



Louisiana Sea Grant Legal Program

Louisiana Coastal Law E-mail Update Issue #18, December 2004

Recent Court Cases

City of Sausalito v. O'Neill, 386 F.3d 1186 (9th Cir. 2004)

Petitioners, the City of Sausalito, sought to enjoin the National Park Service from developing an area adjacent to the city. The City alleged violations of nine environmental statutes in the district court but was denied standing to assert its claims. The 9th Circuit Court of Appeals held that standing was improperly denied under five of those statutes and remanded the case for further consideration of the City's claim under the Coastal Zone Management Act (CZMA) and the Marine Mammal Protection Act (MMPA).

This case is important for the CZMA for two reasons. First, the court of appeals held that local governments can have standing to challenge consistency determinations even though they are not charged with making or concurring with consistency determinations under the Act because they are "adversely affected or aggrieved" by an improper determination. Second, the court held that the consistency determination was based on an improper ground under the CZMA because the Park Service relied on a "general claim" of insufficient funds. The CZMA specifically states that the federal government cannot claim lack of funds as a reason for making a consistency determination.

Giorgio v. Alliance Operating Corporation, 2004 La. App. LEXIS 2845, NO. 2003-CA-1832 (La. App. 4th Cir. Nov. 10, 2004)

In this case, recreational fishermen instituted a suit against the Louisiana Department of Natural Resources and several oil companies for damages incurred after their boat struck a set of pilings adjacent to a large, unlit oil production platform. The platform had been abandoned and released to the state. The court held that since the platform had been released and declared abandoned by the state that the state was the owner. The court also determined that because the state owned the platform and had actual notice of the dangerous condition they were responsible for the damage.

Simpson v. State of Alaska, 2004 Alas, LEXIS 138, NO. S-10948, NO. 5846 (Nov. 19, 2004)

The issue in this case was whether the maximum number of blackcod longline fishery permits issued by the Alaska Commercial Fisheries Entry Commission (ACFEC) was too low. The ACFEC is required to set the maximum number of permits for a non-distressed fishery, such as the blackcod longline fishery, at a level no lower than the highest number of units of gear fished in the four years prior to the limitation of permits in the fishery. In this case, the ACFEC set the

maximum number of permits at seventy-three, which corresponded to the highest number of units of gear fished in the four prior years. The ACFEC decided not to raise the number any higher because Fish and Game Managers were concerned about the health of the stock. The Alaska Supreme Court upheld the decision of the ACFEC because it was reasonably based on the opinions of the Fish and Game Managers and not arbitrary.

In the News

Governor Blanco Seeks Cut of Federal Royalties for Offshore Oil Revenue

Governor Blanco is seeking to form a coalition with the Governors of other coastal oil producing states to petition Congress for 10% of the royalties paid by owners of oil and gas operations in federal waters. It is estimated that a 10% cut for Louisiana could result in 300 million a year to restore wetlands.

The Governor argues that coastal states such as Louisiana foot the bill for the environmental degradation caused by these activities and the increased onshore infrastructure costs needed to maintain these activities. She also argues that because 50% of the royalties from oil and gas produced on federal property in the West have gone to those states for years, Louisiana should receive its "fair share."

Source: Phil Magers, *Blanco Wants Cut of Oil Revenue*, [UPI](#) (Nov. 29, 2004).

The Federal Energy Regulatory Commission Approves Evangeline Parish Gas Storage Facility

The Federal Energy Regulatory Commission (FERC) has approved a high-deliverability, salt dome storage facility in Evangeline Parish. FERC also granted a blanket transportation certificate to the facility and authorized the facility to charge market-based rates.

Source: FERC Approves Pine Prairie Storage Project, Authorizes Market Based Rates, [Foster Natural Gas Report](#) (Nov. 25, 2004).

Recent Spills Cause Inquiry into Speedier Clean-Up Response

In October, an oil spill polluted 21 miles of South Puget Sound shoreline. In November a tanker spilled 30,000 gallons of crude oil into the Delaware River. On December 9, a deadly shipwreck in Alaska threatened the Alaska Maritime Wildlife Refuge with spilled fuel. The effects of these spills were disastrous to the local environments.

In response to these spills, officials are looking for faster ways to clean up after spills especially at night or in fog. The spill in the South Puget Sound is of particular concern because officials did not check the spill until five hours after it was reported.

Besides reducing response times, it is hoped a new device that uses lasers to track oil will assist in speedier clean up.

Sources: Warren Cornwall, *Speedier Response Times to Spills is Sought*, [The Seattle Times](#) (Dec. 6 2004).

30,000 Gallon Oil Spill Kills Birds, Threatens More, [The Chicago Tribune](#) (Nov. 28 2004).

Deadly Shipwreck Now a Major Alaska Oil Spill, [MSNBC](#) (Dec. 10, 2004).

Delta National Wildlife Refuge Makes Threatened List

The Defenders of Wildlife, a non-profit environmental group, placed Delta National Wildlife Refuge (NWR) on their list of the ten most threatened wildlife sanctuaries. Delta made the list because of spills of oil and salt brine that is used to produce oil. Delta NWR has 338 active and inactive oil wells. The most recent spill was caused by Hurricane Ivan and damaged 100 acres.

Source: AP, *Delta Refuge Makes Most Threatened List*, The Advocate (Oct. 10, 2004)

Senators Urge Natural Gas Production in Outer Continental Shelf

Senators, including Mary Landrieu (D-La.), wrote a letter to the Department of the Interior urging that certain areas in the Outer Continental Shelf (OCS) be opened for the production of natural gas.

The areas in question are currently not open to leasing due to administrative withdrawal or congressional moratoria. The letter urges the Department of the Interior to solicit comment from interested parties on the opening of natural gas leases in the moratoria areas. The Senators are requesting increased production because they claim high gas prices are harming industry.

Key Senators Urge Consideration of Production in Off-Limits OCS Areas, Greenwire (Dec. 8, 2004) available at <http://www.eenews.net/Greenwire/include/print.php?single=12080401>

Study Reports that Twenty Percent of Coral Reefs are Permanently Wrecked

According to a study released by the Australian Institute of Marine Science, approximately seventy percent of the world's coral reefs have been wrecked or are at risk because of human activities, though some are showing signs of resilience to global warming. Of those reefs, twenty percent have been permanently destroyed, another twenty-four percent are under imminent risk, and a further twenty-six percent are under a long-term threat of collapse.

Pollution, overfishing, global warming, diseases, and coastal development are among the biggest threats to coral reefs. The rise in ocean temperatures caused by global warming causes the bleaching of coral reefs, which results in serious damage to the reefs. The study did report some good news for coral reefs, as it found that about forty percent of the reefs that were severely damaged by bleaching in 1998 (a year when the ocean's temperature was abnormally high) are either recovered or are well on their way to recovering.

Sources: *Most Coral Reefs Under Threat Some Resilient*, Reuters (Dec. 6, 2004).

The full text of the study is available online at: <http://www.aims.gov.au/pages/research/coral-bleaching/scr2004/>.

Recent Louisiana Attorney General Opinion

Opinion No. 04-0291 (Nov. 22, 2004) – Authority to Regulate the Sale of Small Turtles

The attorney general's office recently released an opinion concerning whether federal or state law governed the sale of small turtles. The opinion found that generally both federal and state law prohibited the intrastate sale of pet turtles, and that the federal and state laws on the subject were not in conflict. The opinion also stated that if conflicts were found to exist that federal law would trump state law.

The Food and Drug Administration (FDA) regulates the sale of small turtles (and their eggs) to prevent the spread of disease. Generally turtles of less than four inches cannot be sold or publicly distributed under FDA regulations. The FDA does permit the sale of small turtles and turtle eggs for research, for export only and the sale of turtle eggs not in connection with a business. It should be noted that these regulations do not apply to marine turtles. The State of Louisiana has added additional regulations governing the regulation, inspection, and control of pet turtles. Since these laws do not permit the sale of small turtles the attorney general determined that they were not in conflict with federal law.

Recent Federal Register Notices

USDA Announces Interim Final Country of Origin Labeling Rule

The United States Department of Agriculture (USDA) announced an interim final rule for the labeling of fish and shellfish. The rule requires retailers to notify their customers of the country of origin of all wild-caught and farm-raised fish and shellfish sold within the U.S. The country of origin information may be labeled, stamped, or marked on the commodity or its packaging, display unit, or bin. Fish and shellfish are not required to be labeled with their country of origin if they are ingredients in a processed food item, or if they are significantly transformed by processing (i.e., if they are cooked).

Farm-raised fish and shellfish must be hatched, raised, harvested, and processed in the U.S. and must not have undergone processing in any other place to be labeled a product of the U.S. Wild fish and shellfish must be harvested in the waters of the U.S. or by a U.S. flagged vessel and processed in the U.S. or aboard a U.S. flagged vessel and must not have undergone a substantial transformation in any other place to be labeled a product of the U.S.

The regulation also requires retail suppliers of fish and shellfish to maintain records to establish the source and recipient of any fish or shellfish sold for one year after the date of sale. Retailers must maintain documentation of the country of origin of fish and shellfish until the product is sold. This regulation will be effective on April 5, 2005.

Source: Mandatory Country of Origin Labeling of Fish and Shellfish; Interim Rule, 69 Fed. Reg. 59708 (Oct. 5, 2004)(to be codified at 7 C.F.R. pt. 60).

NOAA to Review the Louisiana Coastal Management Program

The NOAA Office of Ocean and Coastal Resource Management has announced that it will review the performance of the Louisiana Coastal Management Program. The Coastal Zone Management Act (CZMA) requires the review of state programs authorized under the act. The Louisiana Coastal Management Program will be evaluated on its adherence to its Coastal Management Program Document and its adherence to the terms of financial assistance awards received under the CZMA.

A site visit will be conducted March 21-25, 2005. A public meeting will be held Wednesday, March 23, 2005 at the Louisiana Department of Natural Resources Baton Rouge headquarters.

Source: Evaluation of State Coastal Management Programs and National Estuarine Research Reserves; Notice of Intent to Evaluate, 69 Fed. Reg. 67534 (Nov. 18, 2004).

NOAA Temporarily Suspends the Use of Some TEDs

Due to the large amount of debris from Hurricane Ivan present off of the Louisiana and Alabama coasts, the National Marine Fisheries Service (NMFS) has authorized the use of limited trawling times as opposed to Turtle Excluder Devices (TEDs) to protect sea turtles until December 27, 2004.

The TEDs, which are designed to keep sea turtles out of shrimp trawls, have been clogging with debris. When the TEDs become clogged, not only can shrimp not be caught effectively, but also turtles cannot be effectively prevented from being caught. To remedy this situation, the NMFS is permitting TEDs to be removed from vessels, but is requiring that tow times be reduced to seventy-five minutes from the time the trawl doors enter the water until they are retrieved from the water. This temporary rule is only in effect from the Mississippi/Louisiana border to a line at 90 [deg] 03'00" West longitude.

Source: Sea Turtle Conservation; Shrimp Trawling Requirements; Temporary Rule, 69 Fed. Reg. 69826 (Dec. 1, 2004).

NMFS Announces the Close of Red Snapper Season

The NMFS has announced that the commercial fishery for red snapper in the Exclusive Economic Zone (EEZ) of the Gulf of Mexico will close at noon, local time on December 15, 2004. The fishery will reopen at noon, local time on February 1, 2005.

Source: Closure of the Fall Commercial Red Snapper Component; Closure; 69 Fed. Reg. 70196 (Dec. 3, 2004).

NMFS Proposes 2005 Fisheries List

The NMFS has proposed the List of Fisheries (LOF) for 2005. The LOF is required under the Marine Mammal Protection Act. Each commercial fishery on the LOF is divided into three categories based upon the level of serious injury and mortality caused to marine mammals by operations in the fishery.

Among the proposed changes to the LOF is the removal of the Eastern Gulf of Mexico stocks of Atlantic spotted dolphins and pantropical spotted dolphins from the list of marine mammals incidentally injured or killed by the Gulf of Mexico butterfly trawl fishery, and the addition of the Northern Gulf of Mexico outer continental shelf stock and Northern Gulf of Mexico continental shelf edge and slope stock of bottlenose dolphins to the list of marine mammals injured or killed by the Gulf of Mexico Butterfly Trawl Fishery. The NMFS also proposes to add the Western Gulf of Mexico coastal stock of bottlenose dolphins, the Eastern Gulf of Mexico stock of bottlenose dolphins, the Gulf of Mexico Bay, Sound, and estuarine stock of bottlenose dolphins and the Florida stock of the West Indian manatee to the list of marine mammals incidentally injured or killed by the Southeastern U.S. Atlantic and Gulf of Mexico shrimp trawl fishery.

Source: List of Fisheries for 2005; Proposed Rule; 69 Fed. Reg. 70094 (Dec. 2, 2004).

Gulf of Mexico Fishery Management Council is Considering an Individual Fishing Quota for Grouper Fishery

The Gulf of Mexico Fishery Management Council is considering an Individual Fishing Quota (IFQ) for the commercial grouper fishery of the Gulf of Mexico. Comments are due by December 16,

2004. If an IFQ is established, October 15, 2004 is being considered as a control date for establishing catch histories.

Source: Commercial Reef Fishery of the Gulf of Mexico; Control Date; Advance Notice of Proposed Rule Making; 69 Fed. Reg. 67106 (Nov. 16, 2004).

Websites of Interest

The Census of Marine Life

<http://www.coml.org/coml.htm>

The Census of Marine Life is a global network of researchers in more than 70 nations completing a ten-year assessment of ocean life to explain the diversity, distribution, and abundance of marine life. This website is updated frequently with new discoveries including pictures of newly discovered species of ocean life.

Louisiana Department of Environmental Quality- Nonpoint Source Pollution Program

<http://nonpoint.deq.state.la.us/manage/0.html>

This website contains links about the organization of Louisiana's Nonpoint Source Pollution Program, links to interagency agreements, links to explanations of how the program is assessed, and links explaining the program's implementation.

University of Washington School of Law- Research Guide for U.S. Ocean and Coastal Law

<http://lib.law.washington.edu/ref/ocean.htm>

This website contains links to many research guides on ocean and coastal law. It arranged topically, much like a table of contents in a book. Clicking on one of the main topics brings you to a page with links to more specific information on that topic.