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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the May 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-24-03-05).

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FIRST CIRCUIT

Melone v. Coit, No. 23-1736, 2024 WL 1792762 (1st Cir. Apr. 25, 2024).

Residents of Martha's Vineyard and Nantucket filed suit against the National Marine Fisheries Service (NMFS), claiming that the agency's issuance of an incidental harassment authorization for an offshore wind project violated the Marine Mammal Protection Act due to potential impacts on the North Atlantic right whale. The U.S. District Court for the District of Massachusetts granted summary judgment to NMFS and the developer. On appeal, the First Circuit affirmed. The appellate court found that NMFS's conclusion that the proposed incidental harassment of up to 20 right whales was harassment of a "small number" of the species was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law or unsupported by substantial evidence under the Administrative Procedure Act (APA). Further, NMFS did not act arbitrarily or capriciously under the APA in determining the "specified activity" and the "specific geographic region" in which the activity would occur.

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Nantucket Residents Against Turbines v. U.S. Bureau of Ocean Energy Mgmt., No. 23-1501, 2024 WL 1756024 (1st Cir. Apr. 24, 2024).

A local advocacy organization sued the Bureau of Ocean Energy Management (BOEM) and the National Marine Fisheries Service (NMFS), alleging violations of the National Environmental Policy Act (NEPA) and the Endangered Species Act relating to BOEM's approval of an offshore wind energy project that had potential effects on endangered North Atlantic right whales. The U.S. District Court for the District of Massachusetts granted summary judgment to BOEM and NMFS. On appeal, the First Circuit agreed that NMFS's biological opinion (BiOp) properly analyzed the status and environmental baseline of the right whale. Further, the BiOp properly analyzed the effects of the project on the right whale along with mitigation measures. The court also found the BiOp did not ignore the project's additive effects on the right whale's long-term recovery prospects. The court also agreed that BOEM's reliance on the BiOp did not violate NEPA.

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FOURTH CIRCUIT

Maryland

Delmarva Fisheries Ass'n, Inc. v. Atl. States Marine Fisheries Comm'n, No. CV RDB-24-0688, 2024 WL 1721066 (D. Md. Apr. 22, 2024).

The Delmarva Fisheries Association and others challenged the Atlantic States Marine Fisheries Commission's Addendum II to Amendment 7 to the Interstate Fishery Management Plan for Atlantic Striped Bass. The rule resulted in a single-limit fish-per-person. The U.S. District Court for the District of Maryland denied the plaintiffs' motion for a preliminary injunction finding they did not demonstrate that they are likely to succeed on the merits due to a lack of standing.

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NINTH CIRCUIT

California

Oceana, Inc. v. Raimondo, No. 21-CV-05407-VKD, 2024 WL 1745031 (N.D. Cal. Apr. 22, 2024).

Oceana challenged the National Marine Fisheries Service's (NMFS) management of the Pacific sardine under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the National Environmental Policy Act (NEPA). The parties filed cross-motions for summary judgment. The court agreed that the agency's actions would result in a failure to rebuild the sardine population within the statutory timeframe and a failure to prevent overfishing as required under the MSA. The court also ruled in favor of Oceana on a challenge to the 2023-2024 annual specifications.

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People v. Plains All Am. Pipeline, L.P., No. 2D CRIM. B315256, 2024 WL 1925428 (Cal. Ct. App. May 2, 2024).

Following an oil spill in the ocean and on a California beach, several groups of claimants, including fishers, restaurants, tourism businesses, and oil industry workers, alleged losses. A trial court ruled that oil industry claimants were not direct victims of the spill and accepted mediated settlements in lieu of restitution. It also denied restitution to fishers based on a pending class action lawsuit. On appeal, the court affirmed that the trial court properly denied restitution to oil industry workers and unidentified fishers, but remanded the case for consideration of restitution for four fisher claims.

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ELEVENTH CIRCUIT

Ctr. for a Sustainable Coast v. U.S. Army Corps of Engineers, No. 22-11079, 2024 WL 1918733 (11th Cir. May 2, 2024).

After the U.S. Army Corps of Engineers (Corps) issued a permit to allow construction of a private dock on one of Georgia's barrier islands located in a national seashore, an environmental group filed suit claiming that the agency violated the National Environmental Policy Act (NEPA) and the Cumberland Island National Seashore Act (NSA) by not conducting a full environmental review. The U.S. District Court for the Southern District of Georgia granted summary judgment for the Corps, finding that the plaintiffs lacked standing since the dock had already been constructed and the plaintiff's harm was not redressable. On appeal, the Eleventh Circuit found that the plaintiffs had standing to bring at least one of its procedural rights claims and reversed the district court's grant of summary judgment on the NEPA claim. The court affirmed the dismissal of the NSA claim because the plaintiffs abandoned that argument on appeal.

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D.C. CIRCUIT

El Puente v. U.S. Army Corps of Engineers, No. 23-5189, 2024 WL 1945978 (D.C. Cir. May 3, 2024).

Environmental advocacy organizations filed suit against the U.S. Army Corps of Engineers Corps (Corps) and the National Marine Fisheries Service (NMFS) over a planned dredging project in San Juan Harbor to widen and deepen ship channels, using barges to transport dredged material from the harbor to an offshore dumping site in the open ocean. The Corps' environmental assessment (EA) for the dredging project concluded that it would not significantly impact the environment. NMFS' biological opinion determined that the project was not likely to adversely affect threatened and endangered species, including threatened species of coral. The plaintiffs alleged that the agencies' analysis violated the Clean Water Act, the National Environmental Policy Act (NEPA), the Endangered Species Act, and the Administrative Procedure Act. The U.S. District Court for the District of Columbia granted the agencies' summary judgment. On appeal, the D.C. Circuit affirmed. The appellate court found that both the cumulative impacts analysis and the environmental justice analysis in the EA was sufficient under NEPA. Further, available science and data were adequately considered to analyze impact on corals; mitigation measures to address impact on corals were not undefined; the Corps gathered adequate baseline data on the presence of corals; and NMFS did not change its policy regarding impact on threatened corals.

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District of Columbia

Green Oceans, et al. v. U.S. Dep't of the Interior, et al., No. 1:24-CV-00141-RCL, 2024 WL 1885543 (D.D.C. Apr. 30, 2024).

Environmental groups challenged federal approvals of an offshore wind project off the coast of Rhode Island. Plaintiffs filed a motion to stay the approvals and to enjoin the developer from performing any further construction work. The court denied the motion, finding the plaintiffs did not confer with opposing counsel before filing the nondispositive motion, as required by the court's civil rules.

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