

The National Sea Grant Law Center is pleased to offer 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. 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, send an email to waurene@olemiss.edu with "*Case Alert*" on the subject line. MASGC 07-002-03

~ ~ **March 21, 2007** ~ ~

UNITED STATES SUPREME COURT

Sinochem International Company, Ltd. v Malaysia International Shipping Corp., 127 S. Ct. 1184 (U.S. Mar. 5, 2007).

The United States Supreme Court ruled that a district court does not have to consider a threshold objection, such as subject matter jurisdiction or personal jurisdiction, before responding to a defendant's forum non conveniens plea if it determines that a foreign tribunal is the more suitable arbiter of the merits of the case. The Supreme Court reversed the United States Court of Appeals for the Third Circuit and remanded the case for further proceedings.

<http://www.supremecourtus.gov/opinions/06pdf/06-102.pdf>

FIRST CIRCUIT

Massachusetts

Andrews v Town of Amherst, 2007 Mass. App. LEXIS 222 (Mass. App. Ct. Mar. 5, 2007).

The Andrews owned land surrounded by farmland and crossed by waterways. The Town of Amherst rezoned their land, which was subject to seasonal flooding, from a light industrial zone to a flood prone conservancy zone. The Andrews sued the town. The Land Court Department of Massachusetts ruled that the town's action resulted in reverse spot zoning in violation of the Massachusetts Zoning Act and rendered the town's action null and void. On appeal, the court reversed the land court's decision because the town had not treated other similar properties differently from the Andrews' property.

SECOND CIRCUIT

New York

In re City of New York, 2007 U.S. Dist. LEXIS 12758 (D.N.Y. Feb. 26, 2007).

In 2003, a Staten Island Ferry crashed into a maintenance pier after an assistant captain lost situational awareness due to fatigue. The crash resulted in the deaths of eleven passengers and various injuries to other passengers. The passengers brought suit against the city of New York, the owner and operator of the ferry, for violating an internal rule requiring two pilots in the pilothouse at all times. The city sought to avoid or limit liability under the Limitation of Vessel Owner's Liability Act. The United States District Court for the District of New York found that the city breached its duty of care to the passengers by failing to enforce the two-pilot rule and that the rule was admissible under the federal rules of evidence. Consequently, the court denied the city's petition to avoid or limit liability.

<http://www.nved.uscourts.gov/doi/03cv6049mo22607.pdf>

FOURTH CIRCUIT

American Roll-On Roll-Off Carrier, LLC v P&O Ports Baltimore, Inc., 2007 U.S. App. LEXIS 4154 (4th Cir. Feb. 26, 2007).

While at sea, an aircraft tow tractor aboard an American Roll-On Roll-Off Carrier (ARC) broke free of its lashings and caused diesel fuel to contaminate other cargo. ARC paid the cargo owners for their damages and sought indemnification from the stevedore. The United States District Court for the District of Maryland granted summary judgment in favor of the stevedore, citing a one-year statute of limitations that barred the claim. On appeal, the Fourth Circuit reversed the district court's judgment, since American filed its indemnification claim in a timely manner.

<http://caselaw.lp.findlaw.com/data2/circs/4th/061058p.pdf>

Maryland

Gunby v Olde Severna Park Improvement Association, 2007 Md. App. LEXIS 19 (Md. Ct. Spec. App. Mar. 1, 2007).

The Maryland Department of the Environment issued a license to a couple that owned property along the Severn River (owners) allowing them to build a walkway across a tidal pond and a pier into a river. The Olde Severna Park Improvement Association and several residents (residents) of that community challenged the issuance of the license, claiming that the owners did not own the riparian rights and that the license should not have been issued. The circuit court granted summary judgment to the residents on the basis that a note on a plat in a deed had a reservation that severed the riparian rights in the chain of title. On appeal, the Court of Special Appeals of Maryland vacated the circuit court's ruling, finding that it had misconstrued the provisions in question and mistakenly concluded that the license was improperly issued.

<http://www.courts.state.md.us/opinions/cosa/2007/1180s05.pdf>

FIFTH CIRCUIT

Texas

Coastal Conservation Association v Gutierrez, 2007 U.S. Dist. LEXIS 17376 (D. Tex. Mar. 12, 2007).

The Coastal Conservation Association, the Gulf Restoration Network, and the Ocean Conservancy (collectively, CCA) brought suit against the Secretary of Commerce (Secretary) for the National Marine Fishery Services' (NMFS) adoption of Amendment 22 to the Gulf of Mexico Reef Fishery Management Plan. The amendment concluded that no further regulatory action is necessary to end overfishing of red snapper and to rebuild its stocks. CCA alleged that NMFS violated the Fishery Act, the National Environmental Policy Act (NEPA), and the Administrative Procedures Act (APA). The United States District Court for the Southern District of Texas granted partial summary judgment to the CCA, finding that NMFS violated the Fishery Act and the APA when it promulgated Amendment 22. The court granted NMFS summary judgment on two of CCA's claims: 1) that NMFS violated NEPA and 2) that the Secretary violated the APA and the Fishery Act by denying CCA's petition for emergency rulemaking. The court further ordered that the Secretary approve a red snapper rebuilding plan with measures to reduce bycatch in the shrimp fishery within the next nine months.

http://www.earthjustice.org/librarv/legal_docs/federal-court-decision-on-red-snapper-overfishing.pdf

NINTH CIRCUIT

San Francisco Baykeeper v Cargill Salt Div., 2007 U.S. App. LEXIS 5442 (9th Cir. Mar. 8, 2007).

San Francisco Baykeeper and Citizens Committee to Complete the Refuge filed suit against the Cargill Salt Division and Cargill, Inc., alleging that the company violated the Clean Water Act (CWA) by discharging pollutants into waters of the United States without a permit. The United States District Court for the Northern District of California granted summary judgment in favor of the plaintiffs, finding that the pond into which the company had discharged the waste did qualify as a water of the United States, since it is adjacent to a protected water of the United States. The Ninth Circuit reversed the district court's ruling, holding that adjacency only provides coverage when the relevant waterbody is a wetland and that no other basis for CWA coverage of the company's pond was supported by evidence before the court.

<http://caselaw.lp.findlaw.com/data2/circs/9th/0417554p.pdf>

McConnell v United States, 2007 U.S. App. LEXIS 5443 (9th Cir. Mar. 8, 2007).

A United States Air Force F-16 student pilot was killed in a boating accident involving a boat rented from an Air Force recreation center. The pilot's parents brought suit against the government, alleging that the Air Force had failed to properly maintain, service, and repair the boat, and failed to warn its users that the boat was defective and unreasonably dangerous. The United States District Court for the District of Arizona granted the United States' motion for summary judgment on the grounds that the Feres Doctrine prohibited suit against the government for injuries incidental to military service. The Ninth Circuit Court of Appeals affirmed the ruling, because the use of the boat was a benefit to service members and the alleged negligence was subject to military orders and regulations.

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/B8EDAEA22DFBF288882572970081C896/\\$file/0515025.pdf?](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/B8EDAEA22DFBF288882572970081C896/$file/0515025.pdf?)

TENTH CIRCUIT

Forest Guardians v Forsgren, 2007 U.S. App. LEXIS 3956 (10th Cir. Feb. 23, 2007).

The U.S. Fish and Wildlife Service listed a distinct population segment of Canada Lynx as threatened under the Endangered Species Act. Forest Guardians and several environmental groups brought suit under Section 7(a)(2) of the ESA to compel the United States Forest Service to consult with the FWS on whether the Land and Resource Management Plans for the Carson and Santa Fe National Forests may jeopardize the continued existence of the lynx. The United States District Court for the District of New Mexico dismissed the complaint, and the Forest Guardians appealed. The Fourth Circuit held that there was no agency action that triggered a consultation under Section 7(a)(2), since the LRMPs were only a framework for making later project decisions, not a collection of decisions that would have constituted an "action" under 7(a)(2).

<http://www.kscourts.org/ca10/cases/2007/02/05-2181.htm>

ELEVENTH CIRCUIT

Florida

Carnival Corp. v Carlisle, 2007 Fla. LEXIS 287 (Fla. Feb. 15, 2007).

During a vacation aboard a Carnival Cruise Ship, fourteen-year old Elizabeth Carlisle fell ill and was seen several times by the ship's physician, Dr. Mauro Neri. The doctor diagnosed Elizabeth with the flu. After several days, the family returned home to Michigan where Elizabeth was diagnosed with appendicitis and, as a result of the rupture and subsequent infection, was rendered sterile. The family filed suit against Dr. Neri and Carnival for vicarious liability. The trial court ruled in favor of Carnival, and the family appealed. The district court of appeal found that the Carnival was liable for Dr. Neri's negligence. On appeal, the Florida Supreme Court held that under federal maritime law, a ship owner is not vicariously liable for the negligence of a ship board physician; therefore, Carnival was not liable for Dr. Neri's medical negligence.

http://caselaw.lp.findlaw.com/data2/floridastatecases/2_2007/sc04-393.pdf

UNITED STATES COURT OF INTERNATIONAL TRADE

Salmon Spawning & Recovery Alliance v Basham, 2007 Ct. Intl. Trade LEXIS 30 (Ct. Intl Trade Mar. 6, 2007).

The Salmon Spawning & Recovery Alliance, Native Fish Society, and Clark-Skamania Flyfishers alleged that several federal agencies violated section 9 of the Endangered Species Act and the Administrative Procedures Act by allowing prohibited importation of threatened and endangered salmon from Canada into the United States. The groups also argued that, in violation of section 7 of the ESA, the Bureau of Customs and Border Protection and the U.S. Fish & Wildlife Service failed to consult with the National Marine Fisheries Service about whether the non-enforcement of section 9 of the ESA further placed the salmon in danger. The federal agencies moved to dismiss the case, citing lack of subject matter jurisdiction. The Court of International Trade granted the defendants' motion to dismiss, finding 1) that the Customs' exercise of its enforcement powers under section 9 was discretionary and 2) that the section 7 claims could not be addressed by the court, because non-enforcement constituted a failure to act, not an affirmative action. Therefore, the court could not provide a remedy for the plaintiffs.

http://www.cit.uscourts.gov/slip_op/Slip_op07/07-31.pdf

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<http://www.olemiss.edu/orgs/SGLC/casealert.htm>