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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the November 2016 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-16-03-11).

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FOURTH CIRCUIT

Virginia

Cty. of York v. Bavuso, No. 160104, 2016 WL 6304568 (Va. Oct. 27, 2016).

In an ongoing dispute over oyster aquaculture operations, the Virginia Supreme Court recently considered whether state-wide statutes, as they existed on June 17, 2014, rendered certain York County ordinances invalid because they impose a special use permit requirement for the plaintiffs' oyster aquaculture activities. On June 17, 2014, the county re-zoned the plaintiffs' property from a "resource conservation" category to a "purely residential" category. The court stated that if the plaintiffs had valid oyster operations in place prior to that date, they would have a vested right to continue their aquacultural activity in the currently zoned residential zone where the property is located. The court considered the validity of the ordinances under prior state law and concluded that the York County ordinances at issue were not, at the relevant time, invalid. The court reversed the lower court's decision and entered final judgment in favor of York County.

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NINTH CIRCUIT

Sierra Club v. Tahoe Regional Planning Agency, Nos.14-15998, 14-16513 (9th Cir. Nov. 2, 2016).

The Ninth Circuit recently upheld the Tahoe Regional Planning Agency's (TRPA) Environmental Impact Statement (EIS) for the Lake Tahoe regional plan update. The U.S. District Court for the Eastern District of California had granted summary judgment in favor of TRPA. On appeal, the Ninth Circuit found that 1) the challenge to the regional plan update was ripe; 2) the TRPA's analysis of the effects of concentrating development in the Lake Tahoe region sufficiently addressed significant environmental impacts of its regional plan update; and 3) TRPA's assumptions in the EIS regarding the ability to reduce water quality impacts of concentrated development through best management practices was not arbitrary and capricious.

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Alaska Oil & Gas Ass'n v. Pritzker, No. 14-35806, 2016 WL 6156040 (9th Cir. Oct. 24, 2016).

The Ninth Circuit recently upheld the National Marine Fisheries Service's (NMFS) decision to list the Pacific bearded seal subspecies as endangered under the Endangered Species Act (ESA). The Alaska Oil and Gas Association and the State of Alaska brought separate actions challenging the listing. The U.S. District Court for the District of Alaska found that the listing decision was arbitrary and capricious. On appeal, the Ninth Circuit found that the agency's decision to adopt a new foreseeability analysis was not arbitrary or capricious. Further, NMFS was not required to provide an evidence-based explanation for the relationship between habitat loss and the seal's survival. Finally, the court found that NMFS satisfied its duty to provide the state with a written justification clarifying why it did not adopt regulations consistent with state agency comments.

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California

Marina Coast Water Dist. v. California Coastal Comm'n, No. H042742, 2016 WL 6267909 (Cal. Ct. App. Oct. 26, 2016).

Marina Coast Water District filed a petition challenging the California Coastal Commission's (Commission) decision to issue a coastal development permit to California–American Water Company (Cal–Am) to construct and operate a temporary test slant well on private beach property owned by CEMEX, a company that used the site for sand mining. The trial court denied the request for a writ of mandate. On appeal, Marina Coast contended that the trial court erred in denying the petition for writ of mandate and the Commission's approval of the coastal development permit should be reversed because the Commission lacked appellate jurisdiction. The court affirmed the lower court's decision. The court held that the Commission had jurisdiction to hear Cal–Am's appeal of the denial of the permit for the test slant well and that Marina Coast failed to show that the Commission violated the California Environmental Quality Act in approving Cal-Am's coastal development permit for the test slant well.

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Drakes Bay Oyster Co. v. California Coastal Comm'n, No. A142820, 2016 WL 6311625 (Cal. Ct. App. Oct. 28, 2016).

In an ongoing battle over the decision not to renew an oyster lease in Point Reyes National Seashore, a California appellate court ruled that due process did not preclude certain California Coastal Commission (Commission) staff members from participating in litigation. The current action arose when the oyster company, Drakes Bay, filed a petition for a writ of mandate and complaint for declaratory relief challenging several Commission enforcement orders. A lower court denied Drakes Bay's requests to enjoin the Commission enforcement staff from advising other

staff or the Commission regarding the company's permit application and from advising the Commission in the litigation, and to disqualify the enforcement staff from representing the Commission in the litigation. On appeal, the court agreed. The court found the argument that the Commission might take future enforcement actions too speculative to deny the Commission its staff's assistance in the case.

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Oregon

Juliana v. United States, No. 6:15-CV-01517-TC, 2016 WL 6661146 (D. Or. Nov. 10, 2016).

The U.S. District Court for the District of Oregon recently denied a motion to dismiss a lawsuit against the U.S. for alleged failure to protect a group of young people from the effects of climate change. The lawsuit challenges policy decisions defendants have made, such as the decision to regulate CO_2 emissions from power plants and vehicles. The court held that the group has standing to bring the case, finding that the alleged actions injure plaintiffs in a concrete and personal way.

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ELEVENTH CIRCUIT

Girard v. M/V Blacksheep, No. 15-15803 (11th Cir. November 3, 2016).

The U.S. Court of Appeals for the Eleventh Circuit reversed the district court's decision in a marine salvage case. After Arnaud Girard, a marine salvor, undertook a rescue mission for a 125-foot yacht, the *M/V Blacksheep*, he filed an *in rem* action seeking a salvage award for his services. The district court ruled in favor of the yacht, finding that Girard did not demonstrate that his services were necessary to the rescue of the vessel. On appeal, the Eleventh Circuit disagreed, finding that a salvor is entitled to a salvage award if he proves three elements: 1) a maritime peril from which the ship or other property could not have been rescued without the salvor's assistance; 2) a voluntary act by the salvor; and 3) success in saving, or in helping to save at least part of the property at risk. The court found Girard demonstrated the first two elements and reversed and remanded the case to the district court to determine whether Girard met the third element.

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Florida

Vill. of Key Biscayne v. Dep't of Envtl. Prot, No. 3D15-2824, 2016 WL 6609762 (Fla. Dist. Ct. App. Nov. 9, 2016).

The Village of Key Biscayne challenged the Florida Department of Environmental Protection's (DEP) issuance of a five-year environmental resource permit authorizing the installation of temporary floating docks in Biscayne Bay at the Miami Marine Stadium by the National Marine Manufacturers Association (NMMA) and the City of Miami. The DEP dismissed the village's petition for an administrative hearing, finding that the Village did not have third-party standing to challenge the permit under Florida's Administrative Procedure Act. On appeal, the court affirmed the dismissal. The court held that the village did not demonstrate actual injury-in-fact or a real and immediate threat of direct injury to interests that are protected in this type of environmental permitting proceeding.

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