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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the December 2016 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-16-03-12).

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SUPREME CIRCUIT

State Farm Fire & Cas. Co. v. U.S ex rel. Rigsby, No. 15-513, 2016 WL 7078622 (U.S. Dec. 6, 2016).

Several private parties, known as “relators,” brought an action under the False Claims Act (FCA) against an insurer that issued homeowners policies and government-backed flood policies. The relators alleged that following Hurricane Katrina the insurer submitted false claims to the government for payment on flood policies arising out of damage caused by the hurricane. The FCA establishes specific procedures for relators to follow, including requirements that “[t]he complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders.” The insurance company moved to dismiss the suit on the grounds that the relators had violated the seal requirement. Balancing three factors—actual harm to the government, severity of the violations, and evidence of bad faith— the U.S. District Court for the Southern District of Mississippi decided against dismissal. On appeal, the Fifth Circuit agreed. The U.S. Supreme Court granted certiorari to hear the case. The Court affirmed, holding that violation of FCA’s seal requirement did not mandate automatic dismissal of the relators’ complaint.

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FIRST CIRCUIT

Maine

Maine v. McCarthy, No. 1:14-CV-00264-JDL, 2016 WL 6833935 (D. Me. Nov. 18, 2016).

In February 2015, the EPA issued a formal decision approving several of Maine's water quality standards and disapproving three others. Maine sought judicial review under the Administrative Procedure Act (APA) and the citizen suit provision of the Clean Water Act (CWA). The EPA filed a motion to dismiss the CWA claim, arguing that the statute does not allow for judicial review of its decision to disapprove the state water quality standards. The U.S. District Court for the District of Maine granted the motion to dismiss the CWA claim, finding that while the review of water quality standards under the CWA is mandatory, approving or rejecting them is discretionary.

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FOURTH CIRCUIT

Coastal Conservation League v. United States Army Corps of Engineers, No. 4:16-CV-03008-RBH, 2016 WL 6823375 (D.S.C. Nov. 18, 2016).

Two public interest environmental organizations challenged a permit issued by the U.S. Army Corps of Engineers (Corps) for a project to realign, widen, and pave a 5.6-mile portion of a road that impacted approximately 24 acres of freshwater wetlands. The plaintiffs filed a motion for a preliminary injunction to stop further construction work being done on the property. The U.S. District Court for the District of South Carolina denied the plaintiffs' motion, finding that they did not meet the requirements necessary for preliminary injunctive relief.

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FIFTH CIRCUIT

Louisiana

State v. Thompson, 2016-0409 (La. App. 4 Cir. Nov. 23, 2016).

A commercial fisherman filed a motion for the return of property seized by the Louisiana Department of Wildlife and Fisheries (LDWF) in connection with the arrest of himself and others for various commercial fishing violations. Specifically, he sought the return of four fishing vessels and other equipment. The fisherman cited statutory law and a prior decision of the appellate court that ordered his property returned. A lower court granted the fisherman's motion in part and dismissed in part. The LDWF appealed. The appellate court found that the return of his property was limited to property belonging to the fisherman, which included only one of the four seized vessels. Further, the fisherman was not entitled to the equipment, supplies, and the proceeds from the sale of the fish onboard the vessel at the time of the seizure.

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Joliboix v. Cajun Comfort, Inc., 16-414 (La. App. 5 Cir. Dec. 7, 2016).

An employee filed a claim seeking workers' compensation benefits for an injury he sustained while attending an alleged company sponsored fishing trip. The Office of Workers' Compensation judge granted summary judgment in favor of the employer and insurance company, finding that the employee was not in the course and scope of his

employment at the time of the accident. A Louisiana appellate court reversed the summary judgment decision, finding that there was conflicting evidence regarding whether the trip was considered within the course of his employment. The case was remanded for further proceedings.

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SIXTH CIRCUIT

United States ex rel. Harper v. Muskingum Watershed Conservancy Dist., No. 15-4406, 2016 WL 6832974 (6th Cir. Nov. 21, 2016).

The United States executed a deed for a large parcel of land to the Muskingum Watershed Conservancy District (MWCD) in 1949. The deed stipulated that the land would revert to the United States if MWCD stopped using the land for recreation, conservation, or reservoir-development purposes. After MWCD sold rights to conduct hydraulic fracturing on the land, three Ohio residents filed an action against MWCD under the False Claims Act. The plaintiffs claimed that MWCD was knowingly withholding U.S. property from the federal government. The district court granted MWCD's motion to dismiss. On appeal, the Sixth Circuit affirmed. The appellate court found that the residents failed to show whether or how MWCD knew or should have known that it was in violation of the deed restrictions, such that it knew or should have known that title to the property reverted to the United States.

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SEVENTH CIRCUIT

Indiana

Gunderson v. State, No. 46A03-1508-PL-1116, 2016 WL 7125255 (Ind. Ct. App. Dec. 7, 2016).

Property owners on Lake Michigan sought a declaratory judgment that their property extended to the water's edge and that the public had no rights to land not covered by water. The trial court disagreed and granted summary judgment for the State of Indiana. On appeal, the court found that rights to the shore of Lake Michigan are controlled by the common law public trust doctrine. The court concluded that the private waterfront property extended to the ordinary low water mark, subject to the public's right to limited use of land below the ordinary high water mark. The court also declared that the Department of Natural Resources (DNR) regulation setting the ordinary high water mark of Lake Michigan at 581.5 feet IGLD was invalid, as it conveyed or curtailed the pre-existing public trust rights.

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Michigan

Shaw v. Piskorowski, No. 329027, 2016 WL 6825745 (Mich. Ct. App. Nov. 17, 2016).

Lakefront property owners possessing land adjacent to a right-of-way sought a declaratory judgment and an injunction regarding the scope of use allowed on the right-of-way and to stop the backlot owners' trespass onto their property. The lower court found that the backlot owners had a prescriptive easement and enjoyed the right to use that

easement for various purposes. The property owners appealed, arguing that the backlot owners failed to establish a prescriptive easement and even if they had established an interest, it should have been limited to foot traffic. The court found that because the prescriptive easement was declared by a default judgment against the owner of the burdened property, a continued challenge to the easement's existence would offer no relief for the plaintiffs.

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NINTH CIRCUIT

Washington

Fairweather Fish, Inc. v. Pritzker, No. C14-5685 BHS, 2016 WL 6778781 (W.D. Wash. Nov. 16, 2016).

Commercial fishermen challenged a National Marine Fisheries Service (NMFS) rule that requires additional regulations for the fixed-gear commercial halibut and sablefish fisheries in the North Pacific Ocean. The Final Rule stated, with some exceptions, that owners of a quota share (QS) could not use hired masters to harvest any QS acquired after February 12, 2010. The court found that the rule was impermissibly retroactive. The court partially vacated the rule and remanded the rule to NMFS for further consideration of the National Standards under the Magnuson-Stevens Fishery Conservation and Management Act.

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