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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the June 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-19-03-06).

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U.S. SUPREME COURT

Parker Drilling Mgmt. Servs., Ltd. v. Newton, No. 18-389, 2019 WL 2412907 (U.S. June 10, 2019).

Brian Newton, an employee of Parker Drilling, filed a suit alleging that the company had violated California wage-and-hour laws by not paying its employees for standby time on drilling platforms located on the outer continental shelf (OCS) off the coast of California. Newton argued that under the Outer Continental Shelf Lands Act, state law applies, because California wage-and-hours law is not inconsistent with the Federal Labor Standards Act of 1938. Parker Drilling argued that state law does not apply where the federal law has not left any gaps to be filled. The Ninth Circuit ruled in favor of Newton, vacating a California federal district court ruling for Parker Drilling. The U.S. Supreme Court held that where federal law addresses the relevant issue, state law is not adopted as surrogate federal law on the OCS. The Court vacated the Ninth Circuit's decision and remanded for further proceedings consistent with its opinion.

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FIFTH CIRCUIT

Texas

Texas v. United States Env'tl. Prot. Agency, No. 3:15-CV-00162, 2019 WL 2272464 (S.D. Tex. May 28, 2019).

A federal district court ruled that the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) must reevaluate their 2015 "Clean Water Rule" defining what waters fall under the jurisdiction of the Clean Water Act (CWA). Several private parties and three states—Texas, Louisiana, and Mississippi—challenged the validity of the rule, alleging that it violates the Administrative Procedure Act (APA), the CWA, the Commerce Clause, and the Tenth Amendment to the U.S. Constitution. The court found that the Final Rule violated the APA. The Final Rule's definition of "adjacent" deviated significantly from the Proposed Rule's definition "in a way that interested parties could not have reasonably anticipated." Further, the agencies violated the APA by preventing interested parties from commenting on reports that were the technical basis for the rule. The court remanded the rule to the agencies for further consideration.

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EIGHTH CIRCUIT

Iowa

Hammes v. City of Davenport, No. 318CV00111SMRBJ, 2019 WL 2183365 (S.D. Iowa May 21, 2019).

Jesse Hammes filed a Clean Water Act (CWA) citizen suit, alleging that the City of Davenport, Iowa, violated the CWA by failing to prevent erosion damage to his property due to excessive stormwater runoff from commercial properties. The federal district court ruled that Hammes failed to give adequate pre-suit notice of the suit. In addition, the inverse condemnation claim was not ripe.



NINTH CIRCUIT

Sierra Club, Inc. v. United States Fish & Wildlife Serv., No. 17-16560, 2019 WL 2297454 (9th Cir. May 30, 2019).

The Sierra Club submitted a Freedom of Information Act (FOIA) request to the Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) for records generated during the Environmental Protection Agency's (EPA) rulemaking process concerning cooling water intake structures. The Services withheld a number of the records under an FOIA "deliberative process privilege" exemption, claiming that they were pre-decisional and deliberative. A federal district court granted in part and denied in part the parties' cross-motions for summary judgment. On appeal, the court held that the agencies must disclose the requested documents, because they did not qualify for the deliberative process privilege.

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Washington

Puget Soundkeeper All. v. APM Terminals Tacoma, LLC, No. C17-5016 BHS, 2019 WL 2224920 (W.D. Wash. May 23, 2019).

Puget Soundkeeper Alliance brought a citizen suit under the Clean Water Act against APM Terminals Tacoma over industrial stormwater discharges at a large marine terminal. The defendant argued that stormwater discharges from the wharf are not subject to the federal National Pollution Discharge Elimination System (NPDES) program. The court noted that, as a threshold matter, the court must establish whether the wharf area of the terminal is covered by the relevant NPDES permit. The court found that since the Department of Ecology drafted the NPDES permit in question, it is in the best position to interpret the permit, and because of the liabilities and far-reaching impact of a ruling on the issue, it will seek an amicus brief from Ecology. The court further invited any party or amici to file supplemental briefs regarding the court's plan.

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TENTH CIRCUIT

Oklahoma

Oklahoma ex rel. Hunter v. United States Env'tl. Prot. Agency, No. 15-CV-0381-CVE-FHM, 2019 WL 2288446 (N.D. Okla. May 29, 2019).

The State of Oklahoma and other private parties filed a case challenging the 2015 "Clean Water Rule" adopted by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps). The plaintiffs sought a preliminary injunction of the rule until a final judgment is entered. A federal district court declined to grant the preliminary injunction, ruling that the plaintiffs did not establish a significant risk of irreparable harm without the preliminary injunction.

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ELEVENTH CIRCUIT

Georgia

City of Guyton v. Barrow, No. S18G0944, 2019 WL 2167460 (Ga. May 20, 2019).

A property owner petitioned for review of an Administrative Law Judge's (ALJ's) decision affirming issuance of a permit by the Georgia Department of Natural Resources, Environmental Protection Division (EPD), which allowed the City of Guyton to dispose of treated wastewater on a nearby tract of land by spray irrigation. The property owner challenged the permit on the basis that EPD failed to conduct an antidegradation analysis prior to issuing the permit. The ALJ concluded that antidegradation analysis was not required, and the superior court affirmed. The court of appeals reversed, rejecting EPD's interpretation that the antidegradation rule applied only to point sources. The Georgia Supreme Court granted certiorari to consider the level of deference courts should afford to EPD's interpretation of the antidegradation rule, and whether that regulation required an antidegradation analysis for nonpoint source discharges. The Georgia Supreme Court reversed the appellate court, concluding that the rule is unambiguous and the lower court had erred in its interpretation of the regulation. The court held that the regulation does not require EPD to conduct an antidegradation analysis for nonpoint sources.

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D.C. CIRCUIT

District of Columbia

Anglers Conservation Network v. Ross, No. CV 14-509 (TJK), 2019 WL 2271115 (D.D.C. May 28, 2019).

Several parties challenged an amendment adopted by the National Marine Fisheries Service to a fishery management plan for the mid-Atlantic region. The plaintiffs alleged that the amendment should have added certain river herring and shad species. The U.S. District Court for the District of Columbia granted summary judgment to the plaintiffs on one count and ordered the agency to take specific remedial actions. The plaintiffs sought enforcement of the remedial order, but the court ruled that the agencies already complied with the order.

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FEDERAL CIRCUIT

Washington, D.C.

Nat. Res. Def. Council Inc. v. Ross, No. 2018-2325, 2019 WL 2173792 (Fed. Cir. May 20, 2019).

The United States appealed the U.S. Court of International Trade's (CIT) preliminary injunction banning the import of fish and shrimp from Mexico caught with gillnets in the range of the vaquita, a critically endangered marine mammal. The United States claimed that the factual circumstances the CIT relied upon when deciding to impose the preliminary injunction have changed. The court remanded the case to CIT for further proceedings, because the alleged factual changes should be reviewed by CIT at first instance. The court also concluded that the preliminary injunction will remain in force pending further determination by the CIT.

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