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The SandBar

Legal Reporter for the National Sea Grant College Program



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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*.

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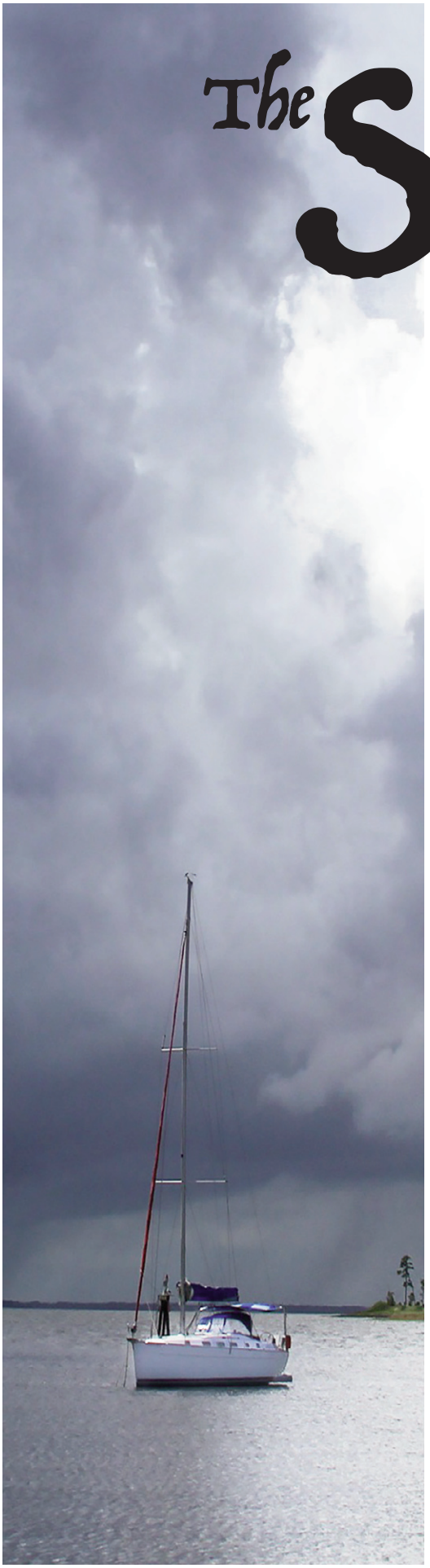
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Cover page photograph of a fishing vessel and sandpipers in North Carolina, courtesy of Kyle Hartshorn.

Contents page photograph of a sailboat in a North Carolina harbor, courtesy of Alan Szalwinski.

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Superior Court Rules North Carolina Violated Its Duties to Protect Coastal Fisheries

Giulianna Pendleton[1]

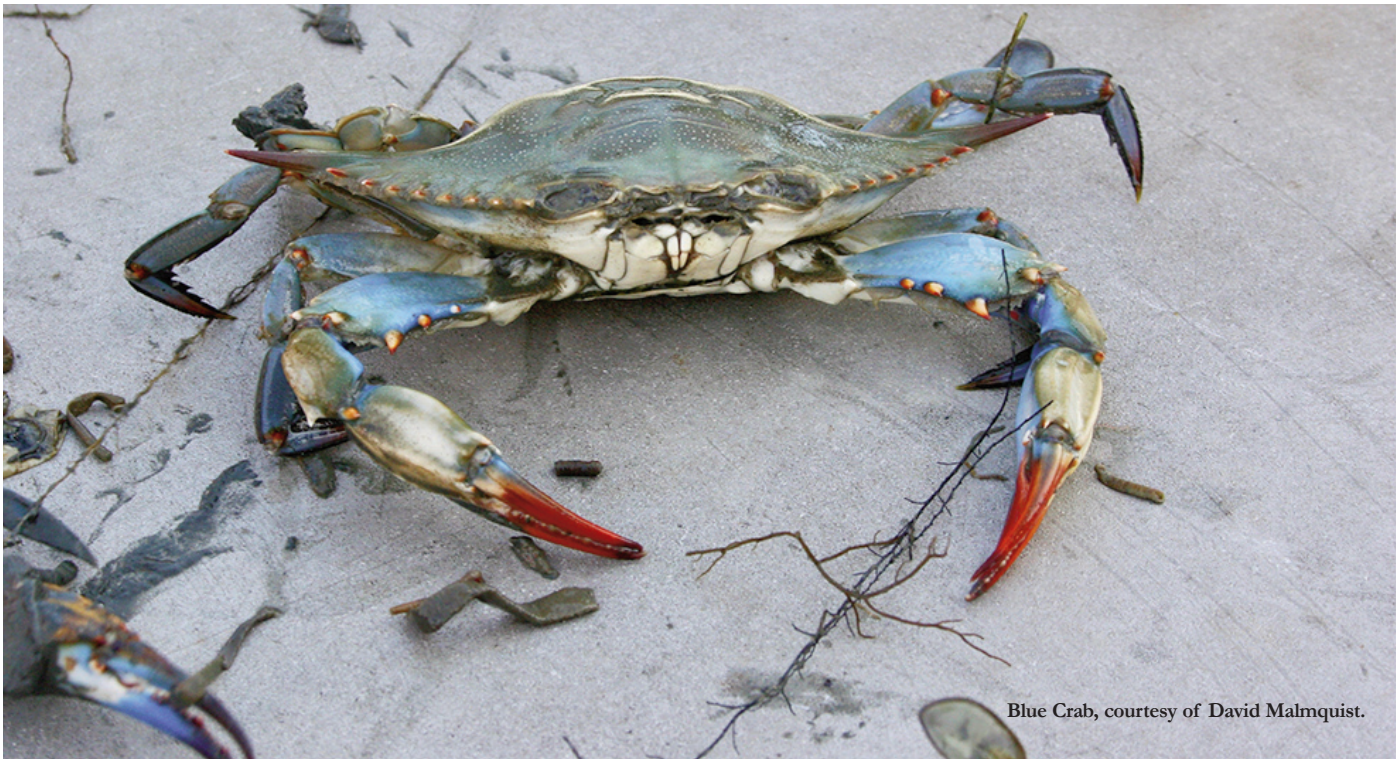


Fishing vessels on Outer Banks, North Carolina, courtesy of John Buie.

A North Carolina Superior Court judge ruled the state violated its affirmative duties to protect coastal fisheries for the general public, as required under the public trust doctrine and the North Carolina Constitution. In its 190-page order, the court concluded that the evidence at trial "overwhelmingly established" that the state failed to preserve and protect coastal fisheries from injury, harm, or destruction for all time and to protect the current and future generations' public right to fish and harvest fish.[2]

History of North Carolina Fisheries

For centuries, North Carolinians have harvested fish for personal consumption, including Atlantic croaker, blue crab, spot, Southern flounder, and weakfish. These fish stocks were abundant and created a backbone for the local economy. However, the rise of commercial fishing in the 1970s drastically changed the landscape. Between 1972 and 1981, finfish catch from commercial fishing increased from 40 million pounds to 90 million pounds. New industrial gear,



Blue Crab, courtesy of David Malmquist.

such as estuarine shrimp trawlers and gillnets, exponentially increased the amount of catch commercial fishing boats brought in and exacerbated habitat destruction. Fish stocks drastically declined, and piers that were once teeming with North Carolinians began to close.[3]

Background on North Carolina Fisheries Management & the Fisheries Reform Act

The significant harm to coastal fisheries soon led to state action. In 1994, the General Assembly established a moratorium on commercial fishing licenses and created the Moratorium Steering Committee to conduct a study of the fishing industry and implement the state's duty to preserve and protect its marine and estuarine resources. The committee issued its report on coastal fisheries management reform, which led to the Fisheries Reform Act of 1997 (FRA) and established a new management standard for fisheries: long-term viability.[4]

This long-term viability standard goes beyond sustainable harvest; it requires a population that is healthy and self-sustaining, evidenced by a strong adult population representation. The FRA included fisheries management guidance criteria to meet this standard: 1) using an "optimal yield" measurement focused on sustaining a long-term harvest that provides the greatest overall benefit to the public (as opposed to a "maximum sustainable yield" measurement); 2) implementing fisheries management plans to guide decisions to meet the goal of long-term viability; and 3) enacting licensing reform making all fishing licenses individual licenses to help eliminate data gaps.[5]

Although the FRA established the long-term viability standard, the 2004 amendments to the FRA significantly eroded this goal by replacing the "optimal yield" measurement with "maximum sustainable yield," or the largest average catch that a fishery can sustain.[6] This shift led to more than two decades of risk-prone management. Of note, no other jurisdiction allows for fisheries to be managed to a maximum sustainable yield measurement. And while the FRA standard is still long-term viability, the maximum sustainable yield measurement is also in place and at odds with the FRA's standard.

The result: none of the state's 13 state-managed fish stocks have been restored to long-term viability. The stocks suffer from age truncation and 7 of the 13 state-managed stocks have "collapsed" or are "collapsing" (i.e., experienced two consecutive years of commercial landings below 10% of the average of the five highest years' landings). Many of the state's historically significant fish species, including Atlantic croaker and Southern flounder, lack long-term viability.[7] This mismanagement of the fisheries impaired the general public's right to harvest fish, and led the Coastal Conservation Association North Carolina and 86 other plaintiffs to file suit against the state in 2020.

Coastal Conservation Association v. North Carolina

Six years after the case's initial filing, on August 17, 2026, Wake County, North Carolina Superior Court Judge Collins issued an order in the case, finding the State of North Carolina violated its affirmative duties under the public trust doctrine and the North Carolina Constitution to protect the state's coastal fisheries for the general public.

The superior court's ruling applied the standards the North Carolina Court of Appeals previously laid out in 2022.[8] In that decision, the Court of Appeals explained the public trust doctrine requires the state to hold public resources in trust for the people of the state, and fisheries are within that purview. The public trust doctrine traces its roots to Roman times and was first established in the United States in the 1842 Supreme Court case *Martin v. Waddell*;[9] the Supreme Court further developed the doctrine under American law, and more recent cases have applied it to modern environmental issues.[10] Whereas historical public trust doctrine cases generally prevented the government from harming public trust resources (e.g., privatizing land or diverting water), here, the Court of Appeals reasoned the state has an affirmative duty to manage these fisheries for the public.[11]

Moreover, the North Carolina Constitution exclaims the "right of the people to hunt, fish, and harvest wildlife is a valued part of the state's heritage and shall be forever for the public good," and the state has an obligation to "conserve and protect its lands and waters" for the public's benefit.[12] The Court of Appeals held these provisions impose 1) an affirmative duty on the state to preserve the right to fish and harvest fish for the general public, and 2) a parallel duty to protect those fisheries from harm for all time. The Court of Appeals, therefore, held the state has an affirmative duty under both the public trust doctrine and the North Carolina Constitution to preserve the public's right to fish and harvest fish, including to preserve the fisheries for the benefit of the public and keep them safe from injury, harm, or destruction for all time.[13]

Following the 2022 decision, the case went to trial in January 2026. During the trial, the plaintiffs again argued the state violated its duty under the public trust doctrine and the North Carolina Constitution to manage its coastal fisheries in order to protect them from injury for all time and to protect the general public's right to fish and harvest fish, for both current and future generations. The state, on the other hand, first argued it was meeting its duties as long as the public has at least some opportunity to catch some fish recreationally, and later argued its actions should be judged on whether the state acted in good faith to carry out its obligations. In the August order, the court ruled in favor of the plaintiffs and rejected the state's arguments, affirming the Court of Appeals 2022 decision.

The court concluded the evidence presented in the six-week trial "overwhelmingly established" that the state violated its affirmative duties under the public trust doctrine and state Constitution.[14] Mainly, not one state-managed fish stock has reached long-term viability. Additionally, claims of state-management failures went unrebutted. Extreme data gaps, inadequate fishery management plans, and permissive use of destructive commercial fishing gear that is banned or severely limited in other jurisdictions (e.g., estuarine shrimp trawling, gillnetting) all further evidenced the state's liability.

Implications & Next Steps

Although this judgment holds the state liable for breaching its legal obligations, it does not impose any affirmative actions on the state. Instead, that would come in the "remedy phase" of the case, as outlined in the order.[15] Moreover, on September 16, 2026, the state filed a Notice of Appeal, meaning the case will go to the Court of Appeals for appellate review.[16]

Endnotes

1 NSGLC Ocean and Coastal Law Fellow.

2 Coastal Conservation Ass'n v. North Carolina, No. 20CVS012925-910, slip op. at 160 (Wake County, N.C. Super. Ct. Aug. 17, 2026).

3 *Id.* at 3–8.

4 Fisheries Reform Act of 1997, 1997 N.C. Sess. Laws 400.

5 *Id.; Coastal Conservation Ass'n*, slip op. at 20–22.

6 2004 N.C. Sess. Laws 160 (2004 Amendments to the FRA); *Coastal Conservation Ass'n*, slip op. at 23–25.

7 *Coastal Conservation Ass'n*, slip op. at 30–32.

8 Prior to the case's final order in August, this case went to the North Carolina Court of Appeals in 2022 when the state appealed the superior court's order denying its motion to dismiss for failure to state a claim and for lack of jurisdiction. The Court of Appeals affirmed the superior court's order and laid out standards under the public trust doctrine and North Carolina Constitution. See Coastal Conservation Ass'n v. North Carolina, 878 S.E.2d 288 (N.C. Ct. App. 2022).

9 41 U.S. 367 (1842).

10 *E.g.*, Illinois Cent. R.R. Co. v. Illinois, 146 U.S. 387 (1892); Nat'l Audubon Soc'y v. Super. Ct. (*The Mono Lake Case*), 658 P.2d 709 (Cal. 1983); Juliana v. United States, 947 F.3d 1159 (9th Cir. 2020).

11 *Compare Illinois Cent.*, 146 U.S. 387 (preventing Illinois from granting Chicago lakefront to a private railroad), and *The Mono Lake Case*, 658 P.2d 709 (preventing California from diverting water to the point of ecologically harming Mono Lake), *with Coastal Conservation Ass'n*, 878 S.E.2d at 297 (concluding plaintiffs may bring a claim against the State for failing to "manage and protect fisheries for the benefit of the general public").

12 N.C. Const. art. I, § 38; *id.* art. XIV, § 5.

13 *Coastal Conservation Ass'n*, 878 S.E.2d 288.

14 *Coastal Conservation Ass'n*, slip op. at 160.

15 *Id.* at 190.

16 Notice of Appeal, *Coastal Conservation Ass'n* (No. 20CVS012925-910).

Wisconsinite's Waterfront Walk Protected by Public Trust Doctrine

Charles Miller[1]



View of an overlook of Lake Michigan in Milwaukee, WI, courtesy of Ken Mattison.

A recent Milwaukee County Circuit Court decision reaffirmed the rights of Wisconsinites to walk along the beaches of Lake Michigan. Paul Florsheim, a retired professor, was fined for trespassing by the Village of Shorewood, Wisconsin, a suburb of Milwaukee with about 14,000 people.[2] Florsheim challenged the charge, arguing that he was walking between the water's edge and the Ordinary High Water Mark (OHWM) of Lake Michigan, thereby walking on public land. The court, in agreeing with Florsheim, discussed the history and applicability of the public trust doctrine (PTD) in Wisconsin, the role of the OHWM, and why it matters that it is Lake Michigan.

Trespassing?

Florsheim crossed on Daniel Dogmala's property multiple times over a week in July 2025, leading to an initial citation.[3] Dogmala had warned Florsheim multiple times not to cross his land, but Florsheim persisted. Florsheim maintained his innocence, telling Dogmala that his "No Trespassing" sign was "not entirely wrong… but incomplete."[4] Florsheim remained between the OHWM and the water line the entire time, not crossing onto the upland line of Dogmala's property.

At the end of August, Florsheim was given a second citation and fined $313, which he challenged in municipal court. The municipal court upheld the citation, leaning on a 1923

Wisconsin Supreme Court Case, *Doemel v. Jantz*, involving Lake Winnebago.[5] The court found that shoreline property owners retain control of the beach to the water's edge. On appeal, the Milwaukee County Circuit Court disagreed and divided their analysis into two parts: outlining the PTD in Wisconsin and explaining how *Doemel* failed to apply to Florsheim walking along the beach of a Great Lake.[6]

Wisconsin's Public Trust Doctrine

The PTD is a legal principle establishing that tidelands and lands below navigable waters are held by the state in trust for public use. The doctrine was originally developed to protect commerce, navigation, and fishing, and has been expanded in many states to include recreation. Under the federal common law, the doctrine encompasses waters and lands beneath navigable waters up to the OHWM. Many coastal states have adopted the OHWM as the boundary line for applying the doctrine.

The PTD is a legal principle establishing that tidelands and lands below navigable waters are held by the state in trust for public use.

Wisconsin's PTD is encapsulated in the state Constitution, case law, and statutes. Article IX of the Constitution states that Wisconsin has jurisdiction over lakes bordering the state, and that navigable waters will be "common highways and forever free."[7] Lake Michigan and Lake Superior, the two Great Lakes that border Wisconsin, fall within the state law definition of "navigable in fact," meaning the state holds title to the lake beds up to the OHWM.[8] State court cases expanded the public trust to apply beyond commerce, fishing, and navigation to canoeing, ice skating, swimming, and other public purposes.[9] In Wisconsin, the PTD boundary is the OHWM, defined as "the point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation, or other easily recognized characteristic," and if it is not distinct enough, other points on the bank or shore are looked to.[10]

***Doemel* Differentiated**

Since *Doemel* was a Wisconsin Supreme Court case, the Circuit Court was unable to overrule it but did distinguish it from *Florsheim*. In *Doemel*, the violation concerned an inland lake, with riparian owners all around the lake. An inland lake has low and high periods due to precipitation, and private property owners control land to the water's edge.[12] On the other hand, the public may access the shores of Lake Michigan up to the OHWM. The area Florsheim passed through along the beaches of Lake Michigan were all held in public trust. The state had authority to restrict access, but did not and never generally or specifically delegated this authority to the Village of Shorewood. The court held that the "*Doemel* decision is cabined to its particular facts and analysis about Lake Winnebago," and did not control *Florsheim*.[13]

Conclusion

The court's reversal underscores that on Lake Michigan the state holds title in trust below the OHWM, and public passage in that zone is protected. This public passage extends to multiple uses. However, the case is applicable mostly to cases involving Great Lakes in Wisconsin, rather than for PTD issues with other bodies of water. Midwest Environmental Advocates declared that the decision "affirms that the shore of Lake Michigan is public land," and they "believe the principles affirmed in this case should be broadly applied" to more than just the Great Lakes. If the case is appealed, it would offer an opportunity to formally overrule *Doemel* and clarify public trust rights in Wisconsin.

Endnotes

1 NSGLC Research Associate; 3L University of Mississippi School of Law.

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4 *Village of Shorewood*, citation 8N8002G29J, 5.

5 *Id.* at 8-9.

6 *Village of Shorewood v. Paul W Florsheim*, 26CV1769, 2 (Wis. Cir. Ct. Sep. 3, 2026).

7 Wis. Const. art. IX, § 1.

8 Wis. Stat. § 30.10(1).

9 Clean Wisconsin, Inc. v. Wisconsin Dep't of Nat. Res., 2021 WI 72, 398 Wis. 2d 433, 961 N.W.2d 611.

10 Diana Shooting Club v. Husting, 156 Wis. 261, 145 N.W. 816, 820 (1914).

11 *Id.* at 13.

12 *Village of Shorewood*, 26CV1769, 9-11.

13 *Id.*

Federal Power Versus Local Will:
The Fight Over Deep-Sea Mining in American Samoa

Vishnu Gadepalli[1]



Island of Tutuila, American Samoa, courtesy of Larry Myhre.

In July 2024, American Samoa placed a moratorium banning deep-sea mineral exploration and extraction in its territorial waters, which extends three nautical miles from its shore.[2] The current governor, Pulaali'i Nikolao Pula, reinforced opposition to mining off the island's shores in 2025.[3] In February 2026, NOAA vessels began mapping more than 30,000 square nautical miles of seafloor in waters surrounding American Samoa for critical mineral deposits. NOAA Administrator Neil Jacobs stated the project would help unlock "access to critical minerals for domestic supply chains."[4] Despite the opposition, the Department of the Interior (DOI) has announced the first commercial deep-sea mining lease sale in American Samoa's waters will take place on November 19, 2026.[5]



Si'u Point Trail, Ta'u Island, National Park of American Samoa, courtesy of the U.S. Department of Interior.

Two Zones, Two Authorities

Under the Submerged Lands Act, coastal states have title to the submerged lands, waters, and natural resources located within 3 miles of the coastline.[6] American Samoa's 2024 ban, issued by then-Governor Lemanu Peleti Mauga, prohibited exploration and exploitation activities in the territory's waters, but that ban only reaches about three miles offshore.[7] Past that line, jurisdiction of the OCS shifts entirely to the federal government, which controls everything out to roughly 200 nautical miles.[8]

Two federal statutes govern mining permits in the OCS. The Bureau of Ocean Energy Management (BOEM), an agency within DOI, regulates seabed mining in federal waters under the Outer Continental Shelf Lands Act of 1953 (OCSLA), the same law that governs offshore oil and gas exploration.[9] NOAA handles mining permits for international waters under the Deep Seabed Hard Mineral Resources Act of 1980.[10]

Where the Push Is Coming From

President Trump's April 2025 Executive Order 14285, "Unleashing America's Offshore Critical Minerals and Resources," told federal agencies to fast-track seabed mining permits, domestically and internationally.[11] BOEM responded by flagging 18 million acres of seabed off American Samoa for potential leasing in November 2025 and announced plans to conduct a hydrographic survey in federal waters off American Samoa by February 2026.[12] There were 76,000 public comments received by BOEM on the plan.[13]

American Samoa, California, Hawaii, Oregon, and Washington have all banned deep-sea mining in their own waters, and Guam has called for a broader moratorium, too.[14] But state and territorial bans only reach so far. In April 2026, the DOI laid out plans for a string of lease sales, starting with American Samoa in August and moving on to the Northern Mariana Islands in November 2026 and Alaska in December 2026.[15]

Legal observers have flagged how much rides on the speed of all this. Once a lease is granted, walking it back later, even under a future administration less friendly to deep-sea mining, would be difficult.[16] It comes down to the fact that a territory can ban an industry in its own waters and still watch that industry show up just past the line, fully licensed by a government thousands of miles away. Whether lawsuits, Congress, or sustained public pressure eventually change that is an open question. Right now, the law backs the federal government, and American Samoa's opposition, however loud, is a political statement rather than something with teeth.

American Samoa's Concerns

The opposition is not only about environmental concerns. The core of the resistance lies in how federal actions threaten the island's fragile economy, its vital fisheries, and its cultural identity.[17] Local communities worry that toxic sediment plumes will travel long distances, suffocating coral reefs[18] and driving away the fish populations that families rely on for daily food security.[19] Because commercial fisheries and tuna processing form the backbone of the territory's private sector, any decline in available fish could trigger a massive economic collapse.[20] For American Samoans, the ocean is an inseparable part of *Fa'asinomaga* (their identity); industrializing and destroying these waters for commercial mining purposes directly violates *Fa'asao*, the ancestral practice of sacred conservation and ecological stewardship.[21]

Local communities worry that toxic sediment plumes will travel long distances, suffocating coral reefs and driving away the fish populations that families rely on for daily food security.

Local advocates argue that stretching the OCSLA to lease millions of acres treats the territory like an asset to be exploited rather than a community with its own say.[22] Because American Samoa is an unincorporated territory, local executive moratoria are legally ineffective past its three-mile jurisdiction, leaving federal agencies free to push forward despite unified local opposition.[23] Other Pacific territories have watched this play out and have taken proactive measures: leaders in Guam and the Northern Mariana Islands have pushed for their own moratoria, citing a critical lack of meaningful engagement from federal agencies before decisions are made.[24]

Endnotes

1 NSGLC Summer Community Engaged Intern, University of Mississippi.

2 Am. Sam. Exec. Order No. 006-2024, § 3 (July 24, 2024); Elizabeth Claire Alberts, *Experts Say 'Bare Bones' U.S. Laws Are Unfit to Regulate Nascent Deep-sea Mining Industry*, Island Times Palau (Jun. 12, 2026).

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A Shortcut and a Familiar Fight: The Corps' Aquaculture Permitting Process Returns to Court in Washington

Taylor Young[1]



Oysterville Sea Farms **shellfish farm in Oysterville, WA, courtesy of Jasper Do.**

In June, a federal district judge found that nine Letters of Permission (LOPs) authorizing commercial shellfish aquaculture activities in the state of Washington were issued unlawfully by the U.S. Army Corps of Engineers Seattle District. This is the latest decision in the past several years over the Corps' approval of commercial shellfish operations in the state. The Corps has filed objections to the initial adjudication, leaving the future permitting process of some farms up in the air.

Background

Indigenous communities in North America have practiced shellfish cultivation and aquaculture for millennia.[2] Over the past couple of hundred years, aquaculture in the United States has slowly developed into a large-scale commercial industry. By the 1980s, commercial aquaculture was experiencing rapid growth and has since grown into a multibillion-dollar industry with few signs of slowing. In 2007, the Corps responded to the growth of commercial shellfish aquaculture by issuing Nationwide Permit

(NWP) 48, which provided a streamlined permitting process for certain commercial shellfish aquaculture activities.[3]

The Corps issues NWPs pursuant to its authority under the Clean Water Act (CWA) and the Rivers and Harbors Act (RHA).[4] The Corps authorizes projects through either individual or general permits. General permits authorize common activities that will have only minimal individual and cumulative environmental impacts. A NWP is a type of general permit that authorizes activities across the country, with Corps districts separately implementing each NWP. Under the CWA, activities authorized by a NWP must be similar in nature, cause only minimal adverse environmental effects when performed separately, and have only minimal cumulative adverse effects on the environment.[5] NWPs may remain in effect for no more than five years before being reissued or modified.[6]

In 2019, NWP 48 was successfully challenged in Washington by nonprofit organizations alleging that the Corps had failed to comply with the CWA and National Environmental Policy Act (NEPA).[7] The district court ultimately held NWP 48 unlawful in Washington and later vacated the permit and its existing authorizations within the state, which was upheld by the Ninth Circuit.[8]

Following that decision, the Corps could no longer use NWP 48 to authorize commercial shellfish aquaculture in Washington and instead had to process permits individually. In 2021, the Corps began using LOPs, a streamlined permitting process, to authorize certain commercial shellfish aquaculture activities under Section 10 of the RHA.[9] Two environmental groups challenged the Corps' use of the streamlined process, alleging federal law required the Corps to conduct full environmental reviews of the operations.

Current Litigation

From 2021 to 2023, the Corps issued over 500 LOPs in the state of Washington. Because these LOPs were issued under the RHA, the Corps may only issue them when, "in the opinion of the district engineer, the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values, and should encounter no appreciable opposition."[10] Interestingly, the LOPs authorize the proposed activity for fifteen years, compared to NWPs, which authorize activity for five years. This is in part because LOPs are intended to be reserved for activities with a "minor" impact.

In December 2021, the Coalition to Protect Puget Sound Habitat and the Center for Food Safety challenged the Corps' issuance of these permits, arguing that the Corps violated the RHA, the Administrative Procedure Act (APA), and NEPA, and that its permitting process was arbitrary and capricious. Of the over 500 LOPs, the plaintiffs challenged nine of them with aquaculture operations ranging in size from five acres to nearly 293 acres. The significant variation in the size of these projects placed the meaning of "minor" squarely at issue.

Specifically, the plaintiffs contended that the Corps improperly concluded that the impacts were "minor" and failed to adequately analyze the projects' environmental, aesthetic, and cumulative impacts. Notably, neither the Corps' regulations nor the applicable statutes provide a working definition of "minor." As a result, the parties and the court relied on case law and, in part, dictionary definitions to assess what constitutes a minor impact for purposes of a LOP.

The Corps argues that the impacts were "minor" because the LOPs did not authorize entirely new activities, but rather served as a continuation of previously authorized aquaculture activities. On the other hand, the plaintiffs argued that previous case law recognizing a dock as a minor activity is distinguishable from the current activities because the aquaculture projects are significantly larger, ranging from approximately 100 to more than over 6,000 times larger than the dock in that case.

The parties also disagreed over the proper scale at which the impacts of the activities should be assessed. The Corps contended that the activities constitute only a negligible portion of the relevant navigable waterways. On the other hand, the plaintiffs asserted that because the projects are commercial in nature, the Corps should consider their relative cumulative impact rather than assess each project independently. Interestingly, the Corps in part admitted that there were "legitimate concerns about the impacts of these projects," including concerns over the use of plastics and their impact on the environment and food chain.[11] For example, one of the nine challenged projects could result in approximately 3.6 million PVC tubes being used in the substrate over fifteen years.

The magistrate judge ultimately agreed with the plaintiffs that the Corps had not adequately supported its determination that these activities were "minor" and that the Corps' LOP permitting process was arbitrary and capricious. The judge found the Corps' argument that the LOP served merely as a continuation of previously authorized activities to be misplaced because previous activities were found to be improperly authorized. Further, looking at the language of each of the nine LOPs, the Corps' reasoning was repetitive, vague, and conclusory and insufficient to support its determinations. Lastly, the judge found assessing the cumulative impacts of the permitted activities to be proper because assessing each permit on an independent basis would be akin to "death by a thousand cuts."[12]

After finding the LOPs to be improperly issued, the judge then considered whether or not to vacate the nine LOPs. In reaching its determination, the court analyzed the seriousness of the Corps' errors, including its previous issuance of NWP 48, and the potential consequences of vacatur for both the commercial shellfish industry and the environment. Ultimately, the magistrate judge recommended vacating the nine LOPs and granting the plaintiff's motion for summary judgment. Importantly, this decision is a Report and Recommendation issued by a magistrate judge, meaning that this decision is not



Photograph of shellfish, courtesy of Stephanie Chavez.

considered a final decision and is subject to review by the district judge. The Corps has filed objections, and the plaintiffs have responded. As of September 2026, the district court has not entered a final ruling.

Significance and looking forward

Pending the federal district court's opinion and possible adoption of the magistrate judge's recommendation, the recommendation signals a significant achievement for the plaintiffs and other environmental groups. If the district judge vacates each of the nine LOPs, the plaintiffs could have a more straightforward path for challenging the more than 500 other LOPs issued in Washington. If the other LOPs are challenged or voluntarily vacated by the Corps, the permitting process for more than 50,000 acres of Washington tidelands currently associated with commercial shellfish aquaculture could be affected.

Washington is the nation's largest producer of shellfish aquaculture, and a broader reconsideration of the LOPs could fundamentally alter commercial shellfish operations in the state and have a broader impact on the national industry.[13] For now, all parties await the district court's final determination. If adopted, the recommendation could have a significant impact by altering the Corps' analysis, the pace at which future LOPs are granted, and the immediate future of the commercial shellfish industry in Washington.

Endnotes

1 NSGLC Research Associate; 3L, University of Mississippi School of Law.

2 Leslie Reeder-Myers et al., Indigenous Oyster Fisheries Persisted for Millennia and Should Inform Future Management, 13 NAT. COMMC'NS 2383 (May 3, 2022).

3 Coal. to Protect Puget Sound Habitat v. U.S. Army Corps of Eng'rs, No. 2:21-CV-1685-JCC-DWC, 2026 WL 1893207, at *1 (W.D. Wash. June 23, 2026).

4 33 C.F.R. § 330.1(g) (2026).

5 33 U.S.C. § 1344(e).

6 *Id.*

7 Coal. to Protect Puget Sound Habitat v. U.S. Army Corps. of Eng'rs, 417 F. Supp. 3d 1354 (W.D. Wash. 2019).

8 Coal. to Protect Puget Sound Habitat v. U.S. Army Corps of Eng'rs, 843 F. App'x 77 (9th Cir. 2021).

9 *Coalition to Protect Puget Sound Habitat*, 2026 WL 1893207, at *4.

10 *Id.* at *5.

11 *Id.* at *7.

12 *Id.*

13 WASH. SEA GRANT, Aquaculture (last visited on Sep. 10, 2026).

The Magnuson-Stevens Act Turns 50

Vishnu Gadepalli[1]

The Magnuson-Stevens Fishery Conservation and Management Act, first passed in 1976, marks its 50th anniversary this year, remaining the primary law governing marine fisheries management in U.S. federal waters.[2] The Act's objectives are to foster the long-term biological and economic sustainability of marine fisheries by working to prevent overfishing, rebuild overfished stocks, increase long-term economic and social benefits, ensure a safe and sustainable supply of seafood, and protect the habitat that fish need to spawn, breed, feed, and grow to maturity.[3] As part of the anniversary, NOAA Fisheries, the agency implementing the Act, is highlighting some of the fisheries management actions under the Act.

A Law Born of Necessity and the Revisions that Followed

Before 1976, the outer edge of U.S. jurisdiction over ocean resources sat just 12 miles from shore, and foreign fleets beyond that line were unregulated.[4] The Magnuson-Stevens Act, named after Senators Warren Magnuson of Washington and Ted Stevens of Alaska, extended U.S. jurisdiction to 200 nautical miles and established eight Regional Fishery Management Councils with representation from coastal states and fishery stakeholders. The Councils then developed Fishery Management Plans (FMPs) that comply with the Act's conservation and management requirements, including ten national standards. Congress has since made two significant revisions: the Sustainable Fisheries Act of 1996 and the MSA Reauthorization Act of 2007, followed by a narrower 2018 amendment addressing modernizing recreational fisheries.

The Sustainable Fisheries Act of 1996 strengthened requirements to prevent overfishing and rebuild overfished fisheries, set objective and measurable standards for fishery management plans, added three new national standards addressing vessel safety, fishing communities, and bycatch, and required councils to identify and protect Essential Fish Habitat. The MSA Reauthorization Act of 2007 went further, establishing annual catch limits and accountability measures, promoting management strategies such as catch shares, and strengthening the role of science through peer review, scientific and statistical committees, and the Marine Recreational Information Program. In 2018, the Modernizing Recreational Fisheries Management Act focused on improving recreational fishing data and management of mixed-use fisheries.

The Numbers Behind the Milestone and Regional Priorities

NOAA Fisheries notes that 52 fish stocks have been rebuilt since the Act's passage, alongside claims of the overfishing that was prevented, protected essential habitats, and sustained seafood and coastal economies.[5] The agency identifies the Snohomish coho salmon, declared overfished in 2018 and since rebuilt to a sustainable level, as the 50th of those rebuilds. The agency also cites a new stock assessment showing Pacific bluefin tuna at the largest recorded biomass since assessments began, and points to the resurgence of West Coast groundfish species–including canary rockfish, one of more than 60 rockfish species in that fishery–as opening new fishing opportunities.

NOAA Fisheries describes the establishment of the eight FMCs as one of the Act's most innovative features and is presenting an eight-part series on their work, noting that each council is shaped by its own coastal communities while operating under a shared framework. Four regional profiles have been published so far. The Gulf profile describes decades of collaboration between federal and state managers to sustain fisheries, innovate data collection, and support coastal communities. The Mid-Atlantic profile describes managers, scientists, and fishermen adapting to changing conditions while working together to keep fishermen on the water. The New England profile attributes the region's persevering fishing heritage to decades of collaboration and science-based management. The Caribbean Fishery Management Council profile highlights local involvement in the fishery management process.

NOAA frames the Act as the cornerstone of U.S. marine fisheries management, crediting it with positioning the United States as a global leader in sustainable fisheries, a theme the agency's Assistant Administrator, Eugenio Piñeiro Soler, addressed in a leadership message on the law's legacy and future impact.[6] The agency describes fisheries management under the Act as a transparent, public process built on science, management, innovation, and collaboration with the fishing industry.[7]

Endnotes

1 NSGLC Summer Community Engaged Intern, University of Mississippi.

2 *50 Years of Sustainable Fisheries Management*, Nat'l Oceanic and Atmospheric Admin. (Jun. 17, 2026); *Laws & Policies: Magnuson-Stevens Act*, Nat'l Oceanic and Atmospheric Admin., (last visited, Jul. 27, 2026).

3 *50 Years of Sustainable Fisheries Management, supra* note 2.

4 *Laws & Policies: Magnuson-Stevens Act*, *supra* note 2.

5 *50 Years of Sustainable Fisheries Management*, *supra* note 2.

6 *50 Years of Innovation and Leadership: Celebrating the Magnuson-Stevens Act*, Nat'l Oceanic and Atmospheric Admin. (Apr. 13, 2026).

7 *Laws & Policies: Magnuson-Stevens Act, supra* note 2.

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