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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the March 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-15-03-03).

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SUPREME COURT

***Yates v. United States*, 135 S. Ct. 1074 (2015).**

The U.S. Supreme Court ruled that a provision of the Sarbanes-Oxley Act prohibiting shredding of a "tangible object" did not extend to throwing undersized fish overboard. A Florida fisherman had been convicted under the Act for allegedly instructing a crewmember to dump undersized red grouper. In overturning the conviction, the court found that the meaning of "tangible object" under the Act should be for objects used to record or preserve information.

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FIRST CIRCUIT

Maine

***Protect Our Lakes v. U.S. Army Corps of Engineers*, 2015 WL 732655 (D. Me. Feb. 20, 2015).**

The U.S. District Court for the District of Maine dismissed a challenge to a Clean Water Act (CWA) permit issued for the construction of a large wind farm in Aroostook and Penobscot counties. Several advocacy organizations and

individuals filed a complaint alleging that the U.S. Army Corps of Engineers (Corps) violated several statues by granting a § 404 permit allowing the permanent and temporary fill of certain wetlands and streams. The judge found that in issuing the permit, the Corps did not violate federal laws, including the CWA, the Endangered Species Act, the Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection Act.

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FOURTH CIRCUIT

***Precon Dev. Corp. v. Army Corps of Engineers*, 2015 WL 1020693 (4th Cir. Mar. 10, 2015).**

The Fourth Circuit ruled that the U.S. Army Corps of Engineers (Corps) has jurisdiction over 4.8 acres of wetlands in Chesapeake, Virginia. A development company had applied for a permit from the Corps to fill the acreage in order to build ten homes. After the Corps denied the permit, the company filed suit. After previously remanding the case due to insufficient evidence to support Corps jurisdiction, the court found that the Corps has adequate evidence to support jurisdiction.

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FIFTH CIRCUIT

***United States v. Kaluza, No. 14-30122*, 2015 WL 1056619 (5th Cir. Mar. 11, 2015).**

The Fifth Circuit affirmed a district court's dismissal of manslaughter charges against two well site leaders for eleven deaths caused by the *Deepwater Horizon* blowout. The defendants were the highest-ranking BP employees working on the rig at the time of the explosion. The panel agreed with the district court's dismissal of eleven counts of seaman's manslaughter, finding that the men's responsibilities on the rig did not bring them under 18 U.S.C. § 1115.

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Louisiana

***In re* Deepwater Horizon, 2015 WL 729701 (E.D. La. Feb. 19, 2015).**

A U.S. district judge ruled that the maximum civil penalty under the Clean Water Act (CWA) for the *Deepwater Horizon* disaster is $4,300 per barrel of oil discharged. BP had requested the cap be set at $3,000. When the CWA was enacted in 1990, the maximum amount of the civil penalty was set at $3,000. Pursuant to the Adjustment Inflation Act, however, agencies may issue regulations raising statutory penalties to adjust for inflation. Since 1997, both the Environmental Protection Agency and the U.S. Coast Guard issued regulations raising the maximum amount of civil penalties under the CWA. At the time of the *Deepwater Horizon* disaster, the EPA had set the maximum civil penalty at $4,300, while the Coast Guard set the amount at $4,000.

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NINTH CIRCUIT

California

***San Francisco Herring Ass'n v. Pac. Gas & Elec. Co.*, 2015 WL 859420 (N.D. Cal. Feb. 26, 2015).**

The U.S. District Court for the Northern District of California denied a gas company's motion to dismiss a complaint arising from the operation of manufactured gas plants approximately one hundred years ago. The plaintiffs alleged that although the plants were no longer operational, pollution from the plant remains in certain neighborhoods of San Francisco and in San Francisco Bay waters in violation of the Clean Water Act and the Resource Conservation and Recovery Act. The court denied the motion to dismiss, because the plaintiffs reasonably alleged injury in fact and the factual basis for the challenged causes of action.

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Washington

***Ctr. For Biological Diversity v. U.S. E.P.A.*, 2015 WL 918686 (W.D. Wash. Mar. 2, 2015).**

The U.S. District Court for the Western District of Washington dismissed a case regarding the effects of ocean acidification on aquatic life in Washington and Oregon. An environmental group filed the suit, claiming that the Environmental Protection Agency (EPA) arbitrarily and capriciously approved the states' decisions not to identify any waters experiencing ocean acidification as impaired under § 303(d) of the Clean Water Act. The court granted EPA's motion for summary judgment, finding that the EPA's approval of the states' § 303(d) lists and conclusion that the states reviewed all existing and readily available water quality data was reasonable.

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D.C. CIRCUIT

District of Columbia

***Ctr. for Sustainable Econ. v. Jewell*, 2015 WL 967955 (D.C. Cir. Mar. 6, 2015).**

The U.S. District Court for the District of Columbia ruled that a nonprofit environmental group had associational standing to challenge the U.S. Department of Interior's approval of a five-year program for proposed mineral leases for resource exploration and development on the Outer Continental Shelf. The group alleged that the Department violated the Outer Continental Shelf Lands Act and the procedural requirements of the National Environmental Policy Act by approving the program. The court ruled that while the organization had associational standing to bring the claim, the groups NEPA claims were not ripe for review. Further, the Department's decisions were entitled to *Chevron* deference.

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