

The National Sea Grant Law Center is pleased to offer a new service, the *Ocean and Coastal Case Alert*. The *Case Alert* is a monthly listserv highlighting recent court decisions impacting ocean and coastal resource management. Each Case Alert will briefly summarize the cases and provide a link to the opinion. Accompanying this announcement is a complimentary copy of the first *Case Alert* email.

~ ~ August 15, 2005 ~ ~

***Stewart v. Dutra Constr. Co.*, 2005 U.S. App. LEXIS 16612(1st Cir. August 9, 2005).**

The First Circuit Court of Appeals on remand from the U.S. Supreme Court determined that a worker injured while working on the "Super Scoop," a large, floating dredge, was a "seaman" under the Jones Act. The Appeals Court remanded the injured worker's case back to the district court for a determination of liability, causation, and damages under the Jones Act.

<http://laws.lp.findlaw.com/1st/991487.html>

***Palazzolo v. State*, 2005 R.I. Super. LEXIS 108 (R.I. Super. Ct. July 5, 2005).**

Palazzolo, a landmark case involving the takings clause of the Fifth Amendment, was recently decided against the landowner. The Rhode Island Superior Court has determined that Palazzolo failed to show that the restrictions on his land had an adverse economic impact on its appraisal value. (Palazzolo will be covered in the October 2005 issue of *The SandBar*.)

<http://www.courts.state.ri.us/superior/pdf/88-0297.pdf>

***Wien v. State of Delaware*, 2005 Del. LEXIS 287 (Del. July 22, 2005).**

The Delaware Supreme Court recently upheld the conviction of a landowner for erecting a large concrete barrier on wetlands that he owned without a permit. The court said the Delaware Wetlands Act was not unconstitutionally vague or overbroad.

<http://caselaw.lp.findlaw.com/data2/delawarestatecases/349-2004.pdf>

***Raleigh Ave. Beach Ass'n v. Atlantis Beach Club, Inc.*, 2005 N.J. LEXIS 932 (N.J. July 26, 2005).**

The New Jersey Supreme Court recently decided that owners of private beaches cannot charge unreasonable annual user fees. Private beaches in the state can be regulated by the Department of Environmental Protection, which allow the state to set the fee amounts beach owners are allowed to collect. The Court also ruled that the public should have free walking access to beaches along the state's coast, though the ruling does not require that all private beaches be opened to the public. (Raleigh will be covered in the October 2005 issue of *The SandBar*.)

<http://lawlibrary.rutgers.edu/courts/supreme/a-40-04.opn.html>

***Am. Canoe Ass'n v. Murphy Farms*, 412 F.3d 536 (4th Cir. June 21, 2005).**

Two North Carolina farms were sued by several citizen groups, claiming the farms violated the Clean Water Act by spilling pig wastes into local rivers without permits. The Fourth Circuit Court of Appeals held that the citizen groups could sue, since the spills were reoccurring before and after the lawsuit was filed.

<http://caselaw.lp.findlaw.com/data2/circs/4th/042052p.pdf>

***City of Shoreacres v. Waterworth*, 2005 U.S. App. LEXIS 16563(5th Cir. August 8, 2005).**

The Fifth Circuit Court of Appeals recently upheld a dredge and fill permit issued to the Port of Houston for the construction of a ten-berth cruise ship and cargo terminal. The City of Shoreacres and several environmental groups filed suit, claiming the Corps had issued the permit in violation of the Clean Water Act and the National Environmental Policy Act. The Court found that the alternative sites proposed by the plaintiffs were unavailable and impracticable.

<http://caselaw.lp.findlaw.com/data2/circs/5th/0420527p.pdf>

***Northeast Ohio Reg'l Sewer Dist. v. EPA*, 411 F.3d 726 (6th Cir. June 16, 2005).**

A group of public agencies and private companies sued the EPA regarding its Great Lakes water quality guidelines and state implementation of related toxic discharge standards. The Sixth Circuit Court of Appeals dismissed the suit, stating that the EPA's actions were not arbitrary or capricious.

<http://caselaw.lp.findlaw.com/data2/circs/6th/004502p.pdf>

***Glass v. Goeckel*, 2005 Mich. LEXIS 1314 (Mich. July 29, 2005).**

The Michigan Supreme Court has determined that the public trust doctrine protects the right of the public to walk along the shores of the Great Lakes. The court says the public may use the land below the ordinary high water. (Glass v. Goeckel will be covered in the October 2005 issue of *The SandBar*.)

http://courtofappeals.mijud.net/DOCUMENTS/OPINIONS/FINAL/SCT/20050729_S126409_100_glass4mar05-op.pdf

***US v. Gerke Excavating, Inc.*, 412 F.3d 804 (7th Cir. June 21, 2005).**

A defendant was sued for dumping dredged stumps, roots, and sand into wetlands. The defendant claimed that the Army Corps of Engineers had exceeded its authority under the Clean Water Act, because the wetlands were not "waters of the U.S." The Seventh Circuit Court of Appeals disagreed, holding the ACOE had authority over the discharges.

<http://caselaw.lp.findlaw.com/data2/circs/7th/043941p.pdf>

***City of Arcadia v. U.S. EPA*, No. 03-163092005, U.S. App. LEXIS 11475 (9th Cir. June 15, 2005).**

Several California cities sued the EPA, claiming the agency could not authorize the state's TMDLs after federal river trash TMDLs were in-place. The Court of Appeals for the Ninth Circuit said that the Clean Water Act puts no such restraints on the EPA.

<http://caselaw.lp.findlaw.com/data2/circs/9th/0316309p.pdf>

***Marine Forests Society v. Cal. Coastal Comm'n.*, No. S113466, 2005 Cal. LEXIS 6846 (Cal. June 23, 2005).**

The California Supreme Court recently held that the rules governing the appointment and tenure of California Coastal Commissioners do not violate the separation of powers clause of the California Constitution because the State of California recently amended the appointment provisions of the California Coastal Act.

<http://www.courtinfo.ca.gov/opinions/documents/S113466.PDF>

***Washington Toxics Coalition v. EPA*, 413 F.3d 1024 (9th Cir. June 29, 2005).**

The Ninth Circuit recently held that the Environmental Protection Agency did not consult with the National Marine Fisheries Service, as required under the Endangered Species Act, before approving the registration of fifty-four pesticides. The pesticides could have injured endangered or threatened salmon and steelhead in the Pacific.

<http://caselaw.lp.findlaw.com/data2/circs/9th/0435138p.pdf>

***Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 2005 U.S. App. LEXIS 15318(9th Cir. July 26, 2005).**

The National Marine Fisheries Service appealed a preliminary injunction requiring the spilling of dam water to aid salmon protected under the Endangered Species Act. The injunction was upheld, but remanded to the lower court for re-evaluation of its scope.

<http://caselaw.lp.findlaw.com/data2/circs/9th/0535569p.pdf>

***Nat'l Association of Home Builders v. US Army Corps*. 2005 U.S. App. LEXIS 15573 (D.C. Cir. July 29, 2005).**

The Army Corps of Engineers changed a nationwide permit for dredge and fill discharges into an activity-specific permit. The National Association of Home Builders and others sued the Corps for violating the Clean Water Act, the Administrative Procedures Act, the Regulatory Flexibility Act, and the National Environmental Policy Act. The Circuit Court of Appeals for the U.S. District of Columbia held that the homebuilder's claims were ripe, as the Corps' issuance of the permits constituted final agency action. The case was remanded to a lower court for further proceedings.

<http://caselaw.lp.findlaw.com/data2/circs/dc/045009a.pdf>

***Oceana, Inc. v. Evans*, 2005 U.S. Dist. LEXIS 15904 (D.C. Cir August 2, 2005).**

Oceana sued the Department of Commerce for an injunction against the approval of the Atlantic Sea Scallop fishery management plan (FMP), claiming the FMP would harm endangered loggerhead sea turtles. The U.S. District Court for the District of Columbia denied the injunction request but remanded the case citing violations of the bycatch reporting requirements of the Magnuson-Stevens Act. (Oceana v. Evans will be covered in the October 2005 issues of *The SandBar*.)

<http://www.dcd.uscourts.gov/opinions/2005/Huvelle/2004-CV-810-14:18:35-8-4-2005-a.pdf>

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