

August

15
2022

Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the August 2022 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-22-03-08).

Forward to a friend

Know someone who might be interested in our monthly newsletter?

Forward this email their way and help spread the word.

FIRST CIRCUIT

Massachusetts

Conservation L. Found., Inc. v. Town of Barnstable, Massachusetts, No. 21-CV-10258-ADB, 2022 WL 2833951 (D. Mass. July 20, 2022).

The U.S. District Court for the District of Massachusetts dismissed a lawsuit filed by a conservation organization alleging the Town of Barnstable, Massachusetts violated Section 1311(a) of the Clean Water Act (CWA) by discharging nitrogen effluent from a wastewater treatment facility into the Lewis Bay Watershed System without a National Pollutant Discharge Elimination System (NPDES) permit. The court applied a test established by the U.S. Supreme Court to determine when pollutant discharges from a point source that travel through groundwater into navigable waters become a “functional equivalent” of a direct discharge and thus require a NPDES permit. The two most important factors of the test are “time” and “distance.” In this instance, the effluent discharges take an estimated 21 years and approximately 1.5 miles to flow from the facility into the Lewis Bay Watershed System. Due to the extensive time and distance, the court concluded that the discharges did not meet “functional equivalent” test and dismissed the case.

[Opinion Here](#)

City of Bos. v. Conservation Comm'n of Quincy, 190 N.E.3d 501 (Mass. 2022).

The Conservation Commission of Quincy, Massachusetts (Commission) denied the City of Boston’s permit to build a bridge that would impact the town’s wetlands, citing the state Wetlands Protection Act and a local wetlands ordinance. Boston applied to the Department of Environmental Protection (DEP) for a superseding order of conditions, which the DEP granted. Boston simultaneously sought judicial review of the Commission’s decision. The local superior court concluded that the DEP order would control the project and ruled in favor of Boston. On appeal, the Massachusetts Supreme Court affirmed, holding that the DEP’s superseding order of conditions preempted the Commission’s permit denial.

[Opinion Here](#)

NINTH CIRCUIT

Audubon Soc'y of Portland v. Haaland, 40 F.4th 917 (9th Cir. 2022).

The Ninth Circuit affirmed a district court’s ruling in favor of the U.S. Fish and Wildlife Service (FWS) in a lawsuit

over the agency's adoption of a combined environmental impact statement (EIS) and comprehensive conservation plan for two national wildlife refuges in the Klamath Basin National Wildlife Refuge Complex. The Audubon Society of Portland claimed that the FWS's actions violated several federal laws, including the Kuchel Act and National Wildlife Refuge System Improvement Act (Refuge Act), which govern the agency's management of the refuges. The plaintiff claimed the FWS's failure to ensure sufficient water quantity in the refuges violated the Refuge Act and that the current pattern of agricultural leasing violated both Acts. The Ninth Circuit found that the FWS complied with its obligations under the Refuge Act to provide sufficient water to the refuges. Further, the agency did not violate either Act by continuing its current pattern of agricultural leasing. The court also held that the FWS did not violate the Refuge Act in delegating duties to the Bureau of Reclamation, nor did it violate the National Environmental Policy Act by not considering reduced-agriculture alternatives.

[Opinion Here](#)

***Tulelake Irrigation Dist. v. United States Fish & Wildlife Serv.*, 40 F.4th 930 (9th Cir. 2022).**

The Tulelake Irrigation District (TID) and associated agricultural groups brought a lawsuit alleging that the U.S. Fish and Wildlife Service's (FWS) adoption of a combined environmental impact statement (EIS) and comprehensive conservation plan for five national wildlife refuges in the Klamath Basin National Wildlife Refuge Complex violated several federal laws by imposing restrictions on the agricultural uses of leased land in those refuges. The U.S. District Court for the District of Oregon granted summary judgment in favor of the FWS. On appeal, TID argued that the FWS's actions violated the Kuchel Act and the National Wildlife Refuge System Improvement Act (Refuge Act). The Ninth Circuit affirmed the lower court's opinion. The court found that, in accordance with the Kuchel Act, the FWS regulated agricultural uses of leased land in the refuges in accordance with proper waterfowl management. Further, under the Refuge Act, agriculture on leased land in national wildlife refuges is a "use" and thus subject to a determination by the FWS that its use is compatible with waterfowl management.

[Opinion Here](#)

***Audubon Soc'y of Portland v. Haaland*, 40 F.4th 967 (9th Cir. 2022).**

The Ninth Circuit affirmed a federal district court's summary judgment for the U.S. Fish and Wildlife Service (FWS) in a challenge to its combined environmental impact statement (EIS) and comprehensive conservation plan for the Klamath Basin National Wildlife Refuge Complex. Environmental conservation groups claimed that agricultural leasing and pesticide use in the plan violated the National Environmental Policy Act (NEPA), the National Wildlife Refuge System Administration Act (Refuge Act), and the Kuchel Act. The U.S. District Court for the District of Oregon granted FWS summary judgment. On appeal, the Ninth Circuit affirmed. The court also found that pesticide application under the plan is consistent with waterfowl management under the Kuchel Act and a compatible use under the Refuge Act. The court concluded that the FWS's plan for continued livestock grazing was also compatible with the Refuge Act.

[Opinion Here](#)

Alaska

***Cook Inlet Fisherman's Fund v. Dep't of Fish & Game*, No. S-17955, 2022 WL 3331490 (Alaska Aug. 12, 2022).**

The Alaska Supreme Court affirmed a lower court's dismissal of a suit by a group of commercial fishermen challenging fishery management practices put in place to protect king salmon in Cook Inlet. The group alleged that the restrictions were unjustified and violated federal law. The court agreed with the lower court's decision to deny the plaintiffs' request to depose two current state Fish and Game employees because all material facts were in the administrative record. The court also agreed that the Cook Inlet fishery was not governed by federal standards and that none of the nonprofit's disagreements with the State's fishery management practices stated a violation of a statute or regulation.

[Opinion Here](#)

Hawaii

***Chun v. Hawaii Bd. of Land and Nat. Res.*, 2022 WL 3274268 (Haw. Aug. 11, 2022).**

The Hawaii Supreme Court denied a petition for the Board of Land and Natural Resources (BLNR) to hold that the Department of Land and Natural Resources (DLNR) does not have authority to issue commercial fishing licenses to foreign nonimmigrant crewmembers on longline fishing vessels pursuant to Hawai'i Revised Statutes § 189-5. HRS § 189-5 prohibits the DLNR from issuing commercial marine licenses to those not lawfully admitted to the United States who are "engage[d] in taking marine life for commercial purposes in the waters of the State." The BLNR denied the petition, reasoning that longline fishing vessels do not fish within state waters. A state circuit court agreed. The Hawaii Supreme Court also affirmed, concluding that the DLNR is not prohibited from issuing commercial fishing licenses to foreign nonimmigrant crewmembers on longline fishing vessels who fish for highly migratory species outside of state waters.

[Opinion Here](#)

Washington

Fish Nw. v. Rumsey, No. C21-570 TSZ, 2022 WL 2916627 (W.D. Wash. July 25, 2022).

The U.S. District Court for the Western District of Washington granted summary judgment to the National Marine Fisheries Service (NMFS) in an action filed by a recreational fishing organization challenging actions related to the management of Puget Sound Fisheries. The group alleged that NMFS violated Endangered Species Act § 7(a)(2) by failing to ensure that its actions in a 2021 Biological Opinion (BiOp) for resource management plans for salmon and steelhead gillnet fisheries do not jeopardize listed Chinook salmon. The court dismissed this claim for lack of notice. They next claimed that the 2021 BiOp was arbitrary, capricious, and an abuse of discretion in violation of the Administrative Procedure Act (APA). The court found this claim was not supported by the record and, therefore, NMFS's issuance of the BiOp did not violate the APA.

[Opinion Here](#)

Wild Fish Conservancy v. Thom, No. C20-417-RAJ-MLP, 2021 WL 8445587 (W.D. Wash. Sept. 27, 2021),
report and recommendation adopted, No. 20-CV-417-RAJ, 2022 WL 3155784 (W.D. Wash. Aug. 8, 2022).

The U.S. District Court for the Western District of Washington granted summary judgment to a conservation group in a challenge to the National Marine Fisheries Service's 2019 Biological Opinion (BiOp) for the Alaska Chinook salmon commercial troll fishery. The court adopted a magistrate's report stating the BiOp was arbitrary and capricious because the agency improperly relied on uncertain mitigation measures to find "no jeopardy" to the Southern Resident Killer Whale and failed to address whether a prey increase program would jeopardize the Chinook salmon evolutionary significant units (ESUs). The court agreed that NMFS's reliance on the BiOp resulted in violation of §7(a)(2) of the Endangered Species Act. Further, NMFS violated the National Environmental Policy Act (NEPA) by failing to conduct analysis for the issuance of the incidental take statement in the BiOp. The federal district court asked the magistrate to submit an additional report and recommendation to the court with an appropriate remedy for the agency's violations.

[Opinion Here](#)



D.C. CIRCUIT

Loper Bright Enter., Inc. v. Raimondo, No. 21-5166, 2022 WL 3330362 (D.C. Cir. Aug. 12, 2022).

The D.C. Circuit Court of Appeals dismissed a case filed by a group of commercial herring fishing companies objecting to the National Marine Fisheries Service's (NMFS) approval of an Omnibus Amendment and issuance of a Final Rule that establishes industry funded at-sea monitoring programs in New England. The companies contended that the Magnuson-Stevens Fishery Conservation and Management Act did not authorize NMFS to approve the amendment and issuance of the rule was procedurally improper. The appellate court affirmed the district court's grant of summary judgment. The court found NMFS's actions to be a reasonable interpretation of its authority. Further, the agency's adoption of the amendment and rule allowed for the requisite notice and opportunity to comment.

[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](#).