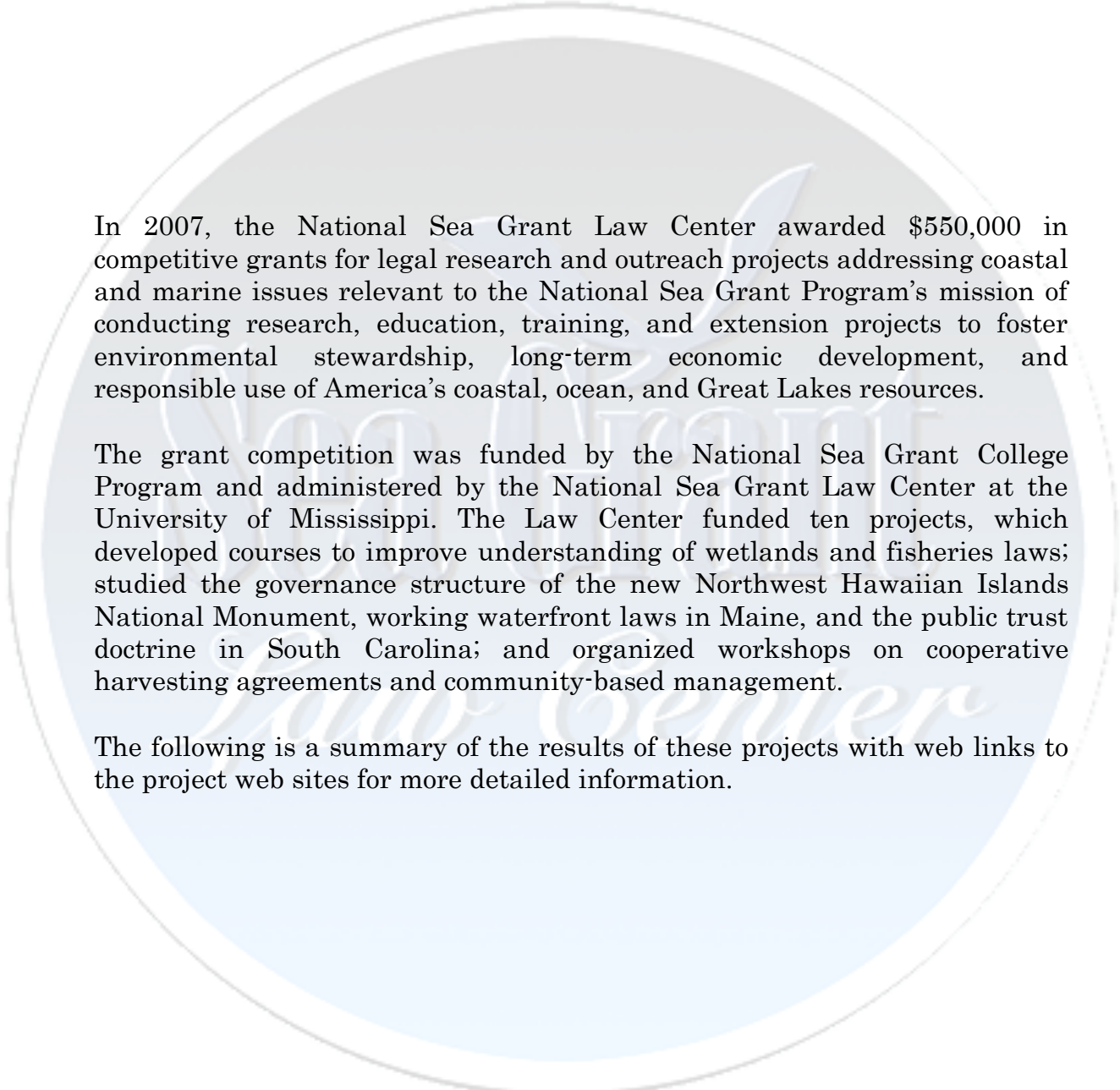




National Sea Grant Law Center
2007 – 2009 Grant Competition
Final Report

July 2009

MASGP 09-023



In 2007, the National Sea Grant Law Center awarded \$550,000 in competitive grants for legal research and outreach projects addressing coastal and marine issues relevant to the National Sea Grant Program's mission of conducting research, education, training, and extension projects to foster environmental stewardship, long-term economic development, and responsible use of America's coastal, ocean, and Great Lakes resources.

The grant competition was funded by the National Sea Grant College Program and administered by the National Sea Grant Law Center at the University of Mississippi. The Law Center funded ten projects, which developed courses to improve understanding of wetlands and fisheries laws; studied the governance structure of the new Northwest Hawaiian Islands National Monument, working waterfront laws in Maine, and the public trust doctrine in South Carolina; and organized workshops on cooperative harvesting agreements and community-based management.

The following is a summary of the results of these projects with web links to the project web sites for more detailed information.

Model Coastal Management Ordinances for Great Lakes Coastal Communities

Principle Investigator: Brian Ohm, Department of Urban and Regional Planning, University of Wisconsin

Partners: David Hart, University of Wisconsin Sea Grant Institute (Co-PI)

Funding from SGLC: \$58,483

Objective: To develop model ordinances for the regulation of development by local governments along the Great Lakes coasts of Wisconsin.

Outcomes:

1. *Model Ordinance:* This project resulted in the publication of *Protecting Coastal Investments: Examples of Regulations for Wisconsin's Coastal Communities*. Updating work done over 25 years ago to provide technical assistance to local governments attempting to address coastal issues, *Protecting Coastal Investments* provides "best practices" for addressing coastal hazards in Wisconsin. Intended to serve as a resource guide, *Protecting Coastal Investments* contains ordinance language that can be included in local ordinances to address locally identified needs. Ordinance provisions are accompanied by explanatory commentary. *Protecting Coastal Investments* was widely distributed through Wisconsin Sea Grant and the University of Wisconsin-Extension.
2. *Coastal Setback Inventory:* As a first step towards the development of the model ordinance language, the PI inventoried the current coastal setback provisions found in local ordinances in Wisconsin. The inventory, which is included as an appendix to *Protecting Coastal Investments*, will allow coastal communities to examine the approaches followed by other Wisconsin communities.

Impact:

The publication has already had an impact on Wisconsin's coastal communities. Bayfield County on Lake Superior is using sections from the ordinance language included in *Protecting Coastal Investments* in a major revision of the County's coastal protection ordinance.

Website: <http://urpl.wisc.edu/people/ohm/Protecting%20CoastalInvestments.pdf> or <http://aqua.wisc.edu/publications/PDFs/ProtectingCoastalInvestments.pdf> .

Fundamentals for Conservation Commissioners

Principle Investigator: Judith McDowell, Woods Hole Sea Grant Program

Partners: Massachusetts Association of Conservation Commissions; Massachusetts Coastal Training Program (a partnership of three NOAA organizations – Waquoit Bay NERR, MA Coastal Zone Management, and Woods Hole Sea Grant).

Funding from SGLC: \$40,000

Objective: To develop a course to enhance Massachusetts Coastal Commissioners' knowledge of wetlands protection laws and the legal authority of coastal conservation commissions.

Outcomes:

1. *Training Course:* Woods Hole Sea Grant and MACC developed a one-day training session on the laws and science behind wetland permitting in Massachusetts coastal communities. The workshop entitled *Coastal Conservation Commission Training: Making Decisions Based on Law and Science* focused on the unique information that coastal commissioners must know to do their jobs and featured speakers with expertise in law, coastal geology, and wildlife habitats and open discussion of case studies. The training was presented twice for a total of 162 participants. MACC will continue to offer the course in the future as needed.
2. *On-line Training Module:* MACC developed a web-based version of the workshop by combining audio recordings of workshop speakers with their PowerPoint slides. MACC gained valuable experience in producing web-based training materials and made the *Coastal Conservation Commission Training* widely available to a much larger audience.

Impact:

The workshop had an immediate impact on participants. According to workshop evaluation forms, 95% of respondents reported an increase in knowledge of coastal wetland regulation. 85% of the participants at both workshop locations stated that they were highly satisfied or very highly satisfied with the content of the workshop. Initial reviews of the web-based training have also been positive. MACC plans to improve its workshop offerings for coastal conservation commissioners by adding information on coastal geomorphology, the needs of coastal wildlife species, and the proper engineering of coastal structures.

Website:

http://www.maccweb.org/coastal_08/coastal_intro/coastal_08-intro.html

Fisheries and the Bench

Principle Investigator: Megan Higgins, Rhode Island Sea Grant Legal Program

Partners: Sand County Foundation, Bradley Fund for the Environment

Funding from SGLC: \$50,000

Objective: To provide education to judges regarding fisheries management and law, and different approaches to fisheries management.

Outcomes:

1. *Fisheries and the Bench Workshop:* On May 19, 2009, the Rhode Island Sea Grant Legal Program hosted a workshop to bring together judges, fisheries managers and regulators, practitioners, and members of academia to obtain a keener understanding of the principles of fisheries law and the establishment of a better balance between the regulatory and economic interests involved. Thirty individuals, including five judges, participated in the workshop. The program included a history of fisheries law; an analysis of emerging issues including property rights, public trust doctrine, and the status of federal law regarding the incorporation of scientific information into management; and emerging issues such as sector management and offshore development projects.
2. *Fisheries and the Bench Curriculum:* Each participant received a 400-page curriculum (also made available on CD) designed by the Rhode Island Sea Grant Legal Program and assembled with the assistance of Sea Grant Law Fellows and workshop presenters. The curriculum combines fundamental legal principles of U.S. fisheries management, selected cases, and analysis to provide a historical context of fisheries law and management, its application in relation to other state and federal law, and the key themes emerging from case law around the nation. Topics covered in the curriculum include legal trends such as sector allocation and harvesting cooperatives, market-based mechanisms for reducing bycatch litigation, and an update on fisheries precedent over the last few years. Developments with respect to offshore renewable energy are also covered.

Impact:

The response of workshop attendees was overwhelmingly positive. The five judges indicated that they benefited from this unique opportunity to explore a topic in-depth via both the curriculum materials and presenters, something beyond which the courtroom setting offers. Over 87% of the participants said that the written curriculum would be useful references in their profession, and 80% found the oral presentations specifically and the overall workshop useful.

Website: <http://seagrant.gso.uri.edu/law/index.html>

Cooperative Harvesting Agreements Workshop for New England Groundfish Fisheries

Principle Investigator: Rita Heimes, University of Maine School of Law

Partners: Gulf of Maine Research Institute; New England Office of the Ocean Conservancy

Funding from SGLC: \$38,082

Objective: To convene a meeting of attorneys, economists, industry representatives, and members of the regulatory and environmental communities to discuss creation of binding and effective harvest cooperative agreements for New England fisheries.

Outcomes:

1. *New England Groundfish Sector Agreements Workshop:* A workshop was held on November 1-2, 2007 to discuss specific provisions of operating agreements for groundfish “sectors” in New England. Over forty people participated, including fourteen attorneys. The diverse audience included representatives of the fishing community, environmental advocacy groups, NOAA, and the New England Fishery Management Council. Taking full advantage of emerging technology, the first day of the conference was blogged live, and the contents of that blog have been permanently archived on the Marine Law Institute’s website (see below). The workshop introduced members of the legal community to an important issue in fisheries law that can benefit from their engagement.
2. *Law Review Article:* The workshop proceedings were published in the spring 2008 issue of the *Ocean and Coastal Law Journal*. The citation for the article is: Rita Heimes, *Managing a Fishery through Contract: Legal Issues Raised by Sector Operating Agreements in the New England Multispecies Fishery*, 14 *OCEAN & COASTAL L.J.* 17 (2008).
3. *Model Sector Contract:* The Gulf of Maine Research Institute’s legal counsel, building on the knowledge gained during the workshop and through GMRI’s relationship with the University of Maine School of Law, is developing a term sheet and model sector contract that should serve as templates for New England groundfish sectors grappling with issues such as allocation, liability, and indemnification. The workshop and the model forms should greatly reduce the administrative and legal costs for fishermen wishing to form sectors.

Website: <http://mainelaw.maine.edu/mli/sectorWorkshop/index.html>

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

Principle Investigators: Natalie Springuel and Kristen Grant, Maine Sea Grant

Partners: Island Institute, Maine Coastal Program

Funding from SGLC: \$60,565

Objective: The goal of this project is to increase awareness, knowledge, and use of new and innovative tools to address coastal access needs.

Outcomes:

1. *Legal Tools to Enhance Public Coastal Access While Protecting Private Property Rights: Legal Tools*, produced during the first phase of the project, contains a comprehensive legal analysis of coastal access tools available in Maine. The report includes definitions of the kinds of access, information on conveying or acquiring property, private agreements, environmental/land use regulations, and taxation as a tool for waterfront access. The report provided the foundation for the *Accessing the Maine Coast* website.
2. *Regional Workshops*: In Fall 2008, three Maine coastal region workshops brought people with diverse coastal access interests together to provide updates on progress made; share new information and tools; clarify current needs; and propose next steps. The workshop's central agenda was to provide stakeholders who would benefit from the website an opportunity to see the site demonstrated. Approximately ninety participants joined the workshops and, for those unable to attend, workshop discussions were shared through a real-time blog.
3. *Accessing the Maine Coast website*: In February 2009, Maine Sea Grant launched its *Accessing the Maine Coast* website. The website does not list public access points in Maine, but rather serves as an information resource for coastal property owners, beach and waterfront users, public and environmental interest groups, and municipal, state, and federal governments. The site offers legal tools to address the specific coastal access questions and needs of these stakeholder groups.

Impacts:

Four Sea Grant programs (Virginia, New Jersey, Mississippi-Alabama, and Hawaii) are in the processes of adapting *Accessing the Maine Coast* for use in their states. Other Sea Grant programs are expected to adapt the site in the future.

Web site: <http://www.accessingthemainecoast.com/>

Examining the Evolving Public Trust in South Carolina

Principle Investigator: Braxton Davis, South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management

Partners: Rick Devoe, South Carolina Sea Grant Consortium (Co-PI)

Funding from SGLC: \$26,545

Objective: Develop a competitive Coastal Law Fellowship program to clarify the implications of the Public Trust Doctrine in the state of South Carolina.

Outcomes:

1. *Graduate Student Training:* Following a thorough search and extensive interviews, Matthew Pecoy, a law student at the University of South Carolina's School of Law, was selected as the Coastal Law Fellow. The SCDHEC-OCRM hosted Matt on a part-time basis at the coastal program headquarters in Charleston, South Carolina for one year. During that time, Matt gained valuable training and experience in legal research and coastal policy while working on a "real world" issue. Legal employers are increasingly seeking applicants with experiential training.
2. *State of the Knowledge Reports:* The Coastal Law Fellow developed a three-part series of "State of the Knowledge" reports as reference documents for OCRM staff and the broader coastal management community in South Carolina. The first report, *The Public Trust Doctrine in South Carolina*, provides an overview of the public trust doctrine and related case law in South Carolina. The second report, *Private Uses of Public Trust Resources*, considers the legal implications of existing conveyances of private rights to public trust resources in the state. The third report, *Submerged Lands Leasing Options in South Carolina*, examined the feasibility of a submerged lands leasing program in South Carolina.
3. *Application of the Public Trust Doctrine in South Carolina Workshop:* On June 25, 2008, the South Carolina Sea Grant Consortium hosted an interagency workshop for state and local regulatory agencies to disseminate the results of the State of the Knowledge reports prepared by the Coastal Law Fellow.

Impact: OCRM staff have already begun to refer to the new reports for insights into beach management and development proposals. SCDHEC-OCRM is currently considering how to address the reports' specific recommendations.

Website: Because the reports were intended for use by OCRM staff and include some sensitive recommendations, they have not yet been released to the public. For information about the release status of the reports, please contact Braxton Davis, Director, OCRM Planning and Policy Division, DavisBC@dhec.sc.gov .

Legal, Policy, and Management Strategies for Effective Stewardship of the Gulf of Mexico: Developing a Consortium for an Adaptive Management Strategy

Principle Investigator: Richard McLaughlin, Harte Research Institute, Texas A&M University - Corpus Christi

Partners: Wyndlyn Von Zharen (Texas A&M University – Galveston); Ralph Rayburn (Texas Sea Grant)

Funding from SGLC: \$75,000

Objective: To organize and conduct a consortium of marine law, policy, and management researchers and practitioners to develop an integrated, informative, and adaptive management strategy to support establishment of a robust legal, policy, and management framework for effective stewardship of the Gulf of Mexico.

Outcomes:

1. *Literature Review:* Three graduate students received funding to conduct a review of secondary literature, selecting articles that pertain to collaborative, ecosystem-based management of the Gulf of Mexico (GoM). For each article, the students prepared summaries suitable for posting on *GulfBase*, a website devoted to the study of the GoM and hosted by the Harte Research Institute (HRI). A new digital library, dubbed *GulfBase/InfoHub* is now available on the *GulfBase* website. Ongoing maintenance of the site, including future literature reviews, will be provided by HRI and the National Sea Grant Law Center.
2. *Managing for a Healthy Gulf of Mexico Ecosystem: Obstacles, Opportunities, and Tools Workshop:* The co-PIs joined with the Environmental Law Institute (ELI) to convene a consortium of marine law, policy, and management researchers, practitioners, and other stakeholders on November 1 – 2, 2007 at HRI in Corpus Christi, Texas. During the workshop participants discussed how to make necessary tradeoffs, address anthropogenic cumulative impacts, and achieve conservation and sustainability of ocean and coastal resources in the Gulf of Mexico. The workshop proceedings are available at <http://www.eli.org/pdf/ocean/Managing%20for%20a%20Healthy%20GOM%20Ecosystem%20Summary.pdf> and http://harteresearchinstitute.org/docs/Healthy_Gulf_Ecosystem_Workshop_Proceedings.pdf
3. *Curriculum Development:* The findings of the literature review and the workshop have been integrated into two graduate classes in marine and environmental management law and policy.

Website: <http://www.gulfbase.org/infohub/>

Legal Tools to Protect Coastal Environments

Principle Investigator: Colleen Masterson, Great Lakes Water Studies Institute at Northwestern Michigan College

Partners: Olson, Bzdok, and Howard, P.C.; Inland Seas Education Association; Sleeping Bear Dunes National Lakeshore; The Watershed Center Grand Traverse Bay; and Michigan Sea Grant

Funding from SGLC: \$51,850

Objective: To create a unique and innovative new legal outreach workshop for Michigan Sea Grant constituents designed to provide government officials, non-profit environment groups, shoreline property owners, and concerned citizens with the tools they need to better understand and protect Michigan's coastal environments.

Outcomes:

1. *Legal Tools to Protect Coastal Environments Workshop:* On June 18-20, 2008, the project partners held a three-day *Legal Tools* workshop for twenty participants. Morning legal analysis sessions were paired with afternoon field experiences at Sleeping Bear Dunes National Lakeshore and on Grand Traverse Bay aboard the schooner *Inland Seas*. This mixture of fieldwork and classroom sessions allowed participants to explore the natural resources that the laws protect. The workshop's unique format received high praise from participants.
2. *Legal Toolkit:* Each participant received a comprehensive *Legal Toolkit* as part of the workshop. The toolkit provides an introduction to environmental law, followed by fifteen sections that explore coastal environmental topics from critical dunes and wetlands to water use and the Great Lakes Compact to invasive species. Each topic is summarized and accompanied by a variety of resource materials. The *Legal Toolkit* is also available online for use by others working to manage and protect coastal environments in Michigan.

Impact:

In addition to increasing their knowledge, workshop participants are using and sharing the *Legal Toolkit* with colleagues. One participant reported already using the Toolkit for work with township boards and zoning and planning boards.

Website: <http://www.nmc.edu/wsi/legal-tools/>

Review and Development of Near-shore Legal and Policy Framework for Community-based Management Opportunities in Oregon

Principle Investigator: Suzanne Iudicello Martley, MRAG Americas

Partners: Port Orford Ocean Resources Team

Funding from SGLC: \$50,000

Objective: The fishing community of Port Orford, Oregon has been working for several years to develop a community-based fisheries management system. The objective of this project was to investigate whether the community's vision was possible under existing state and federal law.

Outcome:

1. *Legal Report:* Project investigators' extensive review of federal and state law and case studies of community-based management in other areas resulted in the report, *Review and Development of Nearshore Legal and Policy Framework for Community-based Management Opportunities in Port Orford, Oregon*. The report concluded by presenting four options that the Port Orford community could pursue to try to achieve its goals: (1) Seek amendment of Oregon's nearshore groundfish plan to enable area management approaches for some species; (2) nominate two areas off of Port Orford for inclusion in Oregon's proposed Marine Reserve Network; (3) create a Special Area Management Plan under the framework of the Coastal Zone Management Act and Oregon's Coastal Management Program; and (4) develop a community sustainability plan with a limited access program as provided for in the most recent revision of the Magnuson-Stevens Act.

Impact:

Port Orford has made significant progress in implementing the project team's recommendations. On September 28, 2008, POORT submitted a local proposal for a marine reserve/marine protected area, the Redfish Rocks Research Reserve, under Oregon's statewide marine reserve planning process. The Oregon Ocean Policy Advisory Council recommended that Redfish Rocks move forward as a pilot marine reserve. Governor Theodore Kulongoski's 2009-2011 recommended budget includes funds to support initial implementation of Redfish Rocks. In addition, on September 17, 2008, POORT signed a Memorandum of Understanding with Oregon Department of Fish and Wildlife for a pilot project in the Port Orford Stewardship Area to implement ecosystem and community-based management. Port Orford was the first community in Oregon to be awarded this opportunity.

Web site: Port Orford Ocean Resources Team, <http://www.oceanresourceteam.org/>

Monumental Questions: Governing the Northwestern Hawaii Islands

Principle Investigator: Alison Rieser, University of Hawaii at Manoa

Partners: Jon Van Dyke, University of Hawaii at Manoa, William S. Richardson School of Law

Funding from SGLC: \$75,000

Objective: To identify and assess legislative and regulatory options for ensuring the full protection of the Papahānaumokuākea (Northwest Hawaiian Islands) Marine National Monument (PMNM) under domestic law and also analyze potential international law measures to reduce threats from navigation and fishing vessel operations.

Outcomes:

1. *Legal Research:* Extensive legal research was conducted to determine whether the Presidential Proclamation was a durable legal basis for the protection of the PMNM and if sufficient legal authority was available to maintain a high level of protection from known threats. A proposal to incorporate the Monument into the National Marine Sanctuary System under the National Marine Sanctuaries Act was also examined.
2. *Outreach:* Research results have been presented at a number of conferences and events. In April 2008, Alison Rieser gave a presentation during a meeting of the National Research Council, Committee on the Effectiveness of International and National Measures to Prevent and Reduce Marine Debris and its Impacts entitled *Tackling Marine Debris at PMNM: Legal Aspects and Options*. Other lectures include *Beauty, Boundaries, and Baselines: An Environmental History of Papahānaumokuākea Marine National Monument* and *Institutional Dimensions of Marine Ecosystem-based Management: Protection the Northwestern Hawaiian Islands Marine Ecosystems with Piecemeal Legal Tools*. PowerPoint presentations prepared in connection with these lectures will be made available on Alison Rieser's faculty website as they are finalized.
3. *Scholarly Articles:* An article based on the above research will appear in the Fall 2009 issue of *Natural Resources & Environment*, the quarterly newsletter of the ABA's Section of Environment, Energy, and Resources, entitled *New Pacific Monuments Settle Legal Questions*.

Faculty Website: <http://www.geography.hawaii.edu/faculty/alison.html>