

March

14  
2014

# Ocean and Coastal Case Alert

**The National Sea Grant Law Center** is pleased to offer the March 2014 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-14-03-03).

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## FOURTH CIRCUIT

### Maryland

***Sierra Club v. Dominion Cove Point LNG, L.P.*, 2014 WL 808163 (Md. Ct. Spec. App. Feb. 28, 2014).**

A Maryland appellate court held that a liquid natural gas (LNG) import terminal on the Chesapeake Bay could continue to export natural gas. The owner of the LNG terminal and the Sierra Club had signed an agreement outlining activities that would be allowed at the site. The Sierra Club argued that the agreement did not specifically include "export" from the LNG terminal under the list of authorized activities. The owner of the terminal filed suit against the Sierra Club, seeking a declaration that it was allowed to export natural gas from the terminal. The court ruled that while the agreement did not specifically include the term "export," language in the agreement indicated that natural gas could be sent to and from the facility.

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## FIFTH CIRCUIT

***In re Deepwater Horizon*, 2014 WL 700065 (5th Cir. Feb. 24, 2014).**

In a lawsuit by Louisiana coastal parishes against BP and others (BP), the Fifth Circuit held that federal law preempted the state law claims. The parishes sought to recover penalties from BP under The Louisiana Wildlife Protection Statute for the pollution-related loss of aquatic life and wildlife resulting from the Deepwater Horizon oil spill. The Fifth Circuit affirmed the trial court's holding that the state law claims were preempted by the Clean Water Act and the Oil Pollution Act.

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***In re Deepwater Horizon*, 2014 WL 841313 (5th Cir. Mar. 3, 2014).**

The Fifth Circuit upheld the terms of a settlement agreement between BP and business-economic-loss claimants. BP had challenged the Claims Administrator's interpretation of the settlement agreement between it and the class of injured parties. BP wanted more detailed evidence of actual injuries traceable to the spill. The Fifth Circuit upheld the Court of Appeals decision that the terms of the settlement agreement were controlling and that the business-economic-loss claimants could not be required to prove their claims with trial-type evidence based on the terms of the settlement agreement.

[Opinion here](#)

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## **NINTH CIRCUIT**

***San Luis & Delta-Mendota Water Auth. v. Jewell*, 2014 WL 975130 (9th Cir. Mar. 13, 2014).**

The Ninth Circuit reversed a federal district court decision invalidating a biological opinion (BiOp) by the U.S. Fish and Wildlife Service regarding the effects of two water diversion projects on the delta smelt and its habitat. The water projects exported water from the northern part of the state to southern portions of the state for agricultural and domestic uses. The Ninth Circuit found that the district court should not have disregarded the BiOp's conclusion that water diversion would threaten the existence of the delta smelt. However, the appellate court affirmed the lower court's order remanding the BiOp to allow the Bureau of Reclamation to prepare an environmental impact statement pursuant to the National Environmental Policy Act.

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## **Hawaii**

***Kauai Springs, Inc. v. Planning Comm'n of Cnty. of Kaua'i*, 2014 WL 812683 (Haw. Feb. 28, 2014).**

The Supreme Court of Hawaii recently upheld the Kauai County Planning Commission's decision to deny three permits that would allow the continued operation of a spring water bottling facility. After refusing to issue the permits, the Commission ordered the company to shut down its operations. A state circuit court overturned the Commission's decision and ordered the Commission to issue the permits. The intermediate court of appeals vacated the circuit court's opinion. On appeal, the Hawaii Supreme Court ruled that the findings and conclusions of the Commission, viewed in light of its duties under the public trust doctrine, were not arbitrary and capricious. However, the court remanded the case to the Commission to clarify its findings.

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## ELEVENTH CIRCUIT

### Georgia

***Georgia Dept. of Natural Resources v. Center for a Sustainable Coast*, 2014 WL 696487 (Ga. Feb. 24, 2014).**

The Georgia Supreme Court held that the doctrine of sovereign immunity prevented an environmental group from challenging the state's actions under the Georgia Shore Protection Act. The environmental group sought to stop the state from issuing Letters of Permission (LoP) authorizing third parties to conduct land alterations on properties located within the jurisdiction of the Shore Protection Act. The Act limits disturbances of sand dunes and beaches unless the actions are in the best interest of the state and do not impair the sand-sharing system. While the Act provides for a permitting system, the court determined that the state's decision to issue LoPs in lieu of the permitting process could not be challenged because the state had not waived its sovereign immunity from suit.

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## D.C. CIRCUIT

### District of Columbia

***Oceana, Inc. v. Pritzker*, 2014 WL 616599 (D.D.C. Feb. 18, 2014).**

Oceana, Inc., a conservation organization, sued the Secretary of Commerce, the National Oceanic and Atmospheric Administration, and the National Marine Fisheries Service (NMFS), claiming violation of the Northeast Multispecies Fishery Management Plan (Plan), the Magnuson-Stevens Fishery Conservation and Management Act, and the Administrative Procedure Act. The group objected to a framework adjustment and sector operations rule that clarified details of an at-sea monitoring program. The U.S. District Court for the District of Columbia granted summary judgment in favor of the federal defendants, finding the changes merely expanded on broad goals already in the Plan and that NMFS did not act arbitrarily and capriciously in enacting those changes.

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***Oceana, Inc. v. Pritzker*, 2014 WL 912364 (D.D.C. Mar. 10, 2014).**

Oceana, Inc., a conservation organization, sued the Secretary of Commerce, the National Oceanic and Atmospheric Administration, and the National Marine Fisheries Service (NMFS), claiming that the Mid-Atlantic Fishery Management Council Omnibus Amendment to Implement Annual Catch Limits and Accountability Measures, violated the Magnuson-Stevens Fishery Conservation and Management Act, the National Environmental Policy Act, and the Administrative Procedure Act. The group alleged that NMFS' changes could result in overfishing, because it did not account for bycatch of non-target stocks. The U.S. District Court for the District of Columbia granted the defendants' motion for summary judgment. The court concluded that because the annual catch limits were set as equal to acceptable biological catch for all stocks in the fishery, the plan would not harm non-target species.

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