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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the October 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-18-03-10).

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U.S. SUPREME COURT

Martins Beach 1, LLC v. Surfrider Found., 2018 WL 1070011 (U.S. Oct. 1, 2018).

The U.S. Supreme Court denied an appeal from a landowner seeking to prohibit the public from accessing a California beach. While multiple courts had heard the dispute over the last several years, the current appeal stemmed from a California appellate court ruling requiring the landowner to obtain a Coastal Development Permit under the California Coastal Act to limit public access. The landowner appealed to the Supreme Court, arguing that a compulsory public access easement of indefinite duration is a per se physical taking. He also alleged that the application of the Coastal Act to his actions violated the takings clause, the due process clause, and the First Amendment. The Supreme Court denied the appeal; therefore, the lower court opinion protecting public beach access will remain intact.

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FIFTH CIRCUIT

United States v. Nature's Way Marine, L.L.C., 2018 WL 4520105 (5th Cir. Sept. 21, 2018).

In 2013, two barges crashed into a bridge, spilling more than 7,000 gallons of oil into the Mississippi River. Nature's Way, owner of the tugboat carrying the barges, and the federal government participated in the cleanup. Nature's Way then sought reimbursement for over $2 million in cleanup costs from the federal government and requested relief from reimbursing federal cleanup costs. The company rationalized that it was not an "operator" of the barges under the Oil Pollution Act of 1990; therefore, its liability should be limited by the tonnage of the tugboat and not the tonnage of the barges. The government filed suit, seeking reimbursement from Nature's Way. The U.S. Court of Appeals for the Fifth Circuit held that the owner of the tugboat was an "operator" of the barge and therefore ineligible for reimbursement of clean up costs in excess of the tonnage of vessels it operated.

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Shell Offshore v. Tesla Offshore, No. 16-30528 (5th Cir. Oct. 5, 2018).

Tesla Offshore hired International Offshore Services to operate a "towfish" to conduct an archeological survey of the ocean floor. The towfish struck and damaged a mooring cable of an offshore oil rig owned by Shell Offshore. Shell brought suit for damages, and the jury found Tesla 75% liable and International 25% liable. International sought to limit its liability. The court held that because the master of the vessel operating the towfish did not hold the required license, the vessel was not eligible to limit its liability.

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Louisiana

Gulf Fishermens Association et al. v. National Marine Fisheries Service et al., 2018 WL 4587652 (E.D. La. Sept. 25, 2018).

A coalition of fishing and public interest groups won a lawsuit challenging National Marine Fisheries Service (NMFS) rules that would have permitted finfish aquaculture operations in the Gulf of Mexico. The U.S. District Court for the Eastern District of Louisiana found that existing fisheries management laws were never intended to regulate aquaculture. The court concluded that NMFS acted outside of its statutory authority in promulgating the rules.

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D.C. CIRCUIT

District of Columbia

Otay Mesa Prop., L.P. v. United States Dep't of Interior, 2018 WL 4608223 (D.D.C. Sept. 25, 2018).

California landowners challenged the U.S. Fish and Wildlife Service's (FWS) designation of 56 acres of their property as "critical habit" for the endangered Riverside fairy shrimp. The species lives in a one acre stock pond on the property, and the FWS concluded that the 56 acres adjacent to the pond constituted either "occupied" critical habitat, or, alternatively, "unoccupied" critical habitat essential for the conservation of the species. The U.S. District Court for the District of Columbia found that the FWS's actions violated the Administrative Procedure Act and the Endangered Species Act, as the agency did not perform the analysis necessary to determine whether the adjacent land was required for the fairy shrimp's survival. The designation was vacated and remanded to the agency for further consideration.

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Miller v. D.C. Water & Sewer Auth., 2018 WL 4762261 (D.D.C. Oct. 2, 2018).

In November 2016, more than two feet of raw sewage from a nearby nursing home, hospital, and several retail operations was released into residents' homes. The residents filed suit against the District of Columbia Water and Sewer Authority and three remediation companies, alleging violation of Superfund law, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act. The U.S. District Court for the District of Columbia dismissed the suit, finding that the plaintiffs failed to meet the procedural requirements of the environmental statutes and that sewage was not a hazardous waste under federal law. The court also dismissed the federal civil rights violations, because the plaintiffs did not establish that the defendants acted under custom or policy of state law or that there was discriminatory intent.

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Massachusetts Lobstermen's Ass'n v. Ross, 2018 WL 4853901 (D.D.C. Oct. 5, 2018).

The U.S. District Court for the District of Columbia rejected a challenge to the designation of the Northeast Canyons and Seamounts Marine National Monument. President Obama had designated the monument under the Antiquities Act. Several commercial fishing associations argued that the Antiquities Act did not give the President the authority to designate the monument for several reasons: 1) the submerged lands of the monument are not "lands" under the Antiquities Act; 2) the federal government does not "control" the offshore land; and 3) the amount of land reserved as part of the monument is not the smallest compatible with its management. The federal district court granted the

government's motion to dismiss the challenge. The judge noted that the Act clearly protects both wet and dry lands, and there was no evidence to support the proposition that the monument was too large.

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Fisheries Survival Fund, et al., v. Jewell, et al., 2018 WL 4705795 (D.D.C. Sept. 30, 2018).

The U.S. District Court for the District of Columbia ruled in favor of the federal government in a lawsuit stemming from the Bureau of Ocean Energy Management's (BOEM) lease for a wind farm off the coast of New York. The plaintiffs claimed that BOEM violated the National Environmental Policy Act (NEPA) and Outer Continental Shelf Lands Act in granting the lease. While the court found that the fishing industry and affected port communities have standing to bring the claims, it held that the NEPA claims were not ripe for review, as the lease did not result in a final agency action.

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