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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the August 2024 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-24-03-08).

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FIRST CIRCUIT

Rhode Island

Stilts, LLC. v. Rhode Island, WC-2023-0481 (R.I. Super. July 12, 2024).

A Rhode Island superior court recently ruled on a challenge to the state's new shoreline access law that extends the public's right to use the shore up to 10 feet landward of the visible high tide line. The plaintiff claimed that the new law amounted to an unconstitutional taking of private property. The court denied the state's motion to dismiss, finding that by changing the boundary of public access, state lawmakers permanently extended a right of access and prohibited private property owners' right to exclude the public from their property.

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SIXTH CIRCUIT

Michigan

Michigan Farm Bureau v. Dep't of Env't, Great Lakes, & Energy, No. 165166, 2024 WL 3610196 (Mich. July 31, 2024).

Farmers' associations and farms that were regulated as concentrated animal feeding operations (CAFOs) brought a declaratory judgment action against the Michigan Department of Environment, Great Lakes, and Energy (EGLE), challenging the validity of discretionary conditions set forth in a National Pollutant Discharge Elimination System (NPDES) general permit for CAFOs. The Michigan Supreme Court held that the conditions are not rules under the state's Administrative Procedures Act and therefore do not require state legislative approval. Further, the general permit and its discretionary conditions are not agency rules that could be challenged by a declaratory judgment action. The court held that compliance with discretionary conditions could be obtained as an obligation of a certificate of coverage.

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NINTH CIRCUIT

Alaska

Inletkeeper v. U.S. Dep't of Interior, No. 3:22-cv-00279-SLG, 2024 U.S. Dist. LEXIS 125431 (D. Alaska July 16, 2024).

The Bureau of Ocean Energy Management (BOEM) facilitated an oil and gas lease sale of offshore plots in Cook Inlet, Alaska, as required by the Inflation Reduction Act (IRA). Claimants challenged the lease agreement, asserting it violated the National Environmental Policy Act (NEPA) and was an “arbitrary and capricious” agency action. They further argued that BOEM’s Environmental Impact Statement (EIS) contained several deficiencies, including failing to assess the project’s contributions to climate change. The claimants also alleged that BOEM did not consider reasonable alternatives. Consequently, the U.S. District Court for the District of Alaska remanded the case, directing BOEM to provide a supplemental EIS addressing the identified deficiencies and suspending the lease pending completion.

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Montana

Ctr. for Biological Diversity v. Haaland, No. CV 23-02-BU-DLC, 2024 WL 3728023 (D. Mont. Aug. 6, 2024).

An environmental organization challenged the U.S. Fish and Wildlife Service’s (FWS) Revised 12-Month Finding on a Petition to List the Upper Missouri River Distinct Population Segment of Arctic Grayling, a salmonid native to Arctic Ocean drainages of Alaska and northwestern Canada. Both parties moved for summary judgment. The court vacated the FWS’s 2020 finding and remanded it for further analysis. The court directed the FWS to make a new finding as to the status of the species within twelve months.

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ELEVENTH CIRCUIT

Florida

Buendig v. Town of Redington Beach, No. 8:19-CV-1473-VMC-SPF, 2024 WL 3755807 (M.D. Fla. Aug. 12, 2024).

Property owners filed suit after the Town of Redington Beach passed an ordinance granting the public certain access to the dry sand beaches. The plaintiffs claimed that the ordinance violated Florida law and constituted an unlawful taking. After the lawsuit was filed, one plaintiff was asked to resign from her position on the Town Board of Adjustment. The district court granted summary judgment to the property owners on the takings claim, as well as on a First Amendment retaliation claim. The Eleventh Circuit vacated and remanded the district court’s ruling. On remand, the federal district court ruled in favor of the town on both claims.

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D.C. CIRCUIT

City of Port Isabel v. FERC, No. 23-1174, 2024 WL 3659344 (D.C. Cir. Aug. 6, 2024).

Residents, environmental groups, and a city sought review of the Federal Energy Regulatory Commission’s (FERC) authorizations for construction and operation of two liquefied natural gas export terminals and a pipeline. The plaintiffs claimed the authorizations violated the National Environmental Policy Act, Administrative Procedure Act, and Natural Gas Act. The appellate court granted the petitions in part and remanded without vacatur. On remand, FERC issued orders reauthorizing the projects. The plaintiffs challenged the reauthorization orders. On appeal, the D.C. Circuit held that FERC was required to issue a supplemental environmental impact statement (EIS) for environmental justice analysis and the agency’s failure to do so was not a harmless error. The court also found that the agency’s EIS was required to consider the carbon capture and sequestration system in addition to the terminal. The court determined that the agency’s explanations for rejecting the use of air quality data from closer to the projects were arbitrary and capricious; however, its updated ozone analysis and analysis of greenhouse gas emissions were not. The court vacated and remanded the orders.

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Sierra Club v. U.S. Department of Energy, No. 22-1218, 2024 U.S. App. LEXIS 17424 (D.C. Cir. July 16, 2024).

Before 2022, the U.S. Department of Energy restricted liquified natural gas exports, requiring 129 billion cubic feet out of the 937 billion produced to go only to countries with a free-trade agreement with the United States. The Sierra Club opposed lifting this restriction, claiming increased exports would detract from a local member's aesthetic and recreational enjoyment. After the Federal Energy Regulatory Commission approved the expansion, the Sierra Club pursued judicial review. However, the D.C. Circuit Court found the Sierra Club failed to establish standing and dismissed the petition for a lack thereof.

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Healthy Gulf v. FERC, No. 23-1069, 23-1071, 2024 U.S. App. LEXIS 17425 (D.C. Cir. July 16, 2024).

The Federal Energy Regulatory Commission (FERC) authorized a liquified natural gas (LNG) project in southwestern Louisiana, deeming it environmentally sound and aligned with public interest. Plaintiffs, including Healthy Gulf, challenged this decision, arguing FERC inadequately addressed the project's cumulative environmental impacts. However, the plaintiffs did acknowledge FERC's consideration of project alternatives. The D.C. Circuit Court partially granted the claimants' petition, remanding the case without vacating the authorization order. While the court upheld FERC's evaluation of alternatives, it remanded the case because FERC's explanation of the project's cumulative effects was inadequate.

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