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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the March 2020 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-20-03-03).

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FOURTH CIRCUIT

Mayor & City Council of Baltimore v. BP P.L.C., No. 19-1644, 2020 WL 1069444 (4th Cir. Mar. 6, 2020).

The mayor and City of Baltimore brought a climate change suit in state court against twenty-six multinational oil and gas companies, alleging various state law claims. The suit was removed to federal court. The U.S. District Court for the District of Maryland ruled that the removal was not warranted and remanded the case to state court. On appeal, the U.S. Court of Appeals for the Fourth Circuit considered whether the remand by the district court was proper under the federal officer removal statute. The Fourth Circuit concluded that the case belongs in state court, as removal was not warranted under the federal officer removal statute. The court stated that it lacked jurisdiction to review the federal district court's remand order with respect to other alleged grounds for removal.

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South Carolina

S.C. Coastal Conservation League et. al v. Ross, No. C.A. No. 2:18-3326-RMG (D.S.C. Feb. 18, 2020).

Various environmental groups and local government entities challenged the National Marine Fisheries Service's (NMFS) decision to issue incidental harassment authorizations to five companies to conduct seismic air gun surveys for oil and gas in the coastal waters of the Mid- and South Atlantic Ocean. The State of South Carolina intervened in the suit, raising additional claims. NMFS filed a motion to dismiss the state's claims. The court granted the motion to dismiss the state's nuisance, trespass, and admiralty law claims. The court denied the motion to dismiss based on a lack of standing, as well as the motion to dismiss claims challenging Executive Order 13,795.

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Pres. Soc'y of Charleston v. S.C. Dep't of Health & Envtl. Control, No. 2018-000137, 2020 WL 811729 (S.C. Feb. 19, 2020).

The South Carolina Supreme Court ruled that several community historical preservation organizations had associational standing in a suit over the relocation and expansion of a passenger cruise facility at a downtown pier terminal. The organization brought the suit against the South Carolina Department of Health and Environmental Control (DHEC) and the Ports Authority seeking a contested case hearing in the administrative law court (ALC) to challenge environmental authorizations issued by the DHEC. The ALC granted summary judgment to the defendants, terminated discovery, and sanctioned the organizations for requesting remand. On review, the South Carolina Supreme Court held that the organizations had associational standing, and the sanctions under Frivolous Civil Proceedings Sanctions Act were not justified. The court reversed and remanded the case.

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SIXTH CIRCUIT

Ohio

Drewes Farms P'ship v. City of Toledo, No. 3:19 CV 434, 2020 WL 966628 (N.D. Ohio Feb. 27, 2020).

A farming partnership brought suit challenging the Lake Erie Bill of Rights (LEBOR), an amendment to the Toledo City charter that granted Lake Erie the same rights as humans and allowed city residents to sue on the lake's behalf. The partnership claimed that the amendment violated the Fourteenth Amendment's Due Process Clause. The U.S. District Court for the District of Ohio invalidated the amendment. The court found that the partnership and the state had standing to sue; the provision was void for vagueness under the Due Process Clause; and the unconstitutional phrases were not severable from the rest of the provision.

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NINTH CIRCUIT

Citizens for S. Bay Coastal Access v. City of San Diego, 45 Cal. App. 5th 295 (Cal. Ct. App. 2020).

The Citizens for South Bay Coastal Access challenged the City of San Diego's issuance of a conditional use permit allowing the city to convert a motel owned by the city into a transitional housing facility for homeless misdemeanor offenders. The group alleged that the city was required to obtain a state coastal development permit for the project. The trial court agreed. On appeal, a California appellate court reversed. The court held that because the California Coastal Commission certified the city's local coastal program, the city's plan governed the city's coastal development.

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ELEVENTH CIRCUIT

Florida

Gulf Restoration Network v. Nat'l Marine Fisheries Serv., No. 8:18-CV-1504-T-27AEP, 2020 WL 836516 (M.D. Fla. Feb. 20, 2020).

The U.S. District Court for the Middle District of Florida denied the National Marine Fisheries Service's (NMFS) motion to stay an enforcement agreement related to the consultation and issuance of a Biological Opinion (BiOp) on federally authorized oil and gas operations in the Gulf of Mexico. The parties had reached a settlement agreement requiring NMFS to complete the interagency consultation and issue the BiOp by November 5, 2019. The deadline was extended four times by stipulated amendments to the settlement agreement. NMFS again filed a motion to stay enforcement of the settlement or, alternatively, to extend the deadline to issue the BiOp to May 5, 2020. The court denied the motion, finding that NMFS had not demonstrated good cause to extend the deadline or to stay enforcement of the settlement.

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BB Inlet Prop., LLC v. 920 N. Stanley Partners, LLC, No. 4D18-3765, 2020 WL 1163099 (Fla. Dist. Ct. App. Mar. 11, 2020).

A Florida appellate court ruled on whether an upland owner had the right to retain a dock that extends onto the submerged land. Upon obtaining title, the current submerged landowner questioned the current upland owner's right to the dock. The upland owner then filed a complaint requesting a declaratory judgment regarding its riparian and littoral rights to the dock. The trial court granted the upland owner's motion for summary judgment, finding that the dock was lawfully located on the submerged land based on common law littoral rights and prior approval by the appropriate local government bodies. On appeal, the court affirmed, noting that the upland owner had a common law littoral right to build the dock in order to access the water.

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FEDERAL CIRCUIT

In re Downstream Addicks, No. 17-9002, 2020 WL 808686 (Fed. Cl. Feb. 18, 2020).

The Court of Federal Claims held that the U.S. government was not liable for the flooding of homes near two dams managed by the U.S. Army Corps of Engineers in Houston during Hurricane Harvey. Property owners downstream of the dams alleged that the Corps' action of opening reservoir gates to release massive volumes of water to prevent additional upstream flooding resulted in a Fifth Amendment taking, as it caused widespread destruction to owners' homes and businesses downstream from reservoirs. The Corps moved to dismiss for failure to state a claim, and both parties cross-moved for summary judgment. The Court of Federal Claims held that state law did not provide owners protected property interest in perfect flood control in wake of Act of God. Further, federal law did not provide owners protected property interest in perfect flood control in wake of Act of God.

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