the emerging policy issues for North Carolina's inner coast, as well as making recommendations on how to address these issues. The audience for this report will be North Carolina's regulatory community, including agencies such as DCM and the Division of Water Quality and state-level commissions such as the CRC. The second outcome document will be an article for publication in a law review. The third outcome will be a series of articles for the *Legal Tides* newsletter. With these three different types of outcome documents, the Center's goal is to reach the regulatory community, academia and the public.



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A number of outstanding individuals with scientific and policy expertise have agreed to be part of the study committee. These people are:

- Mark Brinson, East Carolina University
- Craig Caldwell, North Carolina Division of Water Resources
- Anne Deaton, North Carolina Division of Marine Fisheries
- Michelle Drostin, North Carolina Ecosystem Enhancement Program
- David Dycus, North Carolina Department of Agriculture
- John Fear, North Carolina Coastal Reserve
- Donna Girardot, Business Alliance for a Sound Economy
- Al Hodge, North Carolina Division of Water Quality
- Martin Posey, University of North Carolina-Wilmington
- John Rummel, East Carolina University--Institute for Coastal Science and Policy
- Tracy Skrabal, North Carolina Coastal Federation
- Richard Spruill, East Carolina University
- Jeff Lautier, North Carolina Division of Water Resources
- Spencer Rogers, North Carolina Sea Grant Program

The first meeting of study committee was held on August 12 in Morehead City, during which the committee identified the top five emerging policy issues for the inner coast. The second meeting was held in Wilmington on October 20 and focused on shoreline stabilization issues. The committee's third meeting will be on January 20, 2011 in Washington and will focus on water use and allocation. A website and listserv has been created for the study committee. Meetings will take place approximately every other month, with a final report set for publication in the spring of 2012.

“The Shape of the Coast” Continuing Legal Education Program

The 2009 Shape of the Coast continuing legal education program was held on Friday, October 24 at the Riverfront Conference Center in New Bern. Attendance at the program was good, and the evaluations were very positive. As a result, the decision was made to hold the fifth annual Shape of the Coast program again in New Bern. However, since the Riverfront Conference Center was not available for late October, the 2010 program was moved to Friday, November 5.

The 2010 program will focus on five major topics: (1) the changing demographics of the North Carolina coast; (2) an annual update from the Chair of the Coastal Resources Commission; (3) a panel discussion of petitioning the Coastal Resources Commission, challenging its decisions and an overview of the commission's standing rules and procedural rules; (4) discussion of the legal and practical issues that arise when coastal



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development projects fail; and (5) discussion of the latest and most significant case law on coastal issues. The 2010 speakers are: Dr. Thomas Crawford, Dr. Daniel Marcucci, Robert Emory, Christine Goebel, Doug Huggett, Frank Sheffield, Todd Roessler and William Raney.

Travel cost considerations, accommodation expenses, and the additional time away from the office are causing attorneys to use webinars to obtain necessary continuing legal education credits and information about coastal issues. This trend presents a serious challenge to the continuation of The Shape of the Coast program in its present form and location. The board at its annual meeting on Thursday, November 4, 2010 will address this issue. Although program registration fees are extremely low when compared to other similar programs, the Center expects the general state of the economy will impact attendance at the 2010 program.

Legal Tides

In 2010, the Center published one issue of its *Legal Tides* newsletter. The fall 2010 issue focused on three cases that examined significant coastal law issues, both at the national level and the state level: the U.S. Supreme Court's decision in *Stop the Beach Renourishment v. Florida Department of Environmental Protection*, the North Carolina Court of Appeals decision in *Fish House, Inc. v. Clarke* and discussion of *Newcomb v. County of Carteret*, which was argued for the North Carolina Court of Appeals in early 2010 and for which a decision is pending. An electronic version of the issue may be downloaded from the Center's website at <http://www.nccoastallaw.org/publications.htm>.



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Professional Development and Leadership Roles of the Center's Co-Directors

In 2010, Center co-director Lisa Schiavinato continued in her role as president-elect of The Coastal Society, which is a nonprofit professional organization for those who work in the field of ocean and coastal management, science and policy. This included participation in quarterly meetings of its Board of Directors, which were both in-person and via conference call. Schiavinato also served as the conference chair of The Coastal Society's 22nd International Conference, which was held in Wilmington in June. Schiavinato will begin her tenure as president of TCS on January 1, 2011.

In spring 2011, Schiavinato will teach a graduate course at East Carolina University on ocean and coastal law. She designed this course with former Center advisory board member Lauriston King (professor emeritus at ECU) and was accepted as an official course by ECU administration. This three-credit course will be offered for the first time in the spring 2011 semester and will be a part of the curriculum for ECU's Coastal Resources Management (CRM) PhD program. Dr. Hans Vogel song, director of the CRM PhD program, hopes to make this a regular course that would be offered each spring. Schiavinato would teach the class as adjunct professor. During the spring 2010 semester, she guest lectured at ECU as part of its CRM PhD program. This lecture provided graduate students with an introduction to the U.S. legal system and an overview of the major federal ocean and coastal laws and associated regulatory programs. Schiavinato has guest lectured on these topics at ECU since 2007, and this opportunity represents a strengthening of the Center's relationship with ECU.

In 2010, Schiavinato continued in role as an officer of Sea Grant's Sustainable Coastal Community Development (SCCD) Network and member of its executive committee. The SCCD network is a network of professionals from across the various state-level Sea Grant programs and outside Sea Grant that work on land-use, water resources, working waterfronts and community development issues. Her major accomplishments as network officer in 2010 included drafting network bylaws for approval by membership and being on planning committee for the network's annual business meeting. The network's 2010 business meeting was held on September 30 in Portland, Maine.

Schiavinato currently co-chairs the Inner Coast Emerging Issues study committee with Center co-director Joseph Kalo.

Schiavinato attended several conferences and meetings in 2010, at which she made presentations and moderated panel sessions. Below is a list of select presentations.



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- Presented on current legal issues at the biennial meeting of the Mid-Atlantic Sea Grant Programs, which was held in Corolla
 - Moderated and presented on a panel at the TCS 22 conference in Wilmington on the UNC Coastal Wind Study and the UNC partnership with Duke Energy for a demonstration project in Pamlico Sound (demonstration project has since been cancelled). The panel's other speakers were Dr. Harvey Seim, University of North Carolina-Chapel Hill, Dr. Charles "Pete" Peterson, University of North Carolina Institute for Marine Science and David S. Miller, Duke Energy.
 - Co-presented with Center co-director Joseph Kalo on legal and policy issues associated with wind energy development in state and federal waters for the NC Conservation Network's education forum on renewable energy, which was held in Chapel Hill.
 - Moderated and presented on a plenary session on North Carolina's waterfront access initiatives at the Working Waterways and Waterfronts National Symposium in Portland, Maine. Other panelists included Dr. Michael Voiland, NC Sea Grant, Erik Christofferson, NC Wildlife Resources Commission and Brian Chevront, NC Division of Marine Fisheries.
 - Co-taught with four other people a one-day short course on sand resources and ocean and coastal law at the 2010 American Shore and Beach Preservation Association national meeting in Charleston, South Carolina.

Other meetings Schiavinato attended were the NC Sea Level Rise Forum, held in Raleigh; NC Main Street Conference, held in New Bern; NC Climate Change Adaptation workshop, held in Raleigh; NC Sustainable Energy conference, held in Raleigh; Water Resources Research Institute conference, held in Raleigh; and attended meetings as a member of the NC Wind Working Group.

Among the professional development and leadership activities of Center co-director Joseph Kalo include co-chairing the Inner Coast Emerging Issues study committee, participating as a member of the selection committee for the 2010 North Carolina candidates for the national John A. Knauss Marine Policy Fellowships program and consulted with the attorneys representing the citizens of Marshallberg in the litigation over the rights of use of the harbor by citizens and shoreline owners. Kalo's presentations include a presentation at the UNC School of Law's 2009 Festival of Learning on legal, policy and practical issues associated with wind energy development in waters offshore of North Carolina and co-presented with Schiavinato legal and policy issues associated with wind energy development in state and federal waters for the NC Conservation Network's education forum on renewable energy, which was held in Chapel Hill. In addition to his duties as Center co-director, Kalo continues as a professor



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of law at the UNC School of Law and teaches courses on property law, advanced property law and ocean and coastal law.

Articles written by Kalo in 2009-2010 are: “Do Publicly Funded Beach Nourishment Projects Deprive Property Owners of Private Property Rights Without Just Compensation”, *Legal Tides* (Fall 2009) and “A Trilogy of Significant Coastal Cases”, *Legal Tides* (Fall 2010).

Center Research Law Fellows

In 2009-2010, the Center has benefited from the assistance of three excellent research law fellows, who spent much of their time doing background research on a number of issues relating to the future development of North Carolina’s inner coast and the potential impacts of such development on the region’s natural and cultural resources. Emily Scarborough, who graduated in May 2010, researched these issues during the summer and fall of 2009. For summer 2010, the Center welcomed aboard Layla Cummings and Christopher MacEachran, who are second-year students at the UNC School of Law. During the summer, both fellows were engaged in full-time work for the Center. Both Ms. Cummings and Mr. MacEachran continue to work with the Center on a part-time basis. In addition to the Center’s law fellows from the UNC School of Law, Deanna Swain, a PhD candidate at East Carolina University, has joined the Center as a research fellow in fall 2010. Ms. Swain is PhD candidate in ECU’s Coastal Resources Management PhD program. Ms. Swain also holds a Juris Doctorate, making her well suited to research and analyze legal issues. Ms. Swain will assist the Center in its work on the Inner Coast Emerging Issues study and will begin her work with the Center in December 2010.

Research Conducted and Reports Written

As a result of their efforts, a wealth of background information relevant to the inner coast study was developed. Summaries were prepared of all recent climate change/sea level rise reports that assessed the potential coastal impacts of climate change/ sea level rise; a comparative study was conducted of the CAMA land use plans for four representative coastal counties—Currituck, Hyde, Camden and Tyrrell; back minutes of Coastal Resources Commission meetings were reviewed and summaries prepared explaining what, if any action, the CRC had taken with respect to any issues that might be of relevance to the inner coast study; the Coastal Habitat Protection Plan was reviewed, its recommendations summarized, and research conducted to determine the extent to which those recommendations had in fact been implemented; a number of past reports relating



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to other estuarine shoreline issues were examined, recommendations reviewed, and all the information obtained summarized in written reports; and finally, an initial examination of coastal waste water disposal was undertaken. The summaries and other materials will be posted on the Inner Coast Emerging Issues study webpage, and some of these will be placed directly on the Center's website. Chris McEachran's comparative study of the CAMA land use plans for four coastal counties is especially informative.

New Center Advisory Board Member

Walter Clark, North Carolina Sea Grant's former coastal law and policy specialist and former co-director of the Center, resigned from the Center's advisory board in 2010. After retiring from North Carolina Sea Grant, Mr. Clark moved to the western part of the state and became active in mountain resource preservation issues. Mr. Clark is now the Executive Director of the Blue Ridge Conservancy. Due to the demands of his work with the Blue Ridge Conservancy, Mr. Clark decided to resign from the Center's board. He will be greatly missed.

The Center is fortunate to have Dr. John Rummel, the director of East Carolina University's Institute for Coastal Science and Policy, join the Center's advisory board and fill this vacancy. Welcome aboard, John! We look forward to your contributions.