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# Ocean and Coastal Case Alert

**The National Sea Grant Law Center** is pleased to offer the December 2023 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-23-03-12).

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## FIRST CIRCUIT

### New Hampshire

***Sierra Club, Inc. v. Granite Shore Power LLC***, No. 19-CV-216-JL, 2023 WL 8455290 (D.N.H. Dec. 6, 2023).

Two environmental groups filed a lawsuit under the Clean Water Act (CWA) citizen suit provision concerning the operation of Merrimack Station, a steam-electric power plant. The plaintiffs alleged that the defendants are in violation of the station's 1992 National Pollution Discharge Elimination System (NPDES) permit. The 1992 permit authorized the station to release heated water into the Merrimack River. The plaintiffs alleged that the released water blocked fish passage, changed the fish population, and has more than a minimal contact with the surrounding shoreline. The plaintiffs also asserted that the station's discharges affected Class B use of the Merrimack River and violated applicable water quality standards. Further, the defendants violated the annual reporting requirements. The court held that the plaintiffs had not proven an ongoing permit violation because the plaintiffs provided limited and unsupported testimony of the blocked fish passage. Further, the court held that the plaintiffs did not demonstrate continuing violations of the permit. Additionally, the court found that the plaintiffs failed to show that the discharges violated applicable water quality standards. The court also found that the plaintiffs did not show adequate evidence to demonstrate that the defendants violated the 1992 permit's requirement regarding the station submitting the biological and hydrohalic monitoring program data to the appropriate agencies.

[Opinion Here](#)

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## FIFTH CIRCUIT

***United States v. Abbott***, No. 23-50632, 2023 WL 829157 (5th Cir. Dec. 1, 2023).

The United States sought action to remove a floating barrier placed in the Rio Grande River without the authorization of either Congress or the U.S. Army Corps of Engineers. The structures were placed in the river at the direction of Governor Abbott of Texas. The United States argued that the barrier created an obstruction of the navigable capacity of the water. The district court found that the Rio Grande was historically navigable and susceptible of use for commerce. Further, the district court reasoned that the barrier obstructs the navigable capacity of the Rio Grande and creates a hazard. The Fifth Circuit affirmed the district court's grant of a preliminary injunction against further construction or maintenance of the barriers, reasoning that the term "obstruction" is construed flexibly and the barriers and concrete obstacles employed present a serious risk to watercrafts.

[Opinion Here](#)

## Louisiana

***Inclusive Louisiana v. St. James Par.***, No. CV 23-987, 2023 WL 7920808 (E.D. La. Nov. 16, 2023).

Inclusive Louisiana, Mount Triumph Baptist Church, and RISE St. James filed a lawsuit on behalf of their members and sought declaratory and injunctive relief against the St. James Parish and other defendants for St. James's Parish's adoption of a Land Use Plan in 2014. The plaintiffs argued that the Land Use Plan was discriminatory towards their neighborhoods. Moreover, the plan was used to protect majority white parts of the Parish from industrial development by creating industry in the areas of the parish that are majority Black, which negatively affected their communities. The plaintiffs alleged that the defendants maintained a discriminatory, unequal, and disadvantageous system that deprived the plaintiff's members of their rights through the defendant's zoning and land use decisions. The defendants sought motions to strike and dismiss the complaint. The court denied the defendant's motion to strike any part of the amended complaint, denied certain claims for lack of standing, dismissed the claims against defendants St. James Parish Council and the Zoning and Planning Commission finding that they are not judicial entities with the procedural capacity to sue or be sued, denied the motion to dismiss the request for declaratory relief, dismissed certain claims for failure to state a claim, and denied the defendant's request for attorney's fees.

[Opinion Here](#)



## NINTH CIRCUIT

### Alaska

***Sovereign Inupiat for a Living Arctic, et al., v. Bureau of Land Management, et al.***, No. 3:23-CV-00058-SLG, 2023 WL 8358239 (D. Alaska Dec. 1, 2023).

The U.S. District Court for the District of Alaska dismissed an injunction pending appeal brought by a tribe and an environmental group. The plaintiffs sought an injunction to stop the Bureau of Land Management's (BLM) efforts in the Willow Project while their appeal challenging the BLM's approval of the Willow Project is pending to the Ninth Circuit Court of Appeals. Non-surface efforts in Willow are ongoing and the plaintiffs' intent was to maintain the current conditions on the ground while they await their appeal. The plaintiffs argued that the winter construction activities would affect the hunting and fishing interests of local residents. The court found that the environmental group failed to demonstrate that injury from Willow's winter construction was probable, immediate, and irreparable. Further, because only a small area of the reserve would be impacted by the environmental harm the project may cause and the BLM's decision was supported by legislative endorsement, an injunction to halt the project was not required. As a result, the court denied the request for a preliminary injunction.

[Opinion Here](#)



## ELEVENTH CIRCUIT

### Florida

***Ctr. for Biological Diversity v. Haaland***, No. 23-CV-20495-PAS (S.D. Fla. Dec. 11, 2023).

An environmental group filed suit to vacate an agreement and release of land use restrictions between the National Park Service (NPS) and Miami-Dade County that would allow the development of the Miami Wilds waterpark, hotel, and retail area near the Miami Zoo. The plaintiffs claimed NPS violated the National Environmental Policy Act and Sections 7(a)(2) and 7(d) of the Endangered Species Act (ESA). The court agreed that the agency violated NEPA and ESA Section 7(a)(2) by failing to complete consultation and environmental review prior to entering the agreement. The court declined to rule on the ESA 7(d) claim, as it was not necessary to rule on that claim.

[Opinion Here](#)



## D.C. CIRCUIT

### District of Columbia

***Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.***, No. CV 22-1877 (RDM), 2023 WL 8190792 (D.D.C. Nov. 26, 2023).

The Center for Biological Diversity and Healthy Gulf sued the U.S. Fish and Wildlife Service (FWS) and alleged that the FWS violated the Endangered Species Act and the Administrative Procedure Act. The plaintiffs cited the FWS's decision to list the eastern black rail as threatened instead of as endangered and the FWS's related determination that

the designation of critical habitat for the rail was “not prudent.” In response, the FWS filed a motion for a partial voluntary remand without vacatur to permit the agency to reconsider and explain its listing decision of the rail. The federal district court granted the FWS’s motion because an agency can seek voluntary remand in a case challenging its administrative action if the agency aims to take further action regarding the challenged action, the motion was not frivolous, was not made in bad faith, and did not unduly prejudice the plaintiffs.

[Opinion Here](#)



## COURT OF INTERNATIONAL TRADE

***Southern Cross Seafoods, LLC, v. United States***, No. 22-00299, 2023 WL 8472475 (Ct. Int'l Trade Dec. 7, 2023).

Southern Cross Seafoods, LLC (Southern Cross) brought suit against the United States and the National Marine Fisheries (NMFS). The plaintiff sought a declaratory judgment for NMFS’s denial of the plaintiff’s application for present and future preapproval of its imports of Patagonian toothfish from the Food and Agriculture Organization of the United Nations Statistical Subarea 48.3 in the South Georgia fishery. The agency denied the plaintiff’s application for preapproval of its imports due to the lack of conservation measures for the Convention of the Conservation of Antarctic Marine Living Resources. The defendants moved to dismiss the plaintiff’s lawsuit and argued that the plaintiff lacked subject matter jurisdiction under 28 U.S.C. § 1581(i)(1)(C) because the plaintiff’s action did not arise out of a law that provided for an embargo or other quantitative restriction. The court agreed and granted the defendant’s motion. The court reasoned that NMFS’s denial pertained to one shipment of toothfish and was not an embargo or quantitative restriction within the meaning of 28 U.S.C. § 1581(i). Further, the court held that it did not have jurisdiction under 28 U.S.C. § 1581(i)(1)(D) over the administration and enforcement of any embargo or quantitative restriction. The court invited the parties to file motions under 28 U.S.C. § 1631 to transfer jurisdiction to the appropriate district court.

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