April 15 2024

Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the April 2024 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-24-03-04).

Forward to a friend

Know someone who might be interested in our monthly newsletter?

Forward this email their way and help spread the word.

FIRST CIRCUIT

Massachusetts

Mass. Lobstermen's Ass'n Inc. v. Nat'l Marine Fisheries Serv., No. 1:24-cv-10332 (D. Mass. Mar. 15, 2024).

The U.S. District Court for the District of Massachusetts ruled in favor of the Massachusetts Lobstermen's Association in its challenge to the National Marine Fisheries Service's decision to maintain a rule temporarily closing fishing grounds to protect North Atlantic right whales from getting tangled in fishing gear. NMFS had amended the Atlantic Large Whale Take Reduction Plan to extend 2022–23 area closures in the Massachusetts Restricted Area Wedge, an area between state and federal waters. In a one-page opinion, the judge agreed that the rule violated the Consolidated Appropriations Act of 2023 and held that the Final Wedge Closure Rule was void.

Opinion Here

FIFTH CIRCUIT

Citizens for Clean Air & Clean Water in Brazoria Cnty. v. United States Dep't of Transportation, No. 23-60027, 2024 WL 1456921 (5th Cir. Apr. 4, 2024).

An environmental group filed suit against the U.S. Department of Transportation (DOT) because the agency approved a license to build a deep-water oil facility near the Texas coast. The environmental group claimed that the license approval was not supported by a well-reasoned environmental impact statement (EIS) resulting in violations of the Deepwater Port Act and the National Environmental Policy Act. On appeal, the Fifth Circuit Court of Appeals denied the environmental group's petition for review because the court determined that DOT adequately considered the environmental consequences of operating a large deep-water oil facility off the Texas coast. The court held that the agency considered the project's effects on air quality, protected species, worst-case disasters, oil spill risks, alternative analysis, and the overall environmental impact.

Opinion Here

Mississippi

State v. Aldrich, No. 2022-SA-01088-SCT, 2024 WL 1455595 (Miss. Apr. 4, 2024).

A property owner filed suit against the State of Mississippi in an ownership dispute over one acre of Mississippi coastal land. The disagreement stemmed from the 1994 map of demarcation published by the Secretary of State that depicted the boundaries between private property and public trust tidelands. The 1994 map described the subject property as state-owned public trust tideland. The Mississippi Supreme Court held that the Secretary of State did not follow statutory guidelines in drafting the preliminary and final maps and that the property was not public trust tidelands. The court reasoned that the property owner owned the land because a 1784 Spanish land grant, the basis of the property owner's title to the land, invalidated the Secretary of State's claim that it owned the property. Further, the court held that the state did not meet its burden of proof that the accreted lands were public trust tidelands.

Opinion Here

SEVENTH CIRCUIT

Illinois

Bohen v. ConAgra Brands, Inc., No. 23 C 1298, 2024 WL 1254128 (N.D. Ill. 2024).

Two consumers filed a proposed class action against ConAgra Brands, alleging the company misled them about the sustainability of its fish products through its connection with the Marine Stewardship Council (MSC). They claimed violations under multiple states' consumer protection laws and unjust enrichment based on misrepresentations on the packaging. ConAgra moved to dismiss; however, the court held that while the plaintiffs did not have standing for injunctive relief, they could pursue monetary damages. The court also denied ConAgra's motion to dismiss the multistate class claims. Furthermore, the court delayed ruling on the Virginia Consumer Protection Act's class action ban, setting deadlines for parties to argue whether the ban is a substantive or procedural right. On the issue of misrepresentations, the court found that the labels on the packaging accurately described MSC certification, and there is no evidence to suggest ConAgra lacks product traceability. However, the "Good for the Environment" label was deemed potentially misleading as it could be interpreted by a reasonable consumer to be a separate commitment by ConAgra, rather than a commitment by the MSC, that their products are good for the environment. Ultimately, the court granted ConAgra's motion in part and denied it in part.

Opinion Here

NINTH CIRCUIT

Alaska

State of Alaska v. National Marine Fisheries Service, No. 3:22-CV-00249-JMK, 2024 WL 1199714 (D. Alaska 2024).

In December 2012, the National Marine Fisheries Service (NMFS) issued a final decision to list the Arctic ringed seal as threatened under the Endangered Species Act, concluding ringed seals will face an increasing degree of habitat modification through the foreseeable future from climate change. In March 2019, the State of Alaska petitioned to delist the Arctic ringed seal, relying on the decision not to list the Pacific walrus by the U.S. Fish and Wildlife Service (FWS), high variability in projected climate conditions from the Intergovernmental Panel on Climate Change's (IPCC) Fifth Assessment Report (AR5), and post-listing biologic and population data of the Arctic ringed seal. NMFS responded to the petition, concluding that Arctic ringed seals' reliance on subnivean birth lairs makes them less adaptable to environmental stressors than Pacific walruses. Additionally, the petition did not offer new information from the IPCC's AR5 or post-listing biologic and population data that warranted delisting. Therefore, the agency found the petition lacked justification for delisting the Arctic ringed seal. The state challenged NMFS's final decision. The U.S. District Court for the District of Alaska upheld NMFS's decision.

Opinion Here

Hawai'i

Maunalua Bay Beach Ohana 28 v. State of Hawai'i, No. CAAP-19-0000776, 2024 WL 1151685 (Haw. Ct. App. 2024).

Several property owners sued the State of Hawai'i, claiming Hawai'i Session Laws Act 73 reclassified accreted lands as public lands, resulting in a taking of their land without just compensation. The circuit court ruled in the property owners' favor. An appellate court affirmed that Act 73 constituted a permanent taking of existing accretions, however, the case was remanded to determine compensation. Due to the enactment of Act 56 in 2012, the circuit court determined that just compensation was $0, and denied the property owners' motion for attorney's fees. On appeal, the court determined that the law of the case doctrine did not prevent the circuit court from considering a change in controlling legislation enacted after the decision in 2006. Furthermore, the circuit court's finding of $0 just compensation was not clearly erroneous due to the credible testimony of a licensed real estate appraiser who concluded that no market buyer existed for the accreted land. The property owners were also not entitled to nominal damages or attorney's fees nor did the circuit court abuse its discretion by denying certification of a damages class. Therefore, the circuit court's final judgment is affirmed.

Opinion Here

D.C. CIRCUIT

District of Columbia

Ctr. for Biological Diversity v. Regan, No. CV 21-119 (RDM), 2024 WL 1591671 (D.D.C. Apr. 12, 2024).

In February, the U.S. District Court for the District of Columbia revoked the State of Florida's assumption of the Clean Water Act § 404 dredge-and-fill permitting program. The State of Florida filed a motion to issue a partial stay of the opinion. The court denied the motion for a partial stay, finding that the Clean Water Act prohibits partial permitting programs.

Opinion Here

National Parks Conservation Assn. v. U.S. Dep't Interior, et al., No. CV 20-3706 (RC), 2024 WL 1344450 (D.D.C. Mar. 29, 2024).

The National Parks Conservation Association (NCPA) sued the U.S. Department of the Interior, the National Park Service, and their administrators claiming they failed to protect Biscayne National Park in Florida in violation of the NPS Organic Act and the Administrative Procedure Act (APA). The court granted in part and denied in part NCPA's motion for summary judgment. The court agreed that the Organic Act and NPS's Records of Decision created a duty to establish the Marine Reserve Zone; however, they did not create such a duty for the commercial fishing phase-out. The court also agreed with defendants that NPCA did not identify a final agency action subject to arbitrary and capricious review under the APA. The court ordered the agency to designate the Marine Reserve Zone as soon as practicable.

Opinion Here

Sea Grant LAW CENTER

National Sea Grant Law Center
256 Kinard Hall, Wing E
University, MS 38677-1848