

The SandBar

Legal Reporter for the National Sea Grant College Program

Recent Court Decisions Create Inconsistent Authority for Regional Fishery Management Councils



Also in this issue

Agritourism and
Aquaculture: Navigating
State Right-to-Farm Law
Protections

New Mexico v.
Department of Defense:
A Template for Federal
Facility Cost Recovery

“God Squad” Grants
Unprecedented Exemption
for Gulf Oil and Gas

If You Can’t Beat Them...
Feed Them to Your Pets?
MAWS Act Proposes Unique
Solution to Blue Catfish

Our Staff

Editor:

Terra Bowling

Production & Design:

Barry Barnes

Contributors:

Amy Armata

Tess Bradley

Vishnu Gadepalli

Catherine Janasie

Jordan Young



Follow us on **Facebook** at:
facebook.com/nsglc



Follow us on **LinkedIn** at:
linkedin.com/company/national-sea-grant-law-center

THE SANDBAR is a quarterly publication reporting on legal issues affecting the U.S. oceans and coasts. Its goal is to increase awareness and understanding of coastal problems and issues.

To subscribe to *THE SANDBAR*, visit: nsglc.olemiss.edu/subscribe. You can also contact: Barry Barnes at bdbarne1@olemiss.edu. Our address is: National Sea Grant Law Center, Kinard Hall, Wing E, Room 258, University, MS, 38677-1848, or contact us via email at: tmharget@olemiss.edu. We welcome suggestions for topics you would like to see covered in *THE SANDBAR*.

THE SANDBAR is a result of research sponsored in part by the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, under award NA24OARX417C0025-T1-01, the National Sea Grant Law Center, and University of Mississippi School of Law. The U.S. Government and the Sea Grant College Program are authorized to produce and distribute reprints notwithstanding any copyright notation that may appear hereon.

The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the National Sea Grant Law Center or the U.S. Department of Commerce.

Recommended citation: Author's Name, *Title of Article*, 25:3 *SANDBAR* [Page Number] (2026).

Cover page photograph of a fishing vessel, courtesy of Martijn Nijenhuis.

Contents page photograph of a fishing vessel, courtesy of Kevin Bryant.



The University of Mississippi complies with all applicable laws regarding affirmative action and equal opportunity in all its activities and programs and does not discriminate against anyone protected by law because of age, creed, color, national origin, race, religion, sex, handicap, veteran or other status.

ISSN 1947-3966
ISSN 1947-3974

NSGLC-26-02-03

July 2026


Sea Grant
LAW CENTER

nsglc.olemiss.edu



The SandBar

CONTENTS

**Recent Court Decisions Create
Inconsistent Authority for Regional
Fishery Management Councils..... 4**

**Agritourism and Aquaculture:
Navigating State Right-to-Farm
Law Protections..... 7**

**New Mexico v. Department of
Defense: A Template for Federal
Facility Cost Recovery 9**

**“God Squad” Grants Unprecedented
Exemption for Gulf Oil and Gas..... 12**

**If You Can’t Beat Them... Feed
Them to Your Pets? MAWS Act
Proposes Unique Solution to Blue
Catfish Invasion..... 14**

Recent Court Decisions Create Inconsistent Authority for Regional Fishery Management Councils

Catherine Janasie¹

A fishing vessel, courtesy of the Washington State Department of Ecology.



Three recent lawsuits have questioned the constitutional structure of the Regional Fishery Management Councils established under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). In a series of challenges to fishery management measures adopted by the Mid-Atlantic, Gulf, and New England Fishery Management Councils, commercial fishermen argued that Council members exercise significant federal authority, making the Council members “Officers” who were not appointed in accordance with the Appointments Clause of

the U.S. Constitution. While the Third and Fifth Circuits concluded that certain Council powers violate the Appointments Clause, the First Circuit reached a different conclusion, creating a split in how the courts are interpreting the authority of the Councils.

Background

Congress passed the MSA to manage and conserve the nation’s fisheries. The Secretary of Commerce, through the National Marine Fisheries Service (NMFS), is tasked with



Black Sea Bass, courtesy of Kevin Bryant.

implementing the MSA. To assist NMFS with this work, the MSA created eight regional Fishery Management Councils. NMFS appoints Council members by soliciting nominations from each of the governors in the region. Council members must be knowledgeable in fisheries management and conservation, and the governors must consult the commercial and recreational fishing sectors on who to nominate.²

The MSA regulates fisheries through fishery management plans, also known as FMPs, that aim to maintain each fishery's optimum yield by establishing annual catch limits. NMFS and the Councils work together to develop FMPs and the accompanying implementing regulations. The Councils can propose FMPs, FMP amendments and adjustments, and regulations to implement the FMPs. These proposals are sent to NMFS, which then releases them for public notice and comment. Once a FMP is released for comment, the Secretary has ninety days to approve, partially or completely, or disapprove of the FMP. If the Secretary does not take action within those 90 days, the FMP takes effect as if it was approved.³ However, NMFS must take action to finalize the implementing regulations.

The Challenged FMP Amendments

Three recent FMP actions have led to lawsuits using the same legal theory. In 2022, the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council) approved Amendment 22 to the Summer Flounder, Scup, and Black Sea Bass FMP, which lowered the catch limits in these fisheries. NMFS approved the amendment and issued the implementing regulations. In 2023, the Gulf Fishery Management Council (Gulf Council) approved Amendment 54 to the Gulf Reef Fisheries FMP. Amendment 54 reduced Greater Amberjack commercial catch limits by 80% and recreational limits by 74%. NMFS implemented Amendment 54 as the Final Rule without changes. In 2023, the New England Fisheries Management Council and NMFS finalized Framework Adjustment 65 to the Northeast Multispecies FMP and the corresponding implementing regulations. Framework Adjustment 65 included measures for numerous fish stocks, including haddock and cod.

The Appointment Clause

Each of these FMP measures were challenged in three different lawsuits by commercial fishermen who were

affected by the regulatory measures. However, each lawsuit was premised on the same legal argument: Councils members are “Officers of the United States” who were not properly appointed under the Appointments Clause of the U.S. Constitution. While the appointment of officers has to meet certain requirements, the hiring of “mere employees” does not.

In order to determine whether the Councils’ members are officers or mere employees, the U.S. Supreme Court has created a two-part test. The first prong looks at a temporal aspect: employees only have “occasional or temporary” duties, while officers have “continuing and permanent” duties.⁴ The second prong considers whether the actor has “significant authority” under federal law. In other words, how much power does the actor have in performing his or her assigned functions? Does the actor have significant duties and discretion to carry out these duties?

Court Decisions

The first circuit court to decide this issue was the Third Circuit Court of Appeals in 2024. In that case, both parties agreed that the Mid-Atlantic Council has permanent duties; therefore, the case hinged on the second prong of the test. While the government argued the Fishery Management Councils only serve in an advisory role, the Third Circuit found that the Council’s pocket veto power amounted to significant authority.⁵ The Council’s pocket veto authority allows a Council to veto NMFS’s actions in three scenarios. Under the MSA, a Council can block NMFS from: 1) creating a limited-access fishery, 2) assigning management responsibility to a state, or 3) repealing a FMP.⁶

In March 2026, the Fifth Circuit also found that the Gulf Council’s veto power constituted significant authority.⁷ Both the Third or Fifth Circuits severed the veto authority from the Mid-Atlantic and Gulf Councils but left the rest of the MSA statutory scheme intact. Courts can sever portions of a statute if the remainder of the statute can function without the severed provisions and if Congress would have still enacted the statute without the severed provisions.⁸ The Third and Fifth Circuits each found that the MSA met this test if the veto provisions were severed. However, both courts also declined to vacate the challenged FMP amendments because that veto authority was not used in the adoption of either Amendment.⁹

The First Circuit reached a different conclusion in April 2026. Unlike the Third and Fifth circuits, the court found that the advisory role played by the New England Council is not an exercise of significant authority. The court reached this different conclusion in part because it only took into consideration the Council’s role in drafting the FMP and implementing regulations. The court refused to consider the veto power because the Council had not exercised that power

in the case. Because the New England Council merely provides fishery management recommendations and the Secretary retains authority to promulgate binding regulations, the court ruled that the Council had not exercised significant authority.¹⁰

While the government argued the Fishery Management Councils only serve in an advisory role, the Third Circuit found that the Council’s pocket veto power amounted to significant authority.

Implications

These decisions create a circuit split, which arises when two or more U.S. Courts of Appeals reach conflicting decisions on the same legal issue. As a result, federal law is interpreted and applied differently across jurisdictions. Here, the Third and Fifth Circuits have taken away the Mid-Atlantic and Gulf Councils’ veto authority, while the First Circuit has allowed the New England Council to retain its veto authority. While these decisions did not have an immediate impact on federal fisheries management as none of the challenged actions involved a Council veto, they raise questions regarding the scope of Council authority. A split among the Circuits can only be resolved by the U.S. Supreme Court. However, parties to the recent Fifth or First Circuit case would have to seek review by the Supreme Court, which would need to be done within ninety days of each decision. At the time of writing this article, none of the parties to either case have sought Supreme Court review. ☞

Endnotes

¹ Senior Research Counsel, National Sea Grant Law Center.

² 16 U.S.C. § 1852(b).

³ 16 U.S.C. § 1854.

⁴ *Lofstad v. Raimondo*, 117 F.4th 493, 498 (3d Cir. 2024) (*quoting* *Lucia v. Securities and Exchange Commission*, 585 U.S. 237, 245(2018)).

⁵ *Id.* at 499-500.

⁶ *Id.*

⁷ *Arnesen v. Lutnick*, 170 F.4th 965, 975 (5th Cir. 2026).

⁸ *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 508-09 (2010).

⁹ *Lofstad*, 117 F.4th at 501-502; *Arnesen*, 170 F.4th at 978-980.

¹⁰ *New England Fishermen’s Stewardship Assn. v. Lutnick*, 174 F.4th 263, 275-281(1st Cir. 2026).

Agritourism and Aquaculture: Navigating State Right-to-Farm Law Protections

Jordan Young¹



Photo of pumpkins, courtesy of the University of Georgia College of Agricultural and Environmental Sciences.

In 2022, the United States agritourism industry generated \$1.26 billion through land-based farms and ranches.² Generally, agritourism activities are on-farm services that provide recreation, hospitality, or entertainment, such as u-pick farms or corn mazes. As domestic aquaculture continues to expand,³ many aquaculture producers have included agritourism activities, like u-catch ponds or hatchery tours in their operations. As more individuals relocate from dense urban areas to rural agricultural areas, nuisance lawsuits related to agritourism may become an inevitable obstacle these farmers must navigate.

All fifty states have adopted right-to-farm laws, which provide farmers with a legal defense to nuisance lawsuits related to noise, odor, labor, machinery, and structures associated with farming. However, protections are not universal. While aquaculture and agritourism may be explicitly protected in one state's laws, another state may omit them entirely. Under the current state-by-state legal framework for right-to-farm laws, aquacultural farmers who engage in agritourism may not be protected from lawsuits. Two cases in Florida and Tennessee highlight how courts view agritourism protections under right-to-farm statutes, which may help aquacultural farms and producers to anticipate what aquacultural-related activities are shielded from litigation.

Florida

A recent Florida court decision has restricted farmers' agritourism protections.⁴ In 2016, a Florida farmer built a barn to be used for hosting agricultural-themed weddings. This included a lounge, kitchen, dressing rooms, and other amenities. Two years later, a neighbor filed suit against the farm asserting excessive noise, garbage, and increased road traffic. In defense, the farm argued that its venue operation was protected under Florida right-to-farm laws.

Under the Florida Right to Farm Act, agritourism activities are both defined and protected from nuisance liability.⁵ Any recreational or educational activity open to the public occurring on a farm is protected. However, for private events, the line in the sand is not as clear. Here, the court held that being legally designated as a farm is no longer itself a shield.

The court noted that while agritourism falls under the right-to-farm protective umbrella, these protections are only complementary to the farm's operation. Reviewing the Act's definition of "farm" and "farm operation," the court noted the farm must produce either plants or animals. If the farm produces either product, its additional agritourism activities will be protected from litigation. Here, the barn did not fall under the same protection that other agricultural buildings receive because the structure did not relate to agricultural production.

The court emphasized the importance of ongoing agricultural operations being conducted on the farm to use the right-to-farm defense.

Tennessee

Similarly, a Tennessee farmer who hosted outdoor music concerts and helicopter rides on his property attempted to use right-to-farm laws as a defense to litigation.⁶ While initially operating as a cattle and vegetable farm, in order to increase revenue, the farm began marketing public attractions. First, a “Strawberry Jam Festival” opened to the public, offering family-oriented activities. This soon grew into a multi-week festival hosting amplified concerts and helicopter rides around the farm. One of the farm’s neighbors, who recently moved to the area because she believed Nashville had become overcrowded, became increasingly disturbed by the surrounding activities and filed a nuisance lawsuit. The lower court dismissed the claims due in part to the state’s right-to-farm law. On appeal, the Supreme Court of Tennessee disagreed.

The court noted that nuisance protection under the state’s right-to-farm law does not extend to all activities occurring on a farm. It covers “the land, buildings, and machinery used in the commercial production of farm products and nursery stock” and to certain defined activities characterized as “farm operation[s].” The court held that an amplified music concert was too far removed from the operations of the farm to warrant protection from claims of nuisance by disturbed neighbors. The court agreed that the farm conducted a marketing operation when it began hosting these concert events but noted that “marketing” was not an activity covered by the state’s right-to-farm law, as it is in some states. However, despite this holding, the court did provide Tennessee farmers with a pathway forward for conducting agritourism activities. The court held that agritourism activities—like concerts—could be covered by right-to-farm protection “if they occur ‘in connection with’ producing (growing or raising) the farm products. . . .”⁸ Following the conclusion of the case, the Tennessee state legislature amended the definition of agriculture to include “entertainment” activities when “conducted in conjunction with, but secondary to, commercial production of farm products and nursery stock, when such activities occur on land used for the commercial production of farm products and nursery stock.”⁹

Conclusion

As states continue to expand into agritourism markets and aquacultural production, farmers may be considering where they must draw the line to ensure protection from nuisance claims. Agritourism is a beneficial way for aquaculture farm operators to increase revenue; however, if aquaculture-related

Agritourism is a beneficial way for aquaculture farm operators to increase revenue; however, if aquaculture-related activities are not afforded state right-to-farm protections, incentives for these activities may be low.

activities are not afforded state right-to-farm protections, incentives for these activities may be low. Currently, courts seem to be cognizant of the relationship between the agritourism activity and the farm’s operation. To remain protected, aquaculture farms should ensure their tourism-related activities have a foundation in the farm’s operation. While future amendments or case law may expand what activities are shielded, at the moment, farmers should stick to activities related to their farm’s products or method of production. Guided tours, tasting events, or educational workshops are great ways to increase community engagement while remaining protected from nuisance litigation. ✎

Endnotes

- ¹ NSGLC Summer Research Associate; 2L, Vermont Law & Graduate School.
- ² CHRISTINE WHITT, NOAH MILLER & RYAN OLIVER, *AMERICA’S FARMS AND RANCHES AT A GLANCE: 2022 EDITION*, 17 (2022).
- ³ From 2018 to 2023, the number of aquaculture farms grew from 2,932 to 3,453 farms, an increase of 18 percent. Christopher G. Davis, U.S. aquaculture expands with new operations and increased sales, *U.S. DEPT OF AGRIC. ECON. RSCH. SERV.: CHARTS OF NOTE* (June 10, 2025), (last visited June 11, 2026). Additionally, federal initiatives hope to expand domestic aquaculture production. Exec. Order No. 13,921, 85 Fed. Reg. 28477 (May 7, 2020).
- ⁴ *Sheik Island Farm, Inc. v. Covington Farm, Inc.*, 429 So. 3d 1095, 1100 (Fla. Dist. Ct. App. 2026).
- ⁵ FLA. STAT. § 823.14(3)(a), (f).
- ⁶ *Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405, 412 (Tenn. 2013).
- ⁷ TENN. CODE ANN. § 43–26–102(1)–(2).
- ⁸ *Shore*, 411 S.W.3d at 422.
- ⁹ TENN. CODE ANN. § 43-1-113 (2014).

New Mexico v. Department of Defense: A Template for Federal Facility Cost Recovery

Amy Armata¹

Two CV-22 Osprey aircraft flying over Cannon Air Force Base,
courtesy of Luke Kitterman/U.S. Air Force.



Who is responsible when toxic chemicals infiltrate groundwater? Accountability is rarely straight forward when the polluter is a branch of the federal military. New Mexico is just one of many states experiencing the devastating effects of per- and polyfluoroalkyl substances (“PFAS”), commonly known as “forever chemicals,” in its groundwater.² These substances contaminate the local

environment where they are released, threatening citizens in surrounding communities. When PFAS contamination was found near military bases in New Mexico, the state took legal action against the federal government. In 2025, a federal judge designated the matter as a federal bellwether case, signaling that its outcome will have national implications for how courts will treat over 15,000 similar federal contamination claims.³

Background

In Clovis, New Mexico, near Cannon Air Force Base, a dairy farmer had to euthanize 3,665 cows after discovering the farm's water supply contained two common PFAS compounds, perfluorooctanoic acid ("PFOA") and perfluorooctanesulfonic acid ("PFOS").⁴ Similar contamination impacts Lake Holloman, near Holloman Air Force Base, where the local wildlife contain some of the highest levels of measured PFAS in the world.⁵ Once a popular attraction, the lake is now closed.⁶ Additionally, migratory birds drinking the water from Lake Holloman travel up to 200 miles away, carrying these chemicals and potentially entering the food supply of unsuspecting hunters.⁷ To protect human health and environmental safety, New Mexico took action.

In 2019, New Mexico's Environment Department and Attorney General commenced litigation in state court against the U.S. Department of Defense (DoD) for violations of New Mexico's Hazardous Waste Act (HWA).⁸ The litigation arose because the Air Force released PFAS through fire-fighting foam, resulting in severe groundwater contamination both within the base camps and spreading into the surrounding off-site areas.⁹

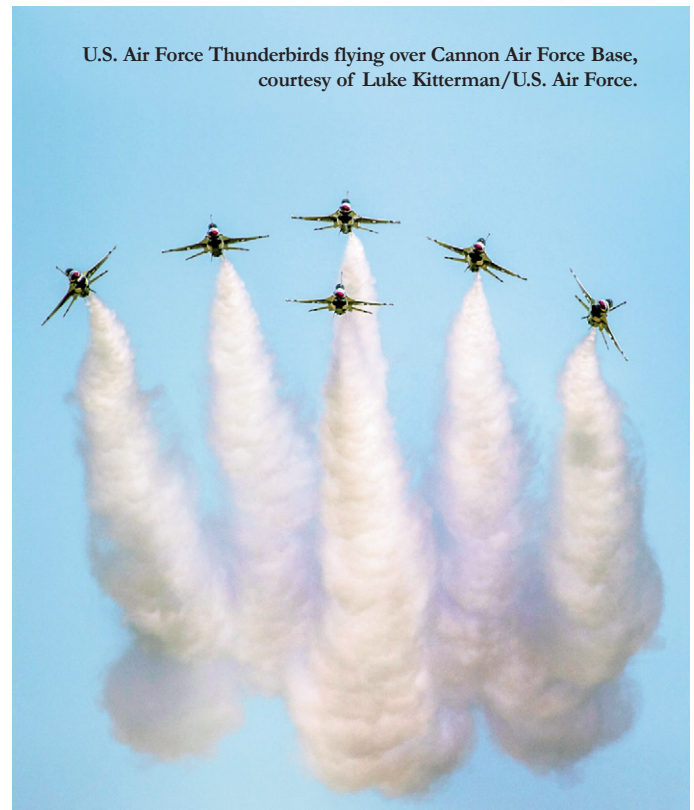
This regional dispute took on a federal component when, effective July 8, 2024, the Environmental Protection Agency (EPA) classified PFOA and PFOS as hazardous substances.¹⁰ This classification unlocked the statutory mechanism for the federal government to be monetarily liable for cleanup costs under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Comprehensive Environmental Response, Compensation and Liability Act

CERCLA, also known as Superfund, authorizes the EPA to designate hazardous substances and regulate materials presenting a substantial danger to the public health, welfare, or the environment.¹¹ The statute primarily focuses on cleaning up inactive hazardous waste sites and assigning liability for response costs.¹² Importantly, under the statute, federal departments are subject to the same standard and extent of liability as any nongovernmental entity.¹³ Further, CERCLA operates retroactively, meaning any potential financial recovery by New Mexico is determined by when the state spent its first dollar responding to the contamination, rather than the date of the EPA's formal hazardous designation in 2024.¹⁴

New Mexico's Lawsuits

New Mexico purposefully pursued parallel litigation in both state and federal courts.¹⁵ Rather than seeking an injunction and monetary damages in a single lawsuit, the state used two distinct tracks to achieve separate legal ends. The federal track is for retrospective financial reimbursement, seeking to force the DoD to repay the state for remedial actions under section 107 of CERCLA.¹⁶ In contrast, the state track seeks operational



control under HWA to compel a military cleanup by an injunction, holding them to the standards required by the state to ensure the safety of the land and water.¹⁷ Pursuing both tracks simultaneously allowed New Mexico to maintain legal pressure on the DoD and open a path for negotiations. Ultimately, these negotiations and the resulting agreement serve as a foundational piece in proving federal liability under CERCLA.

Proving CERCLA Liability in the Tenth Circuit

To establish cost-recovery liability under CERCLA, the Tenth Circuit requires a plaintiff to prove five elements. The plaintiff must show that the defendant is a covered person, that a release or threatened release of a hazardous substance occurred at the site, and that the release caused the plaintiff to incur response costs. Additionally, the plaintiff must prove its cleanup actions complied with the National Contingency Plan (NCP) and that the expenditures constitute necessary costs of response.¹⁸

Applying these elements to the current dispute, first, New Mexico needs to establish that the DoD owned and operated Cannon and Holloman Air Force Bases, and that a release of hazardous substances, namely, PFOS or PFOA, occurred at the locations. For the third element, the state must prove that it spent funds directly responding to the chemical contamination. Finally, to establish the remaining elements regarding consistency and necessity, New Mexico must establish that its independent cleanup actions followed the procedural guidelines within the NCP.

Recent Developments Amidst the Ongoing Dispute

On May 12, 2026, New Mexico and the Air Force announced a verbal agreement to establish a collaborative groundwater-sampling framework to support the ongoing PFAS investigation and cleanup activities at Cannon Air Force Base.¹⁹ Under the agreement, New Mexico will lead the off-site ground water sampling, while the Air Force finances the operations through direct funding and technological resources. This joint effort proves immediate relief for the citizens of Curry County.

While the agreement shows collaboration on the ground, there is no indication that the ongoing litigation will be stopped. Rather, the agreement systematically secures New Mexico's evidence for the federal CERCLA case. By signing off on a collaborative sampling framework, the Air Force has effectively co-signed New Mexico's response methods. As a result, federal attorneys will face an incredibly difficult hurdle in court if they attempt to argue that New Mexico's response actions were unnecessary, or inconsistent with the NCP.

On May 12, 2026, New Mexico and the Air Force announced a verbal agreement to establish a collaborative groundwater-sampling framework to support the ongoing PFAS investigation and cleanup activities at Cannon Air Force Base.

Conclusion

Moving forward, this case and the agreement carry national weight for over 15,000 cases through its bellwether designation. State environmental departments and attorney generals nationwide are watching New Mexico's dual track strategy to determine if it represents a reproducible model to hold federal agencies responsible for releasing hazardous substances. The dual track concept allows states to navigate operational control through state laws to seek an injunction, while the federal claims pursue repayment on the financial front. This strategy provides a potential blueprint for other jurisdictions seeking to manage the jurisdictional restrictions of Section 113(h). Besides the judicial outcome, the most recent developments show how a coordinated litigation strategy can facilitate meaningful negotiations and establish collaborative cleanup efforts between state and federal entities. 🐉

Endnotes

- ¹ NSGLC Summer Research Associate; 2L, New York Law School.
- ² Alexander Nazaryan, *Military Bases Are Rife With 'Forever Chemicals.'* *New Mexico Wants Them Cleaned Up*, N.Y. TIMES (May 19, 2026).
- ³ *Id.*
- ⁴ *Id.*
- ⁵ Danielle Prokop, *New Mexico Federal Pollution Case Will Pave the Way for Other States, Officials Say*, SOURCE NM (June 30, 2025).
- ⁶ *Id.*
- ⁷ *Nazaryan, supra* note 2.
- ⁸ State ex rel. Torrez v. United States, No. D-101-CV-2025-01594 (N.M. Dist. Ct. July 23, 2025).
- ⁹ *Prokop, supra* note 5.
- ¹⁰ *Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances*, U.S. Env't Prot. Agency (last updated April 14, 2026).
- ¹¹ *Id.*
- ¹² *Id.*
- ¹³ 42 U.S.C. § 9620 (2018).
- ¹⁴ See *United States v. Olin Corp.*, 107 F.3d 1506, 1507 (11th Cir. 1997); Omnibus Budget Reconciliation Act of 1990, Pub.L. No. 101-508, 104 Stat. 1388; Superfund Amendment and Reauthorization Act of 1986, Pub.L. No. 99-49, 100 Stat. 1613.
- ¹⁵ See *State ex rel. Torrez*, No. D-101-CV-2025-01594; Second Amended Complaint, State v. United States Dep't of the Air Force, No. 2:19-cv-00465 (D.S.C. July 8, 2024) (seeking federal CERCLA cost recovery).
- ¹⁶ 42 U.S.C. § 9607(a) (2018).
- ¹⁷ *State ex rel. Torrez*, No. D-101-CV-2025-01594.
- ¹⁸ *Morrison Enters. v. McShares, Inc.*, 302 F.3d 1127 (10th Cir. 2002).
- ¹⁹ Press Release, Sec'y of the Air Force Pub. Affairs, NMED, *DAF Verbally Agree to Collaboration That Advances PFAS Cleanup at Cannon AFB* (May 12, 2026).

“God Squad” Grants Unprecedented Exemption for Gulf Oil and Gas

Vishnu Gadepalli¹

On March 31, 2026, the Endangered Species Committee convened for the first time since 1992 and unanimously voted to exempt oil and gas activities from the Endangered Species Act (ESA) requirements across 600,000 square miles of the Gulf.² The Committee, a federal panel also known as the “God Squad,” has the power to decide whether certain projects are exempt from ESA requirements. In this case, the Committee agreed that the threat of ongoing litigation in the Gulf had become a matter of national defense.³ There has been a great deal of controversy stemming from this unprecedented decision, which has the potential to impact up to 20 threatened and endangered species, including the Rice’s whale.⁴

Background

Under Section 7(a)(2) of the ESA, a federal agency must engage in formal consultation with either the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS), depending on species, to ensure that a project will not jeopardize the continued existence of a listed species or its habitat.⁵ Typically, NMFS or FWS will issue a biological opinion (BiOp) that evaluates risks and determines legal alternatives. However, in rare cases where there are no “reasonable and prudent alternatives” to the proposed action that would avoid jeopardy to a species, a federal agency, Governor of an affected state, or a permit or license applicant may submit an application to the Committee for an exemption to the ESA requirements.⁶

Section 7(g) and (h) outlines the process for seeking an exemption. Within 90 days after consultation concludes, a federal agency, state governor, or permit applicant may apply to the Secretary for an exemption. The Secretary then reviews whether the parties acted in good faith and explored reasonable alternatives before forwarding a report to the Endangered Species Committee, which makes the final determination by a vote of at least five members within 30 days of receiving that report. The Committee may only grant an exemption if it finds that no reasonable alternatives exist and that the benefits of the action clearly outweigh the costs to conservation. In this instance, the U.S. Secretary of Defense sought an exemption citing national security concerns stemming from years of litigation over BiOps governing oil and gas activities in the Gulf region.

Path to this Exemption

Leading up to the Secretary’s action, NMFS issued a May 2025 BiOp for the Bureau of Ocean Energy and Management’s (BOEM) and Bureau of Safety and Environmental Enforcement’s (BSEE) oil and gas program in federal waters in the Gulf. The BiOp concluded that Gulf oil and gas operations would jeopardize the existence of the Rice’s whale—one of the rarest and most endangered animals in the world, with less than 50 individuals remaining in the northeastern Gulf. The agency found that those activities would harm the Rice’s whale population due to the risk of deaths caused by vessel strikes, since they rest near the surface at night and are virtually invisible to ships.

The BiOp concluded that Gulf oil and gas operations would jeopardize the existence of the Rice’s whale—one of the rarest and most endangered animals in the world, with less than 50 individuals remaining in the northeastern Gulf.

In the BiOp, NMFS proposed alternatives, such as using technology that enable ships to detect the Rice’s whales and avoid striking them.⁷ The BiOp was challenged by oil and gas companies and environmental groups alike, for both overestimating and underestimating the risks. Environmental groups sued in the U.S. District Court in Maryland, arguing that the opinion did not go far enough in protecting the listed species, while industry groups in Louisiana filed a separate suit arguing the opposite.⁸

The Trump administration contended that allowing environmental groups to file lawsuits challenging BiOps for

these offshore operations had become a matter of national defense. Defense Secretary Pete Hegseth sent a letter to Interior Secretary Doug Burgum on March 13, 2026, invoking the ESA's national security exemption.⁹ The letter argued that further litigation could nullify the BiOp entirely and, as a result, create a legal vacuum in which oil and gas operators do not have a valid BiOp to authorize their activities. This could disrupt oil and gas operations and jeopardize “critical infrastructure” and oil and gas exploration, with Hegseth noting that 85 military bases receive fuel from seven Gulf refineries.

The Verdict and Responses from Both Sides

On March 31, 2026, the Committee members met and unanimously granted the exemption within 15 minutes.¹⁰ They stressed the importance of domestic energy production and the negative effect that prolonged ESA litigation would have on it, and that, given Secretary Hegseth's findings, they had little choice but to approve the exemption. Officials from industries and the Trump administration reacted positively to the decision, viewing it as necessary to promote Gulf energy production and characterizing the vote as a lawful exercise of the Committee's statutory authority. Environmental organizations responded with alarm.¹¹ Environmental groups condemned the decision as unlawful and dangerous and identified the Rice's whale, five species of sea turtles, Florida manatees, and migratory shorebirds as among the species now stripped of ESA protections.¹² Sarah Gledhill from the Florida Wildlife Federation captured the sentiment of many critics: “Exempting the entire oil and gas industry from ESA compliance, forever, is not a national security measure, it's a giveaway.”¹³ One environmental group warned that the decision could set a broad precedent by allowing national security to be used as a shield against ESA enforcement in other industries as well when it comes to future consultation obligations.¹⁴

On the other hand, environmental groups did not waste any time challenging the exemption in court. The Center for Biological Diversity, which had already filed suit attempting to block the meeting, amended its complaint to allege additional procedural violations.¹⁵ The Natural Resources Defense Council filed suit in the U.S. District Court for the District of Columbia on April 2, 2026, arguing that both the DOD's national security determination and the Committee's subsequent exemption grant are not rooted in a legal basis.¹⁶ Defenders of Wildlife and a coalition led by the Southern Environmental Law Center filed petitions in the U.S. Court of Appeals for the D.C. Circuit.¹⁷ In the lawsuits, the plaintiffs argued that the Committee had bypassed required procedures, threatened numerous affected species, and that Hegseth's national security justification simply did not hold up. In Congress, Senator Cory Booker of New Jersey and 26 fellow senators are investigating whether the decision complied with the ESA and the Administrative Procedure Act.¹⁸ ♻️

Endnotes

- ¹ NSGLC Community Engaged Intern, University of Mississippi.
- ² Endangered Species Committee Order, 91 Fed. Reg. 16,966 (Apr. 3, 2026).
- ³ Memorandum from Sec'y of War Pete Hegseth to Sec'y of the Interior Doug Burgum (Mar. 13, 2026).
- ⁴ *US Legislator Introduces the 'Protect Gulf Life Act' to Nullify Endangered Species Committee Decision*, ENV'T, COASTAL & OFFSHORE (May. 27, 2026).
- ⁵ 16 U.S.C. § 1536(a)(2).
- ⁶ 16 U.S.C. § 1536(g); 50 C.F.R. § 451.02(c)(1)-(3).
- ⁷ Nat'l Marine Fisheries Serv., Biological and Conf. Op. on Bureau of Ocean Energy Mgmt. and Bureau of Safety and Env't Enf't's Oil and Gas Program Activities in the Gulf of America, 1, 573-581, (May 20, 2025).
- ⁸ *Groups Sue to Protect Critically Endangered Gulf Rice's Whale from Oil and Gas Impacts*, SIERRA CLUB (May. 21, 2025); Complaint for Declaratory and Injunctive Relief, *Louisiana v. Nat'l Marine Fisheries Serv.*, No. 2:25-cv-00691 (W.D. La., Lake Charles Div. May 20, 2025).
- ⁹ Memorandum from Pete Hegseth, Sec'y of War, to Doug Burgum, Sec'y of the Interior, 1,2, (Mar. 13, 2026).
- ¹⁰ Wendee Nicole, *Endangered Species Act 'Disemboweled' by God Squad in 15 Minutes, Seven Seconds*, DECLARATION (Apr. 3, 2026).
- ¹¹ Wyatt Myskow, *Env't Groups Take Trump Administration's "God Squad" to Court*, INSIDE CLIMATE NEWS Apr. 16, 2026).
- ¹² Press Release, Defs. of Wildlife, *Defenders Slam Unlawful God Squad Vote to Strip Endangered Species Act Protection from Wildlife in the Gulf* (Mar. 31, 2026).
- ¹³ Jenny Staletovich, *'God Squad' Sued Over Waiving Endangered Species Rules for Drilling in the Gulf*, WLRN Public Media (Apr. 16, 2026).
- ¹⁴ Press Release, Defs. of Wildlife, *Def. of Wildlife Challenges Unprecedented 'God Squad' Exemption Allowing Unchecked Gulf Oil Drilling* (Apr. 14, 2026).
- ¹⁵ Press Release, Ctr. for Biological Diversity, *Trump's Cabinet Condemns Rice's Whale to Extinction* (Mar 31, 2026).
- ¹⁶ Press Release, Nat. Res. Def. Council, *NRDC Files Fed. Lawsuit Challenging Trump Admin's. Decision to Bypass Endangered Species Protections for Gulf Oil and Gas*, NAT. RES. DEF. COUNCIL (Apr. 2, 2026).
- ¹⁷ Press Release, Nat'l Wildlife Fed'n and Affiliates, *National Parks Conservation Ass'n Take 'God Squad' to Ct.*, SOUTHERN ENV'TL LAW CTR. (Apr. 15, 2026).
- ¹⁸ Press Release, Office of Sen. Cory Booker, *Senate Colleagues Launch Investigation into Trump Administration Decision to Waive Endangered Species Protections for Oil Drilling* (Apr. 28, 2026).

If You Can't Beat Them... Feed Them to Your Pets?

MAWS Act Proposes Unique Solution to Blue Catfish Invasion

Tess Bradley¹

The invasion of blue catfish in the Chesapeake Bay Watershed has had devastating impacts on native aquatic species, recreational fisheries, and local seafood industries.² After decades of grappling with how to manage the species, lawmakers and Bay supporters have worked together to propose an unconventional solution. Last March, the United States House of Representatives passed the Mitigation Action and Watermen Support (MAWS) Act of 2026.³ If the Act becomes law, it would establish a pilot program authorizing the National Oceanic and Atmospheric Administration (NOAA) to facilitate a blue catfish market in the pet food and animal or aquaculture feed industries.

Introducing the Blue Catfish

Blue catfish are native to the Mississippi River Watershed.⁴ In the 1970s, the Virginia Department of Wildlife Resources (DWR) released over 300,000 blue catfish into the James and Rappahannock rivers to support recreational fisheries. DWR officials assumed that the Chesapeake Bay's salinity would prevent the fish from migrating north; however, the blue catfish defied these expectations, tolerated the salty water, and made themselves right at home.⁵

Though their introduction was well intentioned, the blue catfish have wreaked havoc in the Chesapeake Bay Watershed. They have an incredible appetite and feast on a wide variety of native species, including blue crabs, menhaden, and American eels.⁶ Blue catfish have few natural predators in the area and can grow to over 100 pounds.⁷ Thanks to their lack of competition and impressive reproductive capacity, the blue catfish is now one of the most abundant fish in the region.

The MAWS Act

The MAWS Act is the most recent federal effort to control the blue catfish population in the Chesapeake Bay.⁸ The Act would establish a two-year Blue Catfish Pilot Program designed to incentivize the use of blue catfish in pet food and animal or aquaculture feed. To create the incentive, NOAA would be authorized to provide subsidies to pet food and animal or aquaculture feed manufacturers that buy blue catfish from Chesapeake Bay watermen and seafood processors. Blue catfish are generally a low-value species, in part because of their massive population in the Bay.⁹

The Act would establish a two-year Blue Catfish Pilot Program designed to incentivize the use of blue catfish in the pet food and animal or aquaculture feed.

To help make catching and selling blue catfish worthwhile, the MAWS Act would allow NOAA to set a minimum price per pound based on market factors and stakeholder feedback.

MAWS Act supporters hope to glean a variety of information from the pilot program, including ecological and economic impacts on the Chesapeake Bay region.¹⁰ The Act proposes that state partners and research institutions—like the Chesapeake Bay Program's Invasive Catfish Workgroup—track the program's impact on the blue catfish population in the Bay.¹¹ Additionally, the Act seeks to track the program's impact on native aquatic species and the Bay's overall health. The Act would require NOAA to provide a report to Congress at the end of the pilot program, compiling the data collected by state partners and research institutions, reporting on best practices, and offering any additional recommendations. The bipartisan bill passed the House (320-66) and is currently awaiting further action in the Senate.¹²

Seafood Processor Pushback

The MAWS Act has received pushback from seafood processors. Some fear that promoting the use of blue catfish in pet food and animal or aquaculture feed will make the fish less desirable for human consumption.¹³ Additionally, some Maryland processors are concerned that the Act will undermine existing efforts to promote the use of blue catfish as seafood by diverting the supply to pet food and animal or aquaculture feed industries. These processors feel that the MAWS Act is an overcorrection that skips over seafood processors to benefit watermen and animal food companies.



Blue catfish, courtesy of Sam Stukel/USFWS.

According to the Maryland Department of the Environment (MDE), consumers should avoid eating recreationally caught blue catfish that are over thirty inches long, as blue catfish of this size often contain high levels of polychlorinated biphenyls (PCBs) and mercury.¹⁴ The sponsor of the MAWS Act, Congresswoman Sarah Elfreth of Maryland, has responded to seafood processor concerns by pointing to MDE consumption advisories and stressing that millions of blue catfish would remain unmarketable if processing were left to the seafood industry. Elfreth argues that facilitating a market for blue catfish in pet food and animal or aquaculture feed industries is necessary to utilize the blue catfish that are unfit for human consumption and to adequately control the population of blue catfish in the Chesapeake Bay.¹⁵

Regulatory Setbacks

Chesapeake Bay watermen have struggled to sell enough blue catfish to make a dent in the population. This struggle is partially attributable to unique inspection requirements for processed catfish. While most seafood is subject to inspection by the United States Food and Drug Administration (FDA), processed catfish is inspected by the United States Department of Agriculture (USDA).¹⁶ This regulatory difference stems from the 2008 and 2014 Farm Bills, which amended the Federal Meat Inspection Act to make catfish an “amenable species.”¹⁷ In 2015, the USDA Food Safety and Inspection Service (FSIS) acted on the Farm Bill amendments by establishing a mandatory catfish inspection program. FSIS requirements are more stringent than FDA requirements, subjecting catfish processors to continuous inspections, pre-market labeling approval, and ingredient limitations.¹⁸ These additional requirements can be cumbersome for Chesapeake Bay seafood processors trying to buy and sell blue catfish for human consumption.¹⁹

Hope for the Future

If successful, the Blue Catfish Pilot Program could create a new market for blue catfish, providing local watermen and seafood processors with much-needed economic stability. Additionally, MAWS Act supporters hope to use the data collected from the pilot program to explore using similar pilot programs to control other aquatic invasives.²⁰ Though the Act has generated considerable support, there are legitimate industry and regulatory concerns that may slow its progress. For now, all eyes are on the Senate. ❧

Endnotes

- ¹ NSGLC Research Associate; 2L, Vermont Law and Graduate School.
- ² [Invasive Catfish in the Chesapeake Bay](#), CHESAPEAKE BAY PROGRAM (Nov. 7, 2017).
- ³ [MAWS Act of 2026](#), H.R. 4294, 119th Cong. (2026).
- ⁴ Joe Zimmermann, [Blue Catfish Are Spreading Rapidly in Maryland Waters, as State Officials and the Fishing Community Work To Contain the Invasive Species](#), MD. DEP’T OF NAT. RES. (Apr. 4, 2024).
- ⁵ *Id.*
- ⁶ [Invasive Catfish Management Strategy](#), CHESAPEAKE BAY PROGRAM (Aug. 2020).
- ⁷ [Blue Catfish](#), NOAA FISHERIES (last updated Nov. 2, 2023).
- ⁸ [H.R. 4294](#).
- ⁹ [Invasive Blue Catfish: Can We Eat Our Way Out of This Problem?](#) CHESAPEAKE BAY TRUST.
- ¹⁰ Press Release, Sarah Elfreth, [House Passes Elfreth Bill to Tackle Invasive Blue Catfish in the Chesapeake Bay](#) (Mar. 17, 2026).
- ¹¹ [H.R. 4294](#).
- ¹² *Id.*
- ¹³ Timothy B. Wheeler, [Promoting blue catfish as pet food gains federal support, despite pushback](#), BAY JOURNAL (Mar. 30, 2026).
- ¹⁴ [Blue Catfish Consumption What You Need to Know](#), MD. DEP’T OF THE ENV’T. (Dec. 2024).
- ¹⁵ Elfreth, *supra* note 10.
- ¹⁶ [Catfish From Farm to Table](#), USDA FOOD SERVICE AND INSPECTION SERVICE (last updated Feb 19, 2026).
- ¹⁷ 21 U.S.C. 12 § 601(w)(2).
- ¹⁸ 9 C.F.R. §§ 532, 541, 544 (2026).
- ¹⁹ Elfreth, *supra* note 10.
- ²⁰ *Id.*

The University of Mississippi

THE SANDBAR

Sea Grant Law Center
Kinard Hall, Wing E, Room 258
University, MS 38677-1848



Littoral Events

2026 Floodplain Management Association Annual Conference

*Long Beach, CA
September 8 – 10, 2026*

For more information, visit:
<https://floodplain.org/page/AnnualConference>

Restore America's Estuaries: 2026 Coastal & Estuarine Summit

*San Francisco, CA
September 22 – 25, 2026*

For more information, visit:
<https://estuaries.org/2026-summit-call-for-proposals>

ASBPA National Coastal Conference 2026

*Atlantic City, NJ
October 5 – 8, 2026*

For more information, visit:
<https://asbpa.org/asbpa-national-coastal-conference-2026>