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Ocean and Coastal Case Alert

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

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FIRST CIRCUIT

Maine

Ass'n to Preserve & Protect Local Livelihoods v. Town of Bar Harbor, No. 1:22-CV-00416-LEW, 2024 WL 952418 (D. Me. Mar. 1, 2024).

Several businesses challenged a Bar Harbor, Maine ordinance that limits the number of cruise ship passengers who may disembark in the town to 1,000 per day. The businesses alleged that the ordinance violated both the U.S. Constitution and the Maine Constitution. The court ruled in favor of the Town of Bar Harbor. The court noted that the ordinance is a lawful exercise of home rule authority under the Maine Constitution. Further, the ordinance is not preempted by the Supremacy Clause of the U.S. Constitution, nor does it violate the Commerce and Due Process Clauses.

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THIRD CIRCUIT

New Jersey

Save Long Beach Island v. U.S. Dep't of Com., No. CV231886RKJBD, 2024 WL 863428 (D.N.J. Feb. 29, 2024).

A non-profit organization challenged the National Marine Fisheries Service's issuance of several incidental take authorizations (ITAs) for the development of several wind farms off the coast of New York and New Jersey. The group alleged the agency inadequately considered the impact the wind farms would have on marine mammals. The U.S. District Court for the District of New Jersey granted the agency's motion to dismiss the case. The court reasoned that the plaintiffs lacked standing because they failed to demonstrate an imminent and concrete injury with respect to their interest in marine mammals or that they would suffer any economic harm. The court also agreed that the claims were unripe for review because the ITAs are not final agency actions. Finally, several of the challenged ITAs had expired and were therefore moot.

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Lofstad v. Raimondo, No. CV227360RKTJB, 2024 WL 836392 (D.N.J. Feb. 28, 2024).

Fishermen challenged the National Marine Fisheries Service's (NMFS) promulgation of a final rule proposed by the Mid-Atlantic Fishery Management Council that altered the allocation of three species of fish—summer flounder, scup, and black sea bass—between the recreational and commercial sectors. The plaintiffs contended that the 21 members of the Council were not properly appointed as "officers" under the Appointments Clause of the United States Constitution; therefore, the rule should be vacated. The court disagreed, granting summary judgment for defendants. The court reasoned that the Council members are not "officers" under the Appointments Clause—their role is advisory to the Secretary of Commerce—therefore the Council is not constitutionally defective.

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FOURTH CIRCUIT

Anne Arundel Cnty. v. BP P.L.C., No. 22-2082, 2024 WL 764140 (4th Cir. Feb. 26, 2024).

The city and county of Anne Arundel, Maryland filed suit in state court against oil and gas companies, seeking damages and equitable relief. The governments alleged the companies violated the state Consumer Protection Act and state tort law, alleging that the companies wrongly used and promoted fossil-fuel products while concealing the connection between fossil fuels and climate change. The companies removed the case to federal court. The federal district court subsequently granted the governments' motion to remand to state court. On appeal, the Fourth Circuit affirmed the district court order remanding the case to state court. The court held that the federal-officer removal statute did not authorize removal, and even if First Amendment issues might be part of companies' defense, the action did not arise under federal law such that it could be removed as coming within original federal jurisdiction.

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FIFTH CIRCUIT

Santee v. Oceaneering Int'l, Inc., No. 23-20095, 2024 WL 1057491 (5th Cir. Mar. 12, 2024).

A remote-operated vehicle (ROV) technician working on a drillship was injured while replacing a part on one of the ROVs. He sued his employer and two other companies under the Jones Act, general maritime law, and the Saving to Suitors Clause. The defendants removed the case to the U.S. District Court for the Southern District of Texas, arguing that the federal court had jurisdiction under the Outer Continental Shelf Lands Act (OCSLA). The district court denied the plaintiff's motion to remand the case to state court. On appeal, the Fifth Circuit affirmed. The appellate court agreed that the employee was not a seaman under the Jones Act. The court also found that the district court had original jurisdiction under the OCSLA because the drillship was on the Outer Continental Shelf at the time of the injury. The court also affirmed the district court's ruling with regard to the negligence and unseaworthiness claims because the defendants did not breach their duties to the employee, and he failed to show that additional discovery would have created a genuine issue of material fact.

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D.C. CIRCUIT

A.P. Bell Fish Co., Inc. v. Raimondo, No. 23-5026, 2024 WL 875806 (D.C. Cir. Mar. 1, 2024).

Commercial fishermen challenged a National Marine Fisheries Service (NMFS) rule implementing an amendment to a fishery management plan for reef fish resources in the Gulf of Mexico. The plaintiffs alleged that the rule modified the allocation of red grouper between commercial and recreational sectors by relying on inconsistent economic analyses and failing to comply with Magnuson-Stevens Fishery Conservation and Management Act (MSA) and Administrative Procedure Act. The U.S. District Court for the District of Columbia granted NMFS summary judgment. On appeal, the D.C. Circuit affirmed in part and reversed in part. The court found the final amendment was consistent with the statutory catch limit; however, NMFS's use of methodology that it had previously found invalid was inadequately explained. The court remanded the case without vacating the final rule, ordering the agency to further explain its economic methodology and the effects on two MSA National Standards.

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Pub. Citizen, Inc. v. FERC, 92 F.4th 1124 (D.C. Cir. 2024).

A nonprofit group petitioned the D.C. Circuit to review the Federal Energy Regulatory Commission's (FERC) determination that a proposed liquefied natural gas (LNG) facility in Port St. Joe, Florida fell outside its jurisdiction. FERC had found that the facility fell outside the definition of LNG facility under §3 of the Natural Gas Act. The D.C. Circuit dismissed the cause of action, finding it was moot due to the company abandoning plans to build an LNG facility.

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District of Columbia

Nat'l Wildlife Fed'n v. Lohr, No. 19-CV-2416 (TSC), 2024 WL 727695 (D.D.C. Feb. 22, 2024).

The National Wildlife Federation (NWF) challenged a 2020 Final Rule from the Natural Resource Conservation Service (NRCS) regarding certification of maps delineating wetlands. NWF claimed that NRCS changed its policy regarding pre–1996 wetland certifications without exercising reasoned decision-making in violation of the Administrative Procedure Act (APA), without consulting with Fish and Wildlife Service (FWS) in violation of the Endangered Species Act (ESA), and without taking a hard look at the environmental impacts of its action in violation of the National Environmental Policy Act (NEPA). The court granted NWF's motion for summary judgment, finding that the organization has standing, and the 2020 Final Rule violates the APA because NRCS changed its policy regarding the certification of pre–1996 wetland determinations without providing a reasoned explanation.

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Sea Grant LAW CENTER

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