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Ocean and Coastal Case Alert

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

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U.S. SUPREME COURT

City of S.F., Cal. v. Env't Prot. Agency, No. 23-753, 2025 WL 676441 (U.S. Mar. 4, 2025).

In 2019, a San Francisco public wastewater treatment facility renewed its National Pollutant Discharge Elimination System (NPDES) permit. The EPA added two new end-result requirements to the permit, holding the facility accountable for the water quality in the receiving body of water. Unlike other permit provisions, end-result requirements do not specify actions to take or avoid. The City of San Francisco filed a lawsuit, arguing that 33 U.S.C. § 1311, the federal statute governing effluent limits, does not allow the EPA to impose NPDES permit requirements based on whether receiving waters meet water quality standards. On appeal, the Ninth Circuit ruled that § 1311(b)(1)(C) authorized the EPA to impose limitations necessary to ensure that applicable water quality standards are met in a receiving body of water. The U.S. Supreme Court reversed the Ninth Circuit's decision, finding that the end-result requirements exceeded the EPA's authority. The Court held that § 1311(b)(1)(C) did not allow the EPA to impose NPDES permit requirements conditioning compliance on whether receiving waters meet water quality standards. The Court reasoned that determining the necessary steps to meet water quality standards is the EPA's responsibility, with Congress having provided the tools for this. Additionally, the Court found it unjust to penalize the plaintiff for failing to take steps that it was never notified to take.

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FIRST CIRCUIT

Conservation L. Found., Inc. v. Acad. Express, LLC, 23-1832, 2025 WL 560059 (1st Cir. Feb. 20, 2025).

An environmental group alleged that a bus company violated the Clean Air Act (CAA) by exceeding idling limits in Massachusetts and Connecticut. The federal district court granted summary judgment for the company due to standing issues. On appeal, the First Circuit ruled for the first time that air-pollutant exposure is an injury in-fact, establishing standing regardless of additional harms. The court also joined the Second, Tenth, and Eleventh Circuits in holding that a CAA plaintiff can meet the traceability requirement for standing with proof of geographic proximity, even if other sources contributed to the pollution. The First Circuit further affirmed that associational standing is determined at the commencement of the lawsuit, not the time of the alleged harm. Finally, the court ruled that breathing polluted air, as well as avoiding or less enjoyment of recreational activities, constitutes injuries in-fact for establishing group members' standing. The First Circuit remanded the case to apply the new precedents and determine factual findings on traceability, noting that expert testimony is required to assess the distance and concentration of air pollution from idling buses.

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FOURTH CIRCUIT

Virginia

Precon Dev. Corp. v. U.S. Army Corps Eng'rs, No. 2:24-CV-337, 2025 WL 510234 (E.D. Va. Feb. 14, 2025).

In 2006, a company sought to develop residential lots on wetlands in Virginia, but the U.S. Army Corps of Engineers denied the necessary Clean Water Act (CWA) permit. The Fourth Circuit upheld the Corps' decision on appeal. In 2023, the Supreme Court established a new test for determining whether wetlands fall under the CWA. The plaintiff then filed a new lawsuit, arguing the wetlands are not "waters of the United States." In the new lawsuit, the district court ruled that the Corps was immune from suit and that the court lacked jurisdiction because the plaintiff did not challenge an "agency action" or a "final agency action," as required under the Administrative Procedure Act (APA). Under the APA, the U.S. government is generally immune from lawsuits unless a statute allows judicial review or an agency makes a final decision with no other legal remedy available. The court clarified that the previous jurisdictional determination had expired in 2017 and could not be considered a "final agency action." Moreover, the court determined it lacked the authority to overrule the Fourth Circuit's earlier jurisdictional ruling.

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SIXTH CIRCUIT

United States v. Michigan, No. 23-1931, 2025 WL 798970 (6th Cir. Mar. 13, 2025).

The United States and several Indian tribes sued the State of Michigan over the allocation, management, and regulation of fishing in Great Lakes waters. In 2023, the U.S. District Court for the Western District of Michigan approved a proposed consent decree over objections from the Sault Ste. Marie Tribe of Chippewa Indians. The Sault Ste. Marie Tribe appealed. On appeal, the Sixth Circuit affirmed, ruling that the absence of unanimous consent did not preclude the district court from issuing the decree. The court found that the district court had followed the appropriate legal standards and provided the Sault Tribe with due process. Finally, the Tribe's appeal of the district court's extension of its prior 2000 decree was moot.

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NINTH CIRCUIT

Prutehi Litekyan: Save Ritidian v. U.S. Dep't of the Airforce, No. 22-16613, 2025 WL 481474 (9th Cir. Feb. 13, 2025).

A non-profit organization sued the U.S. Air Force alleging failure to comply with the National Environmental Policy Act (NEPA) before applying to renew its Resource Conservation and Recovery Act (RCRA) permit for hazardous waste disposal at Tarague Beach in Guam. The Air Force had long used the beach for open burning and detonation of unexploded ordnance. As its 2018 RCRA permit neared expiration, the Air Force applied for permit renewal for the 2021-2024 period without issuing an environmental impact statement or environmental assessment. The district court ultimately dismissed the lawsuit for lack of standing, ripeness, and failure to state a claim. However, the Ninth Circuit found that the organization had standing because the injury was traceable to the Air Force's lack of a "hard look" at the environmental impacts. The court also ruled that the Air Force's decision to apply for a permit specifically for a three-year period constituted final agency action, ripe for judicial review, as it reflected the agency's commitment to a specific location and method for hazardous waste disposal. Finally, the court determined that NEPA's procedural requirements applied and could not be displaced by RCRA, so the Air Force was not exempt from NEPA. Therefore, the Ninth Circuit reversed and remanded the district court's decision.

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Alaska

Association of Village Council Presidents, et al. v. Nat'l. Marine Fisheries Serv., et al., No. 3:23-CV-00074-SLG, 2025 WL 776638 (D. Alaska Mar. 11, 2025).

The U.S. District Court for the District of Alaska upheld the National Marine Fisheries Service's (NMFS) 2023–2024 and 2024–2025 groundfish harvest specifications for trawl fisheries in the Bering Sea and Aleutian Islands. The court rejected two Alaska Native regional tribal organizations' claim that NMFS acted arbitrarily and capriciously and violated the National Environmental Policy Act (NEPA) in adopting harvest specifications that relied on studies from 2007 and 2004. The plaintiffs asserted the agency should have completed a supplemental environmental impact

statement due to dramatic changes to the ecosystem. The court found that NMFS's annual harvest specifications were not arbitrary and capricious because the agency performed a "reasoned evaluation" of the new changes in the region to conclude that the harvest specifications would not result in significant impacts to the human environment.

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FEDERAL CLAIMS

Andrews v. United States, 24-1088, 2025 WL 658212 (Fed. Cl. Feb. 27, 2025).

The federal government sued a property owner, accusing him of violating the Clean Water Act (CWA) by filling in approximately thirteen acres of wetlands on his property. The trial court issued an injunction, requiring the defendant to restore the wetlands. The injunction also allowed government agents to inspect remediation efforts provided the defendant received five days' notice. In response to the injunction, the property owner filed a lawsuit in the Court of Federal Claims, claiming that the government took his property without compensation, thereby violating the Fifth Amendment. The court, however, determined that it lacked subject matter jurisdiction because the Court of Federal Claims cannot review the merits of a federal district court decision. Additionally, the court found that the defendant's takings claim was not ripe—actual harm had not occurred, and the case was not ready for litigation—because the defendant had never sought a CWA permit. For a takings claim regarding land use to be ripe, a governmental entity must make a decision regarding a permit application, which the court found had not occurred.

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