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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the November 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-23-03-11).

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FIFTH CIRCUIT

Munoz v. Intercontinental Terminals Co., L.L.C., No. 22-20456, 2023 WL 7103161 (5th Cir. Oct. 27, 2023).

Commodities merchants, traders, and marketing companies affected by a shipping channel closure due to a chemical facility fire filed suit seeking economic loss damages under the Oil Pollution Act (OPA). The defendants contended that OPA did not apply due to the spill containing a mixture of oil and hazardous substances. They argued such spills exclusively fall under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The federal district court agreed and granted summary judgment for the defendants. On appeal, the Fifth Circuit affirmed, reasoning that since OPA explicitly excludes CERCLA-regulated substances from its definition of “oil,” the district court’s decision was in accordance with this interpretation.

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NINTH CIRCUIT

Alaska

Sovereign Inupiat for a Living Arctic, et al., v. Bureau of Land Management, et al., No. 3:23-CV-00058-SLG, 2023 WL 7410730 (D. Alaska Nov. 9, 2023).

The U.S. District Court for the District of Alaska dismissed a lawsuit brought by a tribe and an environmental group challenging the Bureau of Land Management’s (BLM) Record of Decision and Final Supplemental Environmental Impact Statement and the Fish and Wildlife Service’s (FWS) Biological Opinion (BiOp) regarding the Willow Project in the National Petroleum Reserve in Alaska. The project would allow infrastructure construction for drilling wells and producing oil and gas in the area under ConocoPhillips Alaska, Inc.’s leases. The court found that BLM complied with the National Environmental Policy Act and Naval Petroleum Reserves Production Act by considering a reasonable range of alternatives and adequately analyzing greenhouse gas emissions from future oil developments. Furthermore, the court concluded that BLM took steps to minimize impacts on subsistence uses as required by Section 810 of the Alaska National Interest Lands Conservation Act. The plaintiffs moved to strike extra-record evidence, and while the motion to strike was denied, the court granted the motion to strike a letter deemed unnecessary to evaluate greenhouse gas emissions. Additionally, despite finding errors in FWS’s interpretation of “harassment” under the Endangered Species Act, the court upheld the BiOp, determining that FWS adequately considered various factors and that the BiOp was not arbitrary or capricious. As a result, the court denied the request for vacatur and dismissed the plaintiffs’ claims with prejudice.

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California

White v. U.S. Army Corps of Eng'rs, No. 3:22-CV-06143-JSC, 2023 WL 7003263 (N.D. Cal. Oct. 23, 2023).

A Mendocino County resident filed suit arguing that flood control releases from the Coyote Valley Dam into the Russia River violated the Endangered Species Act (ESA) due to impacts on protected salmonids. The Russia River is a designated critical habitat for three species of salmonids, specifically, the Central California Coast Steelhead (threatened), the Central California Coast Coho (endangered), and the California Coast Chinook Salmon (threatened). The plaintiff moved for an injunction pursuant under the ESA arguing that the increase in turbidity in the river led to negative impacts, such as a decrease in salmonid embryo survival and available space. The court denied the plaintiff's motion for an injunction because he did not establish that the salmonids were facing "serious or extreme" harm due to the flood control releases, and he failed to prove that the injunction would remedy the harm to the salmonids.

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Pacific Coast Fed'n of Fishermen's Ass'n, v. Chevron Corp., No. 18-Cv-07477-Vc, 2023 WL 7299195 (N.D.

Cal. Nov. 1, 2023).

The Pacific Coast Federation of Fishermen's Associations filed a lawsuit in state court on behalf of itself, its members, and as a representative of the West Coast fishing community. The plaintiffs sought damages from energy companies, including Chevron, for lost fishing opportunities caused by climate change. The defendants removed the case to federal court under the Class Action Fairness Act (CAFA). In response, the plaintiffs argued that removal under CAFA was improper, as the complaint never invoked Cal. Civ. Proc. § 382 (2023), which allows a party to seek damages on behalf of absent members, and it did not satisfy the pleading requirements under Rule 23 of the Rules for Federal Civil Procedure. The court, however, denied the motion to remand because it found that the complaint paralleled Fed. R. Civ. P. 23, making removal proper under CAFA. The court found a class action desirable due to common questions of law, the impracticality of joinder concerning such a large class, and the plaintiffs' ability to properly represent the interests of the class.

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Hawaii

City & Cnty. of Honolulu v. Sunoco LP, No. SCAP-22-0000429, 2023 WL 7151875 (Haw. Oct. 31, 2023).

The City and County of Honolulu and the Honolulu Board of Water Supply filed a lawsuit in state court against multiple oil and gas producers, claiming that the defendants knew that fossil fuel products contributed to greenhouse gas emissions and global warming. Further, the plaintiffs claimed the producers failed to warn consumers about the danger and actively sought to undermine scientific evidence supporting the reality of global warming. The plaintiffs alleged public nuisance, private nuisance, strict liability failure to warn, negligent failure to warn, and trespass. In response, the defendants moved for dismissal based on a lack of jurisdiction and failure to state a claim. The circuit court denied the defendants' motions. The court determined that it had jurisdiction because the defendants had sufficient contact with Hawaii by selling and marketing fossil fuel products there. Additionally, the court found that the Clean Air Act did not preempt the plaintiffs' claims because state law is rooted in tort law, and no conflict existed between state and federal law. The Supreme Court of Hawaii affirmed.

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Washington

Don't Cage Our Oceans v. United States Army Corps of Engineers, No. C22-1627-KKE, 2023 WL 6959289

(W.D. Wash. Oct. 20, 2023).

The U.S. District Court for the Western District of Washington denied the defendant's motion to limit the scope of review to the administrative record regarding the U.S. Army Corps of Engineers' issuance of Nationwide Permit 56. This permit allows commercial finfish mariculture facilities to operate in U.S. navigable waters. The court acknowledged that most claims should be evaluated based on the administrative record but found that the Endangered Species Act (ESA) citizen-suit claim might warrant a broader review. There are certain limited circumstances where extra-record evidence could be considered, so the court rejects the idea that Ninth Circuit precedence limits review to the administrative record.

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D.C. CIRCUIT

District of Columbia

Maine Lobstermen's Ass'n, v. Nat'l Marine Fisheries Serv., No. CV 21-2509 (JEB), 2023 WL 7128474

(D.D.C. Oct. 30, 2023).

In June, the D.C. Circuit reversed a summary judgment in favor of the National Marine Fisheries Service (NMFS)

regarding a biological opinion (BiOp) and a Final Rule issued by the agency to protect endangered North Atlantic Right Whales. The BiOp stated that lobster-fishing gear attributed to the decline of the North Atlantic Right Whale population due to entanglements, and the Final Rule attempted to remediate the problem. The D.C. Circuit remanded the case with instructions to enter a judgment in favor of the fishing group, vacate the BiOp, and remand the Final Rule. This action led to intervening conservation groups filing a motion to stay pending the resolution of another case. The federal district court denied the conservation groups' motion because they did not identify sufficient harm to indefinitely halt the D.C. Circuit's mandate, and the group's alleged harm was based on mere inferences and speculations.

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Alabama v. U.S. Army Corps of Eng'rs, No. CV 15-696, 2023 WL 7410054 (D.D.C. Nov. 9, 2023).

After decades of legal disputes, the U.S. Army Corps of Engineers (Corps) updated its Master Manual, establishing guidelines for administering multiple dam and reservoir projects within the Alabama-Coosa-Tallapoosa River Basin. In response, the State of Alabama, in collaboration with the Alabama Power Company, filed a lawsuit against the Corps. They alleged violations of the Administrative Procedure Act, the National Environmental Policy Act, and the Clean Water Act. In essence, the plaintiffs argued that the Master Manual was unlawful, contending that the Corps needed to revise it to align with statutory authority after conducting a proper environmental analysis. Subsequently, the plaintiffs sought summary judgment to set aside the manual. However, the court rejected the motion, determining that the Corps had substantial discretion in balancing competing project purposes across its various reservoirs. Moreover, the Corps' changes were within the framework of statutory regulations.

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FEDERAL CLAIMS

Manitou Island Transit, LLC v. United States No. 21-953, 2023 WL 7037604 (Fed. Cl. Oct. 26, 2023).

Manitou Island Transit, LLC (MIT) sued the National Park Service (NPS), alleging the agency breached its contract with the company by failing to dredge and repair docks on the North and South Manitou Islands in Sleeping Bear Dunes National Lakeshore, rendering them inaccessible to MIT's commercial ferry services. The U.S. Court of Federal Claims dismissed MIT's detrimental reliance claim for lack of jurisdiction. However, the court ruled that NPS breached its contractual obligations. The court found that the contract's plain language imposed a reasonable duty on NPS to maintain the docks, including dredging and repairs. Furthermore, the rising water levels in Lake Michigan were not deemed an "act of God" that would excuse NPS from dock repairs, as NPS had anticipated and planned for these conditions. The court also held that the contract's exculpatory clause did not absolve NPS of liability for the breach. The court denied the government's motion for summary judgment and granted MIT's cross-motion for summary judgment on the breach of contract claim.

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