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# Ocean and Coastal Case Alert

**The National Sea Grant Law Center** is pleased to offer the April 2019 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-19-03-04).

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## U.S. SUPREME COURT

### ***Sturgeon v. Frost***, 139 S. Ct. 1066 (2019).

The U.S. Supreme Court ruled that nonpublic lands, including waters, within Alaska's national parks are not subject to the National Park Service's (NPS) regulatory authority. A moose hunter brought the suit against NPS, challenging the agency's enforcement of a regulation preventing the use of hovercrafts on the Nation River, located partly within a federal preservation area. The U.S. District Court for the District of Alaska and the Ninth Circuit ruled in favor of the NPS. The U.S. Supreme Court vacated and remanded the Ninth Circuit's decision. On remand, the Ninth Circuit again held that the regulation applied to the river. The U.S. Supreme Court again granted *certiorari*. The Supreme Court found that the river did not qualify as public land within the meaning of the Alaska National Interest Lands Conservation Act (ANILCA). Congress enacted ANILCA to set aside 104 million acres for preservation. Some of those acres included state, Native, and private land. ANILCA § 103(c) states that only "public lands" are part of that unit and that no state, Native, or private lands are subject to regulations applicable solely to public lands within the units. The Court reversed and remanded the case to the Ninth Circuit.

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## FIRST CIRCUIT

### **Maine**

### ***Ross v. Acadian Seaplants, Ltd.***, 2019 ME 45 (Mar. 28, 2019).

The Maine Supreme Court held that harvesting rockweed growing in and attached to a privately owned intertidal zone was not a right protected under the state public trust doctrine. A property owner brought the suit against a rockweed harvester, requesting injunctive relief and a declaration that the owner exclusively owned the rockweed on his property. The harvester counterclaimed for a declaration that harvesting was a public right. The lower court ruled in favor of the property owner. On appeal, the Maine Supreme Court found that harvesting rockweed was not a form of navigation or fishing, both of which are protected public trust uses in Maine. Further, harvesting rockweed was not allowed under a broader interpretation of Maine's public trust doctrine.

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## Massachusetts

***Rauseo v. U.S. Army Corps of Engineers***, 2019 WL 1367767 (D. Mass. Mar. 26, 2019).

The U.S. District Court for the District of Massachusetts held that a resident and a local citizens group did not establish a nondiscretionary duty of either the U.S. Environmental Protection Agency (EPA) or U.S. Army Corps of Engineers (Corps) to act under the Clean Water Act (CWA). The plaintiffs brought suit against the owner of the property adjacent to the resident's home, the Corps, and the EPA, claiming that the property owner violated the CWA and the Safe Drinking Water Act (SDWA) by filling his property with pollutants, and that the EPA and Corps failed to investigate and sanction the property owner's noncompliance with federal laws. The court held that it lacked subject matter jurisdiction for purposes of claims against the Corps and EPA. Further, the plaintiffs failed to allege a final agency action reviewable under the Administrative Procedure Act.

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## NINTH CIRCUIT

### Alaska

***League of Conservation Voters v. Trump***, 2019 WL 1431217 (D. Alaska Mar. 29, 2019).

The U.S. District Court for the District of Alaska held that President Trump did not have authority under the Outer Continental Shelf Lands Act (OCSLA) to issue an Executive Order revoking the Obama administration's withdrawal of certain areas from oil and gas leasing. Environmental organizations brought the suit against the President, the Secretary of the Interior, and the Department of Commerce Secretary, alleging President Trump's actions violated the U.S. Constitution's Property Clause and the President's statutory authority under OCSLA. The parties filed cross-motions for summary judgment. The court noted that Congress's decisions not to challenge the small number of times that Presidents have revoked a prior withdrawal under OCSLA was not acceptance of the President's revocation authority. The court also held that an injunction was not necessary to prevent the Secretaries from executing the President's Executive Order.

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## ELEVENTH CIRCUIT

***Guevara v. NCL (Bahamas) Ltd.***, 2019 WL 1434938 (11th Cir. Apr. 1, 2019).

A cruise ship passenger slipped and fell while aboard a ship. The passenger filed suit, claiming the cruise ship operator negligently failed to warn of a dangerous condition and to inspect and maintain lighting in the area. The district court granted summary judgment in favor of the cruise ship. On appeal, the U.S. Court of Appeals for the Eleventh Circuit reversed the summary judgment on the failure to warn claim, finding that there was a genuine issue of material fact. The court noted that a cruise ship operator has notice of an allegedly dangerous condition, and therefore a duty to warn, if a sign is posted on the ship warning about the condition.

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## D.C. CIRCUIT

***Oceana, Inc. v. Ross***, 2019 WL 1574916 (D.C. Cir. Apr. 12, 2019).

An environmental group challenged a bycatch reporting methodology adopted in 2015 by the National Marine Fisheries Service (NMFS) to track bycatch in fisheries in the Northeast region of the United States. The group claimed that the methodology violates the Magnuson-Stevens Act and the Administrative Procedure Act. The district court entered summary judgment for NMFS. On appeal, the D.C. Circuit affirmed, finding that NMFS met its obligation under the Magnuson-Stevens Act to establish a standardized methodology. The court also concluded that the district court did not abuse its discretion in not requiring that the agency produce or include on privilege log documents covered by the deliberative-process privilege.

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## District of Columbia

***Groundfish Forum v. Ross***, 2019 WL 1297809 (D.D.C. Mar. 21, 2019).

The U.S. District Court for the District of Columbia granted summary judgment to plaintiffs challenging Amendment 113 to the fishery management plan for Pacific cod in the Bering Sea and Aleutian Islands archipelago. The amendment set aside a portion of the Pacific cod fishery off the coast of the Aleutian Islands each year for exclusive harvest by vessels that intend to deliver their fish to onshore processing plants located within two fishing communities. The National Marine Fisheries Service (NMFS) enacted the measure due to fewer vessels delivering catch to onshore processing plants in the communities. The plaintiffs claimed that Amendment 113 exceeded NMFS' statutory authority under the Magnuson-Stevens Act. The court disagreed that NMFS exceeded its authority; however, it found that NMFS failed to show the amendment satisfied the standards for regulatory measures required by the Magnuson-Stevens Act.

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***Conservation Law Found. v. Ross***, 2019 WL 1359284 (D.D.C. Mar. 26, 2019).

The U.S. District Court for the District of Columbia granted the National Marine Fisheries Service (NMFS) a 30-day remand to provide documentation on an omnibus amendment to several fishery management plans that govern fishing activity in New England. An environmental group challenged the amendment, claiming that the agency violated the Endangered Species Act by not sufficiently considering the impact of the amendment on the endangered right whale and engaging in a formal consultation. The agency must show how it determined that the amendment would not affect endangered right whales.

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***Potomac Riverkeeper, Inc., et al., v. Wheeler***, 2019 WL 1440128 (D.D.C. Mar. 31, 2019).

An environmental group challenged the U.S. Environmental Protection Agency's (EPA) approval of Virginia's 2016 impaired waters list under the Clean Water Act. The U.S. District Court for the District of Columbia granted the EPA's summary judgment motion. The court held that it was reasonable for the agency to defer to the state Department of Environmental Quality's decision to collect more data prior to classifying portions of the Shenandoah River as impaired.

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