

# LITTORALLY

**SPEAKING** News from the Mid Atlantic Chapter



Fall 2005

## VICTORY ON THE BEACHES

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### **Landmark Case Scores Victory for Public Access**

On July 26, the New Jersey Supreme Court handed down a landmark decision and a major victory to all who believe the ocean is held in public trust for the enjoyment and use by all citizens. In a 5 to 2 decision in *Raleigh Beach Association v. Atlantis Beach Club*, the court ordered the Atlantis Beach Club, a self-styled "private beach" along Diamond Beach in Lower Township, Cape May County, to provide full public access to the beach and ocean. The Supreme Court held that under the Public Trust Doctrine, the Atlantis Beach Club could not deny public access to and use of the ocean and the beach adjacent to its property. The American Littoral Society, the NY/NJ Baykeeper and Citizens Right to Access Beaches (CRAB) participated at oral argument as amicus curiae ("friends of the court") and argued in favor of public access and use of the beach in question.

The Public Trust Doctrine recognizes that certain resources such as the ocean, navigable rivers, and their shores are held in trust by the government for the public's use and enjoyment. Under this ancient legal doctrine, the government cannot deny the public's rights, even through the sale or grant of submerged or tidal lands. Previously, New Jersey courts have applied the Public Trust Doctrine to require public access in cases involving municipal beaches and to beaches operated by nonprofit or "quasi-public" corporations. The Atlantis decision is the first New Jersey case upholding public access and use of a privately-owned beach under the Public Trust Doctrine. It is also the first beach access case to reach the NJ Supreme Court in more than 20 years.

This decision has not opened all private New Jersey beaches to the public; however, it has strengthened the argument in favor of access for future litigants by reaffirming the Public Trust Doctrine and by giving the public access to the entire dry sand beach. It also clarified the State's (DEP) authority to enforce the public's right to access and to regulate fees charged for that access.

When the decision was announced, we hoped that the DEP would seize this opportunity to protect the public's rights under the Public Trust Doctrine. We were

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# PROTECTING THE LAND TO PROTECT THE OCEAN

New Shore Steward Program Promotes Coastal Stewardship

Science tells us that the health of the ocean depends on the health of the estuaries that feed it and that the health of the estuaries depends on what is happening on the land that feeds them. The American Littoral Society has long advocated and promoted environmentally appropriate land use both along the shore and in upland areas (see article on Page 4).



Beach plum in bloom

In New Jersey, much of the water's edge is already developed and estuaries, the bays and the ocean have suffered the consequences. To reverse coastal and estuarine degradation, we encourage shoreline and other property

owners to become better stewards of the piece of the shore that is in their care. To achieve this, we have launched the Monmouth County Shore Steward Program with the help of a grant from the Mary Owens Borden Foundation. Based on a very successful program for waterfront landowners in Puget Sound, Washington, the program will engage citizens in Monmouth County who live at the water's edge to learn about and implement "littorally" friendly land management practices. The volunteer program embraces ten stewardship principles to which participants will volunteer to adhere. They will learn best practices and techniques for managing near shore lands in workshops tailored for river-front, bay-front, or ocean front property owners. On completion, they will receive a sign that designates their property as "shore friendly".

We have hired Debbie Welch to develop and manage this program. She is currently pursuing her master's degree in education at Monmouth University and will work for the Society part-time. She holds a BS in Marine Biology and ran the NY/NJ Baykeeper's very successful oyster restoration program for two years. Currently, Debbie is researching and developing materials tailored for residents along the Shrewsbury and Navesink Rivers, ocean front, and bay shores. We view this as a pilot

program and plan to expand to other areas of the region.

Because an important component of the program will be to encourage people to plant native plants and grasses along the shore, Debbie will be working with local garden clubs and landscapers to promote the program, educate the public, and to provide the plant materials needed. The program will also involve "at-large" shore stewards to help implement good practices along publicly owned lands such as parks. We will hold workshops for prospective shore stewards in February. Garden club members, master gardeners, or landscapers who would like to share knowledge or promote the program to their friends and colleagues, please contact Debbie Welch at [debbie@littoralsociety.org](mailto:debbie@littoralsociety.org) or 732-291-0055.



Beach plum fruit

## VICTORY ON THE BEACHES

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encouraged when that very same week, the DEP fined a beach club in Dover township \$12,000 for refusing to sell a beach badge to a member of the public.

In the wake of this victory, we continue our efforts to ensure that proposed beach replenishment projects are securely tied to public access that is visible, adequate, and enforced. We are also working with officials and other groups to update an inventory of all access points in New Jersey. The Society developed such an inventory in 1996. Although the amount of shore development since that time has made this document out of date, it serves as a good starting point for new efforts.

To learn more about the history and impact of the Atlantis decision, download our fact sheet from [www.littoralsociety.org/resources](http://www.littoralsociety.org/resources).

# NewsShorts

## Deep See: A One-day Symposium for Divers

As you have slipped through the silent underwater world, have you ever wondered what makes the ocean tick? What drives the currents and tides; and what impact do they have on sea life and visitors like you? Have you thought about what fish eat (and what eats them)? What are the signs (other than dead fish) of environmental distress below the water line? What should you do if you see them? To answer these questions and much more, the Society will present a one-day educational symposium for divers on Saturday, December 3, at the Brookdale Community College facility on Sandy Hook. This event is designed for divers interested in adding a new dimension to the undersea world they love to explore. Educators, scientists and divers will cover general information about the ocean as well as topics focused on the Mid-Atlantic coast.

The day will run from 9 AM to 3 PM. The fee of \$45 includes breakfast,

lunch, snacks, and all materials. Space is limited to 30 people. To reserve your place, complete the registration form below (photocopies okay) and mail it with your check to The American Littoral Society, Sandy Hook, Highlands, NJ 07732.

### Annual Meeting

The sun shone down on the Hackensack Meadowlands as we convened our 44th Annual Meeting on September 24. Approximately 100 members, their guests, and staff walked the trails at the Meadowlands Environment Center, explored the surrounds in pontoon boats and canoes, and hiked up Snake Hill for spectacular views of Manhattan and New Jersey. As the sun went down, we made a leisurely transition to evening with fresh clams on the half-shell off the back of D.W. Bennett's truck followed by a wine-and-cheese reception that melted into dinner. The food was good and plentiful and the business meeting was short and sweet. After dinner, we retired to the comfort of



Meadowlands Environment Center offered close encounters with life in the salt marsh at our 44th Annual Meeting.

the Center's state-of-the-art auditorium where Frank Steimle, President of the Board of Trustees, presented the Graham Macmillan Award to the Hudson River Fishermen's Association (see Page 5).

We ended the evening by enjoying an engaging and thought provoking program by our keynote speaker, Richard Ellis, noted marine artist, author, and ALS Trustee who spoke on the issues raised in his most recent book on the sea, *The Empty Ocean*. At the end of his talk, punctuated with exceptional examples of his artwork and photography, Mr. Ellis held an informal Q&A and signed copies of his book. We at the Society thank Dr. Angela Cristini and her able staff at the Environment Center for their help in making this day a success.

### Double Your Dollars

For those members who support the Society above

## American Littoral Society-Deep See Symposium

### Registration Form-December 3, 2005-9AM to 3PM

Name \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Diving Experience:  Newly Certified  Frequent Diver  
 Occasional Diver (vacations)

ALS Member  Non-member

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# REGARDING NATURE

## SOFTENING THE EDGE

Consider Mid-Atlantic coastal bays—Peconic, Great South, and Jamaica on Long Island; Raritan and Barnegat in New Jersey, Delaware Bay and the inland bays to its south; and Chincoteague and Chesapeake. They are prodigious protein engines, responsible for levels of productivity to rival any landform in the world. Their tidal flats and edges are habitat for algae and vascular plants, primary producers at the base of a food chain that supports phytoplankton and zooplankton (very small drifting plants and animals) and then up through levels of grazers and predators—snails, shrimp, crabs, juvenile fishes, bigger fishes, wading birds, and ospreys.

Coastal bay systems depend on freshwater inputs from the land and daily flushing by the tides. Streams bring down minerals and nutrients from the land and tides force their way into and out of the wetlands to help feed the system. In its natural form, it is a machine that maintains itself.

But the form has changed; therein the rub. As watersheds are developed, streams carry heavier loads of silt plus contaminants from development—road drippings, road salt, pesticides and herbicides, and the other nasties that get a free ride in stormwater. Almost all of this ends up in coastal bays. Also, water withdrawals in developed watersheds mean lower stream flows to the coast, thereby changing salinities in estuaries. However, the most serious, long-term damage to the ecology of coastal bays comes from physical changes to shallow water and water's edge habitats as waterfront owners seek to "stabilize" their properties.

A major goal of the Littoral Society is to focus attention on the importance of the coast's tidal edges, to protect those not yet damaged, and begin the process of restoring those historically damaged edges so they can perform some of their important functions.

The best way to protect the edges is to leave them alone and build far enough back to prevent the need to fortify the edge to protect real estate. Unfortunately, bulkheading is the preferred method of bayshore fortification; it is a solid wall of wood, metal, or concrete that blocks the tides and a rising sea level from the land.

Bulkheading is expensive (up to \$100 a foot), temporary, and biologically insensitive. A slightly less severe engineering approach is to use riprap, loose, basketball-sized stone that buffers the effects of tides and waves but still allows some energy transfer from land to water and some habitat for marine life.

Most states in this region forbid or discourage bulkheading of bay edge at the high tide line, often pressing upland owners to move bulkheads back or consider "softer" alternatives, like planting native vegetation. In areas of high wave energy, the solution can be a combination of offshore sub-tidal structures to dampen wave forces and the planting of native vegetation between the structure and the water's edge. Bulkheads are also the enemy of valuable intertidal habitat, because they reflect almost 100% of the wave

forces that strike them. As that force rushes away from a bulkhead, it takes intertidal sediments with it, increasing water's edge erosion over time. To add one more insult to the injury, wooden bulkheads are pressure treated against marine borers with copper, chromium, and arsenic; all three elements are toxic to resident marine invertebrates, including young stages of shrimps, crabs, and clams.

The best solution, and the one the Society plans to pursue aggressively, is the selective use of native vegetation (possibly in combination with some shoreline re-grading). In this region, a natural bay shoreline should be a succession of wetlands grasses, *Spartina alterniflora*, *Spartina patens* (both getting their feet wet each high tide) and then, as elevation increases, woodier shrubs like marsh elder, and maybe red cedar. Such a lineup can help absorb the impact of waves on the shore; soak up, hold, and then dole out nutrients; provide habitat; and contribute to the coastal food chain's base. An acre of *Spartina* marsh is at least as productive as an acre of wheat.

So, there are many reasons to avoid bulkheading or any form of structural hardening at the water's edge of coastal bays. Better to preserve or restore native vegetation there where it has evolved to thrive. We (and others) call it a Living Shoreline. It has a nice ring to it.



Native plants can form a natural buffer between land and sea as well as much needed habitat for wildlife.

# TAGGERS' TALES



Representatives of the Hudson River Fishermen's Association accept the 2005 Graham Macmillan Award.

## **Graham Macmillan Award Presented to Hudson River Fishermen's Association**

During a special awards ceremony at our annual meeting on September 24, Frank Steimle, President of our Board of Trustees, presented the 2005 Graham Macmillan Award to the Hudson River Fishermen's Association for the group's exceptional contribution to marine fisheries conservation.

The award was established in the 1970s in honor of Graham Macmillan, who founded the Society's nationally recognized volunteer fish tagging program in 1965. After a ten-year hiatus, we reinstated the award in recognition of the 40th anniversary of the tagging program. Club officers Charles Stamm, Gil Hawkins, and Glenn Blank received the award on behalf of the Association. This year's award was a hand-carved and painted striped bass, complete with yellow dorsal loop tag, created by marine artist, Chris Peszka. The Society commissioned Chris to create an original piece especially for the award.

The Hudson River Fishermen's Association was founded in 1969 by a group of recreational fishermen concerned with pollution in the New York Bight. Since that time they have successfully pressured government and industry to clean up the Hudson River, introduced countless youngsters to recreational fishing activities, and actively promoted the American Littoral Society's catch-and-release fish tagging program to its members. The non-profit organization has been heavily involved in the effort to force General Electric to clean up the PCB contamination in the Hudson. Each spring, they sponsor the well-attended "Hooked on Hudson" event and promote other programs for youth including "Hooked on Fishing, Not on Drugs".

Award candidates were nominated and the final recipient selected by the Society's Board of Trustees. When the Board selected the Hudson River Fishermen's Association, Tim Dillingham, our Executive Director, noted, "There are a lot of good stewards of the coast out there. The Hudson River Fishermen's

Association is exceptional among them." He continued, "They have spent incredible effort in introducing people, especially youth, to the Hudson River and educating them about how to protect and preserve it. We take great pleasure in recognizing and promoting the excellent job they do."

To learn more about the Hudson River Fishermen's Association and their recreational and conservation activities, visit their web site at [www.njhrfa.org](http://www.njhrfa.org).

## **A Gift For All Seasons**

### **A Gift for the Best of All Reasons**

Connect your loved ones to the coast with a gift membership to the American Littoral Society. When you share your love of the littoral zone, we'll send a new membership packet with a personalized gift card from you. Use the form on page 8 or phone Mary Ann Griesbach at 732-291-0055.

## **Celebrate 40 Years of Fish Tagging**

### **Order Your 40th Anniversary T-Shirt Today**

Gray with blue & black + 1 tagged striper; Sizes L & XL (they run large)

\$15 (includes shipping);  
Phone Pam Carlsen  
at 732-291-0055,  
Tuesday-Friday

# ADVOCACY UPDATE

## **Super Wal-Mart Proposed in National Wildlife**

### **Refuge**—The Society is opposing construction of a

Super Wal-Mart in Pennsville Township in Salem County, New Jersey. The proposed site falls within the congressionally approved boundaries of the Supawna Meadows National Wildlife Refuge and will include parking for 1,400 cars on the equivalent of 7 football fields. The shopping center will usurp the scenic gateway to the refuge and a known bald eagle foraging area and will duplicate an existing Wal-Mart located less than a mile away. We are working with Citizens of Pennsville Against Sprawl (COPAS) and the United Food and Commercial Workers Union-AFL-CIO Local 1360 to raise public awareness of this plan. We are testifying at public hearings, writing letters to decision makers, waging a campaign in the press and working to escalate this issue to the State level. As a national wildlife refuge, Supawna Meadows is part of the public trust for all citizens, not only for residents of Pennsville Township, or even, for that matter, of New Jersey. If you'd like to add your voice, contact Matt Blake at [matt@littoralsociety.org](mailto:matt@littoralsociety.org).

**TDR**—We continue to promote transfer of development rights as a way to preserve open space and manage growth in south Jersey. We've generated interest at the municipal and county levels and are working to keep the momentum going. On November 30, we're cosponsoring a presentation for municipal planners, decision makers and the public in Salem County. This is a collaborative effort between ALS, Concerned Pilesgrove Residents (CPR), and Pilesgrove Township. Also participating will be the NJ Office for SmartGrowth and SADC. Our work in promoting this process will position us to work with municipalities and counties to ensure that the critical front-end planning component of TDR will yield the intended result of protecting environmentally sensitive areas and directing growth toward those areas most able to sustain it.

**Wreck Pond Restoration**—ALS convinced the DEP to require greater levels of protection for migratory fish and threatened and endangered bird and plant species as part of Wreck Pond dredging and outfall extension

project. Without the advocacy of ALS, Clean Ocean Action and committed local residents, this project would likely have proceeded without any consideration of these environmental issues or any of the guarantees of the increased protections that have been secured.

## **Ocean Township, Ocean County - Coastal Center Applications**—ALS is working closely with partner

environmental groups and the DEP to ensure that adequate safeguards for protecting the coastal environment and water resource capacity are conditions for the NJ State Planning Commission's Plan Endorsement decisions for coastal municipalities. Earlier this year, DEP extended eligibility for coastal center designation under the Coastal Area Facilities Review Act (CAFRA) for one year. Now, many coastal communities are seeking quick action from the State Planning Commission to receive the density bonuses and increased impervious cover allowances provided by coastal center status. We are working to ensure that, in the rush, the intent of the program is met: to award the density bonuses and other allowances only in the presence of up-front planning consistent with CAFRA and smart sustainable growth for the coast.

## **Flood Hazard Area Control Act - Regulatory Update**—

The NJ DEP has proposed to reauthorize this important regulatory program with no changes, stating that it is working on a package of substantial rule changes and improvements that will be revealed to the public for review and comment later this year. In light of the impact of Hurricanes Katrina and Rita and of State and Federal practice to handle hazard management after the fact through beach nourishment in lieu of preventive land use planning, we believe that changes to this rule are critical. We are urging the DEP to propose a program that protects homes, businesses and communities from the outset by prohibiting new development in areas where storm events are likely to result in catastrophe. We are asking the DEP to coordinate this program with other land use programs and water resource protection regulations so that anti-degradation policies, buffers and water quality criteria are consistent across the board.

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# MORE NEWS

**Lacey Township, Rail-Trail Preservation Project**—ALS is supporting the work of a local conservation group - the Lacey Rail-Trail Environmental Committee - and urging the DEP to deny a CAFRA permit to Lacey Township that would transform an abandoned railway corridor into a road. The corridor is a small segment of Ocean County's Barnegat Branch Bike Trail and is owned by the Township. The railway corridor itself represents an important part of Barnegat Bay's history. Developing it as a road will destroy open space, break an important link in a regional rail-trail system and promote greater sprawl development in Lacey.

**Oyster Creek Nuclear Power Plant**—ALS and Clean Ocean Action are working together to support the NJDEP's position that the Oyster Creek Nuclear Power Plant must upgrade its technology and install a closed-loop system as a condition of its pending discharge permit renewal. This would replace the current "once-through" system that causes severe ecological harm to estuarine habitat, turtles, fish and thousands of microorganisms and larval species by drawing in and later discharging 1.4 billion gallons of hot, heavily chlorinated wastewater into the Barnegat Bay every day. This system and the permit that has authorized its use in the past do not comply with the federal Clean Water Act or its regulatory requirements for "Best Available Technology". The system is also not consistent with the coastal resource protection policies and standards in New Jersey's Coastal Zone Management Program. The draft NJDEP permit sends a clear message to the plant that it may no longer treat the destruction of the marine and estuarine environment of the Barnegat Bay as a cost of doing business. Not surprisingly, Oyster Creek is vigorously opposing the DEP's position.

## ADVOCACY UPDATE

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Finally, we are pushing the Department to implement sound land use planning for the protection of shorefront communities.

## News Shorts

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and beyond the cost of the annual membership dues, did you know that you may double or even triple the impact of your support through an "employee matching gift" or "matching funds" program at your workplace?

Many employers, especially larger corporations, offer these programs to employees. For example, if you send \$100 to the American Littoral Society, if your company has a matching funds program, you would fill out a form and your employer would also send the American Littoral Society a check for \$100. Check with your human resources department to find out if your company participates.

### New Web Site

Before year end, we will launch a new web site. While our current site has served us well for many years, changes in technology and the expectations of our members and the environmental community have dictated that we add new features and functions. The new site is part of our ongoing effort to do a better job of communicating our message and to be a better resource for concerned citizens and the environmental community. New features include the ability to download our newsletter and other documents and to enroll and renew memberships on line. Our web address will remain the same.

### New Membership Rates

For more than fifteen years, the Society has operated without increasing basic membership rates. When the current rates were implemented, a gallon of regular gas cost \$1.10 and a first-class stamp was \$0.25. To meet our increased costs we will increase Basic Individual/Family memberships to \$35, Senior Citizens to \$25, Libraries to \$40 and Clubs to \$50. These rates will take effect for members renewing on or after January 1, 2006.



American Littoral Society  
 Sandy Hook, Highlands, NJ 07732  
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# SAVE THE Date

## FIELD TRIPS AND EVENTS

**Note:** Our National Field Trip Brochure published an incorrect e-mail address for George Kowallis, leader of the Mt. Washington, NH in Winter Trip. The correct address is gkowallis@svcmcnj.org. The trip will focus on the effects of global warming.

**December 3:  
 Deep See-One-day Symposium  
 for Divers, Sandy Hook**

**December 3:  
 Northeast Chapter Holiday  
 Party, Brooklyn, NY. Contact  
 (718) 318-9344;  
 driepe@nyc.rr.com**

**January 1:  
 New Year's Day Beach Walk-  
 Sandy Hook**

### American Littoral Society

732-291-0055  
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### Join Us Today!

Become a member of the American Littoral Society and receive Underwater Naturalist, Coastal Reporter, Littorally Speaking, special publications, and a membership card. Complete this form and mail with your check or credit card details to: American Littoral Society, Sandy Hook, Highlands, NJ 07732. Payment is accepted in US funds only. Make check payable to American Littoral Society. Contributions are tax deductible.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

*I enclose my check for the membership level checked below.*

- \$15 Students and Seniors       \$100 Supporting Member
- \$25 Individual (includes family)       \$250 Sponsor
- \$30 Clubs, Libraries       \$500 Donor
- \$50 Sustaining Member

Please charge my membership checked above to my

- Mastercard       Visa Card       American Express Card

Expiration Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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City: \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

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