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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the February 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-25-03-02).

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FIRST CIRCUIT

Mass. Lobstermen's Ass'n v. Menashes, No. 24-1480, 2025 WL 341699 (1st Cir. Jan. 30, 2025).

Off the coast of Massachusetts lies a 200-nautical-mile stretch of previously unprotected federal waters known as “the Wedge,” a key migration corridor for right whales during their spring migration. To safeguard these critically endangered whales, with only about 356 remaining, the National Marine Fisheries Service issued a “Final Rule,” closing the Wedge to vertical buoy lines from February 1st through April 30th each year to prevent entanglements. In response, the Massachusetts Lobstermen’s Association, Inc. argued that the Final Rule conflicted with a temporary law included as a rider to the Consolidated Appropriations Act of 2023 allowing lobster and Jonah crab fishing in the area. The Association contended that the rider invalidated the Final Rule. However, the First Circuit upheld the legality of the Final Rule, finding it permissible as an exception to the fishing authorization in the same rider.

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Massachusetts

Dolan v. Loiselle, No. 21 MISC 000545 (DRR), 2025 WL 351215 (Mass. Land Ct. 2025).

Property owners sought to relocate a recorded beach access easement that burdened their property and provided neighboring property owners with pedestrian access to Cape Cod Bay. The court held that the proposed relocation satisfied standards set by precedent because it did not significantly lessen the utility of the easement, increase burdens on its use and enjoyment, or frustrate its purpose. The court explained that aesthetic preferences do not impair an easement’s utility and subsequently found that relocating the unused easement to a newly constructed, level pathway would improve beach access, address drainage issues, and ameliorate erosion of the coastal bank.

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SECOND CIRCUIT

Unkechaug Indian Nation v. Seggos, 90 F.4th 32, 2025 WL 310163 (2d Cir. 2025).

The U.S. Court of Appeals for the Second Circuit affirmed a district court's ruling against the Unkechaug Indian Nation in their challenge to New York State's regulations prohibiting the harvesting of American glass eels in off-reservation waters. The Tribe argued that a 1676 order from the colonial governor of New York constituted a federal treaty that preempted state fishing regulations, but the court held that the order does not qualify as federal law under either the Constitution's Debts and Engagements Clause or the Supremacy Clause, since it predated the United States and was not ratified. The court also held that while the Eleventh Amendment barred claims against the New York Department of Environmental Conservation, claims against its commissioner could proceed under the Ex parte Young exception to Eleventh Amendment immunity. The court also found no abuse of discretion in the district court's handling of Daubert motions and discovery objections before entering summary judgment, as these were not relevant to the dispositive treaty question, and it ultimately ruled that the district court did not err in granting summary judgment to defendants.

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FOURTH CIRCUIT

Delmarva Fisheries Ass'n, Inc. v. Atl. States Marine Fisheries Comm'n, No. 24-1388, 2025 WL 377705 (4th Cir. Feb. 4, 2025).

Charter boat operators and fisheries trade associations filed § 1983 action to enjoin Atlantic States Marine Fisheries Commission's Fishery Management Plan for Atlantic striped bass. The U.S. District Court for the District of Maryland denied the plaintiffs' motion for preliminary injunction. On appeal, the Fourth Circuit agreed that the plaintiffs failed to satisfy redressability requirement for standing. The court remanded the case to the district court with instructions to dismiss the case.

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Maryland

MKOS Props. LLC v. Johnson, No. 0713, 2025 WL 354056 (Md. Ct. Spec. App. 2025).

The Maryland Appellate Court affirmed the dismissal of MKOS Properties' trespass and ejection claims against neighboring landowners who installed a boardwalk, bench, and weather station near Wetipquin Creek. The court upheld the trial court's finding that MKOS failed to prove the structures were above the mean high-water line (MHWL), which would have placed them on MKOS's property rather than state-owned land, finding that MKOS's surveyor used unreliable methods to establish the MHWL and presented contradictory data. The court also ruled that MKOS's riparian rights were not relevant to its trespass and ejection claims, as these rights relate to water access and use rather than possession of the waterfront area.

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NINTH CIRCUIT

California

Ctr. for Biological Diversity v. Raimondo, No. 23-cv-06642-AMO, 2025 WL 215568 (N.D. Cal. Jan. 16, 2025).

In December 2023, the National Marine Fisheries Service (NMFS) promulgated a rule that amended the Pacific Coast

Groundfish Fishery Management Plan (FMP) to permit sablefish pot fishing in leatherback sea turtle critical habitat, relying on a 2012 Biological Opinion (BiOp). Despite concerns about entanglements and vessel strikes on leatherback sea turtles, NMFS did not reinitiate consultation. In response, conservation groups filed a lawsuit against the Secretary of Commerce and NMFS, arguing that the rule violated the Endangered Species Act (ESA) and the Magnuson Stevens Fishery Conservation and Management Act. In March 2024, NMFS reinitiated consultation on the effects of the FMP on leatherback turtles and humpback whales. The district court dismissed the ESA claims for failure to provide pre-suit notice, so the plaintiffs moved for summary judgment on their remaining claim. The court allowed the defendants to submit a new 2024 BiOp. The parties were then ordered to submit supplemental briefing on whether the case was moot. The court determined that no effective remedy was available, as the plaintiffs failed to show ongoing harm from NMFS's prior failure to consult or evidence of repeated unlawful activity. As such, the court

determined the case was moot and granted the defendant's motion for summary judgment.

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ELEVENTH CIRCUIT

Daniels v. Exec. Dir. of Fla. Fish & Wildlife Conservation Comm'n, No. 23-13577, 2025 WL 411668 (11th Cir. Feb. 6, 2025).

A commercial fisherman challenged the constitutionality of regulations promulgated by Florida's Fish and Wildlife Conservation Commission that restricted where and how Florida-registered fishing vessels may harvest the Florida pompano in federal waters in the Gulf of Mexico. The fisherman claimed the state regulations were preempted by the Magnuson-Stevens Fishery Conservation and Management Act and violated the Equal Protection Clause. The U.S. District Court for the Southern District of Florida concluded that the fisherman lacked standing and granted the Commission summary judgment. On appeal, the Eleventh Circuit affirmed in part and reversed in part. The court held that the fisherman had standing to pursue claims; however, the court agreed that the Florida fishing regulations were not preempted and did not violate the Equal Protection Clause.

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D.C. CIRCUIT

District of Columbia

Slash Creek Waterworks, Inc. v. Raimondo, No. 23-1755, 2025 WL 358770 (D.D.C. 2025).

Commercial fishermen challenged NMFS regulations for South Atlantic red snapper that excluded dead discards from the annual catch limit (ACL). The plaintiffs argued this violated the Magnuson Stevens Fishery Conservation and Management Act by failing to properly limit catch, prevent overfishing, and maintain fair allocation between commercial and recreational sectors. The U.S. District Court for the District of Columbia ruled in favor of NMFS, finding that the statute does not define the ACL to include dead discards, that NMFS's approach was reasonable given scientific uncertainties in measuring discards, and that NMFS can prevent overfishing even when excluding dead discards from the ACL by accounting for them in the overfishing limit (OFL) and acceptable biological catch (ABC) calculations. The court also ruled that excluding dead discards did not constitute an unlawful reallocation of fishing privileges between sectors, and the incidental effects are reasonably calculated to further conservation.

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



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