

Ocean and Coastal Case Alert

~ ~ July 15, 2009 ~ ~

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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 09-002-06

U.S. SUPREME COURT

Polar Tankers, Inc. v. City of Valdez, 129 S. Ct. 2277 (June 15, 2009).

The U.S. Supreme Court overturned the Alaska Supreme Court's ruling upholding a personal property tax imposed by the City of Valdez against tankers calling in the port. The Court found that the city's ordinance violated the Tonnage Clause, U.S. Const. art. I, 10, cl. 3, which prohibits states, without Congress' consent, from imposing a charge for the privilege of entering, trading in, or lying in a port.

<http://www.supremecourtus.gov/opinions/08pdf/08-310.pdf>

Coeur Alaska, Inc. v. Southeast Alaska Conservation Council, 174 L. Ed. 2d 193 (U.S. June 22, 2009).

The U.S. Army Corps of Engineers granted a Clean Water Act § 404 permit to a mining company to discharge slurry materials, a mixture of rock and water, into a lake. Environmental groups filed suit, claiming that the company should have obtained a CWA § 402 permit from the Environmental Protection Agency for the discharge and that the discharge violated the EPA's performance standard forbidding froth-flotation gold mines to discharge "process wastewater." The district court awarded summary judgment to the mining company and the State of Alaska. The Ninth Circuit reversed, finding that the proposed discharge would violate the EPA's performance standards and CWA § 306(e). The U.S. Supreme Court reversed the appellate court, holding that the Corps has authority to permit the slurry discharge under § 404.

<http://www.supremecourtus.gov/opinions/08pdf/07-984.pdf>

Atl. Sounding Co. v. Townsend, 2009 U.S. LEXIS 4732 (U.S. June 25, 2009).

A tugboat crew member's claim for maintenance and cure was denied by his employer. He brought suit seeking compensatory and punitive damages for the denial of his claim. Both the trial court and the U.S. Court of Appeals for the Eleventh Circuit denied the employer's motion to dismiss the claim for punitive damages. The U.S. Supreme Court affirmed, holding that punitive damages are available for willful and wanton disregard of the maintenance and cure obligation as a matter of general maritime law and that 46 U.S.C. § 30104 of the Jones Act does not eliminate that remedy.

<http://www.supremecourtus.gov/opinions/08pdf/08-214.pdf>

FOURTH CIRCUIT

Indem. Ins. Co. of N. Am. v. United States, 2009 U.S. App. LEXIS 13657 (4th Cir. June 25, 2009).

Five passengers aboard a double-pontoon vessel died when the boat capsized in Baltimore Harbor. The owners and their insurers brought suit against the Coast Guard, claiming that the agency was negligent in inspecting and certifying the vessel because the inspector did not use the test procedure recommended in the U.S. Coast Guard Marine Safety Manual. The U.S. Court of Appeals for the Fourth Circuit ruled that the district court was correct in holding that the discretionary function exception under the Suits in Admiralty Act and the Federal Tort Claims Act barred the action against the Coast Guard.

<http://pacer.ca4.uscourts.gov/opinion.pdf/082148.P.pdf>

EIGHTH CIRCUIT

U.S. v. Bailey, 2009 U.S. App. LEXIS 15121 (8th Cir. July 9, 2009).

A developer, Gary Bailey, constructed a road on a parcel of wetlands in Minnesota without obtaining a § 404 Clean Water Act (CWA) permit. The U.S. Army Corps of Engineers (Corps) ordered the developer to restore the land to its previous condition. When Bailey failed to comply, the United States brought an action to enforce the order and to enjoin the developer from discharging more pollutants into the wetlands. The district court granted summary judgment in favor of the United States and issued a final injunction. Bailey appealed, claiming that the district court erred in finding that the Corps had jurisdiction over his land and entering an injunction to enforce the order. He also claimed that the Corps' restoration order was arbitrary and capricious. The Eighth Circuit upheld the district court's finding. The court held that 1) the Corps had jurisdiction under the CWA because the evidence showed that the site was in a wetland adjacent to navigable-in-fact waters; 2) the court did not abuse its discretion in issuing a permanent injunction; and 3) the order requiring Bailey to restore the wetlands in question was not arbitrary or capricious.

<http://www.ca8.uscourts.gov/opndir/09/07/081908P.pdf>

NINTH CIRCUIT

Exxon Valdez v. Exxon Mobil Corp., 2009 U.S. App. LEXIS 12713 (9th Cir. June 15, 2009).

In 2008, the U.S. Supreme Court reduced the \$2.5 billion punitive damage award against Exxon for the 1989 Exxon Valdez oil spill to about \$500 million. The Court remanded the case to the U.S. Court of Appeals for the Ninth Circuit to decide issues related to interest and appellate costs. The Ninth Circuit found that the assessment of post-judgment interest against Exxon Mobil runs from the date of the original 1996 punitive damages judgment, not from the 2008 judgment regarding the maximum level of punitive damages. The court also found that each party in the litigation should bear its own costs.

<http://www.ca9.uscourts.gov/datastore/opinions/2009/06/15/04-35182.pdf>

Mission Bay Jet Sports, LLC v. Colombo, 2009 U.S. App. LEXIS 13529 (9th Cir. June 24, 2009).

Two jet ski passengers were injured while in an area of Mission Bay reserved for the use of personal watercraft. The owner of the jet ski brought an action seeking exoneration or limitation of liability under the Shipowners Limitation of Liability Act. The U.S. District Court for the Southern District of California dismissed the action for lack of admiralty jurisdiction. The owners appealed. The injured passengers argued that the court lacked admiralty jurisdiction because the area was not navigable, citing the area's limitation to personal watercraft and the fact that it was cordoned off by a row of buoys. The Ninth Circuit disagreed, holding that the district court had admiralty jurisdiction, because the area was in fact navigable and the incident had a sufficient nexus to maritime commerce.

<http://www.ca9.uscourts.gov/datastore/opinions/2009/06/24/08-56142.pdf>

Renard v. San Diego Unified Port Dist., 2009 U.S. App. LEXIS 15059 (9th Cir. July 8, 2009).

The Ninth Circuit affirmed the U.S. District Court for the Southern District of California's dismissal of an action for failure to state a claim. Daniel Renard sued the local port authority claiming a right to free long-term anchorage in San Diego Bay. The appellate court affirmed. The court held that boaters do not have a constitutional right to unregulated long-term anchorage in public navigable waters. Furthermore, the court held that Renard's substantive due process claim was properly dismissed, because "the right to free long-term anchoring in a public body of water is not a right that can be considered 'so rooted in the traditions and conscience of our people as to be ranked as fundamental.'"

<http://www.ca9.uscourts.gov/datastore/memoranda/2009/07/08/08-55412.pdf>

DC CIRCUIT

District of Columbia

Polar Bear Endangered Species Act Listing & § 4 Rule Litig. v. Salazar, 2009 U.S. Dist. LEXIS 53934 (D.D.C. June 22, 2009).

The U.S. Fish and Wildlife Service (FWS) determined that the listing of the polar bear as threatened under the Endangered Species Act created a ban on the import of sport-hunted polar bear trophies. Safari Club International and Safari Club International Foundation brought suit under the Administrative Procedures Act (APA). The defendants, the Secretary of the Interior, FWS, and the director of FWS, moved for a judgment on the pleadings, arguing that the plaintiffs failed to state a claim, since the determination was not a final agency action, and, in the alternative, that the plaintiffs lacked standing to challenge the rule. The court found that the determination was a Final Rule subject to review under the APA, because the ruling definitively established that any application for a permit under 16 U.S.C.S. § 1374(c)(5) would not be granted. However, the court ruled that the associations had standing to challenge the statements in the Final Rule and denied the defendants' motion.

<https://ecf.dcd.uscourts.gov/doc1/04512587808>