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 with "*Case Alert*" on the subject line.

~ ~ October 15, 2005 ~ ~

SECOND CIRCUIT

New York

In re
Otal Invs. Ltd. v. Capital Bank Pub. Ltd. Co., 2005 U.S. Dist. LEXIS 21580 (S.D.N.Y. Sept. 29, 2005).

Three sailing vessels collided in international waters, and Otal filed a lawsuit for damages. Each of the vessels hailed from a nation that had signed the Brussels Collision Convention. The Convention does not allow for a presumption of collision liability, but under the 1874 *Pennsylvania* decision, a presumption of liability arises when one vessel violates laws designed to avoid collisions. The District Court, following a motion in limine regarding liability, held that the Brussels Collision Convention, rather than the *Pennsylvania* Rule, should be applied to the vessels' lawsuit.
http://www.nysd.uscourts.gov/courtweb/pdf/D02NYSC/05-05922.PDF

THIRD CIRCUIT

Delaware

Kopacz v. Delaware River and Bay Auth., 2005 U.S. Dist. LEXIS 20947 (D. Del. Sept. 26, 2005).

Kopacz, an employee of the Delaware River and Bay Authority (DRBA), filed suit against his employer under maritime law for injuries he allegedly sustained while working aboard a DRBA car ferry. Kopacz sought money for living expenses and medical bills, as well as punitive damages. The District Court dismissed the claim for punitive damages, holding that Congress, through adoption of the Jones Act, statutorily limited the remedies available for injured seamen.
http://www.ded.uscourts.gov/GMS/Opinions/Sep2005/04-911.pdf

FOURTH CIRCUIT

Maryland

Potomac Riverkeeper, Inc. v. Nat'l Capital Skeet & Trap Club, Inc., 2005 U.S. Dist. LEXIS 21346 (N.D. Md. Sept. 27, 2005).

Potomac Riverkeeper (PRK) sued the National Capital Skeet and Trap Club for violating the Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA). Up until eighteen months before the lawsuit was filed, the Club had run a skeet and trap firing range next to a tributary of the Potomac River. PRK claimed the Club had discharged lead shot, a pollutant, into a navigable waterway without a permit. The Court held that the Club was not in violation of the CWA, since it was not actively discharging pollutants, nor was it likely to do so in the future. However, the Court found that there was a genuine issue of fact as to whether the lead shot discharged into the nearby flood plain might continue to pollute the waterway, in violation of the RCRA. The Club's motion for summary judgment on the CWA claim was granted, but its motion to dismiss the RCRA claim was denied.
http://www.mdd.uscourts.gov/Opinions152/Opinions/05-549.memo.pdf

FIFTH CIRCUIT

Louisiana

Adams v. Owens-Corning Fiberglas Corp., 2005 La. App. LEXIS 2100 (La. Ct. App. Sept. 23, 2005).

Jefferson, a longshoreman that worked on land loading and unloading docked ships, sued his employer, Cooper, after he contracted asbestosis and colon cancer. Jefferson claimed Cooper had caused the illnesses by exposing him to asbestos and by failing to provide adequate safety gear. The Court dismissed Jefferson's asbestosis claim, but upheld his claim for cancer, since Louisiana's workers' compensation laws barred claims for asbestosis, but not cancer. Jefferson was exposed to asbestosis between 1965 and 1983, but the Longshore and Harbor Workers' Compensation Act did not cover onshore injuries before 1972.
http://www.la-fcca.org/Opinions/PUB2005/2005-09/2004CA1589Sept2005.Pub.124.pdf

NINTH CIRCUIT

Alaska Trojan Partnership v. Gutierrez, 2005 U.S. App. LEXIS (9th Cir. Sept. 22, 2005).

The Bering Sea and Aleutian Islands groundfish and crab fisheries' Restricted Access Management Program (RAM) denied the fishing vessel Alaskan Trojan a crab license for the fishery. RAM asserted that the vessel could not show it had made three crab harvests, which was required under the license limitation program (LLP). The vessel's owner filed suit, claiming RAM's definition of "documented harvest" was not consistent with the intent of the LLP, or its definition of the term. The Ninth Circuit reversed the lower court and awarded Alaskan Trojan a brown crab license.
http://www.ca9.uscourts.gov/ca9/newopinions.nsf/41D3CD7C1C467BA288257084004E8890/$file/0435

Baccarat Fremont Developers, LLC. v. U.S. Army Corps of Eng'rs., No. 03-16586 (9th Cir. Oct. 14, 2005).

Baccarat Fremont Developers sought to remove the Army Corps of Engineers' jurisdiction over wetlands it wanted to develop. The wetlands were located adjacent to two navigable flood control channels, which emptied into San Francisco Bay. Baccarat, citing the *SWANCC* decision by the U.S. Supreme Court, claimed the Corps had not shown a sufficient "hydrological or ecological connection" between his wetlands and the adjacent U. S. waters. The Ninth Circuit held that this was unnecessary, since *SWANCC*
did not address the Corps' adjacency jurisdiction, and affirmed the Corps' jurisdiction over the wetlands.
http://www.ca9.uscourts.gov/ca9/newopinions.nsf/392B35F543211F658825709900652846/$file/031658

California

In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings, 2005 Cal. App. LEXIS 1582 (Cal. Ct. App. Oct. 7, 2005).

A conglomeration of states and federal agencies developed a thirty-year plan, called the CALFED Program, to address water quality and quantity problems in the San Francisco Bay and the Sacramento-San Joaquin Delta. Several groups filed suit, claiming CALFED's Environmental Impact Statement/Report (EIS/R) did not adequately discuss potential adverse environmental impacts, mitigation, or alternative plans. The Court vacated CALFED's certification of the EIS/R, since it failed to offer an alternative plan that would mandate less water extraction from the Delta. In addition, the EIS/R lacked information on the environmental effects of diverting water used for agricultural irrigation, which was crucial to the Program's success.
http://www.courtinfo.ca.gov/opinions/documents/C044267.PDF

ELEVENTH CIRCUIT

Lienhart v. Caribbean Hospitality Servs., 2005 U.S. App. LEXIS 20931 (11th Cir. Sept. 27, 2005).

Lienhart was sleeping in a resort-provided lounge chair on a public beach in Aruba, when she was struck by a truck and boat trailer, owned by a tenant of the resort. Using diversity jurisdiction, Lienhart sued Caribbean Hospitality Services, Inc., the resort's managing company, in a Floridian federal court. She claimed the placement of the chairs had created a zone of danger and that Caribbean had failed to warn her that she could be struck by traffic on the beach. The Court held that Caribbean controlled the beach where the chairs were placed, it breached its duty of reasonable care by failing to keep vehicular traffic from the beach sitting areas, and failed to warn Lienhart of the danger.
http://www.ca11.uscourts.gov/opinions/ops/200410288.pdf

Florida

Fla. Wildlife Fed'n v. United States Army Corps of Eng'rs, 2005 U.S. Dist. LEXIS 22009 (S.D. Fla. Sept. 30, 2005).

The Florida Wildlife Federation and Sierra Club sued the U.S. Army Corps of Engineers, following the issuance of a permit to fill wetlands in Florida. The permit was issued for construction of a biotechnology research park, a joint project between Palm Beach County and The Scripps Research Institute. The plaintiffs claimed the permit, issued after the Corps found that the project would have no significant impact on the environment, violated the National Environmental Policy Act (NEPA), the Federal Clean Water Act (CWA), and the Rivers and Harbors Act of 1899. The Court held that the Corps had acted arbitrarily and capriciously in granting the permit, since it failed to fully consider the development's environmental impacts. Each side will now have to prepare a memorandum of law so that the court can decide what remedies are available to the plaintiffs.
http://www.flsd.uscourts.gov/cases/opinions/05cv80339d66..pdf

DISTRICT OF COLOMBIA

Ocean Conservancy v. Gutierrez, 2005 U.S. Dist. LEXIS 23388 (D.D.C. Oct. 11, 2005).

Two environmental groups filed suit over the National Marine Fisheries Service's (NMFS) management of the Atlantic Highly Migratory Species Pelagic Longline Fishery and its effect on sea turtles. Plaintiffs claimed NMFS violated the Magnuson-Stevens Fishery Conservation and Management Act, the Endangered Species Act, and the National Environmental Policy Act by allowing the use of large, circular, longlining hooks and by making a determination that the agency's actions would not jeopardize sea turtles. The Court found for NMFS and stated that the agency's decision-making process was comprehensive and reasonable, while balancing the reduction of longline bycatch with the needs of fishermen.

Oceana, Inc. v. Evans, 2005 U.S. Dist. LEXIS 22557 (D.D.C. Oct. 6, 2005).

After the U.S. District Court for the District of Colombia found, in a previous decision, that the U.S. Fish and Wildlife Service (FWS) did not have the authority to cancel the habitat closure areas of the Atlantic Sea Scallop Fishery Management Plan, FWS and other federal agencies filed a motion for clarification. The Court upheld its previous decision, but deleted two sentences from the ruling to clarify the fact that the habitat closure areas had been reinstated.

http://www.dcd.uscourts.gov/opinions/2005/Huvelle/2004-CV-810~15:20:41~10-6-2005-b.pdf

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