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The National Sea Grant Law Center is pleased to offer the **Ocean and Coastal Case Alert**. The **Case Alert** is a monthly listserv highlighting recent court decisions impacting ocean and coastal resource management. Each Case Alert will briefly summarize the cases. Please feel free to pass it on to anyone who may be interested. If you are a first-time reader and would like to subscribe, send an email to waurene@olemiss.edu with "**Case Alert**" on the subject line. MASGC 09-002-08



SECOND CIRCUIT

Cordiano v. Metacon Gun Club, Inc., 2009 U.S. App. LEXIS 16980 (2d Cir. July 31, 2009).

Several homeowners filed suit against a gun club, alleging that it disposed lead shot in violation of the Resource Conservation and Recovery Act (RCRA) and the Clean Water Act (CWA). The plaintiffs argued that due to the hydrologic connection between waters on the club's property and a nearby river, the club should have obtained RCRA and CWA permits. The U.S. District Court for the District of Connecticut granted summary judgment to the gun club. On appeal, the Second Circuit affirmed the district court's judgment, finding that the RCRA permit regulations did not apply to the regular, intended use of lead shot on a shooting range. Furthermore, the homeowners failed to show a material issue of fact as to whether lead contamination constituted an imminent and substantial endangerment to human health or the environment. The appellate court also affirmed the district court's judgment on the CWA claim, since the homeowners failed to present a material issue of fact as to whether the gun club discharged lead shot into navigable waters from a point source.

<http://www.ca2.uscourts.gov/decisions/>

FIFTH CIRCUIT

In re Ingram Barge Co., 2009 U.S. App. LEXIS 17732 (5th Cir. Aug. 10, 2009).

Former residents of the Lower Ninth Ward in New Orleans suffered property damage when the Industrial Canal flooded. The residents argued that at least one breach was caused when one of Ingram Barge Company's barges broke free from its moorings. The residents sued the barge's owner, the company chartering it, and the U.S. government. The Fifth Circuit held that the residents were barred from bringing suit against the U.S. for failure to exhaust remedies as required by the Federal Tort Claims Act and the Admiralty Extension Act.

<http://www.ca5.uscourts.gov/opinions/unpub/08/08-30626.0.wpd.pdf>

In re Signal International, LLC, 2009 U.S. App. LEXIS 18088 (5th Cir. Aug. 12, 2009).

Two barges owned by Signal International, LLC (Signal) broke free of their moorings during Hurricane Katrina and caused substantial damage to a highway bridge. Signal sought exoneration or limitation of liability. The Mississippi Department of Transportation (MDOT) opposed the company's petition. The U.S. District Court for the Southern District of Mississippi found that Signal was not entitled to exoneration but was entitled to limitation of liability. The Fifth Circuit affirmed, noting that the company was not entitled to exoneration from liability because the effects of the hurricane were reasonable foreseeable; however, the company could limit its liability because it lacked knowledge that the vessels were not properly moored. The appellate court did find that MDOT is entitled to an award of prejudgment interest.

<http://www.ca5.uscourts.gov/opinions/pub/08/08-60696-CV0.wpd.pdf>

NINTH CIRCUIT

California Trout v. FERC, 2009 U.S. App. LEXIS 15930 (9th Cir. July 20, 2009).

A dam operator applied to the Federal Energy Regulatory Commission to amend its license in order to protect a species nearing extinction, the arroyo toad. California Trout and Friends of the River filed a motion to intervene twenty-one months after the deadline for filing such motions, claiming that the license amendment would have a negative effect on wild trout. FERC denied the motions as untimely. On appeal, the groups argued that FERC's denial of their motions were arbitrary and capricious. The Ninth Circuit held that FERC's denial was not arbitrary and capricious, as 16 U.S.C. § 825g(a) allows the agency to differentiate among untimely interveners and permits FERC to reject prospective interveners who cannot demonstrate "good cause" for untimely motions, and, in this instance, the groups did not show good cause for their late intervention.

<http://www.ca9.uscourts.gov/datastore/opinions/2009/07/20/07-73664.pdf>

Sea Hawk Seafoods v. Exxon Corp., 2009 U.S. App. LEXIS 16324 (9th Cir. July 23, 2009).

Shortly after the Exxon Valdez litigation began, several of the plaintiffs, including Sea Hawk Seafoods, signed agreements providing for allocation of damages. In 2008, the U.S. Supreme Court ruled that Exxon's liability for punitive damages is limited to a 1:1 ratio with compensatory damages, but did not discuss allocation of punitive damages among the plaintiffs. Sea Hawk filed a motion with the court to void the agreement, claiming that the Supreme Court's decision now controls allocation and that it is entitled to more damages than provided for in the agreements. On appeal, the Ninth Circuit affirmed the U.S. District Court for the District of Alaska's denial of the motion. The appellate court ruled that the allocation agreements remain "fair, reasonable, and adequate" within the meaning of Federal Rule of Civil Procedure 23(e).

<http://www.ca9.uscourts.gov/datastore/memoranda/2009/07/23/08-35978.pdf>

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