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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the October 2013 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-13-03-10).

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SECOND CIRCUIT

New York

***N. Oyster Bay Baymen's Ass'n Inc. v. Town of Oyster Bay*, 40 Misc. 3d 1243(A) (N.Y. Sup. Ct. 2013).**

A New York court issued the latest decision in an ongoing battle between an association of oystermen, a town and a private oyster company. The association and individual plaintiffs challenged several long-term leases of underwater lands granted by the Town of Oyster Bay, arguing that the underwater leases were invalid under the State Environmental Quality Review Act and Town ordinances. In this instance, the court looked at whether the underwater land was leased contrary to a town ordinance that stipulates underwater land may not be leased where there is "an indicated presence of shellfish in sufficient quantity and quality...as to support significant hand raking and/or tonging and harvesting." The court ruled that the Town's grant of the lease was arbitrary, because a clam density survey conducted at the time of the lease did not cover portions of the leased lands at issue.

http://decisions.courts.state.ny.us/10jd/nassau/decisions/index/index_new/bucaria/2013sept/009210-11.pdf

FOURTH CIRCUIT

North Carolina

Sept. 16, 2013).

The U.S. District Court for the Eastern District of North Carolina ruled that the North Carolina Department of Transportation (NCDOT) and the Federal Highway Administration (FHA) did not violate the National Environmental Policy Act and other laws in its plans to construct a new bridge over an inlet in North Carolina's Outer Banks. Environmental organizations had alleged that NCDOT and the FHA violated federal law by failing to follow proper procedure in researching, designing, and choosing a replacement for an aging bridge. The court ruled that the agencies' finding that constructing a new bridge along the current bridge would cause the least overall harm to a federal wildlife refuge was not arbitrary and capricious. Further, the agencies adequately considered alternatives to the new bridge construction.

<https://ecf.nced.uscourts.gov/doc1/13113524223>



FIFTH CIRCUIT

Louisiana

***Gulf Restoration Network v. Jackson*, CIV.A. 12-677, 2013 WL 5328547 (E.D. La. Sept. 20, 2013).**

The U.S. District Court for the Eastern District of Louisiana recently ruled that the Environmental Protection Agency (EPA) must decide whether to regulate nitrogen and phosphorus runoff under the Clean Water Act. Several environmental organizations had filed suit alleging that the EPA violated the Administrative Procedure Act in its denial of a rule-making petition. The petition had requested a necessity determination on whether nutrient limits are required for the area. The court found that pursuant to a U.S. Supreme Court decision, *Massachusetts v. EPA*, the agency must conduct a necessity determination in response to the rulemaking petition. The EPA must issue a response within 6 months from the date of the court decision.

<https://ecf.laed.uscourts.gov/doc1/08516799346>



NINTH CIRCUIT

Alaska

***Alaska v. Kerry*, 3:12-CV-00142-SLG, 2013 WL 5269760 (D. Alaska Sept. 17, 2013).**

The U.S. District Court for the District of Alaska rejected the State of Alaska's challenge to federal enforcement of low-sulfur fuel requirements for marine vessels operating in certain Alaskan coastal waters. After adoption of the North American Emissions Control Area by the International Maritime Organization, the Environmental Protection Agency (EPA) implemented the provisions in most U.S. waters out to 200 nautical miles offshore. The state alleged that the EPA's implementation of the regulations violated the Administrative Procedure Act and the U.S. Constitution, as well as exceeded the EPA's authority. The court disagreed finding the challenge to the International Convention for the Prevention of Pollution from Ships (MARPOL) was not justiciable under the political question doctrine. The Senate had expressly approved MARPOL and Congress had adopted legislation implementing its air emissions provisions.

<https://ecf.akd.uscourts.gov/doc1/02311234676>

California

***Pac. Coast Fed'n of Fishermen's Associations v. Glaser*, CIV S-2:11-2980-KJM, 2013 WL 5230266**

(E.D. Cal. Sept. 16, 2013).

Several nonprofits and associations brought a citizen suit under the Clean Water Act (CWA) alleging that an irrigation system in California illegally discharged polluted water into two waterways covered by the CWA. The plaintiffs contended that the system at issue is a point source, which requires a National Pollutant Discharge Elimination System (NPDES) permit. The court disagreed, ruling that the project's established method of channeling discharges through a subsurface tile system does not require an NPDES permit under the CWA. The court found that the tile system is exempt as a return flow from irrigated agriculture.

<https://ecf.caed.uscourts.gov/doc1/03316940880>



ELEVENTH CIRCUIT

***Wallace v. NCL (Bahamas) Ltd.*, 12-15204, 2013 WL 5434714 (11th Cir. Oct. 1, 2013).**

The Eleventh Circuit affirmed a district court decision finding that senior stateroom stewards working aboard cruise ships were due compensatory wages, but not penalty wages, under the Seaman's Wage Act. The stewards filed the suit seeking both compensatory and penalty wages, alleging that their compensation did not take into account payments the stewards made to "helpers" the stewards hired and paid out of their own pockets to help them fulfill their work on embarkation days. The stewards claimed that the helpers were necessary, due to the cruise line's adoption of "free style" cruising, which allows passengers to stay aboard for a longer period of time after the ship has docked and gives crews a shorter period to fulfill their duties before the next group of passengers board. The court found that the practice of assigning the stewards more work than was practical to complete, necessitating the hiring of the helpers constituted a withholding of wages under the Seaman's Wage Act; however, the court refrained from awarding penalty wages because the cruise line had not acted arbitrarily, willfully, or unreasonably.

<http://www.ca11.uscourts.gov/opinions/ops/201215204.pdf>

***Defenders of Wildlife v. U.S. Dep't of Navy*, 12-15680, 2013 WL 5434774 (11th Cir. Oct. 1, 2013).**

Environmental groups brought action challenging Department of the Navy's decision to install and operate underwater submarine warfare training range (USWTR) in the only known breeding grounds of endangered North Atlantic right whale. The United States District Court for the Southern District of Georgia entered summary judgment in favor of the Navy. On appeal, the court ruled that the Navy did not violate the National Environmental Policy Act in signing a contract for project construction prior to starting; the National Marine Fisheries Service adequately analyzed both installation and operation phases of the USWTR; and, NMFS was not required to include an incidental take statement for the operations phase of the project in the biological opinion.

<http://www.ca11.uscourts.gov/opinions/ops/201215680.pdf>



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