Ocean and Coastal Case Alert

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 first-time reader and would like to subscribe, send an email to waurene@olemiss.edu with "*Case Alert*" on the subject line. MASGC 08-002-07

~~ July 15, 2008 ~~

US SUPREME COURT

Exxon Shipping Co. v Baker, 2008 US LEXIS 5263 (US June 25, 2008).

The US Supreme Court reduced the $2.5 billion punitive damage award against Exxon for the 1989 Exxon Valdez oil spill to about $500 million. The court was equally divided on the issue of whether the owners could be l vicariously liable for punitive damages resulting from an employee's actions. (Justice Alito owns Exxon stock and did not participate in the decision.). The Court ruled that the Clean Water Act (CWA) did not preempt punitiv damages awards in marine pollution cases. However, the Court found that the award, which was five times the amount of the compensatory award, was excessive and that a reduction of the damages was necessary. The court held that punitive damages in maritime cases should be limited to an amount equal to compensatory damages.

http://www.supremecourtus.gov/opinions/07pdf/07-219.pdf

FIRST CIRCUIT

AGA Fishing Group Ltd. v Brown & Brown, Inc., 2008 US App. LEXIS 14699 (1st Cir. July 10, 2008).

AGA Fishing Group (AGA) was forced to sell its scallop fishing vessel and license in order to pay a Jones Act award to a crewman injured aboard the vessel. AGA subsequently brought suit against its insurer, Brown & Brown, claiming the company had a duty to recommend higher coverage that would have covered the award. The US Court of Appeals for the First Circuit held that the insurance company was not liable to the company for not recommending a higher amount of coverage. The court found that there is no general duty of an insurance agent to ensure tha coverage is adequate for the needs of the insured, absent special circumstances. In order to recover, the company would have to show a specific assertion of coverage recommendation and a reliance on that assertion.

http://www.ca1.uscourts.gov/pdf.opinions/07-2408-01A.pdf

THIRD CIRCUIT

Delaware

Am. Littoral Soc'y, Inc. v Bernie's Conchs, LLC, 2008 Del. LEXIS 289 (Del. June 24, 2008).

Last June, a Delaware superior court held that regulations mandating a two-year moratorium on horseshoe c harvesting were invalid. Subsequently, several environmental groups filed a motion in superior court to interv purposes of appeal. The Superior Court denied the motion. On appeal, the Delaware Supreme Court found that t action was moot, since the regulation at issue in the case had been superseded by a subsequent rulemaking pro Despite the environmental groups' argument that similar issues would arise after the current regulations expire at tl end of 2008, the court found that none of the exceptions to the mootness doctrine applied.

http://courts.delaware.gov/opinions/(4u0rgo45nbbmvbjkpjg0n4ec)/download.aspx?ID=108060

New Jersey

McGovern v Borough of Harvey Cedars, 2008 N.J. Super. LEXIS 131 (App.Div 2008).

The Borough of Harvey Cedars denied a landowner a zoning permit to commence construction between his home and an ocean line. The construction would have violated a building line ordinance that prevented construction east of an established geographic line. The landowner appealed, alleging that the ordinance was preempted by New Je Coastal Area Facilities Review Act (CAFRA) and that it violated substantive due process. The Superior Court of New Jersey held that the municipal ordinance banning the construction did not violate due process, since th landowner had knowledge that the project would violate the building line ordinance. Furthermore, the ordinance w not preempted by CAFRA, because CAFRA was not intended to preempt local zoning ordinances and the building line ordinance did not conflict with the purposes or operations of the Act.

http://lawlibrary.rutgers.edu/courts/appellate/a0043-07.opn.html

Northlight Harbor, LLC v United States, 2008 US Dist. LEXIS 48062 (D.N.J. June 25, 2008).

A developer filed suit against the US Army Corps of Engineers when a bulkhead on his waterfront property collapsed. The developer claimed that the collapse was a result of a dredging operation conducted by the Corps. Corps moved to dismiss, claiming immunity from suit under the discretionary function of the Federal Tort Claims Act (FTCA). The developer contended that the Corps' actions were not discretionary in nature and, therefore, th Corps was not immune from suit. The United States District Court for the District of New Jersey disagreed, findin that the Corps met the discretionary function test.

https://ecf.njd.uscourts.gov/doc1/11913130778

Virgin Islands

Cohler v United States, 2008 US Dist. LEXIS 48158 (D.VI. June 24, 2008).

During a cruise, Norman Cohler and his family took a day trip to Trunk Bay Beach in the Virgin Islands National Park. While swimming at the beach, Cohler was struck and injured by shore-breaking waves. Cohler filed a negligence action against the government and the tour company. Five of Cohen's family members also sough damages, claiming that they suffered severe emotional distress from witnessing the accident. The government move for summary judgment on the family's claims. The district court noted that to prevail on a claim for negligent infliction of emotional distress based on witnessing an injury to a third person, a plaintiff must show that 1) th plaintiff was in the "zone of danger" when the accident occurred; 2) that the plaintiff suffered bodily harm as a resul of emotional disturbance; and, 3) that the plaintiff is a member of the injured third party's immediate family. The court found that three of the family members were not in the "zone of danger" because they were not in the ocean when the incident occurred. The court found that the other two family members did not demonstrate evidence o bodily harm as a result of the accident. Therefore, the district court granted the government's motion for sum judgment on the family members' claims.

http://www.vid.uscourts.gov/dcopinion/05cv0029_cohler_v_united_states_et_al_memorandum_and_order_20080624

FOURTH CIRCUIT

Evergreen Int'l, S.A. v Norfolk Dredging Co., 2008 US App. LEXIS 13378 (4th Cir. S.C. June 25, 2008).

After a container ship allided with a submerged dredge spoil pipeline, the United States District Court for the District of South Carolina found that the vessel owner was 90% at fault and that the dredging company was 10% at fault. The vessel owner appealed the decision. The Fourth Circuit found that the district court did not err in finding that company was only 10% at fault, because the company had properly placed and marked the dredge spoil pipeline.

http://pacer.ca4.uscourts.gov/opinion.pdf/071879.P.pdf

NINTH CIRCUIT

Coos County Bd. of County Comm'rs v Kempthorne, 2008 US App. LEXIS 13475 (9th Cir. June 26, 2008).

Coos County filed suit against the US Fish and Wildlife Service (FWS) alleging a failure to act under the Endangered Species Act (ESA) and the Administrative Procedures Act (APA). The county claimed that when a ESA's mandatory five-year review of the marbled murrelet, a rare seabird, revealed that the species did not fit into one of the several types of population categories protected under the ESA, the FWS was required to begin the delisting process. The United States District Court for the District of Oregon dismissed the county's action, findin that the five-year review process was not governed by deadlines associated with citizen petitions. The Ninth C affirmed the district court's decision holding that the FWS did not have an enforceable duty to delist a threaten species from the ESA after the five year review.

http://www.ca9.uscourts.gov/ca9/newopinions.nsf/71FA63A7743B4A3B8825747400023B6E/$file/0635634.pdf?open

Crowley Marine Servs. v Maritrans, Inc., 2008 US App. LEXIS 14183 (9th Cir. July 3, 2008).

In accordance with federal law, Maritrans hired Crowley to escort an oil tanker into the Puget Sound. During th escort, the oil tanker and the escort vessel collided. The district court found that both vessels had violated International Regulations for Preventing Collisions at Sea (COLREGS). The court allocated 70% of liability to t escort vessel and 30% to the tanker, finding that the escort vessel's actions were more serious with regard to causation and that the master of the escort vessel had medical and alcohol problems that may have affected th situation. On appeal, the Ninth Circuit affirmed the district court's ruling.

http://www.ca9.uscourts.gov/ca9/newopinions.nsf/67EEB10DC3F7AB9688257474A007D0DB4/$file/0735237.pdf?op

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ELEVENTH CIRCUIT

Florida

Southern Offshore Fishing Ass'n v Gutierrez, 2008 US Dist. LEXIS 52364 (M.D. Fla. July 8, 2008).

After the National Marine Fisheries Service (NMFS) issued a final rule closing the first and second trimester coa shark fishing seasons, the Southern Offshore Fishing Association filed suit. The group claimed that the decision t close the season was arbitrary and capricious in violation of the Magnuson-Stevens Act and the Administra Procedures Act. The United States District Court for the Middle District of Florida held that NMFS' decision to close the season was not arbitrary and capricious, because the data showed that an open season could have resulted continued overfishing of the coastal shark populations.

https://ecf.flmd.uscourts.gov/doc1/04715806097

D.C. CIRCUIT

P.R. Ports Auth. v FMC, 2008 US App. LEXIS 14502 (D.C. Cir. July 8, 2008).

When several commercial marine terminal operators filed complaints against the Puerto Rico Ports Authority (PRPA), the Authority claimed that it had sovereign immunity. The Federal Maritime Commission held that the PRPA was not entitled to sovereign immunity, because it was not an arm of the Commonwealth of Puerto Rico. appeal, the United States Court of Appeals for the District of Columbia disagreed. In making its decision, the c looked at Puerto Rico's intent in creating the PRPA, the commonwealth's control of the agency, and overall effects of the PRPA on the commonwealth's treasury. The court concluded that the PRPA was an arm of the Commonwealth and is, therefore, entitled to sovereign immunity.

http://pacer.cadc.uscourts.gov/docs/common/opinions/200807/06-1407-1126039.pdf

Am. Wildlands v Kempthorne, 2008 US App. LEXIS 14500 (D.C. Cir. July 8, 2008).

A fisherman and several environmental groups, including American Wildlands, petitioned the Fish and Wildlif Service (FWS) to list the westlope cutthroat trout as endangered. The FWS denied the petition, and the group filed suit under the Administrative Procedure Act, alleging that the agency's decision was arbitrary and capricious. T United States District Court for the District of Columbia ruled in favor of the plaintiffs (American Wildlands). Th FWS subsequently conducted a new status review and concluded that the trout would not be listed as endang American Wildlands again brought suit in the district court, which granted summary judgment in favor of FWS. appeal, the Court of Appeals for the District of Columbia affirmed the district court's decision. The court found tha the denial of the petition by the FWS was proper since the agency engaged in reasoned decision-making based on the best available science. Furthermore, the district court did not abuse its discretion in denying the plaintiff's n supplement the record.