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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the April 2025 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-25-03-04).

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FIRST CIRCUIT

Maine

E. Maine Conservation Initiative v. Bd. of Env't Prot., 2025 Me. 35 (Apr. 10, 2025).

The Maine Supreme Judicial Court upheld a permit issued by the Department of Environmental Protection (DEP) to Kingfish Maine, Inc. for a yellowtail aquaculture operation in Jonesport. The permit authorized Kingfish to construct a facility in accordance with the Site Location of Development Law and to install intake and outfall pipes pursuant to the requirements of the Natural Resources Protection Act (NRPA). The plaintiffs originally sought review of the permit from the Board of Environmental Protection, citing negative impacts of the project on the environment. The Board upheld the permit. The plaintiffs subsequently filed suit in superior court, which also upheld the DEP permit. On appeal, the court held that the Board correctly interpreted its scope of review under NRPA and that the Board did not abuse its discretion by using the DEP's evaluation of impacts of the intended effluent discharge rather than independently evaluating the impacts.

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FIFTH CIRCUIT

Indigenous Peoples of Coastal Bend v. U.S. Army Corps of Eng'rs, No. 23-40555, 2025 WL 938104 (5th Cir. Mar. 28, 2025).

The Moda Ingleside Crude Export Terminal in Ingleside, Texas, is the largest export terminal in North America by volume, handling about 11.6 million barrels of oil per day through the Port of Corpus Christi. To expand the terminal, its owner applied for a permit to dredge the seafloor and dispose of the dredged material in U.S. waters. The U.S. Army Corps of Engineers (Corps) held a notice-and-comment period, conducted an environmental assessment, and

issued the dredging permit. Two Native American tribes and an environmental association sued to invalidate the permit, arguing the Corps violated the National Environmental Policy Act (NEPA), the Clean Water Act (CWA), and the Administrative Procedure Act. The district court ruled in favor of the Corps, concluding that the agency had adequately studied the environmental impacts of the proposed expansion. On appeal, the Fifth Circuit affirmed, holding that the Corps complied with NEPA by 1) addressing impacts beyond increased vessel traffic, 2) evaluating the project's benefits and costs, 3) assessing both incremental and cumulative impacts, and 4) considering climate change. The court also found the Corps complied with the CWA in evaluating the project's benefits, costs, and cumulative impacts. Finally, the court ruled that the plaintiffs forfeited an argument regarding vessel traffic and that the Corps was not required to prepare an environmental impact statement under NEPA.

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Texas

***Gunstream Land Corp. v. Hansen*, 6:21-CV-00451, 2025 WL 915410 (E.D. Tex. Mar. 26, 2025).**

Gunstream Land Corporation sued nearby property owners, claiming that the failure of their dam caused ongoing damage to a fishing preserve. Specifically, the dam allowed sand, sediment, and soil to enter a stream that eventually flowed into the plaintiff's lake. After a six-day trial, the jury ruled in favor of the plaintiff on the negligence and trespass claims but overall sided with the defendant, concluding that the Clean Water Act (CWA) had not been violated. The plaintiff then moved for a new trial on the CWA claim alone, arguing that the jury's verdict was against the great weight of the evidence. The court then reviewed the factors for granting a new trial: 1) the simplicity of the issues, 2) the extent of the evidence dispute, and 3) the absence of any harmful events during the trial. Ultimately, the court denied the motion, deferring to the jury's verdict. The court found that the jury's verdict was not against the great weight of the evidence and concluded that the plaintiff had failed to show that the other factors supported granting a new trial.

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NINTH CIRCUIT

Hawaii

***Ctr. for Biological Diversity v. Nat'l Marine Fisheries Serv.*, No. CV 23-00306 MWJS-WRP, 2025 WL 719360 (D. Haw. Mar. 6, 2025).**

In 2014, the National Marine Fisheries Service (NMFS) listed twenty coral species from the Indo-Pacific and Caribbean as threatened under the Endangered Species Act (ESA). Under Section 4(d) of the ESA, NMFS is required to issue regulations necessary to help conserve threatened species. However, by 2020, the agency had failed to take regulatory action to address the environmental and human threats to the corals' survival. In response, the plaintiff petitioned NMFS to create regulations under Section 4(d) to aid in the conservation of the corals. NMFS denied the petition in a brief, three-page letter, prompting the plaintiff to sue in federal court. Upon review, the court found the denial letter inadequate as it lacked a reasoned explanation for not adopting regulations to protect the coral species. The court noted that NMFS's letter made only conclusory assertions, offering no supporting facts or evidence.

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ELEVENTH CIRCUIT

***Okeelanta Corp. v. U.S. Army Corps of Eng'rs*, No. 23-11683, 2025 WL 901220 (11th Cir. Mar. 25, 2025).**

Agricultural entities challenged the approval of the Everglades Agricultural Area Project (EAA Project) under the Water Resources Development Act of 2000 (WRDA) and the National Environmental Policy Act (NEPA). The EAA Project, part of ongoing water management efforts following severe hurricanes and flooding in the 1920s, includes a 240,000 acre-feet reservoir and a 6,500-acre stormwater treatment area (STA) designed to operate simultaneously.

Plaintiffs claimed that the Corps used the wrong water supply baseline when approving the EAA Project and failed to properly analyze how the standalone operation of the STA would affect water availability. They argued that the WRDA's Savings Clause guaranteed them a specific water supply and that the Corps' 2008 Lake Okeechobee Regulation Schedule (LORS), which reduced about 500,000 acre-feet of water from the original regulation schedule from 2000, violated this obligation. They further argued that the Corps' Environmental Impact Statement (EIS) violated NEPA's anti-segmentation principle by failing to evaluate the effects of operating the standalone STA. The Eleventh Circuit determined that the plaintiffs had standing but ruled that their challenge to the standalone STA operations was not ripe for judicial review because the Corps had not made a final decision. The court further concluded that the Savings Clause only required replacing water due to the EAA Project, not water reductions caused by nature-related infrastructure concerns. Thus, the Corps acted reasonably in using the 2008 LORS. Lastly, the court concluded that the STA had independent utility and could function effectively without the reservoir, making a separate EIS appropriate under NEPA. Therefore, the court affirmed in part and reversed in part the district court's ruling.

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D.C. CIRCUIT

Healthy Gulf v. FERC, 23-1226, 2025 WL 937664 (D.C. Cir. Mar. 28, 2025).

The Federal Energy Regulatory Commission (FERC) approved Driftwood Pipeline LLC's proposal to build two new natural gas pipelines in southwestern Louisiana by issuing a certificate of public convenience and necessity. Subsequently, two environmental organizations filed a petition to challenge FERC's decision, arguing that FERC had failed to comply with specific provisions of the National Environmental Policy Act (NEPA) and the Natural Gas Act (NGA). The D.C. Circuit ruled that FERC's decisions—to not to assess the project's impact on upstream greenhouse gas emissions and to not determine whether the project's overall greenhouse gas emissions would be significant—did not violate NEPA. Moreover, the court ruled that the plaintiff's NEPA challenge to FERC's decision not to consider the project's environmental effects alongside those of the natural gas terminal was forfeited because the plaintiff did not raise the issue in their comments on FERC's draft environmental impact statement. Lastly, the D.C. Circuit held that FERC's determination of market need for the project was supported by substantial evidence under the NGA and that FERC had properly considered the project's greenhouse gas emissions in balancing its benefits against its costs as required by the NGA.

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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-141-RCL, 2025 WL 973540 (D.D.C. Apr. 1, 2025).

Environmental organizations and individuals challenged federal agency approvals of a wind project off the coast of Rhode Island and Massachusetts, alleging the agencies violated several federal laws, including the Administrative Procedure Act, the Outer Continental Shelf Lands Act (OCSLA), National Environmental Policy Act, the Endangered Species Act, the Marine Mammal Protection Act, the Migratory Bird Treaty Act (MBTA), the Clean Water Act, the Coastal Zone Management Act (CZMA), and the National Historic Preservation Act. The defendants argued that the plaintiffs lacked standing to bring those claims. The court concluded that forty of the forty-five original plaintiffs had standing to continue with six of the nine claims. The judge dismissed three claims under the OCSLA, the MBTA, and the CZMA.

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Healthy Gulf v. Burgum, No. 23-cv-604 (APM), 2025 WL 928684 (D.D.C. Mar. 27, 2025).

In 2023, the Bureau of Ocean Energy Management (BOEM) approved Lease Sale 259, opening over 70 million acres in the Gulf for offshore oil and gas development. Six environmental groups filed suit to challenge Lease Sale 259, arguing that BOEM violated the National Environmental Policy Act (NEPA) by failing to evaluate environmental impacts. The U.S. District Court for the District of Columbia found that BOEM failed to adequately assess the

greenhouse gas emissions from the sale due to its reliance on an outdated reference case, which did not account for laws enacted after 2020, thus not providing the "hard look" required under NEPA. The court also ruled that BOEM acted arbitrarily by failing to consider the Rice's whale's expanded habitat range in the Gulf. The court upheld BOEM's analysis regarding oil spill risks, concluding that its assessment of potential catastrophic oil spills was reasonable and sufficient under NEPA. Lastly, BOEM's consideration of alternatives was deemed adequate, as the agency was not required to explore every proposed alternative but instead reasonably discussed options that met its statutory obligations. Therefore, the court granted in part and denied in part both of the parties' summary judgments.

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