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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the January 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-25-03-01).

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FIRST CIRCUIT

Maine

New England Fishermen's Stewardship Assoc. v. Raimondo, No. 2:23-CV-00339-JAW, 2024 WL 5247893 (D. Me. Dec. 30, 2024).

The New England Fishermen's Stewardship Association, a trade group representing commercial fishermen, filed a lawsuit against the National Marine Fisheries Service and others responsible for administering federal fishery policy in New England. The plaintiffs argued that federal statutes infringe upon several provisions of the U.S. Constitution, including the Appointments Clause and the non-delegation doctrine. Specifically, the plaintiffs contended that Framework Adjustment 65 constitutes unlawful rulemaking and that members of the New England Fishery Management Council acted as officers of the United States because they wielded significant authority, i.e., the ability to veto certain actions taken by the Secretary of Commerce. Upon review, the court determined that the plaintiffs had standing to bring the case. Additionally, the court ruled that those statutory provisions granting the Council the power to block certain types of actions by the federal agency constitute actions of federal officers in violation of the Appointments Clause. As a remedy, the court severed the provisions of the Magnuson-Stevens Act that violated the Appointments Clause, including the Council's ability to exercise a pocket veto, but upheld the Council's role as an advisory body.

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SECOND CIRCUIT

New York

U.S. ex rel Chiles v. Cooke Inc., No. 21-CV-5743 (JMF), 2025 WL 27662, (S.D.N.Y. Jan. 3, 2025).

Two plaintiffs filed a lawsuit under the False Claims Act (FCA) against Cooke Inc., a Canadian seafood company, alleging it defrauded the U.S. by submitting false statements and omissions to obtain fishing vessel licenses and harvest fish in U.S. waters. To bring a valid claim under the FCA, there must be a request for money or property from the U.S. government. The plaintiffs claimed that Cooke submitted false claims for two types of property: fishing licenses and the fish harvested using those licenses. The court ruled that fishing licenses are not considered property under the FCA, as they are merely regulatory interests. As a result, the claim regarding the licenses was dismissed. The court also found that fish are not considered property under the FCA, as wild fish are not owned until caught. Consequently, the plaintiffs' claim related to the fish also failed. In addition, the plaintiffs argued that Cooke owed

penalties for false statements. The court held that statutory penalties are discretionary and potential fines not yet assessed do not fall within the scope of the FCA. Therefore, the court dismissed this claim as well.

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FOURTH CIRCUIT

Maryland

In re Chesapeake Bay Found., Inc., No. 1434, Sept. term, 2023, 2024 WL 5199079 (Md. Ct. Spec. App. Dec. 23, 2024).

In January 2019, the Council of Trappe, Maryland, and the Trappe East Holdings Business Trust applied to the Maryland Department of the Environment (DEP) for a groundwater discharge permit for sanitary waste from the proposed Trappe East Wastewater Facility. The facility was designed to serve a new residential development in the town and was also intended to employ enhanced nutrient removal. Subsequently, the DEP issued the permit. The plaintiffs challenged the permit, arguing that the DEP erred in granting it because it failed to ensure compliance with water quality standards. The plaintiffs contended that 1) the discharge was equivalent to a direct discharge into surface waters, requiring a NPDES permit under the Clean Water Act (CWA), and 2) the permit was deficient because it did not guarantee zero net discharge of nutrients to surface waters. The Maryland Court of Appeals upheld the department's decision, finding that 1) substantial evidence supported the determination that spray irrigation was not equivalent to a direct surface water discharge, thus not requiring a federal permit under the CWA, and 2) the discharge permit was not legally deficient due to the absence of a guarantee for zero net nutrient discharge.

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NINTH CIRCUIT

Montana

Mont. Trout Unlimited v. Mont. Dep't of Nat. Res. & Conservation, 2025 MT 1, 2025 WL 16774 (Mont. Jan. 2, 2025).

The Montana Supreme Court ruled that mine dewatering activities do not require a beneficial use permit under the Montana Water Use Act (MWUA) in a dispute involving a copper mine project planning to remove 807 acre-feet of groundwater annually by using 350 acre-feet for operations and returning the remainder to the aquifer. While the mining company obtained a permit for the water used in operations, environmental groups argued that the returned water should also require a permit. The court, deferring to longstanding agency interpretation, held that mine dewatering falls into a third category outside of beneficial use or waste under the MWUA and therefore does not require permitting. The dissent argued that this creates a loophole allowing unlimited groundwater pumping at mines without state oversight, though the majority noted that other statutory frameworks still provide environmental regulation.

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Oregon

Boaters Rights Ass'n v. Withee, No. 6:23-cv-00333-MTK, 2024 WL 5186622 (D. Or. Dec. 20, 2024).

The U.S. District Court for the District of Oregon upheld a 2022 state law prohibiting wake surfing and restricting towed watersports for boats over 5,500 pounds in the Willamette River's Newberg Pool. Recreational boaters challenged the law as violating their rights under the Federal Aid in Sport Fish Restoration Act, which funds recreational boating facilities. The court ruled that while the plaintiffs had standing to sue, the state law was valid because it did not prevent general access to federally funded facilities but simply regulated specific activities. The court distinguished the case from precedent involving complete vessel bans, finding that Oregon's targeted restrictions on certain watersports were consistent with the Act's guarantee of access for specified recreational purposes. The court granted summary judgment to the state defendants, concluding that nothing in the Act guarantees an unrestricted right to all forms of recreational boating.

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Washington

Madsen v. State, No. 58232-5-II, 2025 WL 38218 (Wash. Ct. App. Jan. 7, 2025).

Reversing a lower court's decision, the Washington Court of Appeals held that the Washington Department of Fish and Wildlife (WDFW) was not immune from liability in a trespass case involving oyster farm damage. The case arose when oyster farm owners sued WDFW after a salmon habitat restoration project allegedly released contaminants that killed their oysters. The WDFW claimed immunity under a state statute protecting the agency from liability except in cases of gross negligence or wanton misconduct; however, the appellate court found this immunity did not apply because WDFW did not adhere to the statute's permitting requirements. While the jury found that WDFW committed trespass, the appellate court ruled that it was an error to require the jury to find gross negligence or wanton misconduct in order for the owners to recover. The case was remanded for a new trial focused on proximate cause and damages, with the trespass finding preserved.

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ELEVENTH CIRCUIT

Florida

Bear Warriors United, Inc. v. Hamilton, No. 6:22-CV-2048-CEM-LHP, 2024 WL 5279337 (M.D. Fla. Dec. 18, 2024).

An environmental organization filed a lawsuit against the Secretary of the Florida Department of Environmental Protection (FDEP) under the Endangered Species Act (ESA). The lawsuit alleged harm to the West Indian Manatee in the North Indian River Lagoon (IRL) from pollution linked to wastewater discharge regulated by the FDEP. Specifically, the plaintiff contended that the FDEP's oversight of wastewater treatment plants and septic systems contributed to nutrient pollution, resulting in seagrass depletion and manatee starvation. The court ruled that the Secretary had waived his challenge to the plaintiff's standing. Furthermore, the court granted the plaintiff's motion for summary judgment in part because the plaintiff established: 1) FDEP had regulatory authority over the wastewater discharge from wastewater treatment plants; 2) FDEP-regulated discharges had resulted in excess nutrients in the North IRL; 3) those nutrients led to the death of seagrasses through harmful algae blooms; and 4) the death of seagrasses constituted a taking of manatees under the ESA. However, the court determined that whether ongoing harm to the manatees was occurring under FDEP's regulatory regime remained a factual dispute, thereby denying the plaintiff's motion for summary judgment in part.

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Titusville v. Speak up Titusville, Inc., No. 5D2023-3739, 2024 WL 5219853 (Fla. Dist. Ct. App. Dec. 26, 2024).

Florida's Fifth District Court of Appeal held that a voter-approved city charter amendment creating a right to clean water was expressly preempted by a state statute. The court reasoned that the amendment would have granted residents the right to clean water and allowed them to bring legal actions, including for monetary damages, in their own name or in the name of local waters. The court found that state law expressly prohibits local governments from granting such rights unless specifically authorized by general law or the state constitution. Thus, the court reversed the trial court's ruling, holding that principles of separation of powers required enforcement of the legislature's express preemption.

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