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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the October 2014 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-14-03-09).

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FIRST CIRCUIT

Massachusetts

***Denehy v. Massachusetts Port Auth.*, CIV.A. 13-12473-WGY, 2014 WL 4402960 (D. Mass. Sept. 5, 2014).**

The U.S. District Court for the District of Massachusetts ruled on an action filed by a commercial clamdigger in connection with a jet fuel spill at an airport that discharged fuel into Boston Harbor. The clamdigger filed suit against the Massachusetts Port Authority and the company responsible for aircraft refueling activities at the airport, seeking recovery under general maritime law and the Oil Pollution Act (OPA) for damages to clambeds abutting the airport. The district court dismissed the federal admiralty claims, because the activity did not meet the requirements for admiralty jurisdiction. The court stayed the OPA claims until the OPA's 90-day period for presentment of claims has passed.

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FIFTH CIRCUIT

***United States v. Transocean Deepwater Drilling, Inc.*, 2014 WL 4672403 (5th Cir. Sept. 18, 2014).**

The U.S. Court of Appeals for the Fifth Circuit ruled that the Chemical Safety Board (CSB), an independent federal agency established by the Clean Air Act (CAA), had jurisdiction to investigate emissions from the Deepwater Horizon disaster. The CSB had issued subpoenas to Transocean in connection with its investigation. After Transocean failed to comply with the subpoenas, the U.S. government filed an action to enforce them. Transocean argued that the CSB lacked jurisdiction to conduct the investigation because the incident was a marine oil spill and did not occur on a stationary source. The court ruled that the installation was a "stationary source" within the meaning of the CAA.

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Louisiana

***In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico*, 2014 WL 4375933 (E.D. La. Sept. 4, 2014).**

A U.S. district court judge ruled on the cause of the 2010 oil spill and apportioned blame for the incident. The judge found that BP's actions resulted in gross negligence, which could quadruple penalties faced by the company. The Clean Water Act (CWA) § 311 imposes mandatory penalties of \$25,000 per day or up to \$1,000 per barrel against the owners of facilities that "discharge" oil or hazardous pollutants into navigable waters. Penalties may reach up to \$4,300 per barrel in instances of gross negligence. The judge also apportioned blame among three companies: BP, 67%; drilling rig owner Transocean Ltd., 30%; and cement contractor Halliburton Energy Service, 3%. The court found that BP bears the majority of responsibility for the 2010 oil spill due to decisions "primarily driven by a desire to save time and money, rather than ensuring that the well was secure." In a separate ruling, the judge will determine how much oil spilled as a result of the incident. And in the third phase of the case, expected to begin in January, the judge will rule on exactly how much the companies will owe in CWA penalties.

[Opinion here](#)



NINTH CIRCUIT

***Sturgeon v. Masica*, 2014 WL 4977583 (9th Cir. Oct. 6, 2014).**

The Ninth Circuit dismissed a challenge to the National Park Service's (NPS) enforcement of a regulation banning the use of hovercrafts on the Nation River, which falls within a national preserve. The ban prevented a hunter from using a hovercraft to hunt moose along the river. The state of Alaska intervened in the suit, challenging the NPS regulations that required its researchers to obtain a permit before engaging in studies of chum and sockeye salmon on the river. The U.S. District Court for the District of Alaska entered summary judgment in NPS's favor. On appeal, the hunter and Alaska argued that § 103(c) of the Alaska National Interest Lands Conservation Act (ANILCA), which provides that no lands conveyed to the state are subject to regulations applicable solely to public lands within conservation units, prohibits NPS from regulating the river. The Ninth Circuit dismissed Alaska's claim for lack of standing. The court also ruled that because the NPS regulation applied to all lands within park boundaries and not solely public lands, ANILCA did not prohibit the NPS regulation.

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Alaska Cmty. Action on Toxics v. Aurora Energy Servs., LLC, 2014 WL 4339239 (9th Cir. Sept. 3, 2014).

The Ninth Circuit Court of Appeals ruled on a citizen suit challenging the non-stormwater discharges of coal into Alaska's Resurrection Bay. The U.S. District Court for the District of Alaska had granted a partial summary judgment in favor of the defendants, owners and operators of a coal loading facility. The Ninth Circuit overturned the decision, finding that the plain terms of the National Pollutant Discharge Elimination System (NPDES) permit prohibited the non-stormwater discharge of coal.

[Opinion here](#)

Lacano Investments, LLC v. Balash, 765 F.3d 1068 (9th Cir. 2014).

The U.S. Court of Appeals for the Ninth Circuit ruled on a dispute between several landowners (collectively, Lacano) and the Alaska Department of Natural Resources (DNR) over ownership of certain streambeds. The suit stemmed from 2010 and 2011 determinations by the Alaska DNR that the "waterways above [the] streambeds were navigable in 1959, the year Alaska was admitted to the Union, and remain navigable." Lacano sought a declaratory judgment and an injunction to prohibit the state from taking possession of the streambeds. The court dismissed the case, finding that the Eleventh Amendment bars these types of actions against the state, and the suit did not qualify for an exception to that bar.

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California

Klamath Siskiyou Wildlands Ctr. v. U.S. Forest Serv., 2014 WL 4960906 (E.D. Cal. Oct. 1, 2014).

Environmental groups challenged the U.S. Forest Service's review and approval of a gold mining operation located in the Salmon River watershed in northern California, alleging that the review and approval violated the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the 1872 Mining Law, and the Administrative Procedure Act (APA). The U.S. District Court for the Eastern District of California granted summary judgment in favor of the U.S. Forest Service.

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Lynch v. California Coastal Comm'n, 229 Cal. App. 4th 658 (2014).

Several oceanfront homeowners challenged the California Coastal Commission's (CCC) permit conditions for bluff protection and seawall reconstruction. The conditions precluded homeowners from rebuilding a lower stairway section and imposed a 20-year limitation on the permit. A lower court granted the homeowners' motion for judgment and issued writ of mandate. On appeal, the court reversed. The appellate court ruled: 1) it would decline to create an "under protest" exception enabling homeowners to challenge the permit conditions after construction; 2) the CCC could limit the seawall reconstruction permit to 20 years; 3) reconstruction of the lower stairway was subject to permitting requirements of the California Coastal Act; and 4) the permit condition which prohibited homeowners from reconstructing the lower portion of a beach access stairway down the bluff was valid.

[Opinion here](#)



D.C. CIRCUIT

District of Columbia

***Anglers Conservation Network v. Pritzker*, CV 13-1761 (GK), 2014 WL 4977414 (D.D.C. Sept. 30, 2014).**

After the Mid-Atlantic Fishery Management Council declined to proceed with an amendment that would manage river herring and shad, several organizations and individuals filed suit against NOAA Fisheries. NOAA Fisheries filed a motion to dismiss. The court granted the motion to dismiss, noting that it had no authority to review an intermediate decision of the Mid-Atlantic Council.

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