

Ocean and Coastal Case Alert



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The National Sea Grant Law Center is pleased to offer 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. Please feel free to pass it on to anyone who may be interested. If you are a first-time reader and would like to subscribe, send an email to waurene@olemiss.edu with "**Case Alert**" on the subject line. MASGC 09-002-12

FOURTH CIRCUIT

Maryland

Animal Welfare Inst. v. Beech Ridge Energy LLC, 2009 U.S. Dist. LEXIS 114267 (D. Md. Dec. 8, 2009).

The Animal Welfare Institute and other environmental groups sought an injunction to stop construction of a wind energy project, alleging that the wind turbines would result in an unlawful take of Indiana bats in violation of § 9 of the Endangered Species Act (ESA). The U.S. District Court for the District of Maryland agreed with the plaintiffs and issued an injunction enjoining further construction and operation of the wind energy facility during winter months. The court relied on expert testimony and other reports stating that the bats were present at the project site to conclude that bats were likely to be taken by the project. The court did note that the construction and operation of the facility could proceed with an incidental take permit from the Fish and Wildlife Service.

<http://bit.ly/6svfoP>

North Carolina

Hensley v. N.C. Dep't of Env't & Natural Res., 2009 N.C. App. LEXIS 1853 (N.C. Ct. App. Nov. 17, 2009).

The owner of a country club sought a variance from the state Pollution Control and Environment Sedimentation Pollution Control Act to construct a nine-hole golf course. A division of the North Carolina Department of Environment and Natural Resources (DNR) granted the variance. Clean Water for North Carolina, an environmental group, filed a petition challenging the variance, alleging that it would have a negative impact on trout waters protected by state statute. The trial court ruled in favor of the country club, finding that the construction activities were temporary and would not violate the Act. The appellate court disagreed and reversed the decision, finding that the ongoing maintenance of the golf course would negatively impact the trout waters buffer zone in violation of the Act.

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/081307-1.pdf>

FIFTH CIRCUIT

Ackerson v. Bean Dredging LLC, 2009 U.S. App. LEXIS 25891 (5th Cir. Nov. 25, 2009).

A class action (known as the Katrina Canal Breaches Litigation) against the U.S. and thirty-two dredging companies alleged that dredging activities caused environmental damage to protective wetlands in the Mississippi River Gulf Outlet (MRGO). The plaintiffs sought to recover damages suffered as a result of Hurricane Katrina, as well as injunctive relief to prevent future dredging activities. The U.S. District Court for the Eastern District of Louisiana dismissed the claim against the U.S. government for lack of subject matter jurisdiction and dismissed the claim against the contractors, finding that they had government-contractor immunity. On appeal, the Fifth Circuit affirmed the dismissal, finding that the dredging companies were entitled to government immunity under *Yearsley v. W.A. Ross Construction Co.* and *Boyle v. United Technologies Corp.*

<http://www.ca5.uscourts.gov/opinions%5Cpub%5C07/07-30272-CV0.wpd.pdf>

Louisiana

In re Katrina Canal Breaches Consol. Litig., 2009 U.S. Dist. LEXIS 107836 (E.D. La. Nov. 18, 2009).

In a class action seeking damages for flooding caused by Hurricane Katrina, residents alleged that the U.S. Army Corps of Engineers negligently failed to maintain and operate the Mississippi River Gulf Outlet (MRGO). The U.S. District Court for the Eastern District of Louisiana awarded damages to the residents, finding that the Corps' negligence was a substantial cause of fatal breaching of the levees and the subsequent catastrophic flooding. The court found that the MRGO is a navigation channel, not a flood control project; therefore, the immunity provided to the government by the Flood Control Act of 1928 did not apply.

<http://www.laed.uscourts.gov/CanalCases/Orders/19415.pdf>

NINTH CIRCUIT

Ili v. American Seafoods Co., LLC, 2009 U.S. App. LEXIS 25877 (9th Cir. Nov. 25, 2009).

A fishing vessel crewmember, Samson Ili, was injured while completing a 16-hour shift and filed suit against his employer, American Seafoods. Ili alleged that requiring crewmembers to work 16-hour days, seven days a week, for months at a time resulted in negligence under the Jones Act and unseaworthy conditions. The U.S. District Court for the Western District of Washington granted summary judgment for American Seafoods. On appeal, the Ninth Circuit reversed, ruling that the shipowner may be liable for injuries resulting from extended work hours. <http://www.ca9.uscourts.gov/datastore/memoranda/2009/11/25/09-35000.pdf>

D.C. CIRCUIT

District of Columbia

Van Valin v. Locke, 2009 U.S. Dist. LEXIS 109381 (D.D.C. Nov. 23, 2009).

Charter fishing vessel operators contested the National Marine Fisheries Service's (NMFS) formal rule limiting customers on guided sport boats to a catch of one halibut per day. The charter operators argued that in issuing its final rule, the Secretary of Commerce (through NMFS) violated the Northern Pacific Halibut Act by unfairly and inequitably allocating the halibut harvest. Local commercial and subsistence halibut fishermen intervened on behalf of the government. The U.S. District Court for the District of Columbia held that the Secretary's decision was not arbitrary, capricious, or contrary to law because the record reflected that the Secretary adequately considered the equities of the allocation of the halibut harvest. The court granted summary judgment to the Secretary and interveners.

<https://ecf.dcd.uscourts.gov/doc1/04512776296>

FEDERAL CLAIMS

Dauphin Island Prop. Owners Ass'n v. United States, 2009 U.S. Claims LEXIS 383 (Fed. Cl. Nov. 24, 2009).

In 2000, Dauphin Island, Alabama property owners filed suit against the U.S. Army Corps of Engineers, alleging that dredging by the Corps in the Mobile Ship Bar Channel contributed to significant shoreline erosion of their property. In November, the U.S. Court of Federal Claims approved a \$1.5 million settlement agreement reached by Dauphin Island property owners and the federal government. The court found the settlement to be "fair, reasonable, and adequate."

<http://www.uscfc.uscourts.gov/sites/default/files/FUTEY.DAUPHIN112409.pdf>

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