

Andy Wilson's summary of cases and issues he covered at the Fisheries Committee meeting.

1. [Mexican Gulf Fishing Co. v. United States DOC, 2022 U.S. Dist. LEXIS 34176, at \\*1 \(E.D. La. Feb. 28, 2022\)](#)

Challenge by charter fishermen and headboat operators to NMFS rulemaking related to reporting and GPS monitoring requirements. In response to U.S. Motion for Summary Judgment, *in an 81 page opinion*:

Held: [1]-Because the tracking requirement met the Burger criteria, it was reasonable under the closely regulated industry exception to the U.S. Const. amend. IV warrant requirement; the tracking requirement was the only way to provide accurate data on the locations fished and it was necessary to further the government's interest in protecting the fisheries and preventing overfishing; [2]-The required purchase of tracking equipment by regulated fishermen was authorized as necessary for the conservation and management of the fishery, namely the use of equipment for vessels required to facilitate enforcement of the Magnuson-Stevens Fishery Conservation and Management Act; [3]-The tracking requirement did not exceed the authority of the U.S. Congress under the Commerce Clause of the U.S. Constitution; as voluntary participants, the fishermen were not being regulated for doing nothing.

Great discussion of the APA and NMFS rulemaking process.

1. [Campo v. United States, 157 Fed. Cl. 584, 587 \(2021\)](#)

La. Oyster fishermen brought takings claim in Ct. of Federal Claims for damage to oyster leases caused by the release of freshwater as a result of the Corps of Engineers decision to open the Bonnet ("Bonney") Carre' Spillway to prevent flooding in New Orleans. In response to a U.S. Motion to Dismiss:

Held:[1]-In their suit against the federal government for damages to their oyster beds and reefs as a result of the opening of a spillway, the oyster farmers, under Louisiana precedent, federal common law, and Lockean labor theory, showed compensable property rights in the oysters as against the government; the government conceded when the farmers sold oysters, they were paid for the fruits of their effort, and they demonstrated rights to exclude, destroy, use, possess, sue third parties for damages, recover for larceny, alienate, and enjoy the fruits of selling oysters.

1. [In re ACF Basin Water Litig., 554 F. Supp. 3d 1282, 1287 \(N.D. Ga. 2021\)](#)

Challenge by NGO's and oyster fishermen to Corps of Engineers' operation of Apalachicola-Chattahoochee-Flint (ACF) River Basin as water flows had wiped out the oyster industry and adversely affected the Florida ecosystem in the Apalachicola Bay.

Held:[1]-The U.S. Army Corps of Engineers' adoption in 2017 of the Final Environmental Impact Statement for the Apalachicola-Chattahoochee-Flint (ACF) River Basin Water Control Manual and Water Supply Storage Assessment was not arbitrary and capricious and did not violate the Water Supply Act, the Rivers and Harbors Acts of 1945 and 1946, NEPA, or the APA because the Manual Update assured a dependable

supply of water from Lake Lanier and the Chattahoochee River to the Atlanta Metropolitan region through the year 2050, and it did so without significant sacrifices to environmental standards, and recognized the need to maintain other uses of the ACF system such as flood control, hydropower generation, fish and wildlife conservation, navigation and recreation. *On Appeal now.*

1. [Harrison Cty. v. Miss. River Comm'n, 2021 U.S. Dist. LEXIS 172976, at \\*3 \(S.D. Miss. Sep. 13, 2021\)](#)

Another challenge to the Corps of Engineers' operation of the Bonnet Carre Spillway brought by a Ms. County, Ms. business entities and Ms. Fisheries who claimed that the freshwater outflow from the spillway entered Mississippi Sound and caused economic loss.

In response to Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim filed by the defendants, Mississippi River Commission ("MRC") and U.S. Army Corps of Engineers ("the Corps"), Held: the plaintiffs' claims against the MRC should be dismissed pursuant to Rule 12(b)(6) because the MRC is not an agency capable of being sued under the Administrative Procedure Act ("APA"). In addition, the plaintiffs' NEPA claims against the Corps must be dismissed for lack of jurisdiction because, at this time, no major federal action remains to occur. The plaintiffs' Motion for Leave to File an Amended Complaint is denied as moot.

1. Summary of the enactment of legislation in each of the Gulf of Mexico States related to "alternative oyster culture" which allows for the funding, loaning of equipment, and training to establish a new form of oyster culture technique utilizing floating cages to raise/farm oysters rather than rely upon traditional on bottom oyster reefs.