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# Ocean and Coastal Case Alert

**The National Sea Grant Law Center** is pleased to offer the November 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-14-03-10).

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## FIRST CIRCUIT

### Rhode Island

#### ***Berman v. Sitrin*, 2014 WL 5818980 (R.I. Nov. 10, 2014).**

The Rhode Island Supreme Court upheld a jury's rejection of a lawsuit filed by a man paralyzed by a fall from the Newport Cliff Walk. He filed suit against the state, the city, and the Cliff Walk Commission, arguing that the defendants failed to properly inspect, maintain, and repair the walk. In 2011, the man settled with the city for \$2 million and a jury found that the state was not liable. On appeal, the state supreme court found that the trial court did not err in its decision to allow or preclude certain evidence and affirmed the lower court's decision.

[Opinion here](#)

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### Massachusetts

#### ***Cape Cod Shellfish & Seafood Co. v. City of Boston*, 2013 WL 9868281 (Mass. App. Ct. Nov. 12, 2014).**

A Massachusetts appellate court ruled that several seafood companies are required to pay property taxes. The companies were lessees at Massachusetts Port Authority (Massport) on Boston's Fish Pier from 1998 until 2004, but only one company paid tax during that period. When the companies attempted to renew their leases, Massport refused based on the fact that the companies were not current on their taxes. The companies remained in their

locations, paying rent on a month to month basis. When the city attempted to collect taxes, the companies filed an action seeking a determination that they were not liable for taxes on the properties. The companies claimed that since their leases had expired, they were no longer "business lessees" required to pay taxes pursuant to the Massport enabling act. The court rejected this argument, reasoning that the companies were essentially business lessees and therefore required to pay taxes.

[Opinion here](#)



## FOURTH CIRCUIT

### ***Am. Whitewater v. Tidwell, 2014 WL 5653174 (4th Cir. Nov. 5, 2014).***

The U.S. Court of Appeals for the Fourth Circuit recently upheld the U.S. Forest Service's decision to allow limited "floating" on the headwaters of the Chattooga River. American Whitewater filed suit against the Forest Service, claiming that the floating limits were too stringent and inconsistent with the Wild and Scenic River Act (WSRA). Two environmental groups intervened in the suit, arguing that no headwaters floating should be allowed. The U.S. District Court for the District of South Carolina granted judgment in favor of the Forest Service. On appeal, the Fourth Circuit ruled that Forest Service's wild and scenic river management and oversight plan was not arbitrary or capricious under the Administrative Procedures Act.

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## FIFTH CIRCUIT

### ***In re Deepwater Horizon, 2014 WL 5801350 (5th Cir. Nov. 5, 2014).***

A panel of the U.S. Court of Appeals for the Fifth Circuit reaffirmed its ruling that B.P. Exploration & Production, Inc. and Anadarko Petroleum Corporation are liable for the 2010 Gulf of Mexico oil spill. In June, the panel had ruled that the companies were liable under Clean Water Act § 311. The companies sought a rehearing, arguing that the panel erred in its decision. The panel rejected the companies' arguments and affirmed its interpretation of a "discharge" under § 311.

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## NINTH CIRCUIT

### ***Shell Gulf of Mexico Inc. v. Ctr. for Biological Diversity, Inc., 2014 WL 5839951 (9th Cir. Nov. 12, 2014).***

Shell attained approval from the Bureau of Safety and Environmental Enforcement for two oil spill response plans required by the Oil Pollution Act that enabled the companies to carry out oil and gas exploration in the Beaufort and Chukchi Seas of Alaska. Shell then filed a preemptive suit under the Declaratory Judgment Act against several

environmental organizations, seeking a judgment that the Bureau's approval did not violate the Administrative Procedures Act. The U.S. District Court for the District of Alaska denied the organization's motion to dismiss. On appeal, the Ninth Circuit granted the motion, finding that Shell lacked standing to bring the case. Specifically, the oil company did not satisfy the case or controversy provision of Article III of the U.S. Constitution, since it did not have adverse legal interests to the environmental groups.

[Opinion here](#)

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## Washington

***State, Dep't of Ecology v. Wahkiakum Cnty.*, 2014 WL 5652318 (Wash. Ct. App. Nov. 4, 2014).**

The Washington Court of Appeals ruled that a county's ordinance banning the use of most common class of biosolids within the county conflicted with state law, and therefore violated the state constitution. The ruling reversed a lower court decision. The appellate court found that the ordinance was unconstitutional because it prohibited what state law allowed; thwarted the legislative purpose of state law; and exercised power the legislature did not confer on local governments.

[Opinion here](#)

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## ELEVENTH CIRCUIT

### Florida

***Pope v. Grace*, 2014 WL 5734076 (Fla. Dist. Ct. App. Nov. 6, 2014).**

Two beachfront property owners challenged a final order of the Florida Secretary of the Department of Environmental Protection (DEP) that found a permit for repairs to the foundation of a dune walkover structure unnecessary. The DEP had found that the repairs were exempt from permitting requirements under Fla. Stat. 161.053 (11)(b), which exempts activities that do not "cause a measurable interference with the natural functioning of the coastal system." The plaintiffs appealed the decision, and a Florida appellate court affirmed the final order. The court found the DEP's interpretation of its authority to grant the exemption at issue was reasonable.

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### Alabama

***Mobile Baykeeper, Inc. v. U.S. Army Corps of Engineers*, 2014 WL 5307850 (S.D. Ala. Oct. 16, 2014).**

The U.S. District Court for the Southern District of Alabama dismissed a lawsuit challenging the U.S. Army Corps of Engineer's determination that Nationwide Permit 12 (NWP 12) applied to a pipeline construction project for a pipeline between Mobile, Alabama and Pascagoula, Mississippi. The pipeline would ultimately be used to transport crude oil to a refinery. Environmental groups filed the suit, alleging that the Corps violated the Clean Water Act and the Administrative Procedures Act, because it failed to 1) consider the project's proximity to public water supply intakes; 2) consider whether routing the pipeline through the watershed would be contrary to the public interest; and 3) provide a reasoned explanation for its determination of minimal cumulative effects. The court found that the applicable laws did not require the Corps to consider the water supply and public interest impacts prior to issuing NWP 12 verifications and that the Corps provided adequate justification of its minimal effects determination.

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National Sea Grant Law Center  
256 Kinard Hall, Wing E  
University, MS 38677-1848

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