



**The North Carolina Coastal Resources  
Law, Planning and Policy Center**  
North Carolina State University • Box 8605  
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## **2008-2009 Annual Report of the North Carolina Coastal Resources Law, Planning and Policy Center**

### **Introduction**

The past year has been extremely active for the NC Coastal Resources Law, Planning and Policy Center (Center) and its co-directors, UNC Law Professor Joseph Kalo and Lisa Schiavinato, law, policy and community development specialist for NC Sea Grant. During that time, the Center worked on several exciting projects, which are detailed later in this report. It also benefited from the work of five UNC School of Law students who worked as research fellows.

### **Center Research Fellows**

During the past year, Jarryd Ritter, Meredith Ritchie, Brandson Dhande, Jackson Mabry and Emily Scarborough have worked for the Center as research fellows. Mr. Ritter and Ms. Ritchie primarily worked on the ocean policy study in Summer 2008, but each has researched a variety of ocean and coastal law and policy issues. Mr. Dhande briefly rejoined the Center during winter 2009 to assist the Center co-directors on the UNC wind feasibility study. Mr. Ritter, Ms. Ritchie, Mr. Dhande and Mr. Mabry have since moved on to other opportunities. For example, Mr. Mabry is now on the team of the *North Carolina Law Review*, and Mr. Dhande, who graduated in May 2009 from the UNC School of Law, is working at the Office of University Counsel at UNC-Chapel Hill until his job with an Atlanta law firm begins in January 2010. Ms. Scarborough has remained on staff with the Center since Summer 2009. These students have done tremendous work. We're pleased that Ms. Scarborough chose to stay with the Center into the fall, and we wish our former fellows the best.



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## **Center Projects: 2008-2009**

### Developing a Management Strategy for North Carolina's Coastal Ocean (a.k.a. Ocean Policy Study)

The Center spent 2008 and the first half of 2009 working with the North Carolina Division of Coastal Management (DCM) and a statewide ocean policy steering committee to produce a final report of recommendations that address North Carolina's emerging ocean resources issues. The final report was published in April 2009 and formally submitted to, and accepted by, the NC Coastal Resources Commission in June 2009. The final report reviews North Carolina's ocean and coastal policy structure and recommends policy options that will better prepare the State to meet the challenges ahead. The emerging issues identified by the steering committee are: sand resource management, renewable energy, ocean outfalls, marine aquaculture and comprehensive ocean management.

In 2008, the Center worked with DCM and the steering committee on researching technical information regarding the emerging issues. The steering committee, chaired by the Center co-directors, met throughout the year to discuss technical issues, guide the Center's research and develop recommendations. A draft report was released in the fall of 2008. A series of four public meetings were held in the spring of 2009 (Pine Knoll Shores, Nags Head, Wilmington and Raleigh) to allow citizens to comment on the draft report. After the public meetings were held, the Center finalized the draft report, which was published in April. In June, the final report was submitted to the CRC, which then formed a subcommittee to discuss implementation of the recommendations and whether further research was needed.

An electronic version of the final report is available for download at the Center's website at <http://www.nccoastallaw.org>.

NC Sea Grant, DCM and the UNC School of Law provided funding for this project. Two research fellows worked full-time for ten weeks on the project in 2008, and one research fellow worked on the project part-time in fall 2008 and spring 2009.



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### Coastal Wind: Energy for North Carolina's Future

In summer 2008, the Center was approached by UNC-Chapel Hill to participate in a feasibility study for wind energy development in the coastal sounds. The scope of this study was later expanded to include federal waters adjacent to state waters. The BC General Assembly authorized the study in 2008 through House Bill 2436 (page 43). The study team included several researchers and faculty members of UNC-Chapel Hill, including Dr. Harvey Seim and Dr. Charles "Pete" Peterson, both of UNC-Chapel Hill. The study team was directed to research and obtain wind data for North Carolina's coastal waters, as well as research the environmental impacts, transmission issues and legal and regulatory obstacles associated with wind energy production in coastal and offshore waters. Geographic Information Systems (GIS) technology was utilized to map the feasible areas for wind energy production in the state's coastal waters. A report to the NC General Assembly was submitted on July 1, 2009. An electronic version of the final report may be downloaded at <http://www.climate.unc.edu/coastal-wind>.

The final report includes an analysis of energy production potential (including the resulting benefits due to a reduction in dependence on fossil fuel combustion for generation of electricity), siting, ecological impacts and statutory or regulatory barriers to construction and operation of one or more wind turbines, along with associated support and interconnection facilities in the coastal sounds.

The Center researched and identified the legal and regulatory barriers, both state and federal in nature, to water-based wind energy projects, identified changes to relevant NC statutes and regulations that would need to be made in order to allow the permitting of such projects and outlined the existing state statutory and regulatory framework for such projects. The legal and regulatory section of the final report is located in chapter 7.

The project has received attention in the legislature and in the media. Dr. Seim, Dr. Peterson, Professor Kalo and Ms. Schiavinato all have made presentations on the results of the project at conferences, before the CRC and to the media. The team also will present its findings at the 22<sup>nd</sup> conference of The Coastal Society, which will be held in Wilmington in June 2010. This will provide additional national exposure for the project. Support was broad enough for the General Assembly to provide funding to continue the research into coastal wind energy. In the 2009 budget bill, the General Assembly provided \$300,000 in stimulus funds for a wind energy demonstration project in Pamlico Sound. This project is for up to three turbines. UNC-Chapel Hill and Duke Energy have entered into an agreement to bring this project into fruition. The purpose of the demonstration project is to further test the wind as a resource and environmental impacts.



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Brandon Dhande, one of the Center's research law fellows that worked on the project, found post-law school graduation employment based on the work he did on the study. As mentioned above, Mr. Dhande is presently working in the Office of University Counsel at UNC-Chapel Hill on the UNC-CH / Duke Energy wind energy demonstration project.

The NC General Assembly has provided funding for this project through the UNC General Administration, which included partial funding for Ms. Schiavinato's efforts and funding for research law fellows.

#### North Carolina Law Review Article: "Wind Over North Carolina Waters"

Based on the work the Center has done over the past year on wind energy, Professor Kalo and Ms. Schiavinato decided a comprehensive scholarly article on the legal and regulatory issues associated with wind energy production off North Carolina's waters was needed. In spring 2009, Kalo and Schiavinato submitted a proposal to the *North Carolina Law Review* for publication of a law review article on the subject, and it was accepted. The article, "Wind Over North Carolina Waters", was published in the *North Carolina Law Review* in the September 2009 issue. An electronic version of the article may be downloaded from the Center's website.

#### Wind Energy Technical Advisory Board and NC Wind Working Group

In early 2009, the Environmental Management Commission's renewable energy committee was tapped to form a wind energy technical advisory group. The purpose of this group was to make recommendations to the renewable energy committee on a wind energy siting and standards bill that would be introduced before the General Assembly during its 2009 general session. Schiavinato, as a member of the North Carolina Wind Working Group, was invited to be a member of this advisory group. Based on the group's recommendations, Senate Bill 1068 was introduced before the General Assembly. The bill included provisions for wind energy projects in the mountains and on the coast. The coastal provisions vested authority for permitting wind energy projects on coastal lands and coastal waters within DCM and vested authority to permit wind energy projects in the other parts of North Carolina with the Department of Environmental and Natural Resources. The bill was not enacted during the general session, due to disagreement over some of the non-coastal provisions, but can be considered again in 2010 during the Assembly's special session.



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## **“Shape of the Coast” Continuing Legal Education Program**

On October 24, 2008, the Center held a four-hour continuing legal education program entitled “The Shape of the Coast,” which was held at the Riverfront Convention Center in New Bern. The program was as successful as the 2006 and 2007 programs, with approximately 100 people in attendance. The speakers included Dr. Stanley Riggs, CRC Chair Bob Emory, Clark Wright, Esq., Justin McCorcle, Esq., Professor Kalo and Ms. Schiavinato. Program topics included geology of North Carolina’s southern coast, federal wetlands regulation, coastal stormwater rules and draft recommendations of the ocean policy steering committee.

### **Planned Projects**

#### Estuarine Shoreline Emerging Issues Study

During the public meeting period of the ocean policy study, members of the public suggested to the Center that a similar emerging issues study be conducted for the estuarine side of the North Carolina coast. During summer 2009, the Center conducted preliminary research for the study and plans to seek outside funding to conduct the study in 2010-2011. The Center may partner with the UNC School of Law’s Center for Law, Environment, Adaptation and Resources, as well as with other entities.

#### Continuing Legal Education Program on Current Coastal Issues

With the successful completion of last October’s third annual “Shape of the Coast” continuing legal education program, the Center will hold the fourth annual program in New Bern on October 23, 2009. Speakers this year include Dr. Richard Spruill, CRC Chair Bob Emory, Amy Pickle, Esq., Professor Donald Hornstein, Tyler Newman, Jennifer Cohen, Rose Vaughn Williams, Esq., Dr. Charles “Pete” Peterson and Professor Kalo. Topics for the program include North Carolina’s coastal hydrological system, water allocation, coastal insurance and a presentation on the results of the UNC wind feasibility study.



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## Other Projects

Whether the Center will undertake any additional projects over the next year depends on several factors: how the work on the ocean and coastal policy project progress, whether the General Assembly continues any study of waterfront access issues, and whether the Center identifies any other projects for which funding is available to pay for researchers and related costs.

## **Legal Tides**

In 2009, the Center published two issues of its *Legal Tides* newsletter. The summer 2009 issue featured an article regarding the law and policy issues surrounding sandbags, with The Riggings condominium development serving as a case study, and the fall 2009 issue featured an article on the Florida Supreme Court decision in *Walton County, et al v. Stop the Beach Nourishment*. Electronic versions of both issues can be downloaded from the Center's website at <http://www.nccoastallaw.org/publications.htm>.

## **Professional Development and Leadership Roles of Center Co-Directors**

In late 2007, Ms. Schiavinato was elected to the Board of Directors of The Coastal Society (TCS), a nonprofit professional development organization for those in the field of coastal management, science and policy. In December 2008, Schiavinato was elected President. She will serve as president-elect for 2009-2011 and will assume the presidency of The Coastal Society from January 2011-December 31, 2012.

In 2008, Ms. Schiavinato was selected by the president of TCS (Jeff Benoit, Restore America's Estuaries) to co-chair the society's 22<sup>nd</sup> biennial conference. This conference, known as TCS 22, will be held in Wilmington, NC from June 13-16, 2010. Ms. Schiavinato co-chairs the conference with Todd Miller, executive director, North Carolina Coastal Federation.

In June 2009, the *Sea Grant Law and Policy Journal* (Ms. Schiavinato serves as a member of its editorial board) published its issue on water quantity in June 2009. This issue includes five articles that focus on the ongoing problems and emerging solutions for the various water quantity issues facing coastal and Great Lakes states. An electronic version of the issue can be downloaded at <http://nsglc.olemiss.edu/SGLPJ/SGLPJ.htm>.



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In July 2009, Ms. Schiavinato presented on the Center's work on the emerging ocean resources policy study at the Coastal Zone conference in Boston, Massachusetts.

Ms. Schiavinato continues to serve as regional representative for the South Atlantic and secretary-treasurer of Sea Grant's national network for sustainable coastal community development. This network includes professionals from with Sea Grant and beyond throughout the country that work on coastal community development issues. In 2009, the network held its annual members meeting and a sustainable urbanism training in conjunction with the Coastal Zone 2009 conference.

On October 8, 2009, Professor Kalo made a presentation on water-based wind energy at the Carolina Club for the Carolina Alumni Association.

In the fall of 2008, Ms. Schiavinato guest-lectured in graduate school classrooms on the application of law and policy to coastal resource management, including lecturing to students at ECU and NCSU.

In 2009, it was announced that a graduate of UNC School of Law, Ashley Erickson, was selected to be a Knauss fellow. The Knauss Fellowship Program provides a unique experience to students with an interest in national policy issues affecting ocean, coastal, and Great Lakes resources. The one-year, paid fellowship matches highly qualified student researchers with hosts in the legislative branch, the executive branch, or appropriate associations/institutions located in the Washington, D.C. area. Ms. Erickson will begin her fellowship in 2010. Professor Kalo serves on the North Carolina search committee for the fellowship program.