

# The SandBar

Legal Reporter for the National Sea Grant College Program

## Targeting Plastic Pollution: Groups Challenge Plastic Company Operations



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### *Also in this issue*

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2020 Legislative Update

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# Targeting Plastic Pollution: Groups Challenge Plastic Company Operations

Olivia Deans<sup>1</sup>



Plastic pollution is a growing danger to the aquatic environment, marine species, and human health. Communities and states have tried a variety of approaches to reduce or ban plastic products. Some of these approaches have resulted in litigation with challengers claiming a ban is preempted by existing law or unconstitutional. In recent years, some environmental and community organizations have taken a different approach by addressing plastic pollution at the source: the operations of the plastic

manufacturing companies. In *San Antonio Waterkeeper*, plaintiffs successfully brought suit for violation of state and Clean Water Act permits. In *Waterkeeper v. Frontier*, environmental organizations alleged plastic pellet pollution was a violation of the Clean Water Act and Resource Conservation and Recovery Act. Currently, several organizations are challenging permit approval and environmental analysis for construction of a new plastic petrochemical complex in *Center for Biological Diversity v. U.S. Army Corps of Engineers*.





### **San Antonio Bay Estuarine Waterkeeper v. Formosa Plastics**

In June 2019, San Antonio Bay Estuarine Waterkeeper (San Antonio Waterkeeper) brought suit against Formosa Plastics, a 2,500-acre plastic manufacturing petrochemical complex in Point Comfort, Texas, alleging violations of the Clean Water Act (CWA) and state permits.<sup>2</sup> The CWA prohibits discharge of a pollutant into the waters of the United States without a permit.<sup>3</sup> To lawfully discharge pollutants, a person must receive a National Pollutant Discharge Elimination System (NPDES) permit. The CWA allows states to administer a pollutant elimination system and permit program.<sup>4</sup> Like other states, Texas prohibits the discharge of sewage and industrial waste into the adjacent water and administers permits prohibiting the discharge of floating debris and solids in accordance with the CWA.<sup>5</sup> The specific permit at issue in *San Antonio Waterkeeper* prohibited the plastics facility from discharging floating solids other than “trace amounts.”

San Antonio Waterkeeper alleged that Formosa discharged floating solids in violation of its permit and the CWA. The plaintiffs provided evidence of witness testimony, photographs, videos, and thirty containers of collected plastics from the waterway. Formosa argued the term “trace

amounts” was ambiguous and that it had received reports of compliance by independent environmental consultants. The federal district court determined from experts and dictionary definitions that “trace amounts” refers to a small amount or barely discernable amount. Using the evidence provided by San Antonio Waterkeeper, the court concluded Formosa discharged solids in greater than trace amounts and in violation of the CWA. Ultimately, the court approved a \$50 million settlement requiring Formosa to mitigate the plastic pollution and install pollution control operations.

This judgment could mean that plastic companies are essentially prohibited from allowing any plastic solid to enter an adjacent waterway because the court found “trace amount” of discharge to be a very small or close to zero discharge. This judgment could easily apply to other Texas industries with NPDES permits, and companies may have to significantly invest in advanced pollution control mechanisms to ensure there is no discharge of plastic solids. Additionally, the results of the *San Antonio Waterkeeper* decision may also affect plastic pollution in other states. For states with permit language similar to the Texas permit requirements, it is likely a court could find similar CWA violations.

### **Waterkeeper v. Frontier Logistics**

Environmental non-profit organizations, Charleston Waterkeeper and South Carolina Coastal Conservation League, brought suit in 2020 against Frontier, a South Carolina plastics distribution company that sells small plastic pellets called “nurdles” to manufacturers of plastic goods.<sup>6</sup> The organizations alleged the company’s activities resulted in plastic pollution on beaches and intercoastal waterways in violation of the CWA and the Resource Conservation and Recovery Act (RCRA).<sup>7</sup> In response to the organizations’ allegations, Frontier filed several procedural arguments, including a motion for judgment on the pleadings. Frontier argued it was entitled to a judgment on the pleadings because the organizations failed to state a claim under the CWA and RCRA, and the organizations could not bring claims under the CWA and RCRA based on the same alleged injury. When there is a motion for judgment on the pleadings, a court is tasked with determining if a plaintiff alleged plausible facts that, if true, would entitle them to relief.<sup>8</sup>

The CWA allows any citizen to bring a civil suit against a person violating a CWA standard or limitation.<sup>9</sup> This could include unlawful discharges of pollutants into waterways. The U.S. Supreme Court determined the CWA citizen suit provision requires a plaintiff to allege an ongoing violation with a reasonable likelihood of future polluting.<sup>10</sup> Here, the environmental organizations alleged that every plastic pellet and every day the pellet remains in the waterway is a distinct violation of CWA § 1311(a). Using the plausible facts standard, the court found the environmental organizations sufficiently stated a claim for relief under the CWA. While the environmental organizations did allege reports and evidence of the plastic nurdles discharged into the waterways, they are not required to prove their factual allegations as true at this stage in the litigation process. The court held the environmental organizations had alleged plausible facts and denied Frontier’s motion for judgment on the pleadings. The judgment was appealed on October 15, 2020.

Although there has not been a judgment on the merits and evidence of the CWA and RCRA plastic pollution claims, this case still presents two interesting points. First, a plaintiff may simultaneously bring a RCRA and CWA claim. Frontier argued the organizations could not bring simultaneous claims because the plastic could not be both a solid waste under RCRA and a discharge under the CWA. While the court noted Frontier’s claim was true for an individual nurdle, it determined that some of the nurdles could be solid waste and some nurdles could be discharges, and it was appropriate to bring both a RCRA and CWA claim. Second, the court noted the Environmental Protection Agency’s (EPA) current practice of not actively

enforcing environmental laws despite ongoing violations. The court cited to the plaintiff’s allegations of EPA non-enforcement when determining whether the CWA violations were ongoing. Perhaps, the failure of an agency to enforce environmental violations would help persuade courts hearing CWA citizen suits that the violation is continuous. Court analysis of plastic pollutants will become clearer as this case continues to unfold.

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### **Center for Biological Diversity v. Corps**

This year, environmental groups have also challenged a proposed 2,600-acre plastic petrochemical complex in St. James, Louisiana.<sup>11</sup> The proposed Formosa complex would include ten separate chemical manufacturing plants designed to produce plastic. Some opponents of the project warn that it could destroy up to 116.2 acres of wetlands and pollute waters in the high-risk flood zone. In February, environmental and community groups filed suit against the Louisiana Department of Environmental Quality for approving Formosa permits that allegedly violated the Clean Air Act and Louisiana Public Trust Doctrine.<sup>12</sup> The petition for review cited to Formosa’s past CWA violation in the *San Antonio Waterkeeper* case. While the permits are reviewed, Formosa and environmental groups entered into agreement to stop construction in areas with potential unmarked burial grounds and areas with nearby wetlands.

In October, environmental groups filed suit against the U.S. Army Corps of Engineers (Corps) for inadequate environmental assessment of the proposed Formosa complex under the National Environmental Policy Act (NEPA).<sup>13</sup> Specifically, the complaint alleges that the CWA requires the Corps to consider the cumulative impacts of the activity on wetlands, fish and wildlife, flood hazards, and water quality. When the Corps published the environmental assessment it stated that the scope of analysis was confined to the impact to public navigation



and wetlands within the jurisdiction of the Corps regulation. Environmental groups argued this was not an adequate consideration of environmental effects required by the CWA and NEPA. In response, the Corps filed to stay the motion for summary judgment in order to re-evaluate the CWA alternatives analysis.

The court has not yet issued a decision regarding the proposed petrochemical plastic complex. Unlike *San Antonio Waterkeeper* and *Waterkeeper v. Frontier Logistics*, environmental groups are not challenging the current plastic pollution but instead challenging the construction of the plastic manufacturing facility itself. Courts generally give deference to agency decisions, and it may be more challenging for environmental groups to challenge plastic facility permit decisions instead of plastic pollutants. Depending on the outcome of the litigation, challenging the construction of petrochemical facilities may be a mechanism to decrease plastic pollution.

## Conclusion

With a variety of approaches for mitigating plastic pollution, some organizations have successfully challenged the operations of plastic companies. As litigation continues, the CWA may emerge as one of the strongest tools to prevent plastic pollution damage to waterways and shorelines. ♻️

## Endnotes

- <sup>1</sup> Ocean and Coastal Law Fellow, National Sea Grant Law Center.
- <sup>2</sup> *San Antonio Bay Estuarine Waterkeeper v. Formosa Plastics Corp.*, 2019 WL 2716544 (S.D. Tex. 2019).
- <sup>3</sup> 33 U.S.C. § 1311.
- <sup>4</sup> 33 U.S.C. § 1342.
- <sup>5</sup> TEX. WATER CODE ANN. § 26.121 (2019).
- <sup>6</sup> *Waterkeeper v. Frontier Logistics, L.P.*, 2020 WL 5629717 (D.S.C. 2020).
- <sup>7</sup> RCRA allows citizens to bring suit against any person who is handling or disposing of any solid or hazardous waste that may present an imminent and substantial endangerment to health or the environment. 49 U.S.C. § 6972(a).
- <sup>8</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
- <sup>9</sup> 33 U.S.C. § 1365(a).
- <sup>10</sup> *Gwaltney of Smithfield v. Chesapeake Bay Foundation, Inc.*, 484 U.S. 49, 57 (1987).
- <sup>11</sup> Plaintiffs' Motion for Summary Judgment, *Ctr. for Biological Diversity v. U.S. Army Corps of Engineers*, 2020 WL 6041625 (D.D.C.).
- <sup>12</sup> *Rise St. James v. La. Dep't of Env'tl. Quality*, No. 694029 (La. 2020).
- <sup>13</sup> Plaintiffs' Motion for Summary Judgment, *supra* note 11.



Plastic litter, courtesy of Haria Varlan.

# Mississippi v. Tennessee: Special Master Finds Aquifer is an Interstate Resource

Catherine Janasie<sup>1</sup>

When one state alleges it has suffered a legal harm caused by another state, the complaining state must ask the U.S. Supreme Court (Court), the only court that can hear disputes between states, to hear the case. In 2014, the state of Mississippi asked the Court if it could file a lawsuit against the state of Tennessee concerning the city of Memphis's use of water from a shared aquifer, the Middle Claiborne. Mississippi is concerned with Memphis pumping groundwater close to the border between the two states. Pumping large amounts of groundwater creates "a cone of depression" and changes the flow of water, causing more water to flow towards the well pumping the water. Mississippi claims the city's pumping has taken billions of gallons of water out of Mississippi, causing it to flow towards Memphis's wells. In 2015, the Supreme Court granted Mississippi's request, allowing the case to go forward. On November 5, 2020, the Special Master in the case finally issued his first report.

## Case Overview

In suits between states, the Court serves as a trial court and appoints a Special Master to run a trial-like process. The Special Master hears the parties' initial motions, evaluates the evidence, and makes findings of fact, conclusions of law, and recommends a decision for the Court. The Court then decides whether or not to follow the Special Master's recommendation. The Special Master process can take years to complete.

In November 2015, the Court appointed the Hon. Eugene E. Siler of the U.S. Court of Appeals for the Sixth Circuit as the Special Master for Mississippi v. Tennessee. After considering each state's initial filings, the Special Master issued a Memorandum of Decision in August 2016 that ordered an initial hearing on whether the aquifer was an interstate resource. In the Memorandum, the Special Master noted that he did not think that Mississippi had made its case that the aquifer was not in its initial pleadings.



Graph of the Middle Claiborne Aquifer,  
courtesy of the U.S. Dept. of Interior.

## The Initial Hearing

Following the 2016 decision by the Special Master, the parties prepared for the initial hearing by gathering their experts, exhibits, and other evidence to make their cases. Tennessee argues that the aquifer underlies multiple states, making it an interstate resource. Thus, Tennessee asserts that the framework the Court has developed for interstate surface water should apply to the underground aquifer that both states use. Under that doctrine, known as Equitable Apportionment, neither state has any right to the water until the Court apportions the water.



Mississippi argues that the water is state property, claiming it owns the groundwater within the state. Thus, Mississippi is not asking for the water to be apportioned through Equitable Apportionment in its lawsuit. Rather, it claims the groundwater within the state is intrastate in nature and is asking for monetary damages of not less than \$615 million for the water taken by Memphis.

The initial hearing on whether the aquifer is an interstate resource was originally set to start on January 15, 2019 in Nashville, Tennessee. However, on January 14th, the Special Master delayed the hearing until May 20, 2019. The hearing was held for five days from May 20-24, 2019, and both states presented their theories for the case. In the hearing, Mississippi tried to make the case that the Court should not “look at the Middle Claiborne Aquifer as a whole.”<sup>2</sup> Rather, Mississippi argued that the subunits in the aquifer should be examined: the Memphis Sands in Tennessee and the Sparta Sands in Mississippi. Since the Sparta Sands is a separate geologic formation, Mississippi asserted that the groundwater in Mississippi should be treated as intrastate in nature.

### The Report of the Special Master

After almost a year and a half, the Special Master issued its report on the hearing on November 5, 2020. In the report, the Special Master makes two findings. First, Judge Siler found that the aquifer is interstate in nature. In making this determination, the Special Master relied on expert testimony and evidence showing the aquifer “is part of a single interconnected hydrological unit underneath multiple states,” and thus, “is an interstate resource.”<sup>3</sup> In doing so, the Special Master rejected Mississippi’s argument that the aquifer should not be looked at as a whole but rather in individual parts, stating “[b]y definition, an aquifer is nothing but a collection of interconnected units...Mississippi provides no reason to reject this basic understanding of aquifers.”<sup>4</sup> Further, Judge Siler noted that the subunits also extend across state boundaries, including the Mississippi-Tennessee border, and the groundwater, though slowly, moves between the two states. Moreover, the fact that groundwater pumping in Memphis affects water levels in Mississippi demonstrates that the aquifer is interstate in nature.

Driven by the first finding that the aquifer is interstate in nature, the Special Master’s second finding was that equitable apportionment was the appropriate remedy for Mississippi. Judge Siler stated that “[w]hen states fight over interstate water resources, equitable apportionment in the remedy. Mississippi presents no compelling reason to chart a new path for groundwater resources.”<sup>5</sup> Noting that surface water and groundwater have different characteristics, the Special Master noted that equitable apportionment is a flexible doctrine that

can “tailor itself to each situation.”<sup>6</sup> Further, the Special Master rejected Mississippi’s contention that it should have the sole authority to govern the taking of water within its borders. While acknowledging that “one state cannot reach into another state to collect water,” the Special Master cited the fact that none of Memphis’s groundwater wells are within Mississippi.<sup>7</sup> As a result, the water dispute must follow the Supreme Court’s precedent and be decided through equitable apportionment.

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### Looking Forward

What are the next steps for the case? First, the Supreme Court must approve the Special Master’s findings or send the case back to him for further proceedings. This means a final decision in the case will not occur until the Court schedules oral arguments and issues an opinion, a process that could be lengthy. Second, if the Supreme Court agrees with the Special Master’s findings that the aquifer is an interstate resource that should be subject to equitable apportionment, Mississippi would need to file an amended complaint. This is due to the fact that Mississippi did not seek equitable apportionment in its complaint, but rather sought monetary damages. If Mississippi chooses not to amend its complaint, the case would be dismissed. For now, though, the case remains up in the air. ❧

### Endnotes

<sup>1</sup> Senior Research Counsel, National Sea Grant Law Center.

<sup>2</sup> Mississippi v. Tennessee, No. 143, Original, [Report of the Special Master at 17](#).

<sup>3</sup> *Id.* at 11.

<sup>4</sup> *Id.* at 18.

<sup>5</sup> *Id.* at 26.

<sup>6</sup> *Id.* at 28.

<sup>7</sup> *Id.* at 29.

# U.S. Department of Labor Inspector General Raises Concerns of PUA Fraud

Blake Tims<sup>1</sup>

A recent U.S. Department of Labor Inspector General (IG) report shows how easy it may have been for unscrupulous individuals to unlawfully benefit from the federal Pandemic Unemployment Assistance (PUA) program, which was created by the CARES Act.<sup>2</sup> The PUA is one of several programs that the CARES Act created to temporarily expand unemployment benefits for workers affected by the COVID-19 pandemic. In establishing the PUA program, Congress allowed applicants to self-certify that they are unemployed because of a COVID-19 related reason. The PUA was set to expire at the end of December but was extended by Congress through the week ending March 14, 2021.

The IG's report, "Covid-19: States Cite Vulnerabilities in Detecting Fraud While Complying with the CARES Act UI Program Self-Certification Requirement," cited the PUA self-certification requirement as a top fraud vulnerability based on responses received from state agencies responsible

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**While most states appear to be taking steps to detect and deter suspected fraudulent claims, many still face resource shortages and technological barriers that lessen their ability to better detect and deter fraud.**

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for implementing the program. States also identified systems issues and inadequate fraud screening tools as top concerns. Amplifying the PUA's self-certification vulnerability is the fact that the CARES Act actually prohibits states from requiring claimants to submit evidence of prior earnings or income to determine their eligibility for these unemployment benefits. As the IG's report notes, "the Department [of Labor]'s Solicitor's Office asserts that states have no authority to require claimants to provide documentation of wages earned or income verification. The OIG believes state's reliance on self-certifications alone to ensure eligibility for PUA will lead to increased improper payments and fraud."

PUA fraud is rampant in many states. For example, Arizona reported nearly 2.7 million unemployment claims

from the beginning of the pandemic through August, even though there are only 3.4 million working Arizonans; more than one million of these PUA claims were ultimately flagged as potentially fraudulent.<sup>3</sup> Additionally, Colorado reported that it had processed 62,498 filings from July 18 to August 25, roughly 48,000 of which were found to be fraudulent.<sup>4</sup> In July, Maryland uncovered a massive criminal enterprise with more than 47,500 fraudulent unemployment claims totaling over \$501 million.<sup>5</sup>

However, the IG report also acknowledged that states have procedures in place that require self-certifying PUA claimants to acknowledge that making fraudulent representations could lead to prosecution. While most states appear to be taking steps to detect and deter suspected fraudulent claims, many still face resource shortages and technological barriers that lessen their ability to better detect and deter fraud. Federal guidance has been provided to address some of these challenges, but states allege that the guidance is often too late and requires additional clarification.

As part of the reauthorization, PUA applicants have new documentation requirements. For new PUA applications after January 31st, individuals must provide documentation of their past employment within 21 days. For continuing PUA claims, applicants have 90 days to submit documentation. ❧

*This article was originally published on the NSGLC blog and edited for The SandBar.*

## Endnotes

- <sup>1</sup> 2022 J.D. Candidate, University of Mississippi School of Law.
- <sup>2</sup> *Office of Inspector General, U.S. Department of Labor, Covid-19: States Cite Vulnerabilities in Detecting Fraud While Complying with the CARES Act UI Program Self-Certification Requirement* (Oct. 21, 2020).
- <sup>3</sup> Tim Henderson, *Fight Against Fraud Slows Payments to Unemployed*, STATELINE (Aug. 27, 2020).
- <sup>4</sup> Blair Miller, *Colorado Finds More Fraudulent PUA Claims Made July-August, Says \$300/Week Benefits Will Start Next Week*, THE DENVER CHANNEL (Sept. 10, 2020).
- <sup>5</sup> Jessica Jannetta, *Maryland Uncovers \$501M Fraudulent Unemployment Claims Scheme*, BALTIMORE BUSINESS JOURNAL, (July 15, 2020).



# Turned Turtle for the Third Time:

## *The Decades-Long Case on Loggerhead Turtles and Dredge Fishing*

Philip Lott<sup>1</sup>

Loggerhead turtle, courtesy of Mark Fox.



Oceana, a nonprofit conservation organization, recently challenged the National Marine Fisheries Service's (NMFS) revisions to its Incidental Take Statement (ITS) for loggerhead turtle takes caused by dredge fishing in the Atlantic Sea Scallop Fishery. The ITS proposed to measure takes by using the number of hours spent dredge fishing in

Mid-Atlantic waters as a surrogate for actual takes. The district court agreed with Oceana's contention that the agency failed to show how the specific number of hours outlined in the ITS correlated to the specific number of loggerhead takes. The court remanded the case back to NMFS for a third time, furthering the life of a case that began back in 2008.<sup>2</sup>

### Loggerhead Turtles & Dredge Fishing

There are nine distinct population segments (DPS) of loggerhead turtles found worldwide.<sup>3</sup> The Northwest Atlantic DPS at issue is listed as “threatened” under the Endangered Species Act (ESA). The species nests primarily along the Atlantic coast of Florida, South Carolina, Georgia, and North Carolina and along the Florida and Alabama coasts in the Gulf of Mexico.<sup>4</sup> One of the main threats to loggerhead turtles is bycatch in fishing gear. Dredge fishing in particular poses a threat, as turtles may be captured or crushed by dredges towed along the sea floor.<sup>5</sup> For a threatened species like the Northwest Atlantic DPS of loggerhead turtles, dredge fishing might have serious consequences for the species if not regulated properly.

Under the ESA, federal agencies must take steps to ensure that their actions do not jeopardize endangered wildlife and flora.<sup>6</sup> Each federal agency, in consultation and with the assistance of NMFS or the U.S. Fish and Wildlife Service, must insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species. As part of the consultation process, the agency issues a Biological Opinion (BiOp), and if the action is not likely to jeopardize the continued existence of a species but is nonetheless likely to result in some “incidental take,” the BiOp must include an ITS specifying the permissible extent of this impact on the species.

### History of the Case

Oceana challenged a 2008 BiOp issued by NMFS that assessed the impact of the Atlantic Sea Scallop Fishery on the Northwest Atlantic DPS of loggerhead turtles. Following the challenge, NMFS reinstated consultation and the court proceedings were stayed until 2012. NMFS issued a superseding BiOp in 2012, and Oceana amended its complaint to continue to challenge it. NMFS determined “that it would monitor takes, or the harming or killing of turtles, by using the number of hours spent dredge fishing,” but it failed to explain the correlation between the number of hours spent dredge fishing and the amount of loggerhead turtle takes.<sup>7</sup>

Because of NMFS’s continuous failure to explain this correlation, the case has faced three remands. In 2014, the case was remanded to NMFS for the first time in order for the agency to address two deficiencies in its 2012 BiOp. The district court remanded due to NMFS’s “decision to evaluate loggerhead [turtle] takes resulting from trawl gear fishing only once every five years” and “to allow the [NMFS] to better explain its reliance on a monitoring surrogate to measure loggerhead turtle takes caused by dredge fishing.”<sup>8</sup> While one of the deficiencies was addressed, the case was remanded for a second time in 2018 with the district court again requiring



Baby loggerhead turtle, courtesy of the Florida Fish and Wildlife Conservation Commission.





NMFS “to better explain its reliance on a monitoring surrogate to measure loggerhead turtle takes caused by dredge fishing.” Specifically, the district court held that NMFS failed to explain how 359,757 dredge hours equals 161 takes. And most recently, the case was remanded for a third time in October 2020 with the district court again asking NMFS to explain itself.

### The Third Remand

In its decision on October 1, 2020, the district court ruled that NMFS must either “clearly explain whether there is a correlation between the dredge hour surrogate and the numerical take limit, and its selection of 359,757 dredge hours, or, if unable to do so, . . . select a more appropriate surrogate or other mechanism for monitoring loggerhead takes resulting from dredge fishing.”<sup>10</sup> The district court also directed “NMFS to explain the discrepancy between its briefing in the court and the second revised ITS regarding the reliability of the bycatch estimates for sea turtles from the dredge fishery.”<sup>11</sup> In its briefing, NMFS expressly disclaimed its reliance on a predictive, linear relationship between dredge hours and takes. This left the district court without a sufficient basis to conclude that the 359,757 dredge hours served as an adequate proxy for 161 takes.

Furthermore, the district court stated that there was a “need for greater judicial oversight as this case progress[ed]” in light of NMFS’s “hesitation and deliberation as to whether to reinitiate consultation upon learning that the take limit had been exceeded.”<sup>12</sup> Around November 2019, before the January 2020 oral argument for the case, NMFS knew that the dredge hour surrogate had been exceeded. At that point, NMFS was obligated by the ESA to immediately

reinitiate consultation and it failed to do so. The agency also neglected to inform the district court of this new information. According to the court, this sequence of events “illuminate[d] the conduct and credibility of the agency,” and the court will now require regular status reports.<sup>13</sup>

For a third time, NMFS will reassess at the direction of the district court, this time to again revise the ITS as it pertains to dredge hour monitoring. Whether the case will avoid a fourth remand remains to be seen. ♻

### Endnotes

- <sup>1</sup> 2021 JD Candidate, University of Mississippi School of Law.
- <sup>2</sup> *Oceana, Inc. v. Ross*, No. 08-1881 (PLF), 2020 WL 5834838 (D.D.C. Oct. 1, 2020).
- <sup>3</sup> [Loggerhead Turtle, Species Directory](#), NOAA FISHERIES (accessed on Oct. 31, 2020).
- <sup>4</sup> *Id.*
- <sup>5</sup> [Fishing Gear: Dredges, Bycatch](#), NOAA FISHERIES (accessed on Nov. 1, 2020).
- <sup>6</sup> 16 U.S.C. § 1531 *et seq.*
- <sup>7</sup> Maya Earls, [Fishery’s Impact on Sea Turtles Needs Second Look, Court Says](#), BLOOMBERG LAW (Oct. 2, 2020).
- <sup>8</sup> *Oceana*, 2020 WL 5834838, at \*2.
- <sup>9</sup> *Id.* at \*3.
- <sup>10</sup> *Id.* at \*11.
- <sup>11</sup> *Id.*
- <sup>12</sup> *Id.* at \*10–11.
- <sup>13</sup> *Id.* at \*11.

# 2020 Legislative Update

*Summaries by the Congressional Research Service, a nonpartisan division of the Library of Congress,  
edited where necessary.*

## **116 Public Law 110 – Renames the Oyster Bay National Wildlife Refuge (H.R. 263)**

Designates the Oyster Bay National Wildlife Refuge near Oyster Bay, New York, as the “Congressman Lester Wolff National Wildlife Refuge.”

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## **116 Public Law 152 – Great American Outdoors Act (H.R. 1957)**

Establishes the National Parks and Public Land Legacy Restoration Fund to support deferred maintenance projects on federal lands. For FY2021-FY2025, an amount equal to 50% of energy development revenues credited, covered, or deposited as miscellaneous receipts from oil, gas, coal, or alternative or renewable energy development on federal lands and waters will be deposited into a fund. Deposited amounts must not exceed \$1.9 billion for any fiscal year. The fund must be used for priority deferred maintenance projects in specified systems that are administered by the National Park Service, the Forest Service, the U.S. Fish and Wildlife Service, the Bureau of Land Management, and the Bureau of Indian Education.

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## **116 Public Law 186 – Amending the Nutria Eradication and Control Act of 2003 (H.R. 3399)**

Reauthorizes through FY2025 and revises the Nutria Eradication and Control Act of 2003, which provided grants to Maryland and Louisiana for a program to eradicate or control nutria (a type of rodent). The program also provided grants to restore marshland damaged by nutria. Revises the grant program, including by expanding the program to include grants for eradicating nutria in any state that has demonstrated a need for the program as well as grants for restoring wetlands or agricultural lands damaged by nutria.

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## **116 Public Law 188 – America's Conservation Enhancement Act (S.3051)**

Reauthorizes several wildlife protection programs, including the North American Wetlands Conservation Act, the National Fish and Wildlife Foundation Act, the Chesapeake Bay Gateways and Watertrails network, and the Chesapeake Bay Gateways Grants Assistance Program until 2025. Reauthorizes the Chesapeake Bay Program until 2024. It also addresses the threats of emerging wildlife diseases and invasive species, as well as protecting livestock from predators.

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## **116 Public Law 191 – Amendment to the Klamath Basin Water Supply Enhancement Act of 2000 (S. 3758)**

Specifies types of programs the Bureau of Reclamation may participate in, such as land idling (i.e., refraining from



cultivating crops on certain land), for the purpose of aligning water supply and demand for users of irrigation water associated with the Klamath Project in Oregon and California. Additionally, the bill provides for the continued use of power from the Pick-Sloan Missouri Basin Program by the Kinsey Irrigation Company and the Sidney Water Users Irrigation District in Montana.

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#### **116 Public Law 221 – National Sea Grant College Program Amendments Act of 2020 (S. 910)**

Reauthorizes through FY2024 and revises the National Sea Grant College Program. Requires NOAA to award Dean John A. Knauss Marine Policy Fellowships. Currently, NOAA has discretion in awarding such fellowships. The fellowships support the placement of graduate students in fields related to ocean, coastal, and Great Lakes resources in positions with the executive and legislative branches. (The reauthorization also provides for direct hire opportunities for Knauss fellows by participating federal agencies.)

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#### **116 Public Law 223 – Digital Coast Act (S. 1069)**

Provides statutory authority for and revises the National Oceanic and Atmospheric Administration's (NOAA's) Digital Coast program. (The program currently exists under NOAA to provide data, tools, and training that communities use to manage their coastal resources.) NOAA must focus on filling data needs and gaps for critical coastal management issues and support continued improvement in existing efforts to coordinate the acquisition and integration of key data sets needed for coastal management. NOAA may enter into financial agreements and collect fees to carry out the program. Additionally, NOAA may establish publicly available tools that track ocean and Great Lakes economy data for each coastal state.

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#### **116 Public Law 224 – Save Our Seas 2.0 (S. 1982)**

Addresses plastic marine debris. Establishes a Marine Debris Foundation, a genius prize for innovation, and new research to tackle the issue. Formalizes U.S. policy on international cooperation, enhancing federal agency outreach to other countries, and exploring the potential for a new international agreement on the challenge. Provides grants for and studies of waste management and mitigation. (Summary not provided by CRS.)

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#### **116 Public Law 271 – Coordinated Ocean Observations and Research Act of 2020 (S. 914)**

Reauthorizes through FY2025 and revises the Integrated Coastal and Ocean Observation System (IOOS), which is a network of federal and regional entities that provide information about the nation's coasts, oceans, and Great Lakes, as well as new tools and forecasts to improve safety, enhance the economy, and protect the environment.

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#### **116 Public Law 274 – Great Lakes Environmental Sensitivity Index Act of 2020 (S.1342)**

Requires the National Oceanic and Atmospheric Administration to update at least once every seven years its environmental sensitivity index products for each coastal area of the Great Lakes. An environmental sensitivity index product is a map or similar tool that is utilized to identify sensitive shoreline resources prior to an oil spill event.



*The University of Mississippi*

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# Littoral Events

## **American Shore & Beach Preservation Association 2021 Coastal Summit**

*March 23-25, 2021  
(Virtual)*

For more information, visit: <https://asbpa.org/conferences>

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## **The Gulf of Mexico Conference Preview 2021**

*April 14, 2021  
(Virtual)*

For more information, visit: <https://gomcon2021.dryfta.com>

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## **Ocean Visions 2021 Summit**

*May 18-20, 2021  
(Virtual)*

For more information, visit: <https://www.oceanvisions.org/summit-2021>