

February

17
2015

Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the February 2015 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-15-03-02).

Forward to a friend

Know someone who might be interested in our monthly newsletter?

Forward this email their way and help spread the word.

THIRD CIRCUIT

New Jersey

***United States v. Reeves*, 2015 WL 461860 (D.N.J. Feb. 4, 2015).**

The U.S. District Court for the District of New Jersey ruled on several post-trial motions in a criminal case in which individuals were convicted of violating the Lacey Act by creating false records for illegally possessed oysters, trafficking in illegally possessed oysters, and falsifying records used by the federal Food and Drug Administration for tracking the movement of oysters in interstate commerce. The defendants filed motions for judgment notwithstanding the verdict and for a new trial. Except for the motion of one defendant, the court denied the motions.

[Opinion Here](#)

***Gripenburg v. Twp. of Ocean*, 2015 WL 263913 (N.J. Jan. 22, 2015).**

A New Jersey court upheld a series of zoning ordinances that rezoned a large tract of land from residential and commercial use to an Environmental Conservation district. Landowners Thomas and Carol Gripenburg, who had a large portion of property affected by the ordinances, filed suit. The lower court dismissed the challenge, finding that

the ordinances were a valid exercise of municipal zoning power and were not arbitrary, capricious, or unreasonable. An appellate court reversed. On appeal, the New Jersey Supreme Court held that ordinances were valid, as they were a legitimate exercise of the municipality's power to zone property consistent with its Master Plan and Municipal Land Use Law. The court noted that the plaintiffs could apply for a variance, and, if denied, may pursue an inverse condemnation claim.

[Opinion Here](#)



FOURTH CIRCUIT

South Carolina

***Maull v. S. Carolina Dep't of Health & Envtl. Control*, 2015 WL 340706 (S.C. Ct. App. Jan. 28, 2015).**

A South Carolina court of appeals ruled on a challenge to the Department of Health and Environmental Control's (DHEC) decision to issue an amendment to a critical area permit allowing a permittee to construct a dock about 20.4 feet from an adjacent property owner's property line. The Administrative Law Court (ALC) had affirmed the DHEC decision. On appeal, the court upheld most of the ALC's decision, including the ALC's consideration of testimony on the dock's impact to navigation and public safety. The court did find, however, that the ALC did not adequately address whether the DHEC properly considered the impact its permit amendment would have on the adjoining property owner's value and enjoyment of his property and remanded this portion of the case for consideration.

[Opinion Here](#)

Virginia

***French v. Virginia Marine Res. Comm'n*, 767 S.E.2d 245 (Va. Ct. App. 2015).**

A Virginia court of appeals ruled on the issuance of a permit for the use of state-owned subaqueous lands. The Virginia Marine Resources Commission (VMRC) had issued an after-the-fact permit to a landlocked landowner who had built an access bridge across a shallow mountain creek. A neighbor challenged the permit, alleging that the issuance violated her procedural due process rights. A lower court upheld the permit. On appeal, the court ruled that the VMRC did not deprive the neighbor of her property rights, and the VMRC did not abuse its discretion in issuing the permit.

[Opinion Here](#)



SEVENTH CIRCUIT

Wisconsin

***Bye v. Wisconsin Dep't of Natural Res.*, 2015 WL 522336 (Wis. Ct. App. Feb. 10, 2015).**

A landowner placed unauthorized fill on wetlands on his property and then applied for an after-the-fact water quality certification from the Wisconsin Department of Natural Resources (DNR). The DNR found that the landowner was not entitled to certification. While the landowner's case was pending, the Wisconsin legislature amended the law governing wetland permits. The circuit court concluded that, based on the new law, the landowner was eligible for water quality certification and reversed the DNR's decision. The appellate court disagreed and reversed the circuit

court's decision. The appellate court found that although the landowner had submitted an application under the new law, that application was not a factor in the current case.

[Opinion Here](#)



NINTH CIRCUIT

Alaska

***Hughes v. Treadwell*, 2015 WL 404235 (Alaska Jan. 30, 2015).**

The Alaska Supreme Court upheld a ballot initiative requiring legislative approval for any large-scale metallic sulfide mining operations in a bay watershed. A mining engineer and associations had filed the suit challenging the lieutenant governor's certification of the ballot. The lower court granted summary judgment in favor of the State of Alaska and initiative sponsors. On appeal, the state supreme court held that the initiative was not an unconstitutional appropriation of state assets and did not violate a constitutional prohibition against local or special legislation.

[Opinion Here](#)

California

***Ctr. for Biological Diversity v. Dep't of Fish & Wildlife*, 2015 WL 543704 (Cal. Ct. App. Feb. 10, 2015).**

A California appellate court ruled on the California's Department of Fish and Wildlife's (DFW) Environmental Impact Report (EIR) assessing its fish hatchery and stocking enterprises. Rather than addressing impacts on specific locations managed by the DNR, the EIR examined impacts on individual species that could be located at multiple locations. The EIR also proposed new qualification requirements and monitoring and reporting obligations for private vendors who participate in the stocking programs. The DFW adopted these requirements as mitigation measures. On appeal, the court considered whether the EIR complied with the California Environmental Quality Act (CEQA) and whether the DFW's imposition of these mitigation measures on private fish vendors violated the requirements of the state Administrative Procedure Act (APA). The court found that the DFW did not violate CEQA in its organization of the EIR, analysis of the project, and its impact mitigation. The court found that the EIR did violate the APA by imposing the requirements on private fish vendors without complying with the APA's notice and hearing procedures.

[Opinion Here](#)

Hawaii

***Hawaii Wildlife Fund v. Cnty. of Maui*, 2015 WL 328227 (D. Haw. Jan. 23, 2015).**

The U.S. District Court for the District of Hawaii ruled on whether the County of Maui violated the Clean Water Act (CWA) by discharging effluent without a National Pollutant Discharge Elimination System (NPDES) permit at two of four injection wells at the Lahaina Wastewater Reclamation Facility. The county contended that the discharges were not from a point source, because the pollutant did not pass through point sources throughout its journey to navigable waters. The court rejected this reasoning, finding that pollutants that travel from an initial point source through nonpoint sources and eventually enter navigable waters are still considered discharges from point sources.

[Opinion Here](#)

Washington

Beatty v. Washington Fish and Wildlife Comm'n, No. 31409-0-III (Wash. Ct. App. Jan. 15, 2015).

A Washington miner sought a permit from the Washington Department of Fish and Wildlife (WDFW) to operate a hydraulic suction dredge outside of the authorized two-week work window. The WDFW offered to issue the permit outside of the window if the miner would comply with the WDFW's request to provide site-specific information so that the agency could assess impacts of the mining on fish life. The miner objected and sought an administrative hearing. The board upheld the condition. The appellate court agreed with the conclusion that the conditions "were reasonably designed to protect fish life and do not impose restrictions unrelated or out of proportion to the proposed dredging activity."

[Opinion Here](#)



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



You're receiving this newsletter because you've subscribed to the *Ocean and Coastal Case Alert*.

To view our archive, go to [Case Alert Archive](#).

First time reader? [Subscribe now](#).

Not interested anymore? [Unsubscribe instantly](#).