

August

15  
2023

# Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the August 2023 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-23-03-08).

## 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

***Housatonic River Initiative v. United States Env't Prot. Agency***, No. 22-1398, 2023 WL 4730222 (1st Cir. July 25, 2023).

Several environmental groups sought review of a permit issued by the Environmental Protection Agency (EPA) requiring General Electric Company (GE) to clean up polychlorinated biphenyls (PCBs) from the Housatonic River. The groups made procedural and substantive claims, including violation of the Toxic Substances Control Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation, and Liability Act. The First Circuit ruled in favor of the EPA, finding that the agency's monitored natural recovery provisions, rejection of alternative treatment for excavated material, and hybrid disposal provisions were not arbitrary or capricious.

[Opinion Here](#)

## Massachusetts

***Melone v. Coit***, No. 1:21-CV-11171-IT, 2023 WL 5002764 (D. Mass. Aug. 4, 2023).

A resident alleged that the National Marine Fisheries Service (NMFS) violated the Marine Mammal Protection Act (MMPA) and the Administrative Procedure Act (APA) in issuing an Incidental Harassment Authorization (IHA) for the Vineyard Wind Project offshore of Martha's Vineyard and Nantucket. Both sides moved for summary judgment. NMFS and Vineyard Wind asserted that the plaintiff lacked standing and that they were entitled to summary judgment due to compliance with the MMPA. The resident claimed that he had standing as a result of his environmental interest in right whales and is entitled to summary judgment and vacatur of the IHA because NMFS acted arbitrarily and capriciously in issuing the IHA. The U.S. District Court for the District of Massachusetts found that the plaintiff had standing but failed to show that NMFS acted arbitrarily, capriciously, or otherwise unlawfully in issuing the IHA.

[Opinion Here](#)



## FOURTH CIRCUIT

***N. Carolina Coastal Fisheries Reform Grp. v. Capt. Gaston LLC***, No. 21-2184, 2023 WL 5009246 (4th Cir. Aug. 7, 2023).

An environmental organization brought suit alleging shrimp trawlers were violating the Clean Water Act (CWA) by throwing bycatch overboard and by disturbing sediment with their trawl nets. The U.S. District Court for the Eastern District of North Carolina dismissed the suit. On appeal, the Fourth Circuit affirmed. The court stated that the issue required the court to apply the major-questions doctrine in interpreting the CWA. The court found that the return of bycatch to the ocean was not a discharge of a “pollutant” that would require compliance with the CWA. Sediment from the lagoon floor that was temporarily suspended in the water due to the trawl nets was not “dredged spoil,” and therefore not a “pollutant” that required a CWA discharge permit. And, even if sediment from the lagoon floor was a pollutant, the trawlers did not “discharge” it and therefore their actions do not require a CWA permit.

[Opinion Here](#)

## Maryland

***Maryland Dep't of the Env't v. Assateague Coastal Tr.***, No. 11, SEPT. TERM, 2022, 2023 WL 5076609 (Md. Aug. 9, 2023).

Assateague Coastal Trust (Assateague) sought review of a general discharge permit issued by the Maryland Department of the Environment (MDE) issued to Animal Feeding Operations (AFOs) in accordance with the Clean Water Act and state water pollution control law. After a state circuit court vacated the permit and remanded it to MDE with instructions to incorporate certain water quality standards into the permit, MDE filed an appeal to a state appellate court. While the appeal was pending, Assateague filed a petition for writ of certiorari from the Maryland Supreme Court. The court considered 1) whether the Department’s Final Determination to issue the 2019 General Permit was reasonable and complied with the water quality standards established under state and federal law, and 2) whether the permit conditions for AFO ammonia emissions were reasonable and complied with state water quality standards. The court upheld the permit, finding MDE’s actions were reasonable and complied with state and federal law.

[Opinion Here](#)



## EIGHTH CIRCUIT

### Minnesota

***Matter of Denial of Contested Case Hearing Requests***, No. A19-0112, 2023 WL 4919533 (Minn. Aug. 2, 2023).

The Minnesota Supreme Court held that the Minnesota Pollution Control Agency’s (MPCA) issuance of a copper-nickel mine water pollution permit was arbitrary and capricious. The court noted several danger signals suggesting the agency did not adequately consider whether the project has the reasonable potential to cause or contribute to an exceedance of water quality standards within the Lake Superior watershed. The court remanded the permit to the MPCA, which must remedy the procedural irregularities and resulting deficiencies in the administrative record and consider whether a variance under state regulations is appropriate for the pollution of unsaturated groundwater within a containment system for the project. However, the court found that the prohibition on injecting polluted water directly to the groundwater saturated zone for long-term storage does not apply.

[Opinion Here](#)



## NINTH CIRCUIT

### Alaska

***Alaska Indus. Dev. & Exp. Auth. v. Biden***, No. 3:21-CV-00245-SLG, (D. Alaska Aug. 7, 2023).

Several plaintiffs and the State of Alaska challenged President Biden's Executive Order 13990 and actions the U.S. Department of the Interior and the Bureau of Land Management took to implement the order's directive to place a temporary moratorium on the implementation of an oil and gas leasing program on the Coastal Plain of the Arctic National Wildlife Refuge. The plaintiffs filed a motion for summary judgment, and the defendants filed a cross motion. The court denied plaintiffs' and the state's motions and entered judgment in favor of the federal government.

[Opinion Here](#)



## D.C. CIRCUIT

### District of Columbia

***El Puente v. U.S. Army Corps of Engineers***, No. 1:22-CV-02430 (CJN), 2023 WL 4706152 (D.D.C. July 24, 2023).

The U.S. District Court for the District of Columbia granted the U.S. Army Corps of Engineers' motion for summary judgment in a lawsuit over the San Juan Harbor Navigation Improvements Project. The Project involves deepening and widening current shipping channels by dredging and then disposing of the dredged material in a designated ocean disposal site. Environmental groups alleged that the government violated the National Environmental Policy Act and Endangered Species Act in approving the project. The court disagreed and found that the Corps adequately considered environmental concerns, including impacts on endangered coral and sea turtles, in a 2018 environmental analysis.

[Opinion Here](#)

***Natural Resources Defense Council, et al., v. U.S. Fish and Wildlife Service, et al.***, No. CV 21-0770 (ABJ), 2023 WL 5174337 (D.D.C. Aug. 11, 2023).

Environmental groups brought suit under the Endangered Species Act to require the U.S. Fish and Wildlife Service to designate critical habitat for the endangered rusty patched bumble bee. The agency declined to designate critical habitat after the species was listed as endangered in 2017, reasoning that habitat destruction was not a primary threat to the species. The U.S. District Court for the District of Columbia disagreed, stating that the agency can only withhold a critical habitat designation if it would not be beneficial to the species.

[Opinion Here](#)



National Sea Grant Law Center  
256 Kinard Hall, Wing E

You're receiving this newsletter because you've  
subscribed to the *Ocean and Coastal Case Alert*.

University, MS 38677-1848

To view our archive, go to [Case Alert Archive](#).

First time reader? [Subscribe now](#).

Not interested anymore? [Unsubscribe instantly](#).