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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the December 2015 issue of *Ocean and Coastal Case Alert*.

The Case Alert is a monthly newsletter highlighting recent court decisions impacting ocean and coastal resource management. (NSGLC-15-03-12).

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SECOND CIRCUIT

New York

Matter of Defend H2O v. Town Bd. of the Town of E. Hampton, No. 15CV2349ADSAYS, 2015 WL 7721207 (E.D.N.Y. Nov. 30, 2015).

Following Hurricane Sandy, the U.S. Army Corps of Engineers (Corps) planned construction of a reinforced sand dune on the beach in Montauk, New York. In two consolidated actions, several plaintiffs filed suit alleging that the Corps' approval of the project violated the federal Administrative Procedure Act (APA) and state law. In an effort to halt the project, the plaintiffs filed motions for a temporary restraining order (TRO) and a request for a preliminary injunction. The U.S. District Court for the Eastern District of New York denied the TRO and requested a report and recommendation from a magistrate judge on whether an evidentiary hearing was necessary for the preliminary injunction. The judge found that the hearing was not required. The district court adopted the magistrate's report and rejected the motion for a preliminary injunction.

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Coal. for Healthy Ports v. U.S. Coast Guard, No. 13-CV-5347 (RA), 2015 WL 7460018 (S.D.N.Y. Nov. 24, 2015).

The U.S. District Court for the Southern District of New York recently upheld the U.S. Coast Guard's environmental review of a project proposed by the Port Authority of New York and New Jersey to raise the height of the Bayonne Bridge so that larger ships can more readily access the Port of New York and New Jersey. In preparation for the project, the Coast Guard prepared an environmental assessment rather than an Environmental Impact Statement (EIS) and ultimately issued a "finding of no significant impact." Several groups contended that the Coast Guard violated the National Environmental Policy Act by failing to take a "hard look" at the project's growth, construction, environmental justice, and cumulative effects, and by insufficiently engaging the public in its induced growth analysis. The court granted the Coast Guard's motion for summary judgment, finding that the agency's decision was neither arbitrary nor capricious.

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FOURTH CIRCUIT

North Carolina

***Nies v. Town of Emerald Isle*, No. COA15-169, 2015 WL 8272743 (N.C. Ct. App. Nov. 17, 2015).**

Several North Carolina oceanfront property owners filed an inverse condemnation action against the Town of Emerald Isle, claiming that the town's amendment of ordinances regulating the use of the dry sand beach resulted in a taking of private property. A North Carolina trial court granted summary judgment in favor of the town in 2014. On appeal, the North Carolina Court of Appeals upheld the ruling, concluding that the dry sand beach was subject to public trust rights; the beach driving ordinances did not constitute a taking; and a beach equipment ordinance was a legitimate exercise of the town's police power.



FIFTH CIRCUIT

Louisiana

***In re Oil Spill by the Oil Rig "Deepwater Horizon"*, No. MDL 2179, 2015 WL 7721206, (E.D. La. Nov. 30, 2015).**

The U.S. District Court for the Eastern District of Louisiana ruled that Anadarko Petroleum, co-owner of the Deepwater Horizon, is liable for \$159.5 million in connection with the 2010 oil spill disaster. The court based its ruling on strict liability standards outlined in the Clean Water Act (CWA). The imposed fine is below the maximum allowed under the CWA. The court reasoned that the fine provided the appropriate balance between the company's "lack of culpability" and the "extreme seriousness" of the spill.

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NINTH CIRCUIT

Alaska

***Estrada v. State*, No. S-15434, 2015 WL 7353892 (Alaska Nov. 20, 2015).**

Several fishermen were charged with violation of an Alaska Department of Fish and Game regulation that specified how many sockeye salmon may be taken under their subsistence fishing permits. The district court agreed with their challenge and dismissed the charges. The court of appeals reversed. On appeal, the Alaska Supreme Court reversed the court of appeals and dismissed the charges. The court concluded that charges were improper because the harvest limits were not adopted following the requirements of the Alaska Administrative Procedure Act.

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California

***Ctr. for Biological Diversity v. California Dep't of Fish & Wildlife*, No. S217763, 2015 WL 7708312 (Cal. Nov. 30, 2015).**

The California Supreme Court ruled that the California Department of Fish and Wildlife violated the California Environmental Quality Act and the California Fish and Game Code when it approved a large development project in northwest Los Angeles County. An environmental group had challenged certification of the project's environmental impact report (EIR), conservation plan, and streambed alteration agreement, and the issuance of two incidental take permits. The trial court agreed with the environmental group and granted the petition. An appellate court reversed. On appeal, the California Supreme Court overruled the appellate court, holding: 1) the agency did not show substantial evidence that discharge of greenhouse gases from the development would not significantly impact the environment; 2) mitigation measures designed to protect endangered stickleback fish constituted a prohibited "take" of an endangered species; and 3) plaintiffs had exhausted their administrative remedies.

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***San Francisco Baykeeper, Inc. v. California State Lands Comm'n*, 242 Cal. App. 4th 202, 194 Cal. Rptr. 3d 880 (Cal. 2015).**

An environmental organization challenged the California State Lands Commission's (SLC) approval of a project to dredge mine sand from state lands under San Francisco Bay. Among other claims, the group alleged that the SLC's review of the project under the California Environmental Quality Act (CEQA) did not satisfy the SLC's duty under the public trust doctrine. A lower court dismissed the claim. The appellate court found that, absent evidence that the SLC considered its own obligations under the public trust doctrine as part of its CEQA review, the organization was entitled to a writ of mandate to compel the SLC to conduct that analysis.

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Hawaii

***Mount v. Keahole Point Fish, LLC*, No. CV 14-00100 ACK-RLP, 2015 WL 7451162 (D. Haw. Nov. 23, 2015).**

The U.S. District Court for the District of Hawaii concluded that U.S. Coast Guard Commercial Diving Operations regulations did not apply to certain vessels owned by an aquaculture company that raises Kampachi fish approximately one mile off the coast of Kona, Hawaii. After being injured while performing a diving operation for the company, the employee filed suit, alleging negligence per se and unseaworthiness per se under the diving regulations.

The court agreed that the regulations did not apply to the vessels involved, because they were fishing vessels below a certain size and weight making them exempt from the regulations.

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ELEVENTH CIRCUIT

***Riverkeeper v. U.S. E.P.A.*, No. 14-13508, 2015 WL 7720386 (11th Cir. Nov. 30, 2015).**

The U.S. Court of Appeals for the Eleventh Circuit ruled that the Environmental Protection Agency's (EPA) interim response to petitions to withdraw Alabama's National Pollutant Discharge Elimination System (NPDES) authorization was not immediately reviewable. Environmental organizations had sought to withdraw the state's authorization to administer NPDES, and the EPA's initial response found that the alleged program deficiencies did not warrant withdrawal proceedings. The court found that because the EPA has not made a final agency action on the allegations, it did not have jurisdiction to review the interim report.

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