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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the June 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-25-03-06).

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U.S. SUPREME COURT

Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colorado, No. 23-975, 2025 WL 1520964 (U.S. May 29, 2025).

The U.S. Supreme Court overturned a ruling from the U.S. Court of Appeals for the D.C. Circuit vacating federal approvals for a railroad line that would move crude oil from Utah to Gulf Coast refineries. The D.C. Circuit had held that the Surface Transportation Board violated the National Environmental Policy Act (NEPA) by not evaluating environmental impacts of the project. The Supreme Court disagreed, finding that the appellate court did not allow the Board substantial deference required by NEPA. The Court noted that because NEPA specifically grants agency discretion in environmental reviews, judicial review should be limited to the deferential arbitrary-and-capricious standard under the Administrative Procedure Act.

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THIRD CIRCUIT

New Jersey

Save Long Beach Island v. U.S. Dep't of Commerce, No. CV 23-1886 (RK) (JBD), 2025 WL 1647587 (D.N.J. June 11, 2025).

The U.S. District Court for the District of New Jersey dismissed a lawsuit filed by an environmental group and an individual challenging approvals issued by the National Marine Fisheries Service (NMFS) to windfarm developers in New York and New Jersey. Specifically, the plaintiffs challenged six Incidental Harassment Authorizations (IHA) and one Letter of Authorization (LOA) issued for the “take” of two species: the North Atlantic Right Whale and the Humpback Whale. The court found two of the challenged IHAs moot due to expiration. The court concluded that the group lacked standing to pursue the remaining claims because they did not show injury in fact. Although the court granted summary judgment on jurisdictional grounds, the court also noted that the claims failed on the merits. The plaintiffs did not meet their high burden to prove that NMFS’s take estimates of Right Whales and Humpback Whales

were arbitrary and capricious under the MMPA's "small numbers" and "negligible impact" requirements. Further, the plaintiffs failed to show that NMFS's decision not to conduct further environmental review under NEPA before issuing the IHAs and LOA was arbitrary and capricious.

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FOURTH CIRCUIT

South Carolina

S.C. Coastal Conservation League v. U.S. Army Corps of Eng'rs, No. 2:22-CV-2727-RMG, 2025 WL 1476517 (D.S.C. May 22, 2025).

The U.S. District Court for the District of South Carolina granted the U.S. Army Corps of Engineers' (Corps) and Environmental Protection Agency's (EPA) motions for summary judgment in a case regarding the development of 180 acres of wetlands on the Cainhoy Peninsula. The S.C. Coastal Conservation League and other environmental groups filed suit challenging the Section 404 permit issued for the development, arguing the Corps failed to satisfy the requirements of the Clean Water Act (CWA) and the National Environmental Protection Act (NEPA). Both the plaintiffs and defendants filed motions for summary judgment on these claims. The court found the Corps did not violate the CWA as it carefully considered all alternative plans, potential impacts to aquatic ecosystems, and benefits to the public. The court also found that the Corps did not violate NEPA because the Corps could have reasonably concluded that an Environmental Impact Statement was not required for this development given the attachment of permit conditions that would reduce the development's impact. Accordingly, the court granted the Corps and EPA's motions for summary judgment and dismissed the plaintiffs' claims. Additionally, because the plaintiffs did not move for summary judgment on their separate claims against the Fish and Wildlife Service (FWS), the court held the plaintiffs waived these claims and granted summary judgment in favor of the FWS.

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NINTH CIRCUIT

Alaska Dep't of Fish & Game v. Fed. Subsistence Bd., No. 24-179, 2025 WL 1551415 (9th Cir. June 2, 2025).

The Ninth Circuit dismissed a suit brought by the Alaska Department of Fish and Game (DFG) against the Federal Subsistence Board (FSB) regarding the FSB's authorization of emergency subsistence hunting of moose and deer for a Tribe on federal public lands during the COVID-19 pandemic. DFG claimed the authorization violated the Alaska National Interest Lands Conservation Act (ANILCA), and the Board improperly delegated management of the hunt to the Tribe. The U.S. District Court for the District of Alaska dismissed the suit as moot. On appeal, the Ninth Circuit reversed in part, vacated in part, and remanded, and the district court subsequently denied the DFG's request for declaratory and injunctive relief. On appeal, the Ninth Circuit held that FSB has power under ANILCA to authorize an emergency subsistence hunt. The court also found that the FSB permissibly relied on a regulation allowing taking wildlife on federal lands for subsistence uses in emergency situations. However, the court found the district court violated the mandate rule by reaching the delegation claim, which was forfeited on appeal, on remand. The court affirmed in part, vacated in part, and remanded with instructions.

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Alaska

Beckwith v. ENI Petroleum US, LLC, No. S-18591 (Alaska June 6, 2025).

A worker on an oil and gas drill site in the Beaufort Sea suffered a workplace accident while unloading equipment from a loading dock. He sought coverage for the accident under both the federal Longshoreman and Harbor Workers' Compensation Act (LHWCA) and the Alaska Workers Compensation Act. He sued the owners and operators of the site alleging negligence under maritime tort jurisdiction. The lower court granted the company's motion for summary judgment, dismissing the plaintiff's claims under the LHWCA and finding the accident did not meet the two-prong test for maritime tort jurisdiction. Upon appeal, the Alaska Supreme Court affirmed the lower court's ruling on the LHWCA. However, they reversed and remanded the maritime tort claims. The court found that the accident did in

fact pass the two-pronged test for maritime jurisdiction by potentially disrupting maritime commerce and by being substantially related to traditional maritime activities.

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Washington

Sound Action v. King Cnty., No. 86228-6-I, 2025 WL 1432898 (Wash. Ct. App. May 19, 2025).

The Court of Appeals of Washington affirmed the Shorelines Hearings Board's decision upholding a permit for a kelp and shellfish farm off the coast of Vashon Island. Sound Action had challenged the permit before the Board as a violation of the State Environmental Policy Act (SEPA), King County Code (KCC), and the County's Shoreline Master Program (SMP). Sound Action then appealed the Board's decision, claiming it was not supported by substantial evidence, based on incorrect interpretations of law, or arbitrary and capricious. After reviewing the record, the court determined that a "fair-minded person" could have reached the same conclusions as the Board, and thus its findings were not "clearly erroneous." The court also held that Sound Action failed to prove that the Board misinterpreted the SEPA, KCC, or SMP. Finally, the court held the Board's decision was not arbitrary and capricious because it provided explanations for rejecting Sound Action's evidence as insufficient.

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D.C. CIRCUIT

District of Columbia

Nat'l Hydropower Ass'n v. U.S. Fish & Wildlife Serv., No. CV 24-2285 (SLS), 2025 WL 1555156 (D.D.C. June 2, 2025).

The National Hydropower Association challenged regulations issued in 2024 by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that allow federal agencies to include measures to offset the impact of incidental take of endangered species, known as "reasonable and prudent measures" in Incidental Take Statements. However, following Executive Orders from President Trump, the agencies announced their intention to revise or rescind regulations, including the ones challenged here. Accordingly, the court decided to grant the defendant's motion for an abeyance in the interest of judicial economy. The court found such an abeyance would not cause the plaintiffs immediate and significant hardship.

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