

May

20

2015

Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the May 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-15-03-05).

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FIRST COURT

***Town of Barnstable v. O'Connor*, No. 14-1597, 2015 WL 2345449 (1st Cir. May 18, 2015).**

The First Circuit ruled that a lower court wrongly dismissed a suit seeking to block the construction of Cape Wind, an offshore wind project. Plaintiffs had sought an injunction and a declaratory judgment in federal district court against state officials and two private parties. The district court granted defendants' motions to dismiss after determining that the Eleventh Amendment precluded the assertion of federal court jurisdiction. The First Circuit disagreed and remanded the case.

[Opinion Here](#)

SECOND CIRCUIT

New York

***Natural Res. Def. Council, Inc. v. New York State Dep't of Env'tl. Conservation*, 2015 WL 1978968 (N.Y. May 5, 2015).**

The Natural Resources Defense Council (NRDC) filed a challenge alleging that the Department of Environmental Conservation's 2010 General Permit for storm water discharge from small municipalities was a self-regulatory system that did not hold local governments to statutory standards. NRDC claimed that the General Permit was only reviewed for completeness and was not subject to an opportunity for a public hearing. The New York Court of Appeals affirmed the lower court's holding that the NRDC's challenge to the 2010 General Permit was without merit. The court found that the 2010 General Permit was in compliance with the Clean Water Act and cited policy reasons compelling agencies to streamline permitting processes for minimal environmental impact projects.

[Opinion Here](#)



FIFTH CIRCUIT

***In re Deepwater Horizon*, No. 13-30843, 2015 WL 2166593 (5th Cir. May 8, 2015).**

The Fifth Circuit ruled that BP can appeal individual claim determinations in its *Deepwater Horizon* settlement agreement. The U.S. District Court for the Eastern District of Louisiana had approved final rules governing discretionary district court review of appeal determinations for claims processed through the settlement program; however, the rules did not allow for a right to appeal from district court decisions on individual claims. The court found that BP should be allowed to appeal, because the company did not expressly waive that right in the settlement agreement.

[Opinion Here](#)

Texas

***Gulf Coast Rod Reel & Gun Club, Inc. v. U.S. Army Corps of Engineers*, 2015 WL 1883522 (S.D. Tex.**

Apr. 20, 2015).

Rollover Pass is a manmade channel that connects Galveston Bay directly to the Gulf of Mexico. In August 2012, the U.S. Army Corps of Engineers (Corps) approved the Texas General Land Office's request for a Clean Water Act (CWA) permit to close Rollover Pass in order to reduce coastal erosion by eliminating sediment and to reduce salinity levels in the Bay's estuary system. Two community groups filed suit, alleging that the Corps' decision to issue a Finding of No Significant Impact under the National Environmental Policy Act (NEPA) for the closure was arbitrary and capricious and that the Corps violated NEPA and the CWA by failing to fully disclose the ecological and socioeconomic impacts that would result from the closure of Rollover Pass. The court granted plaintiffs' motion to introduce additional evidence in the case and litigation will continue.

No Opinion



NINTH CIRCUIT

Oregon

***Newport Fishermen's Wives, Inc. v. U.S. Coast Guard*, 2015 WL 1951751 (D. Or. Apr. 29, 2015).**

When the Coast Guard issued notice that it would close a search and rescue facility located in Newport, Oregon

(AIRFAC Newport), Newport Fishermen's Wives, Inc. filed an action seeking to enjoin the closure under the Administrative Procedure Act for violations of the National Environmental Policy Act and the Homeland Security Act. While the case was pending, the Howard Coble Coast Guard and Maritime Transportation Act of 2014 was enacted, which prohibits closure of AIRFAC Newport until January 1, 2016. The court dismissed the case, finding that plaintiffs' existing claims were moot and future claims are not yet ripe for adjudication.

[Opinion Here](#)



D.C. CIRCUIT

District of Columbia

United States Ass'n of Reptile Keepers, Inc. v. Jewell, 2015 WL 2207603 (D.D.C. May 12, 2015).

The United States Association of Reptile Keepers Inc. (USARK) sought a preliminary injunction to prevent the Department of the Interior from implementing a final rule that adds four species of constricting snakes to the list of injurious species under the Lacey Act. USARK questioned whether the Lacey Act's authority extends to the interstate transportation of injurious species. The U.S. District Court for the District of Columbia partially granted USARK's motion for a preliminary injunction. The court found that the plaintiffs were likely to prevail on their claim that the original 1960 interpretation of the Lacey Act does not include regulation of interstate transportation and Congress never explicitly expanded the Act to do so. Further, the court found the argument that subsequent legislative developments prohibiting interstate transport of zebra mussels and Asian carp did not amend the Lacey Act to prohibit interstate transport of all injurious species.

[Opinion Here](#)

Alaska Wilderness League v. Jewell, 2015 WL 1756095 (D.D.C. April 17, 2015).

The Alaska Wilderness League challenged a U.S. Fish and Wildlife Service regulation allowing certain oil and gas industry players to unintentionally "take" Pacific walruses in the Chukchi Sea off the coast of Alaska. The action was filed in the U.S. District Court for the District of Columbia, and the government responded with a motion to transfer venue to the U.S. District Court for the District of Alaska. The court granted the government's motion to transfer the case based on the court's finding of proper venue, relevant public interest factors, and relevant private interest factors in the District of Alaska. Additionally, the court granted the Alaska Oil and Gas Association's motion to intervene.

[Opinion Here](#)



FEDERAL CLAIMS

St. Bernard Parish Gov't v. United States, 2015 WL 2058969 (Fed. Cl. May 1, 2015).

St. Bernard Parish Government and private property owners filed a complaint in the U.S. Court of Federal Claims

under the Takings Clause of the Fifth Amendment to the U.S. Constitution. The complaint alleged that the U.S. Army Corps of Engineers constructed, expanded, operated, and failed to maintain the Mississippi River-Gulf Outlet (MR-GO) as a navigational waterway connecting the Gulf of Mexico with New Orleans, which significantly increased storm surge and flooding on the plaintiffs' properties during Hurricane Katrina and subsequent hurricanes and severe storms. The court agreed with the plaintiffs. The court ruled that the Corps' actions surrounding MR-GO, including decisions to reroute the flow and build levees, and its failure to maintain the levees constituted a temporary taking under the Fifth Amendment.

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