~ ~ January 14, 2011 ~ ~

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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. NSGLC-11-03-01

FIRST CIRCUIT

Massachusetts

Strahan v. Diodati, 2010 U.S. Dist. LEXIS 133469 (D. Mass. Dec. 16, 2010).
A self-proclaimed "citizen prosecutor" filed suit seeking an injunction to enjoin state officials from licensing fishing equipment that allegedly entangles whales in violation of the Endangered Species Act (ESA). The United States District Court for the District of Massachusetts granted summary judgment in favor of the state officials. The plaintiff was unable to show conclusive evidence that officials actually caused takings during the relevant period or that takings were likely to continue in the future.
http://pacer.mad.uscourts.gov/dc/cgi-bin/recentops.pl?filename=gorton/pdf/strahan%20sj.pdf

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FOURTH CIRCUIT

Friends of the Earth, Inc. v. Gaston Copper Recycling Corp., 2011 U.S. App. LEXIS 140 (4th Cir. Jan. 5, 2011).
The Fourth Circuit overruled a district court decision finding Clean Water Act (CWA) violations and assessing penalties against the former owner of a metals smelting facility. The court held that the environmental groups had CWA standing, as a member had direct connection to waters impacted by the metal smelting facility discharges. However, the court ruled that due to legal insufficiency of portions of the notice letter the district court erred in finding violations and imposing penalties on all but three violations. Further, the court overturned the district court's decision assessing penalties for 54 days of violations that were wholly past when the environmental groups filed the complaint.
http://pacer.ca4.uscourts.gov/opinion.pdf/061714.P.pdf

FIFTH CIRCUIT

Louisiana

Landry's Seafood House-New Orleans, Inc. v. Bd. of Comm'rs of the Orleans Levee Dist., 2010 La. App. LEXIS 1805 (La.App. 4 Cir. Dec. 30, 2010).
A Louisiana appellate court upheld a lower court decision requiring a restaurant to meet its rental obligation after the property was damaged by Hurricane Katrina. The lower court set the annual rent for the property at $165,000 from July 1, 2005 to June 30, 2015. The property owners appealed, arguing that the rent should be higher, while the restaurant argued that the rent should be excused or reduced due to the hurricane. The court found that the rental amount was appropriate. The rental agreement specifically stated that in the event of damage or loss, the lessee was required to repair the damage and that there would be no abatement of rent pending construction. Further, the court found that trial court did not err in accepting an appraiser's summary appraisal report with regard to the amount of the rent, since it was supported by the record.
http://www.la4th.org/pdf/20101052DC%201.pdf

SIXTH CIRCUIT

Michigan

Anglers of the Au Sable, Inc. v. Dep't of Envtl. Quality, 2010 Mich. LEXIS 2591 (Mich. Dec. 29, 2010).
The Michigan Supreme Court held that an energy company's discharge plan was not an allowable use of water, finding that the plan was "manifestly unreasonable." The plan would have allowed the diversion of contaminated water from one source into an uncontaminated watershed. Overruling a previous court opinion, the court held that the Michigan Department of Environmental Quality could be sued under the Michigan Environmental Protection Act (MEPA) for issuing permits that would result in pollution. The court also ruled that any citizen may bring suit under MEPA, overruling a previous state Supreme Court opinion requiring citizens bringing a MEPA claim to meet a more restrictive federal standing test.
http://courts.michigan.gov/supremecourt/Clerk/10-10/138863-66/138863-66-Opinion.pdf

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NINTH CIRCUIT

California

Ctr. for Biological Diversity v. Lubchenco, 2010 U.S. Dist. LEXIS 135030 (N.D. Cal. Dec. 21, 2010).
Several environmental groups filed suit alleging that certain federal agencies violated the Endangered Species Act in failing to list the ribbon seal as threatened or endangered. The U.S. District Court for the Northern District of California granted summary judgment in favor of the agencies. The court found that the plaintiffs failed to show that the decision not to list the species was arbitrary and capricious.
https://ecf.cand.uscourts.gov/doc1/03517541938

Washington

Kitsap Alliance of Prop. Owners v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 2011 Wash. App. LEXIS 23 (Wash. Ct. App. Jan. 4,

2011).
A Washington appellate court upheld Kitsap County's critical area ordinance increasing buffers in the county's shoreline areas. Prior to this ruling, a lower court had ruled that the county did not have authority to regulate the shorelines and the appellate court affirmed that decision. Shortly thereafter, the legislature enacted amendments clarifying that the state Growth Management Act was to regulate critical areas until Shoreline Management Act plans were updated and also directed that the amendments be applied retroactively. On review, the appellate court vacated its previous opinion and rejected the property owners' assertions that retroactive application violated the separation of powers doctrine, infringed on vested rights, constituted a prohibited ex post facto law, and rendered existing local plans noncompliant with the Growth Management Act.
http://www.courts.wa.gov/opinions/pdf/38017-0.11.doc.pdf

DC CIRCUIT

United States v. Old Dominion Boat Club, 2011 U.S. App. LEXIS 518 (D.C. Cir. Jan. 11, 2011).
The U.S. Court of Appeals for the District of Columbia affirmed a district court opinion finding that a private club occupying reclaimed land on the Potomac River waterfront was not required to provide public access to the waterfront. The U.S. government had filed suit seeking to quiet title to the land in order to establish public access to or a public view of the waterfront. The court based its decision on Maryland law as it existed in 1801, since as the U.S. accepted the territory in question and created a judicial system for the District of Columbia, it declared that it would apply the laws of Maryland as they existed at that time for that part of the district. Accordingly, since Maryland law in 1801 allowed riparian owners to lay fill and build wharves, the court found that the club and its predecessors in interest had the right to fill the lands at issue.
http://pacer.cadc.uscourts.gov/docs/common/opinions/201101/09-5363-1287248.pdf

Hoopa Valley Tribe v. FERC, 2010 U.S. App. LEXIS 26280 (D.C. Cir. Dec. 28, 2010).
A U.S. appellate court denied the Hoopa Valley Tribe's petition challenging the Federal Energy Regulatory Commission's (FERC) refusal to impose condition on a utility's annual licenses. The tribe argued that the conditions would preserve the Klamath River's trout fishery and in rejecting the conditions, the agency acted contrarily to its regulations and precedents. The court disagreed, holding that FERC's actions were not standardless, and the unanticipated, serious impacts standard adopted by FERC in a rehearing order was not inconsistent with its precedents and regulations.
http://pacer.cadc.uscourts.gov/docs/common/opinions/201012/09-1134-1285059.pdf

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