

January
16
2024

Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the January 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-24-03-01).

Forward to a friend

Know someone who might be interested in our monthly newsletter?

Forward this email their way and help spread the word.

FOURTH CIRCUIT

Maryland

Sierra Club, et al., v. National Marine Fisheries Service, et al., No. CV DLB-20-3060, 2024 WL 96341 (D. Md. Jan. 9, 2024).

Several nonprofit environmental organizations sued the National Marine Fisheries Service (NMFS), alleging the agency issued a biological opinion (BiOp) for oil and gas activity in the Gulf of Mexico that underestimated the risk of harm to protected species, including the Rice's whale and the Kemp's ridley sea turtle, and took inadequate measures to mitigate those risks. The court stayed the case at the parties' request. Recently, the plaintiffs motioned to lift the stay due to a ruling in a separate suit that allowed Gulf lease sales to continue without additional environmental protections. The U.S. District Court for the District of Maryland agreed to lift the stay, as it no longer had the support of all the parties. The court also denied the government's motion to remand the case to reinstate the consultation on the BiOp.

[Opinion Here](#)

South Carolina

Frederick Stuhr et al., v. United States Army Corps of Engineers Charleston Dist. et al., No. 2:23-CV-03357-RMG, 2023 WL 8934549 (D.S.C. Dec. 27, 2023).

In a Clean Water Act (CWA) citizen suit, plaintiffs alleged that the U.S. Army Corps of Engineers and the Environmental Protection Agency (EPA) violated the CWA by approving and authorizing a mitigation bank instrument in violation of the Administrative Procedure Act and the CWA. The federal defendants moved to dismiss the suit, arguing that the plaintiffs failed to meet the CWA notice requirements. The court found adequate notice had been provided and declined to dismiss the suit.

[Opinion Here](#)



FIFTH CIRCUIT

Lewis v. United States, No. 21-30163, 2023 WL 8711318 (5th Cir. Dec. 18, 2023).

The Fifth Circuit ruled on a lawsuit between property owners and the U.S. Army Corps of Engineers (Corps) over the federal jurisdiction of wetlands under the Clean Water Act (CWA). The case originated when the property owners sought Approved Judicial Determinations (AJDs) from the Corps. Following ten years of litigation, the Fifth Circuit relied on *Sackett v. EPA* to conclude that the land did not meet the criteria for classification as waters of the United States under the CWA. The court determined that there was no connection between any wetlands on the property and a “relatively permanent body of water connected to traditional interstate navigable waters.” Furthermore, the attempt to withdraw a revised AJD did not render the appeal moot because the government failed to guarantee the prevention of recurring issues, prolonged the landowners’ uncertainty by repeatedly issuing and withdrawing AJDs, and raised doubt regarding the outcome of Corps’ evaluations on remand, rendering remand inappropriate. The district court’s decision was vacated and remanded.

[Opinion Here](#)



NINTH CIRCUIT

Alaska

Sitka Tribe of Alaska v. Alaska Department of Fish & Game, No. S-18114, 2023 WL 9011059 (Alaska Dec. 29, 2023).

The Sitka Tribe of Alaska sued Alaska, the Alaska Department of Fish and Game (ADFG), and the Board of Fisheries for alleged violations of the Alaska Constitution in managing a commercial herring fishery. The superior court denied the Tribe’s motion for a preliminary injunction and requested attorney’s fees but ruled in favor of their statutory and regulatory violations. The Tribe argued on appeal that the constitution required that ADFG provide all relevant information to the Board, that it faced irreparable harm warranting a preliminary injunction despite the issue being moot, and that it was the prevailing party for purposes of awarding attorney’s fees. The Supreme Court of Alaska affirmed the superior court’s decision, concluding that ADFG’s decision not to provide a report to the Board was not arbitrary or capricious and refused to impose new obligations beyond the constitution’s plain language. Additionally, the court declined to reevaluate the moot preliminary injunction, concluding that it did not warrant review under the public interest exception. Finally, attorney’s fees were denied as neither party clearly dominated the case to be considered the prevailing party.

[Opinion Here](#)

California

Dezzi Rae Marshall v. Red Lobster Mgmt. LLC, et al., No. LACV2104786JAKMARX, 2023 WL 9111611 (C.D. Cal. Dec. 18, 2023).

The U.S. District Court for the Central District of California denied Red Lobster’s motion to dismiss a class action suit alleging that the restaurant chain has deceptively marketed and sold its Maine lobster and shrimp products. The plaintiffs alleged that the company made false claims that their products were sustainably sourced in accordance with high environmental and welfare standards. The plaintiffs alleged that the restaurant chain’s shrimp comes from farms in Indonesia, Vietnam, India, and China that “engage in environmentally destructive practices, poor reporting of environmental data and standards, and overuse of antibiotics.” Further, the plaintiffs claimed that the company’s Maine lobster products are sourced from the Gulf of Maine lobster fishery, which poses risks to endangered populations of North American right whales. The claim survived the summary judgment motion because the plaintiff provided sufficient evidence that members of the public could be deceived by the company’s claims.

[Opinion Here](#)

Oregon

Boaters Rts. Ass'n v. Melcher, No. 6:23-CV-00333-MK, 2024 WL 68360 (D. Or. Jan. 5, 2024).

The Boaters Rights Association sued the Oregon Department of Fish and Wildlife (ODFW) director and marine board officials alleging that a state law and regulations related to a “towed watersports program” violate rights of recreational boaters provided under the Federal Aid in Sport Fishing Restoration Act (SFRA). The defendants filed a motion to dismiss the case. The court declined to dismiss the case finding that the plaintiffs plausibly alleged that the state law violated the plaintiffs’ right to use federally funded facilities to access waterways for specified recreational purposes, as conferred under the SFRA. The court agreed to dismiss the ODFW director from the case.

[Opinion Here](#)

Washington

Bang v. Lacamas Shores Homeowners Ass'n, No. 3:21-CV-05834-BJR, 2023 WL 8717018 (W.D. Wash. Dec. 18, 2023).

A resident filed a Clean Water Act (CWA) citizen suit against the Lacamas Shores Homeowners Association (HOA) alleging that the HOA is adding pollutants from a “Biofilter” to nearby wetlands and Lacamas Lake. The plaintiff sought an imposition of civil fines and an order compelling the HOA either to stop adding pollutants, or to obtain a National Pollutant Discharge Elimination System (NPDES) permit or other approval under the CWA. In 2022, the court dismissed the case. The plaintiff appealed and asked the court to reconsider its ruling considering the 2023 “waters of the United States” rule. On appeal, the court granted the plaintiff’s motion for partial summary judgment and denied the defendant’s motion for summary judgment.

[Opinion Here](#)



National Sea Grant Law Center
256 Kinard Hall, Wing E
University, MS 38677-1848



You're receiving this newsletter because you've subscribed to the *Ocean and Coastal Case Alert*.

To view our archive, go to [Case Alert Archive](#).

First time reader? [Subscribe now](#).

Not interested anymore? [Unsubscribe instantly](#).