

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. NSGLC-10-03-04

FIRST CIRCUIT

United States v. Massachusetts, 2010 U.S. Dist. LEXIS 32417 (D. Mass. Mar. 31, 2010).

The U.S. District Court for the District of Massachusetts recently ruled that the Massachusetts Oil Spill Prevention Act (MOSPA) is preempted by the federal Ports and Waterways Safety Act (PWSA). MOSPA, enacted in response to an oil spill, contained manning requirements for tank vessels operating in Buzzards Bay and established tug escort requirements for those vessels. The court found that the U.S. Coast Guard's regulations promulgated under the PWSA expressly preempted MOPSA.

<http://pacer.mad.uscourts.gov/dc/cgi-bin/recentops.pl?filename=woodlock/pdf/usa%20memor033110.pdf>

SECOND CIRCUIT

Peconic Baykeeper, Inc. v. Suffolk County, 2010 U.S. App. LEXIS 6513 (2d Cir. Mar. 30, 2010).

An environmental group and others filed suit against Suffolk County and its public works department, alleging that the county's mosquito control program violated the Clean Water Act (CWA) by discharging dredged spoils and other materials without a permit, discharging pollutants from ditches and culverts without a permit, and spraying pesticides over open water without a permit. The U.S. District Court for the Eastern District of New York ruled in favor of the county. On appeal, the Second Circuit affirmed in part and vacated and remanded in part. The court affirmed the lower court's conclusion that the county's maintenance of the drainage ditch system for mosquito control was within a CWA permit exemption. However, the court reversed and remanded the district court's finding that the applications were in compliance with the Federal Insecticide, Fungicide, and Rodenticide Act, given that the spraying may not have been in compliance with the Act's requirements.

<http://bit.ly/9Ybm8q>

FIFTH CIRCUIT

Louisiana

Independent Turtle Farmers of La., Inc. v. U.S., 2010 U.S. Dist. LEXIS 31117 (W.D. La. Mar. 30, 2010).

The U.S. District Court for the District of Louisiana upheld the U.S. Food and Drug Administration's 35-year ban on the sale of turtles and turtle eggs. The ban was in response to studies showing that many *Salmonella* illnesses were related to turtles. The Independent Turtle Farmers of Louisiana had petitioned the FDA to overturn the ban, citing recent developments in antibacterial soap and treatments to reduce or eliminate *Salmonella* from turtle eggs and hatchlings. The court deferred to the agency's authority.

<https://ecf.lawd.uscourts.gov/doc1/08912374397>

NINTH CIRCUIT

California

Gualala Festivals Committee v. California Coastal Commission, 2010 Cal. App. LEXIS 390 (Cal. App. 1st Dist. Mar. 25, 2010).

The Gualala Festivals Committee filed a petition for a writ of mandate to set aside a cease-and-desist order issued by the California Coastal Commission which prohibited the committee from discharging fireworks over the Gualala River estuary without a coastal development permit. The lower court ruled in favor of the

Commission. On appeal, the court affirmed the Commission's decision, finding that it had jurisdiction over fireworks displays since they would result in the discharge of solid and chemical waste within a coastal zone. <http://www.courtinfo.ca.gov/opinions/documents/A125614.PDF>

Karuk Tribe of Northern California v. California Regional Water Quality Control Bd., North Coast Region, 2010 Cal. App. LEXIS 427 (Cal. App. 1st Dist. Mar. 30, 2010).

The Karuk Tribe of Northern California and others petitioned for a writ of mandate to require the California Regional Water Quality Control Board to enforce California law governing waste discharge into hydroelectric dam-reservoirs. The lower court denied the petition after receiving the Board's supplemental analysis, but awarded attorney fees to plaintiffs. On appeal, the court held that the Federal Power Act preempted state law, precluding state reporting requirements for the waste discharge. The court also reversed the award of attorney's fees, finding that the plaintiffs were not a successful party and therefore not entitled to attorney's fees.

<http://www.courtinfo.ca.gov/opinions/documents/A124351.DOC>

Hawaii

Unite Here v. City and County of Honolulu, 2010 WL 1408403 (Haw. 2010).

Several environmental groups brought an action against the City and County of Honolulu, the Director of Hawaii's Department of Planning and Permitting (DPP), and the owner of Kuilima Resort. The groups claimed that a supplemental environmental impact statement (SEIS) was required under the Hawaii Environmental Policy Act (HEPA) before a subdivision application could be approved as part of a proposed expansion of the Kuilima Resort. The Intermediate Court of Appeals held that absent a substantial change in the action an SEIS was not required under HEPA. On appeal, the Hawaii Supreme Court addressed whether, "[u]nder HRS Chapter 343 and its enabling rules, is a supplemental environmental review required when there are significant changes to a project's circumstances, such as increased environmental and community impacts, or are supplemental reviews limited solely to changes in project design?" The court held that due to a change in timing, the project was an essentially different action and that original EIS was no longer valid; therefore, the project required an SEIS.

http://www.courts.state.hi.us/docs/opin_ord/sct/2010/apr/28602.pdf

ELEVENTH CIRCUIT

Crimson Yachts v. Betty Lyn II Motor Yacht, 2010 U.S. App. LEXIS 7447 (11th Cir. Apr. 12, 2010).

A shipyard brought an action *in rem* against a yacht, seeking to enforce a maritime lien for major repairs it performed. The U.S. District Court for the Southern District of Alabama dismissed the *in rem* claims. The court held that because the yacht was not "in navigation" due to renovations, it did not have the requisite status necessary for a maritime lien. On appeal, the Eleventh Circuit held that the yacht was a "vessel" subject to maritime liens and admiralty jurisdiction, because the vessel retained a practical ability to engage in maritime transport.

<http://www.ca11.uscourts.gov/opinions/ops/200911288.pdf>

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