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# Ocean and Coastal Case Alert

**The National Sea Grant Law Center** is pleased to offer the October 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-23-03-10).

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## FIRST CIRCUIT

### Massachusetts

***Seafreeze Shoreside, Inc., et al., v. U.S. Dep't of Interior, et al.***, No. 1:22-CV-11091-IT, 2023 WL 6691015 (D. Mass. Oct. 12, 2023).

The U.S. District Court for the District of Massachusetts denied two commercial fishing groups' motions for summary judgment in a case challenging the Vineyard Wind project offshore Martha's Vineyard. The groups claimed that the federal agencies' issuance of permits and authorizations for the project violated the Administrative Procedure Act (APA), the Endangered Species Act, the Clean Water Act, the Marine Mammal Protection Act, the National Environmental Protection Act, and the Outer Continental Shelf Lands Act. The court noted that "the APA affords great deference to agency decision-making and agency actions are presumed valid." The court found that the groups did not show that the defendants acted arbitrarily, capriciously, or otherwise unlawfully in issuing the permits and authorizations.

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### Rhode Island

***Rhode Island Ass'n of Coastal Taxpayers v. Neronha***, No. CV 23-278 WES, 2023 WL 6121974 (D.R.I. Sept. 19, 2023).

The Rhode Island Association of Coastal Taxpayers (RIACT) challenged a new state law that expanded public beach access. State law previously used the mean high-water line to demark the private beachfront property boundary line. The current law draws the line of beach access ten feet from the "recognizable high tide" line, defined as the "seaweed line," which is an expansion of public access. RIACT alleged that this expansion constituted a taking of private property without just compensation. The U.S. District Court for the District of Rhode Island dismissed this challenge, finding that RIACT lacked standing to sue the state agencies, as the agencies' authority to enforce laws is an insufficient basis to confer standing in litigation challenging the laws. Furthermore, the court found that the agencies

named could not redress the alleged injury. Thus, the court dismissed the case.

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## SECOND CIRCUIT

***New York v. Raimondo***, No. 22-1189, 2023 WL 6764807 (2d Cir. Oct. 13, 2023).

The State of New York brought suit against the National Marine Fisheries Service (NMFS) and other federal agencies, alleging that a rule allocating summer flounder to commercial fishermen among various states violated the national standards under the Magnuson-Stevens Fishery Conservation and Management Act and the Administrative Procedure Act. The U.S. District Court for the Southern District of New York denied New York's motion for summary judgment and granted the defendants' cross-motion. On appeal, the Second Circuit affirmed. The court found the allocation rule was based upon the best scientific information available, and NMFS adequately balanced national standards regarding fairness, efficiency, economic impacts, and avoidance of discrimination between residents of different states.

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## FIFTH CIRCUIT

### Louisiana

***Louisiana v. Haaland***, No. 2:23-CV-01157, 2023 WL 6450134 (W.D. La. Sept. 21, 2023).

In August 2023, the State of Louisiana, along with multiple petroleum companies, filed a motion for preliminary injunction in federal district court to prevent the U.S. Bureau of Ocean Energy Management (BOEM) from adding a term to the Final Notice of Sale of an oil and gas lease located on the Outer Continental Shelf in the Gulf of Mexico. The additional term withdrew six million acres from the sale and restricted vessel activity in the remaining territory due to concerns that the endangered Rice's whale would be negatively impacted. However, the agency reported just months prior in an Environmental Impact Statement that critical habitat for the Rice's whale was not identified and that vessel strikes were extremely unlikely to occur. The court found BOEM's actions to be in violation of regulations set forth by the Outer Continental Shelf Lands Act since the agency made significant changes to the Final Notice of Sale, thereby not allowing the affected parties the opportunity to comment. The court also found BOEM's actions to be arbitrary and capricious as the agency failed to reasonably explain both its swift change in position and the challenged terms, resulting in economic harm and a potential change in future industry operations. The court issued the requested preliminary injunction, requiring the Department of Interior to hold the sale no later than September 30th absent the additional terms.

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## SIXTH CIRCUIT

### Ohio

***Hawkins v. Ohio Dep't of Nat. Res.***, 2023 Ohio 3493 (Ohio App. 10th Sept. 28, 2023).

Property owners appealed a county court decision affirming an adjudication order issued by the Ohio Department of Natural Resources (ODNR) concluding that a portion of their property is located within a Lake Erie Coastal Erosion Area (Lake Erie CEA). The trial court ruled in favor of ODNR and the appellate court affirmed. The court agreed there was substantial evidence to support ODNR's determination. The court also agreed that ODNR correctly and accurately followed the statutory and regulatory procedure when making its determination and rejected the owners' claim that the order violated their constitutional rights.

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## NINTH CIRCUIT

### California

***Oroville Dam Cases***, No. C093600, 2023 WL 6471941 (Cal. Ct. App. Oct. 5, 2023).

The Butte County, District Attorney filed suit on behalf of the State of California seeking civil penalties and injunctive relief against the California Department of Water Resources (DWR) for the release of water from Lake Oroville down the Oroville Dam's gated flood control spillway and emergency spillway in February 2017. The state Fish and Game

the Storme Dam's gated flood control spillway and emergency spillway in February 2017. The state Fish and Game Code section 5650.1 authorizes injunctive relief and civil penalties against any "person" who deposited harmful materials into waters of the state. A lower court found that DWR was not a "person" under the statute and granted summary judgment for DWR. On appeal, the court affirmed the lower court's judgment.

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## D.C. CIRCUIT

### District of Columbia

***AP Bell Fish Co., Inc. v. Raimondo***, No. CV 22-1260 (TJK), 2023 WL 6159985 (D.D.C. Sept. 21, 2023).

The U.S. District Court for the District of Columbia granted summary judgment in favor of the National Marine Fisheries Service (NMFS) after commercial fishermen and a trade association challenged Amendment 53 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. NMFS created Amendment 53 when, in the evaluation of stock assessment using new technology, it found that annual catch limits of Red Grouper needed to be altered. The plaintiffs alleged that the implementation of these new catch limits substantially decreased the allowed catch of Red Grouper in the commercial industry, while simultaneously increasing the allowed catch of the same fish within the recreational industry. The plaintiffs argued that the change in allocation did not promote conservation or adhere to legal requirements mandated by the Magnuson-Stevens Conservation and Management Act of 1976, and that the new allocation was based on bad data. Furthermore, the plaintiffs argued that the Amendment unfairly disadvantaged the commercial sector. In its analysis, the court found the plaintiffs' challenges to the Amendment to be incorrect and unreasonable, stating that NMFS acted neither arbitrarily nor capriciously but within the scope of its authority and adhered to national standards.

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***Am. Bird Conservancy v. Granholm***, No. CV 19-3694 (TJK), 2023 WL 6276618 (D.D.C. Sept. 26, 2023).

Two nonprofit organizations challenged the Department of Energy's funding for an offshore wind energy demonstration project that includes the installation of six wind turbines in Lake Erie a few miles north of Cleveland, Ohio. The groups claimed the agency violated the National Environmental Policy Act (NEPA) by failing to prepare an impact statement and take a hard look at reasonable alternatives and the cumulative impacts of its decision. They also alleged that a Section 404 permit issued for the project by the U.S. Army Corps of Engineers violated the Clean Water Act (CWA). The parties cross-moved for summary judgment. The court dismissed the plaintiffs' NEPA claims for lack of standing. The court denied the plaintiff's motion for summary judgment on the CWA claim.

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