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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the February 2024 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-24-03-02).

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THIRD CIRCUIT

Pennsylvania

Commonwealth v. Karash, No. 473 C.D. 2020, 2024 WL 435943 (Pa. Commw. Ct. 2024).

A fisher challenged a citation he received for having only four life jackets onboard when there were five people on the boat. Prior to issuing the citation, a waterways conservation officer (WCO) had asked the fisher for his fishing license and did a safety equipment inspection that lasted less than forty minutes. The WCO did not enter the fisher's boat nor tie their vessels together. The fisher alleged a violation of their rights against unreasonable search and seizure under federal and state constitutions. The trial court upheld the citation. On appeal to the Commonwealth Court of Pennsylvania, the court found that the WCO's actions were minimally intrusive and served the public interest in preserving natural resources and ensuring boater safety. Additionally, the court concluded that the Commonwealth met its burden of proof through the WCO's testimony about the number of people and life jackets available. Therefore, the trial court's decision was affirmed.

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FOURTH CIRCUIT

Maryland

In re. Water Balt., Inc., No. 1426, Sept. term, 2022, 2024 WL 358511 (Md. Ct. Spec. App. Jan. 31, 2024).

Environmental advocates sought review of municipal separate storm sewer system (MS4) permits for stormwater that flows into Chesapeake Bay. The advocates argued that the MS4 permits issued by the Maryland Department of the Environment failed to meet water quality standards, violated anti-backsliding provisions of the Clean Water Act, and did not consider the totality of available information, causing a disproportionate impact. The lower courts affirmed

the permits. On appeal, the court found that the department exercised its discretion appropriately in implementing water quality-based effluent limitations in the permits. The court determined that the department had broad discretion in achieving consistency with total maximum daily load (TMDL) waste load allocations—the pollutant level a water body can contain without violating water quality standards—based on substantial evidence. Furthermore, the court found that the permits did not constitute unlawful backsliding because they were not less stringent than the effluent limitations in previously issued permits. The court also found that the department complied with 33 U.S.C. §

1342 when implementing permits to reduce the discharge of pollutants. Therefore, the court affirmed the lower courts.

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FIFTH CIRCUIT

Louisiana

Atchafalaya Basinkeeper v. Bernhardt, No. CV 20-00651-BAJ-EWD, 2024 WL 331584 (M.D. La. Jan. 29, 2024).

Several nonprofits and individuals challenged the U.S. Fish and Wildlife Service's (FWS) decision to delist the Louisiana Black Bear as a threatened species under the Endangered Species Act (ESA). The bear was first listed in 1992 and delisted in 2016 when FWS determined that the population had recovered. The U.S. District Court for the Middle District of Louisiana granted summary judgment in favor of FWS, finding the agency's decision was not arbitrary or capricious and in accordance with the law.

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Mississippi

Arnesen v. Raimondo, No. 1:23-CV-145-TBM-RPM, 2024 WL 377820 (S.D. Miss. Jan. 31, 2024).

Commercial fishers filed a lawsuit challenging the Magnuson-Stevens Fishery Conservation and Management Act after the Gulf of Mexico Fishery Management Council (Council) passed Amendment 54, which proposed a quota reduction on greater amberjack. The Commercial fishers argued that the Council members violated the Appointment Clause of the U.S. Constitution, rendering the Final Rule adopting Amendment 54 void. The district court found that although six Council members (five state officials and the regional director) violated the Appointment Clause, the remaining eleven did not. The district court found that the commercial fishers did not show how the Council action proximately caused their injuries. Additionally, the district court found that the Council still maintained a quorum of validly appointed Council members. Therefore, the district court held that there was no reason to void the Final Rule adopting Amendment 54.

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EEECHO Inc. v. Mississippi Env't Quality Permit Bd., No. 2022-SA-01068-COA, 2024 WL 569017, (Miss. Ct. App. Feb. 13, 2024).

The Mississippi State Port Authority (MSPA) developed plans to construct a storage facility for equipment and cargo for U.S. Department of Defense shipments. The MSPA was required to obtain a water quality certification from the Mississippi Department of Environmental Quality (MDEQ) and a federal permit from the U.S. Army Corps of Engineers since the proposed project involved filling 3.15 acres of federal wetlands. Several plaintiffs challenged the MDEQ's issuance of a water quality certification to the MSPA. A county court affirmed the permits. The Mississippi Court of Appeals affirmed, holding that the MDEQ's decision was supported by substantial evidence and was not arbitrary or capricious.

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Texas

SaveRVG v. Texas General Land Office, No. 13-22-00358-CV, 2024 WL 385656 (Tex. App.-Corpus Christi-Edinburg 2024).

SaveRVG and others filed a lawsuit alleging that Texas laws permitting beach closures for space flight activities violated the Open Beaches Amendment in the Texas Constitution. These laws permitted the closure of Boca Chica Beach in Cameron County, Texas, to facilitate space flight activities. However, the Open Beaches Amendment protects the right of the public to access and use a public beach without restrictions. Cameron County and the Texas General Land Office (GLO) argued that the organizations lacked standing and invoked sovereign immunity. The trial court dismissed all claims, prompting SaveRVG to appeal. The appellate court held that the organizations had standing because their members suffered specific injuries traceable to the acts of Cameron County and the GLO. The court also held that the GLO and Cameron County waived sovereign immunity because the constitutionality of the statutes was in question. Therefore, the trial court's decision was reversed and remanded.

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D.C. CIRCUIT

District of Columbia

Center for Biological Diversity v. Raimondo, No. 18-112, 2024 WL 324103 (D.D.C. 2024).

For six years, conservation groups have sued the National Marine Fisheries Service (NMFS) for violating the Endangered Species Act, the Marine Mammal Protection Act, and the Administrative Procedure Act concerning the protection of North Atlantic right whales. In 2022, the U.S. District Court for the District of Columbia ruled in favor of the plaintiffs, finding deficiencies in NMFS's 2021 biological opinion (BiOp) and its 2021 Final Rule. Congress enacted the Consolidated Appropriations Act of 2023 (CAA), which imposed a six-year pause on existing right whale conservation measures until 2028, deeming the Final Rule sufficient. A 2023 lawsuit by the Maine Lobstermen's Association resulted in vacating the 2021 BiOp and remanding the Final Rule without vacatur. As a result, the court granted the government's motion to dismiss, finding conservation groups' challenge to NMFS' 2021 BiOp and Final Rule moot. The court also vacated its 2022 Opinion and Order due to the recent legislative actions.

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FEDERAL CLAIMS

Campo v. United States, No. 20-44, 2024 WL 504316 (Fed. Cl. Feb. 9, 2024).

Several oyster farmers claimed that the federal government's Bonnet Carré spillway operations in Louisiana destroyed their oyster stock and deprived them of use of their leased oyster beds and reefs. The farmers alleged the government's actions resulted in a permanent taking of their property for a public use without payment of just compensation. In 2021, the Federal Claims court denied the government's motion to dismiss, holding that that in some circumstances and against some parties the plaintiffs do have compensable property rights in the oysters. The government subsequently filed a motion to dismiss, arguing that the plaintiffs' claims are precluded by state law. The court agreed and dismissed the case.

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