



Marine Resources Committee Newsletter

Vol. 12, No. 1

December 2008

MESSAGE FROM THE CHAIR

Mike Wascom
Chair, Marine Resources Committee

I hope you will enjoy the four articles on different marine resource issues that our outstanding Marine Resources Committee Newsletter editor, Professor Robin Craig, has put together. My special thanks to the authors: Michael Valentine and J. Michael Harty; Jay Huffman; Ryan Mohr and John Allen; and Chad J. McGuire and Bradley P. Harris.

We are always looking for topical articles on marine resources issues and welcome submissions to our newsletter from each of our members. We also welcome submissions from law students. For further information on submitting articles, please contact Robin at: rcraig@law.fsu.edu.

The start of a new national administration in January 2009, along with the new, 111th Congress should prove fertile for current and emerging marine resources law issues. We will be reporting on these developments as they arise.

On behalf of the committee officers, I would like to wish you a peaceful holiday season and a wonderful year in 2009!

INITIAL REPORT FROM THE SAND BAR ON HURRICANE IKE

Jay T. Huffman
*Attorney, Royston, Rayzor,
Vickery, & Willams, LLC
Houston, Texas*

The effects of Hurricane Ike on Galveston Bay will continue to impact the greater Houston and Galveston, Texas area long after the 2008 hurricane season. On Sept. 13, 2008 at 2:10 a.m. (CDT) Hurricane Ike, a strong and massive Category 2 storm, made landfall on the eastern end of Galveston Island with sustained winds of 110 mph (175 km/h), a 21.5 foot (6.5 meter) storm surge and widespread coastal flooding. What lasting impact Hurricane Ike has on the marine environment of Galveston Bay will remain to be seen as assessment teams from the various national and state agencies begin the process of assessing and implementing action plans. What we know so far is that not only the issue of derelict boats on the shores of Galveston Bay, but also the uncalculated amount of debris scattered about the bottom of Galveston Bay, along with the estimated 2,221 pollution incidents, will raise various legal issues and battles for future hurricane seasons.

In the wake of Hurricane Katrina in 2005, the National Oceanic and Atmospheric Administration (NOAA) Marine Debris Program estimated that there were 3,000–4,000 abandoned vessels scattered around the Gulf Coast region. Emily V. Driscoll, *America's*

**Marine Resources
Committee Newsletter
Vol. 12, No. 1, December 2008
Robin Kundis Craig, Editor**

In this issue:

Message from the Chair
Mike Wascom 1

Initial Report from the Sand Bar on
Hurricane Ike
Jay T. Huffman 1

Coastside Fishing Club and Michael J. Nolan v. the California Resources Agency, the California Department of Fish and Game, and the Resources Legacy Fund Foundation
Michael R. Valentine and J. Michael Hardy 3

Rights-Based Fisheries and Ecosystem-Based Management: Maybe Scientists and Fishermen Know the Way?
Chad J. McGuire and Bradley P. Harris 5

Exempt No More: NPDES Permits Will Be Required for Vessel Discharges
Ryan Mohr and John Allen 7

© Copyright 2008. American Bar Association. All rights reserved. The views expressed herein have not been approved by the ABA House of Delegates or the Board of Governors and, accordingly should not be construed as representing the policy of the ABA.

This newsletter is a publication of the ABA Section of Environment, Energy, and Resources, and reports on the activities of the committee. All persons interested in joining the Section or one of its committees should contact the Section of Environment, Energy, and Resources, American Bar Association, 321 N. Clark St., Chicago, IL 60654.



Underwater Junkyard, TIME MAGAZINE ONLINE, Tues., Sept. 30, 2008. <http://www.time.com/time/printout/0,8816,1846014,00.html>. Current estimates are that there are 301 boat casualties of Hurricane Ike, but with thirty-eight marinas with 10,303 wet and dry slips in the Galveston Bay area, this number is most certainly an initial number that will rise along with the number of derelict boats that were scattered from these slips to numerous destinations through Ike’s massive storm surge. Local papers reported that even a month after Hurricane Ike, derelict boats still scatter the local landscape while the issue of responsibility for cleanup remains the focus of the discussion. Chris Pachenko, *Boats Cause A Bind in Clear Lake after Ike*, THE DAILY NEWS, Sun., Oct. 19, 2008. http://www.khou.com/news/local/Galveston/stories/khou081019_rm_clear-lake-boats_.12. In response, Bill Grimes, Training and Response coordinator of the Texas General Land Office’s (GLO) Oil Spill Response Division, has become the state’s “sunken vessel guy.” T.J. Aulds, *Dock Owners Have A Sinking Feeling*, THE DAILY NEWS, Sun., Nov. 16, 2008.

Texas law allows boat owners to abandon their vessels and leave the issue of cleanup to local governments, the state, and private property owners. *Local Governments Get Guidelines For Handling Displaced Boats*, FEMA Release 1791-161, Oct. 18, 2008, <http://www.fema.gov/news/newsrelease.fema?id=46389>. Under the law, vessel owners are contacted and given the opportunity to claim and remove their boat or vessel. If vessel owners cannot or will not take action, jurisdictions will seek affidavits from the owners relinquishing rights to the vessels and giving jurisdictions permission to remove or dispose of watercraft. If the owner cannot be found, the Texas GLO’s office or private property owner must publish an ad in the local paper that provides a detailed description, including the vessel’s name and identification number, with the warning that the dock owner plans to have the vessel salvaged. The costs, \$5,000 to \$10,000 per boat for removal, make the abandonment decision for many Texas boat owners a simple one, but in turn this becomes a harsh reality for local governments or private property owners who are then responsible for removing the marine debris.

In addition to the issue of derelict boats, the impact of oil pollution related to Hurricane IKE remains to be seen. As of Nov. 19, 2008, personnel were still evacuated from fifty-eight production platforms in the Gulf of Mexico, equivalent to 8.4 percent of the 694 manned platforms, in the wake of Hurricane Ike.

Hurricane Gustav/Hurricane Ike Activity Statistics Update, Nov. 19, 2008, <http://www.mms.gov/ooc/press/2008/press1119.htm>. Production platforms are those structures located offshore from which oil and natural gas are produced and these structures remain in the same location throughout a project's duration unlike drilling rigs which typically move from location to location. There are no longer any evacuated jackups, submersibles, and/or semisubmersibles rigs in the Gulf of Mexico. Though, to date, there were no major oil spills or hazardous material releases, there were 190 reported incidents in Harris and Galveston Counties that involved oil, reported sheens, and other chemical material incidents which impacted the marine environment as reported to the Texas GLO. Of these incidents, 103 were related to oil, crude, or sheen-related incidents and eighty-seven were not reported as oil but instead were reported as other materials such as chemicals or sewage. The impact of these incidents will continue to be monitored and the effects on the marine environment of Galveston Bay will continue to impact the environment on the judicial system of the region.

The largest reported oil spill occurred on Goat Island, Texas which is a spit of uninhabited land which lies north of Bolivar Peninsula in Galveston Bay. Hurricane Ike's storm surge leveled the earthen containment walls and broke the pipes that connected from the storage tanks to the two wells in Galveston Bay. It was reported that, what little oil was left to find was cleaned up in relative short order. *Assessment of Hurricane Ike Damage Continues*, OIL SPILL INTELLIGENCE REPORT, Oct. 9, 2008.

**COASTSIDE FISHING CLUB AND
MICHAEL J. NOLAN V. THE CALIFORNIA
RESOURCES AGENCY, THE CALIFORNIA
DEPARTMENT OF FISH AND GAME,
AND THE RESOURCES LEGACY
FUND FOUNDATION**

**Michael R. Valentine
Attorney, Resources Law Group**

**J. Michael Harty
Principal, Harty Conflict
Consulting & Mediation**

Background

California's Marine Life Protection Act (MLPA), adopted in 1999 (California Fish and Game Code sections 2850-2863), requires the state's wildlife agencies to implement a marine life protection program that includes a network of marine life reserves and other designations to help protect and improve the natural diversity and abundance of marine life in California waters. The state legislature didn't adequately fund the public process for designing the reserve network and by 2004 the State Department of Fish and Game (DFG) had announced its intent to abandon the effort. The California Resources Agency and DFG then entered into a memorandum of understanding (MOU) with the Resources Legacy Fund Foundation (RLFF) creating a public-private partnership to fund MLPA implementation through a scientifically-based and publicly transparent process. RLFF is a public charity within the meaning of section 501(c)(3) of the Internal Revenue Code and is also a supporting organization under sections 4942(g)(4)(B)(i) and 4966(d)(4)(B)(I).

Litigation

Coastside Fishing Club, a group of recreational anglers, filed a petition for writ of mandate and complaint for declaratory and injunctive relief against the MOU signatories, alleging that the MOU was:

- A violation of the separation of powers and appropriations provisions of the California Constitution (Article III, § 3 and Article XVI, § 7 respectively);

- A violation of state law regarding gifts of money to the state (Government Code § 11005);
- Not a contract that could be authorized under the MLPA.

The essence of plaintiffs’ argument was that by providing money for the process, RLFF inevitably exercised impermissible control over the results and, thus, by entering into an agreement to provide private funding for a public process, the MOU parties had usurped legislative functions. RLFF and the state defendants moved to dismiss the action for failure to state a claim upon which judicial relief could be granted. The trial court granted the motion to dismiss and the plaintiffs appealed.

Decision

The First District of the California Court of Appeal, in an opinion written by Justice Kline, rejected the plaintiffs’ claims. Writing for a unanimous court, Justice Kline first noted that the argument that the funding provided by RLFF pursuant to the MOU constituted an illegal gift to the state was “manifestly untenable” because the commitments of the MOU parties were supported by consideration on all sides. The court then determined that, while the MLPA is ambiguous as to the kinds of contracts it authorizes, this contract appeared to be permissible. In reaching this conclusion, the court extensively reviewed:

- Legislative history of the MLPA;
- Previous examples of legislative endorsement of the use of public-private partnerships, especially in the ocean and coastal context; and
- Historical and current inadequacy of DFG funding.

In reaching its conclusion on the argument that the MOU contemplates an unauthorized gift, the court noted that private foundations have helped fund other marine science and policy implementation projects in California.

The court then turned attention to the constitutional question, which the court characterized as whether a contract for the purpose of obtaining private funds to

defray the cost of implementing the MLPA constitutes an impermissible delegation of legislative power in violation of the separation of powers doctrine. It first observed that the ultimate decision and associated rulemaking authority contemplated under the MLPA are exercised by the California Fish and Game Commission, not by any of the parties to the MOU. The court then pointed out that the MLPA itself provides numerous safeguards to ensure that the marine reserve plan to be developed and approved by the commission conforms to the legislative will. These facts distinguished the case from *Bayside Timber v. Board of Supervisors* (1971) 20 Cal. App. 3d 1, in which an impermissible delegation of legislative authority was found to exist when the “content of the rules under which private logging operations are conducted is decreed exclusively by... timber owners and operators” and “no guides or standards” had been set to prevent abuse of the broad discretion conferred. *Id.* at 10. In distinguishing the MOU from *Bayside Timber* the court also noted the absence of any pecuniary interest by RLFF in implementation or enforcement of the MLPA. As a result, the court concluded that the MOU was authorized by the MLPA and does not compromise the separation of powers doctrine of the California Constitution.

At least for the foreseeable future this litigation appears to have resolved any doubts about the legality of the public-private partnership memorialized in the MOU. This should facilitate the implementation of the MLPA as directed by the California Legislature and in these economically difficult times may have implications for other cooperative public-private arrangements for the implementation of public objectives.

**ABA Section of Environment, Energy,
and Resources**

**17th Section Fall Meeting
Sept. 23-26, 2009
Baltimore, Maryland**

SAVE THE DATE!

RIGHTS-BASED FISHERIES AND ECOSYSTEM-BASED MANAGEMENT: MAYBE SCIENTISTS AND FISHERMEN KNOW THE WAY?

Chad J. McGuire

*Department of Public Policy & Adjunct
Faculty, School of Marine Sciences
University of Massachusetts, Dartmouth*

Bradley P. Harris

*Department of Fisheries Oceanography,
School for Marine Science and Technology
University of Massachusetts, Dartmouth*

Introduction

The authors recently attended an International Symposium on current developments in Fisheries Ecology hosted by Florida State University at the Mote Marine Laboratory in Sarasota Florida (<http://www.bio.fsu.edu/mote/current.html>). At this symposium, the authors presented a view of U.S. fisheries management aimed at identifying “legal” issues involved with implementing ecosystem-based management principles. Some of the legal issues presented by the authors are summarized below. More importantly, some legal implications of the scientific discussions presented, as viewed by the authors, are highlighted, and their potential effects on future fisheries management policy, including rights-based management to achieve sustainable fisheries, is discussed.

Legal Issue: Implementing Ecosystem-Based Management in U.S. Fisheries

The authors presented an overview of ecosystem-based management in the May 2008 Marine Resources Committee Newsletter. In summary, fisheries management has evolved from a history of species-specific stock assessment to a present focus on habitats and general ecosystem interactions. From an information standpoint, this means science must now focus on *habitat*, where it once focused on species *stock abundance*. Under the 1996 Amendments to Magnuson-Stevens Fisheries Management Act (MSA)—the major federal law that implements

fisheries policy in the United States—specific timeframes for identifying “essential fish habitat” (EFH) (a major component to implementing ecosystem-based management (EBM)) were established (16 U.S.C. § 1853). However, what is left unresolved is the quality of scientific information necessary to inform both the identification and management of EFH. While MSA requires the use of “best scientific information available” (16 U.S.C. § 1851(a)(2)), there is no specific understanding of how stock assessment data (the traditional purpose of science under MSA) can be used to identify EFH.

While one may find the presence of fish in a specific location a *factor* in attempting to understand what is essential habitat for that fish, it is hardly conclusive, especially for management purposes. For example, consider the following statement from science regarding EBM in the fisheries context: EBM must “delineate all marine habitats utilized by humans in the context of vulnerability to fishing-induced and other human impacts, identify the potential irreversibility of those impacts, and elucidate habitats critical to species for vital population processes” (E. K. Pikitch et al., *Ecosystem-based fishery management*, 305 *Sci.* 346-347 (2004)). What seems required for proper EBM is the identification of habitats *critical* for vital population processes, not simply a correlation between finding a species in one location, and assuming that area is *de facto* essential habitat for the species. However, the legislative mandates for identifying and protecting EFH have left regional fishery councils in the position of “drawing lines” in large swaths of marine habitat without strong scientific evidence to support the designation. This is the case even when other statutory mandates requires high standards of scientific rigor (for example, see the Data Quality Act/Information Quality Act, Public Law 106-554). Councils are supported in such designations by regulations allowing for EFH designation even when scientific information is lacking. For example, 50 C.F.R. § 600.315(b) states: “The fact that scientific information concerning a fishery is incomplete does not prevent [regulation].” What has resulted, in many instances, is the labeling of marine areas as EFH, even when there is limited evidence to support the designation for a given commercial species.

Lessons from Mote—Science and Rights-Based Fisheries

The Mote symposium brought together fisheries science experts from around the globe. The theme of the symposium was a focus on managing spatial areas, much like the mandates of the 1996 Amendments to MSA. Ecologists from various countries identified the basic scientific problems with understanding ecological connections between species, including the difficulty in identifying and understanding what constitutes *essential fish habitat*. One recurring theme was identified by the authors; the scientists seemed to ultimately understand the best management technique was focused on managing *people*, especially when scientific information about habitats was lacking. In addition, they also seemed to agree the best *means* for understanding ecological structuring of commercial fish stocks was to create a stronger connection between the scientist and the fisherman. They often referred to this connection by labeling the scientist a “barefoot ecologist.” The job of the barefoot ecologist is to work within the existing fishing frameworks identified by fishermen, and develop a baseline data set to better determine the connections between fishing effort and effects on marine landscapes. In this way, the majority of attending scientists believe a better scientific understanding of essential habitats can be achieved. From a legal standpoint, the authors discerned a few important lessons for consideration.

First, it is obvious scientists over the world are looking for closer relationships with fishermen. It certainly seems scientists are beginning to see the value of local fishermen’s knowledge regarding areas of high versus low productivity. Such knowledge seems especially relevant when the purpose of the science shifts to an emphasis on spatial locations (identifying important habitat). Many of the scientists at the symposium discussed the “special rules” they noticed amongst fishermen in various communities. In certain South American fishing areas, informal rulemaking on fishing locations were identified through the use of “markas,” or specific geographic features to identify one’s right to fish in the area. It seems the fisherman’s knowledge of ecosystem function was correlated to the degree in which that same fisherman held a “property interest” in

the area. If the fisherman’s right was better defined, de facto or otherwise, the level of knowledge regarding “essential habitat” of targeted species increased. This positive relationship between rights-based fisheries and greater stewardship of the fishing resource has been historically identified in the United States (*see*, J.H. ACHESON, *THE LOBSTER GANGS OF MAINE* (Hanover, NH: University Press of New England 1988)).

Implications for U.S. Fisheries Management

Devolving the ocean private rights held in public trust by government has been increasingly discussed as a means of promoting better fishing stewardship. It has been used in other nations with generally increasing levels of success. While this article is not meant to detail the private versus public rights allocations of U.S. fisheries management, there is an interesting theme to weed out from the scientific discussions at Mote. Most importantly, scientists and policymakers agree sustainable fishing needs to account for ecosystem processes, rather than relying solely on stock assessments. The scientists seems to be suggesting one the preferred *methods* for obtaining the necessary information to implement ecosystem-based management (including the proper identification of essential fish habitat) is to work directly with those who fish the resource. Moreover, those who fish the resource seem to generally know the *most* about the resource when they “possess” rights in the resource that are more private than public. This simple observation may support the idea of looking towards rights-based methods of fishery management as we move forward with plans to end over-fishing, and institute truly “sustainable” fishing practices in the future.

Chad McGuire can be reached for comments at cmcguire@umassd.edu. **Brad Harris** can be reached at bharris@umassd.edu.

TRENDS NOW AVAILABLE ONLINE!

Section members are now able to view the newsletter *Trends* in .pdf format in the Section Members Only portion of the Section Web site at www.abanet.org. Issues dating back to September/October 2006 are archived.

As a Section member you have access to view *Trends* after logging onto the Web site with your ABA Member ID number and password. Section members may also view *The Year in Review* and *Natural Resources & Environment*.

The online versions of the publications contains all the articles found in the paper copies, created in .pdf format.

www.abanet.org/environ/



EXEMPT NO MORE: NPDES PERMITS WILL BE REQUIRED FOR VESSEL DISCHARGES

Ryan Mohr
Associate, Fox Galvin, LLC
St. Louis, Missouri

John Allen
Partner, Fox Galvin, LLC
St. Louis, Missouri

As a general proposition, the Clean Water Act (CWA) prohibits the discharge of any pollutant in to the navigable waters of the United States without an National Pollutant Discharge Elimination System (NPDES) permit. In 1973, however, the Environmental Protection Agency (EPA) exempted by regulation several categories of vessel discharges from the NPDES permitting requirements. *See* 8 Fed. Reg. 13,528, 13,530, § 125.4 (May 22, 1973). The exempted discharges included marine engine discharges, graywater discharges, and “any other discharge incidental to the normal operation of a vessel.” 40 C.F.R. § 122.3(a).

This broad exclusion for vessel discharges stood unchallenged until Northwest Environmental Advocates, The Ocean Conservancy, and Waterkeepers Northern California petitioned EPA in 1999 for repeal of 40 C.F.R. § 122.3(a), including the normal operation exclusion. The petitioners argued EPA lacked authority to implement the exclusions because the CWA did not authorize the exclusions. EPA denied the petition in September 2003, and the petitioners sought redress from the United States District Court for the Northern District of California.

The district court issued an order on March 30, 2005, directing EPA to repeal 40 C.F.R. 122.3(a) in its entirety. The court held that “the language of the CWA demonstrates the ‘clear intent’ of Congress to require NPDES permits before discharging pollutants into the nation’s navigable waters.” *Northwest Environmental Advocates, et al. v. United States Environmental Protection Agency*, 2005 WL 756614, at *9 (N.D. Cal. 2005). “Given the Court’s finding that Congress has ‘directly spoken’ on the question before the Court

today,” the Court continued, “it is ‘the end of the matter’ and the Court, as well as the EPA, must give effect to the unambiguously expressed intent of Congress.” *Id.* at 13. And to give effect to Congress’ intent, the court invalidated EPA’s vessel discharge exclusion from the NPDES permitting requirements and ordered EPA to repeal 40 C.F.R. § 122.3(a). On Sept. 18, 2006, at the petitioners’ request, the court issued another order vacating 40 C.F.R. § 122.3(a), effective Sept. 30, 2008. *See Northwest Environmental Advocates, et al. v. United States Environmental Protection Agency*, 2006 WL 2669042 (N.D. Cal. 2006).

EPA appealed to the Ninth Circuit Court of Appeals, and the Ninth Circuit sided with Northwest Environmental Advocates and the other petitioners, upholding the Sept. 30, 2008 vacatur of the normal operation exclusion. *See Northwest Environmental Advocates, et al. v. United States Environmental Protection Agency*, 537 F.3d 1006 (9th Cir. 2008). Following the appeal, and at EPA’s request, the district court extended the effective date of the vacatur to Dec. 19, 2008.

So what does this mean? On Dec. 19, 2008, in response to a proposed stipulation by the parties, the U.S. District Court for the Northern District of California extended the deadline for expiration of the vessel exception to Feb. 9, 2009. Thus, barring another extension, the regulation exempting vessel discharges from the NPDES permitting requirements will be vacated on that day. This means that all previously exempted vessel discharges will be prohibited without a valid NPDES permit.

Obviously it would be unduly burdensome on EPA and the regulated community to require all dischargers to obtain individual NPDES permits, so EPA drafted a general permit, called the Vessel General Permit (VGP), to govern the discharges. The VGP applies to all commercial vessels, and it permits certain enumerated discharges only in accordance with the permit conditions.

The VGP authorizes any owner or operator of a commercial vessel being used as a means of transportation who is eligible for permit coverage or

who is required to submit a Notice of Intent to be covered by the VGP to discharge in accordance with the VGP. An owner or operator of a vessel is eligible for permit coverage if it discharges one or more of the enumerated types of discharges into waters of the United States incidental to the normal operation of the vessel. “Waters of the United States” includes all inland navigable waters and the three-mile territorial sea.

The VGP enumerates twenty-eight types of discharges that are eligible for coverage under the permit, including deck runoff, bilgewater/oily water separator effluent, ballast water, chain locker effluent, and graywater mixed with sewage. The VGP authorizes these discharges, as well as the other twenty-three types of discharges, from covered vessels, provided that the discharges comply with the requirements of the VGP.

The discharge requirements are too lengthy to be restated in their entirety, but these requirements can be generally characterized as operational controls designed to reduce pollutant levels in vessel discharges. These requirements are, for the most part, best management practices rather than numeric effluent limits or rigorous testing requirements. For example, the permittee is required to keep “toxic and hazardous materials in protected areas” and those materials must be stored in “containers constructed of a suitable material, labeled, and secured.” The permittee is also required to keep decks cleared of “debris, garbage, residue and spills prior to conducting deck washdowns and prior to departing from port.”

There are some effluent limits in the VGP, including limits on the salinity of ballast water and limits on the concentration of oil in motor gasoline and compensating discharge. Additionally, the VGP requires permittees to utilize “onshore treatment for ballast water” if such treatment is “available and economically practicable and achievable.”

Permittees are also subject to the comprehensive requirement that all discharges be controlled “as necessary to meet applicable water quality standards [for] the receiving waterbody or another waterbody impacted by [the discharge].” To further this goal, EPA

has reserved the right to take steps to correct impacts to the receiving waters, including imposition of additional requirements and, if necessary, issuance of a site-specific permit.

The VGP also requires permittees to maintain a variety of records such as general vessel information, inspection records, analytical results (if required), and maintenance records.

In addition to the foregoing requirements applicable to vessels generally, the VGP contains additional requirements applicable to the following vessel classes: (1) large cruise ships, (2) medium cruise ships, (3) large ferries, (4) barges, and (5) oil and petroleum tankers. For these vessel classes the VGP requires, among other things, additional training, inspection, and recordkeeping requirements and, in certain instances, the VGP imposes additional effluent limitations.

All permittees must comply with the requirements set forth in the VGP as well as the general permit requirements, applicable to all NPDES permits, set forth in 40 C.F.R. § 122.41. All prospective permittees should review the VGP in detail to insure compliance with the applicable discharge requirements.

Another notable component of the VGP is that it does not automatically apply to all covered vessels. Covered vessels that are less than three hundred gross registered tons and do not have the capacity to discharge more than eight cubic meters (2,113 gallons) of ballast water will automatically be authorized to operate pursuant to the permit. Vessels that meet or exceed either the weight or ballast water capacity thresholds must apply for coverage under the VGP by submitting a Notice of Intent to EPA within a certain time period.

It should be noted Congress has already provided some relief for both EPA and the regulated community. On July 31, 2008 Congress enacted and the president approved S.3298. By this act, Congress imposed a two-year moratorium on the permit requirements for certain discharges from vessels less than 79 feet in length and from all fishing vessels of any length. See Permits for Discharges from Certain Vessels, Pub. L.

No. 110-299, 122 Stat. 2995. Moreover, although the VGP indicates it applies to certain recreational vessels, Congress enacted S.2766, known as the Clean Boating Act of 2008, which exempts discharges incidental to the normal operation of recreational vessels.

It is not clear how the VGP will be enforced, or even who will enforce the VGP, but it is clear that unless the U.S. District Court for the Northern District of California again extends the deadline, the exemption from the NPDES permitting requirements for vessel discharges will lapse on Feb. 9, 2009. All potential permittees should scrutinize the VGP and work toward timely compliance with the applicable discharge requirements. To this end, EPA established the following Web page for the VGP program from which useful information can be obtained: http://cfpub.epa.gov/npdes/home.cfm?program_id=350.

LIKE TO WRITE?

The Marine Resources Committee welcomes the participation of members who are interested in preparing this newsletter. If you would like to lend a hand by writing, editing, identifying authors, or identifying issues, please contact Robin Craig at (850) 644-0726 or rcraig@law.fsu.edu.

COMMITTEE ONLINE

Visit the Committee Web page at:
<http://www.abanet.org/environ/committees/marine/home.html>.

Back issues of the newsletter can be found at:
<http://www.abanet.org/environ/committees/marine/newsletter/archive.html>.

COMMITTEE LIST SERVE

Communicate with your colleagues at:
environ-marine_rsrcs@mail.abanet.org.

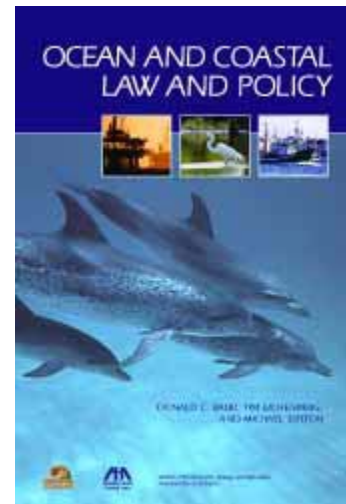
FROM ABA PUBLISHING AND THE SECTION OF ENVIRONMENT, ENERGY, AND RESOURCES

Ocean and Coastal Law and Policy

Donald C. Baur, Tim Eichenberg, and Michael Sutton, Editors

The country's ocean and coastal laws and policies in many ways mirror the very resources they were created to manage, restore, and protect: they are complex, intertwined, and fluid. *Ocean and Coastal Law and Policy* provides an authoritative yet practical resource for practitioners, government officials, and scholars to understand and build upon the current legal framework of our ocean and coastal policies.

This book brings together the expertise and insights of the country's leading scholars and practitioners in the field of ocean and coastal law. Covering the full array of issues in ocean and coastal law—from maritime jurisdiction and boundaries to water quality protection to fisheries management and marine mammal protection to offshore energy development and climate change—each chapter addresses the current state of the law for each subject, followed by analysis of the critical emerging and unresolved issues. The book's final chapters address the principles and legal authorities for transitioning toward an ecosystem-based management approach to U.S. coastal and ocean areas, and a review of the important call for action issued by two national ocean commissions in their far-reaching blueprints for the reform of current ocean policy and law.



2008 750 pages 7x10 paperback

Product Code: 5350165

Regular Price: \$119.95

Section of Environment, Energy, and Resources Member Price: \$99.95

**TO ORDER ABA BOOKS, CALL 1-800-285-2221 OR
VISIT THE ABA PUBLISHING
WEB SITE AT WWW.ABABOOKS.ORG
QUESTIONS? E-MAIL: SERVICE@ABANET.ORG**