

The National Sea Grant Law Center is pleased to offer a new service, 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 and provide a link to the opinion. 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, just send an email to [waurene@olemiss.edu](mailto:waurene@olemiss.edu) with "*Case Alert*" on the subject line.

---

~ ~ **December 15, 2005** ~ ~

## **FIRST CIRCUIT**

*Medeiros v. Vincent*, 2005 U.S. App. LEXIS 27093 (1st Cir. Dec. 12, 2005).

The First Circuit affirmed the dismissal of Medeiros's claim that a Rhode Island Department of Environmental Management regulation restricting the number of lobster which may be harvested by methods other than lobster traps was unconstitutional. The court found that the "right to make a living" is not a fundamental right and therefore the regulation need only be rationally related to the legitimate government purpose of lobster conservation.

### **Rhode Island**

*Riesman v. Coastal Resources Management Council*, 2005 R.I. Super. LEXIS 166 (R.I. Super. Nov. 16, 2005).

The Rhode Island Superior Court affirmed the findings of the Coastal Resources Management Council that the public had used a disputed right-of-way to reach the ocean for decades. The court found that despite the landowners' resistance, starting approximately 20 years ago, the public continued to use the land to access the water and that the CRMC appropriately determined the 30-foot wide parcel of law was a public right-of-way.

---

## **FOURTH CIRCUIT**

*Ohio Valley Environmental Coalition v. Bulen*, 2005 U.S. App. LEXIS 25258 (4th Cir. Nov. 23, 2005).

The Fourth Circuit held that the Corps of Engineers complied with §404 of the Clean Water Act when it issued NWP 21, a general permit for the discharge of dredge and fill material, vacating a contrary decision by the district court. The Fourth Circuit found that the Corps acted appropriately, identifying a category of activities; determining those activities would have minimal environmental impact; and providing public notice and comment.

---

## **SIXTH CIRCUIT**

### **Michigan**

*Michigan Citizens for Water Conservation v. Nestle Waters North America*, 2005 Mich. App. LEXIS 2940 (Mich. App. Nov. 29, 2005).

The Michigan Court of Appeals affirmed the trial court's imposition of an injunction prohibiting Nestle from withdrawing any groundwater from property owned by Donald Patrick Bollman and Nancy Gale Bollman. The trial court found that Nestlé's withdraws unreasonably interfered with the plaintiffs' use of groundwater and violated the Michigan Environmental Protection Act. The Michigan Court of Appeals also found that the company's withdrawals unreasonably interfered with the Bollmans' rights, but disagreed that a complete bar was the appropriate remedy. The case was remanded to the trial court to determine a proper withdrawal rate.

---

## **NINTH CIRCUIT**

### **Oregon**

*Center for Biological Diversity v. U.S. Fish and Wildlife Service*, 2005 U.S. Dist. LEXIS 30090 (D. Or. Nov. 16, 2005).

The Center for Biological Diversity challenged the Fish and Wildlife Service's (FWS) decision that an Endangered Species Act listing of Southwestern Washington/Columbia Distinct Population Segment of coastal cutthroat trout was not warranted. The Center objected to the FWS's reliance on a single individual's fishing diary and argued that the agency failed to properly consider the declines in light of current threats. The District Court granted summary judgment in favor of the FWS finding that the agency took the required hard look at whether the coastal cutthroat trout is endangered of extinction in a significant portion of its range.

---

## **ELEVENTH CIRCUIT**

### **Florida**

*Payne v. City of Miami*, 2005 Fla. App. LEXIS 18139 (Fla. App. Nov. 16, 2005).

The Florida Appellate court found that a marine industry advocacy group and the owner of a tugboat company had standing to challenge the issuance of a permit for a condominium project on a river that would make it difficult for marine industries to continue to operate. The court reversed the contrary ruling of the trial court, which had held that the plaintiffs failed to prove they would suffer an adverse effect to an interest protected or furthered by the comprehensive plan. The case was remanded for further proceedings.

---

## **FEDERAL CIRCUIT**

*Norman v. United States*, 2005 U.S. App. LEXIS 24826 (Fed. Cir. Nov. 18, 2005).

The court affirmed the dismissal of a developer's taking claim finding that the causal connection between the revocation of an earlier delineation and the alleged loss was too attenuated. In 1988, the Army Corps of Engineers issued a wetlands delineation, which the developers relied on when purchasing the property. In 1991, the Corps issued a new delineation for the same property which substantially increased the acreage of jurisdictional wetlands. When the developers applied for a §404 permits several years later, the Corps required them to mitigate the wetland losses. Applying the *Penn Central*

factors, the court found that the Corps's actions had not resulted in a taking because the developers had reasonable investment-backed expectations for only a few acres which not affected by the new delineation.

---

## **COURT OF FEDERAL CLAIMS**

*Amber Resources Co. v. U.S.*, 2005 U.S. Claims LEXIS 347 (Fed. Cl. Nov. 15, 2005).

The court held that the 1990 amendments to the Coastal Zone Management Act breached 36 oil and gas leases off the California coast and the plaintiffs were therefore entitled to obtain restitution of \$1.2 billion in bonus payments.

---

*If you are a first-time reader and would like to subscribe to the Ocean and Coastal Case Alert, send an email to [waurene@olemiss.edu](mailto:waurene@olemiss.edu) with "Case Alert" on the subject line. If you are getting this e-publication and wish to unsubscribe for any reason, please hit your reply button and replace the subject line with "Unsubscribe". Thank you.*