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# Ocean and Coastal Case Alert

**The National Sea Grant Law Center** is pleased to offer the April 2018 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-18-03-04).

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## THIRD CIRCUIT

***In re Frescati Shipping Co. Ltd.,*** 2018 WL 1528339 (3d Cir. Mar. 29, 2018).

Frescati, the owner of a single hulled tanker ship, contracted with CARCO to deliver crude oil to the company's terminal. The ship hit an abandoned anchor near the terminal, resulting in an oil spill. Frescati paid for the cleanup and was reimbursed partially by the United States under the Oil Pollution Act of 1990 (OPA). Frescati and the United States sued CARCO to recover costs incurred in the cleanup. The court held that the ship operator did not act negligently and complied with the safe berth warranty terms. On the other hand, CARCO failed to establish an equitable recoupment defense for costs incurred, because it failed to maintain the terminal area free of obstruction. The court ruled that CARCO waived its argument for limited liability under OPA, because the operator failed to offer any specific defense until nearly ten years after the incident. Frescati's additional claims for damages for negligence were vacated, because the court declined to extend tort liability for failing to use sonar to scan for debris at the terminal.

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## FOURTH CIRCUIT

### Maryland

***Roes v. State,*** 2018 WL 1617645 (Md. Ct. Spec. App. Apr. 4, 2018).

The Maryland Court of Special Appeals upheld the conviction of a Caroline County man for abandonment of a vessel and two counts of littering for two deteriorating houseboats tied to his property and sinking in the Choptank River. The court merged the appellant's sentences for abandoning a vessel into his sentences for littering, because the court concluded the jury was asked to consider the same conduct as abandonment and littering.

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## FIFTH CIRCUIT

***Ecosystem Investment Partners v. Crosby Dredging, LLC,*** 2018 WL 1412917 (5th Cir. Mar. 20, 2018).

Ecosystem Investment Partners (EIP) invests in projects that restore, build, improve, and protect natural resources. The government compensates EIP with environmental-mitigation credits. EIP then sells those credits to entities that wish to offset ecologically harmful actions. The U.S. Army Corps of Engineers (Corps) decided to build new wetlands to offset another flood control project in Louisiana. EIP sued the Corps alleging a violation of the National Environmental Policy Act (NEPA) for failing to consider whether EIP's credits were a reasonable alternative. EIP sought an order from the district court ordering the Corps not to build new wetlands. The case was dismissed, and EIP appealed. The appellate court affirmed the district court's decision that EIP lacked statutory standing to sue, because EIP failed to allege an environmental injury that would place EIP within NEPA's zone of interests.

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## NINTH CIRCUIT

***Barnes v. Sea Hawaii Rafting, LLC,*** 2018 WL 1513087 (9th Cir. Mar. 28, 2018).

A seaman will have a second chance to argue his Jones Act claim for maintenance and cure against ship owners after he was injured in an explosion on their ship. The U.S. District Court for the District of Hawaii initially dismissed his claims after a bankruptcy court approved a sale of the ship free and clear of his maritime lien. The Ninth Circuit Court of Appeals, however, found this was error by the district court, because the ship should have been under its jurisdiction, not that of the bankruptcy court. The court reversed the decision and remanded the case.

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***National Wildlife Federation v. NMFS,*** 2018 WL 1571429 (9th Cir. Apr. 2, 2018).

The Ninth Circuit recently heard appeals from a long line of litigation involving salmon and steelhead listed under the Endangered Species Act. Three federal agencies challenged injunctions issued by the U.S. District Court for the District of Oregon. The district court granted the plaintiffs, the National Wildlife Federation and the State of Oregon, injunctions ordering the federal agencies to conduct spill operations and fish monitoring operations at dams and other facilities in the Federal Columbia River Power System. The court also ordered the agencies to disclose information to the plaintiffs about planned projects at certain dams to ensure that major expenditures did not bias the preparation of the Environmental Impact Statement under the National Environmental Policy Act (NEPA). The appellate court affirmed the grant of the spill and fish monitoring operations and dismissed the appeal of the NEPA disclosure order. Previous litigation did not serve as a final order barring the district court from issuing these injunctions.

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***Friends of Santa Clara v. U.S. Army Corps of Engineers,*** 2018 WL 1702746 (9th Cir. Apr. 9, 2018).

Santa Clarita Organization for Planning the Environment (SCOPE) and Friends of Santa Clara River challenged the U.S. Army Corps of Engineers' (Corps) issuance of a § 404 permit to Newhall Land and Farming (Newhall Land) that authorized the discharge of materials into the Santa Clara River. SCOPE first alleged that the Corps failed to select the least environmentally damaging alternative. The court found that the Corps did not err in deciding that alternatives would be impractically expensive. Second, the court ruled that the Corps was not required to consider the project's revenues. Third, the Corps did not err by including land acquisition costs in the considered alternative. The court also rejected the plaintiffs' Endangered Species Act claims. SCOPE's National Environmental Policy Act claim also failed, because the final Environmental Impact Statement still provided an adequate analysis of the cumulative impacts of

the project's dissolved copper projects.

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### Alaska

***League of Conservation Voters v. Trump,*** 2018 WL 1385408 (D. Alaska Mar. 19, 2018).

In 2017, President Trump reversed President Obama's executive order withdrawing coastal areas in the Arctic Ocean from oil and gas leasing. He issued another executive order calling for expedited seismic survey permits, which help locate oil and gas resources. The League of Conservation Voters filed suit, claiming that President Trump lacked the authority to rescind withdrawals under the Outer Continental Shelf Lands Act. The federal defendants moved to dismiss on the following grounds: 1) sovereign immunity, 2) plaintiffs lacked a private right of action, 3) a court cannot issue declaratory relief against the President, and 4) lack of Article III standing. The court held that the sovereign immunity and the lack of private right of action defenses failed, because plaintiffs argued that the president exceeded the scope of his authority under Article II. Additionally, even though the right of declaratory relief against the President is limited, an adequate remedy can be accomplished via an injunction against the President's subordinates. The court ruled that the plaintiffs did have Article III standing, because harm was imminent and likely to occur. Additionally, a geographic specific injury was alleged, because, although the region is large, it is still discrete and defined. Furthermore, the plaintiffs sufficiently alleged harms that were particularized and personal to them, because they have an interest the viewing and enjoyment of marine life. Therefore, the motions to dismiss were denied.

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## TENTH CIRCUIT

***Benham v. Ozark Materials River Rock, LLC,*** 885 F.3d 1267 (10th Cir. 2018).

The Tenth Circuit Court of Appeals upheld an Oklahoma federal district court's verdict that a company violated the Clean Water Act for constructing a roadway by filling wetlands of Saline Creek. The court upheld the lower court's approval of a restoration plan proposed by the citizen who brought the lawsuit. The company is required to pay the $35,000 cost of the plan.

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## D.C CIRCUIT

### District of Columbia

***Alabama v. U.S. Army Corps of Engineers,*** 2018 WL 1542321 (D.D.C. Mar. 29, 2018).

The U.S. District Court for the District of Columbia approved a motion to transfer a case challenging the U.S. Army Corps of Engineers' decision to grant the State of Georgia's request for additional water supply from a federal reservoir, Lake Lanier. The State of Alabama brought the challenge in the District of Columbia, because it was a case of national interest that deserved a neutral forum, and the reservoir is part of the Apalachiocola-Chattahoochee-Flint Basin, which covers Georgia, Florida, and Alabama. The court found the case should instead be heard in the Northern District of Georgia, because the lake is located there and the Corps' decision will affect four million Georgia residents who depend on the lake for their water supply.

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***Nat. Res. Def. Council, Inc. v. Envtl. Prot. Agency,*** 2018 WL 1568882 (D.D.C. Mar. 30, 2018).

The U.S. District Court for the District of Columbia found the State of Maryland and District of Columbia's joint plan

to limit the amount of trash entering the Anacostia River was inconsistent with the plan language of the Clean Water Act (CWA). The plan did not satisfy the CWA's requirement for states to calculate Total Maximum Daily Loads (TMDLs) of offending pollutants to satisfy water quality standards, because it instead set a minimum amount of trash needed to be removed from or prevented from entering the river.

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