



Sea Grant Legal Resources for Fisheries Extension

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National Fisheries Extension Mtg.

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Overview

- Sea Grant Law Center 101
- Magnuson–Stevens Reauthorization
- *Parm v. Shumate*
- Working Waterfronts
- Gulf LNG Update

Advisory Request Process

1. Constituent (management agency, extension agent, private citizen) contacts Law Center.
2. Law Center attorneys work with constituent to identify discrete legal question.
3. Research conducted by attorney and law students.
4. Final product prepared – memorandum of law, joint publication with constituent, etc.

Marine Extension Bulletin
September 2004

Woods Hole Oceanographic Institution Sea Grant Program
Cape Cod Cooperative Extension

Some Liability Issues for Massachusetts Shellfish Farmers

As Massachusetts' shellfish aquaculture industry continues to grow, issues of risk and liability may arise. This bulletin describes some of the potential risks and liabilities, while providing some tips for protecting shellfish farmers, shellfish consumers, and the public from harm.

It takes a great deal of time and energy to get a shellfish farm up and running, from getting an area licensed, planting the juvenile shellfish, to pulling nets and scrubbing gear. When the time comes to harvest those shellfish, it's also time to think about what is at stake and how risks can be minimized. What are some of the liabilities associated with a shellfish farm? For example, what happens if a member of the public is injured on a licensed area? What responsibilities do shellfish farmers have for employee injuries? What happens if a customer becomes ill after consuming cultured shellfish?

Some Background

In Massachusetts, licensed aquaculturists are granted the exclusive use of an area for the purposes of growing shellfish (§ 57 of Chapter 130, Massachusetts General Laws). Under the law, the public has reserved the right to use the waters and lands as long as that use is compatible with aquaculture. What does that mean? It means that no one without the consent of the license holder can take shellfish from that area, disturb the area or the growth of the shellfish, discharge any substances that injure the shellfish, or willfully destroy or remove the gear. And if they do! Violators may be fined by the license holder for triple damages and costs under § 63 of Chapter 130, Massachusetts General Laws.

In the event of a lawsuit, proper documentation is critical for both the plaintiff and the defendant. Licenses should be completely documented, including the specific extent of damage caused, any costs incurred, and any steps taken to repair the damages. In addition to written records and receipts, it is advisable to seek professional legal advice. It is also a good idea to notify the shellfish officer and the town, as the town may choose to pursue the matter.

Injury to a Member of the Public

Responsible shellfish farmers should do their best to maintain a safe and clean shellfish farm. Still, the Massachusetts



Many shellfish aquaculturists head out to work their farm when the tide is out and their farms are exposed.

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Law Center Publications

Legal Reporter for the National Sea Grant College Program

The **SANDBAR**

Volume 2, 1, 2003

Gradual Takings Claim Not Barred by Statute of Limitations

Rand v. U.S., 354 F.3d 1304 (Fed. Cir. 2007).

Jason Sarawee, LL.M.

The Federal Circuit recently addressed the time limits for filing a gradual takings lawsuit, in which a landowner argues that his property has been taken by government action over the course of several years.

Background

A group of landowners with acreage running along four miles of Lake Michigan sued the U.S. claiming marina jetties installed by the Army Corps of Engineers (the Corps) were causing a gradual, yet steady erosion of their properties. Although the shorelines of the Great Lakes naturally erode, the erosion had been accelerated over the years by the construction of the harbor jetties, built by the Corps in Lake Michigan's St. Joseph Harbor around 1903. The jetties were upgraded using sandtight steel sheet piling from 1950 through 1989. These improvements doubled the annual, natural erosion rate of Lake Michigan's littoral land starting the jetties from one to two feet per year.

Because of the increased erosion surrounding St. Joseph Harbor, the Corps developed a sand mitigation plan pursuant to the Rivers and Harbors Act. For over fifteen years the Corps attempted to mitigate the erosion by nourishing and replenishing the beaches with fine sand. In 1996, the Corps switched to coarser materials with a longer retention time on the beach.

The Lawsuit

The landowners sued the United States in July of 1999, charging the Corps with restricting the nat-

ural flow of sand and river sediment to their properties, causing a slow, yet onerous taking of their littoral land without just compensation. The owners claimed these jetties and some dredging projects had permanently taken away sand needed to replenish the naturally eroding shorelines along Lake Michigan.

The Corps moved to dismiss for lack of jurisdiction, arguing that the takings occurred more

See Sandbar, page 6

NMFS Strengthens Sea Turtle Protections

Stephanie Skowalec, J.D., M.S.E.L.

On February 21, 2003, the National Marine Fisheries Service (NMFS) issued a final rule strengthening the protections for endangered and threatened sea turtles. The NMFS amended its turtle excluder device (TED) regulations to improve the effectiveness of the regulation in reducing sea turtle mortality in the southeastern United States. The final rule took effect on April 15, 2003. However, the Gulf Area received a grace period until August 21, 2003.

All five endangered or threatened sea turtles are found within U.S. waters. Large loggerhead and leatherback turtles can be found in the state

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LAW AND POLICY DIGEST

<http://www.olemiss.edu/orgs/SGLC>



Magnuson Reauthorization

- S. 2012
 - Passed by Senate on 6/19/2006
 - Unanimous
- House Bills
 - HR 5051 referred to subcommittee on 4/19/2006
 - HR 5946 (Pombo) passed House on 9/27/2006 – now in Senate



Parm v. Shumate

- Walker Lands originally filed suit to enjoin public use of Gassoway Lake and a drainage ditch.
 - Ditch runs from lake to Bunch's Cutoff – waterbody that connects with MS River.
 - Lake only receives water when river floods.
- Plaintiffs want to use water when covers property.
 - Walker Lands owns lake and ditch



Parm continued

- Magistrate Judge
 - Federal common law and state law right to use navigate and fish between high and low water marks regardless of ownership
- U.S. District Court
 - Property is subject to public use up to high water mark.
 - No common law right to hunt and fish.
 - “Public use limited to activities that are incidental to navigable character of Mississippi River.”



Working Waterfronts

- Maine

- Senate Paper 338

- \$33 million bond issue

- \$2 million funds Maine Working Waterfront Access Pilot Program.

- \$12 million to fund acquisition of property and conservation easements.



Working Waterfronts Continued

- Florida

- Working Waterfront Protection Act
- Offers grants and planning assistance for communities seeking to revitalize waterfront areas and promote traditional waterfront trades.



Gulf LNG Update

- Gulf Landing DEIS issued April 22, 2005
- Gulf of Mexico Fishery Management Council filed formal comments expressing concerns about impacts of open rack vaporizer on fish stocks.
- In June 2005, NMFS disagreed with methodology applied and with the Coast Guard's and MARAD's conclusion that impacts would be minor.



LNG Continued

- Gulf Restoration Network v. U.S. DOT (5th Cir.)
 - Challenged decision to permit LNG terminal using open loop system.
 - Deepwater Port Act – license conditional on facility being “constructed and operated using best available technology”
 - Plaintiffs argued that closed loop was BAT
 - Court agreed with DOT that BAT means “construction that reasonably minimizes adverse impact to a reasonable degree given all relevant circumstances.”



Questions??????

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