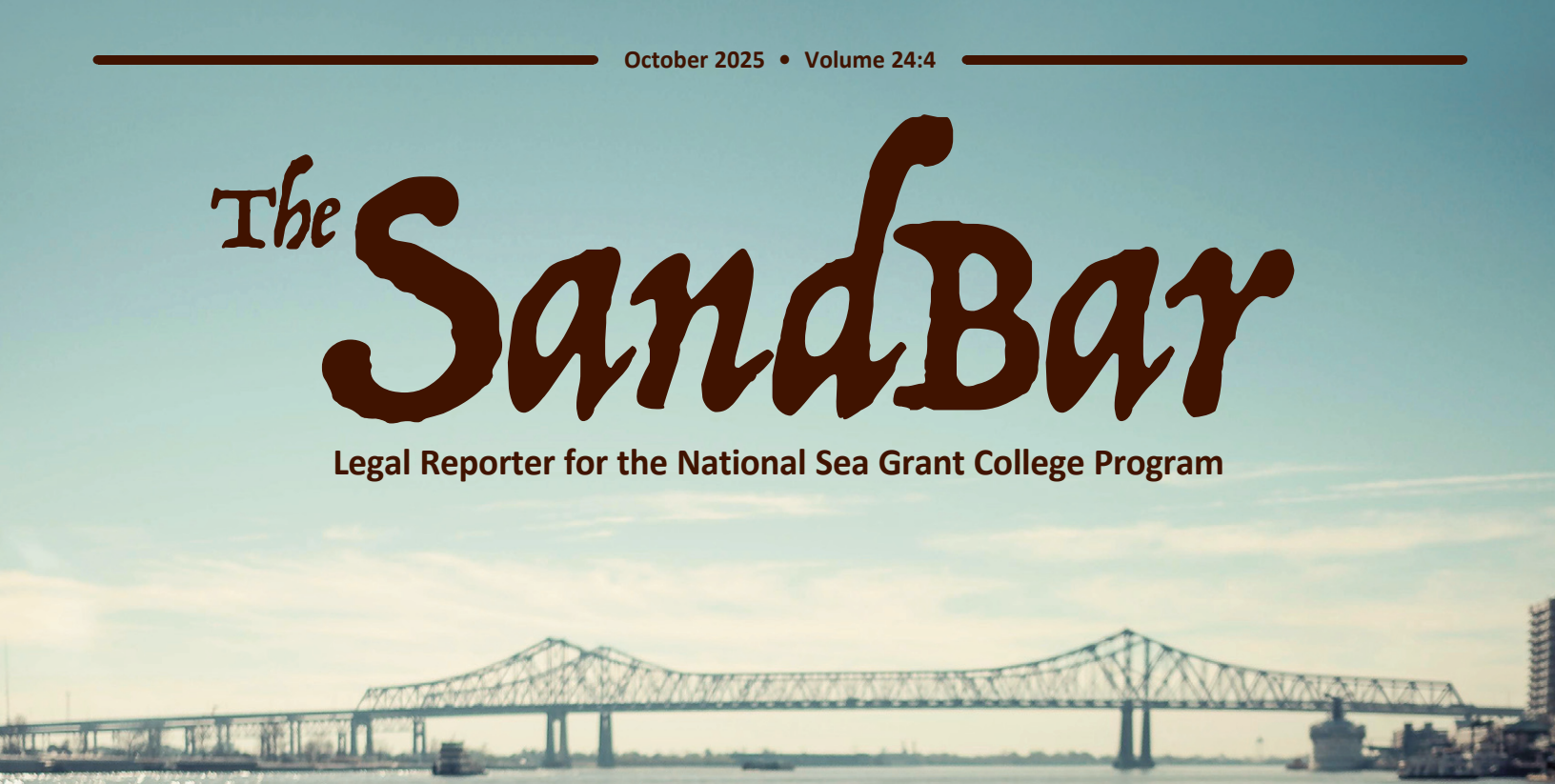
October 2025 • Volume 24:4

The SandBar

Legal Reporter for the National Sea Grant College Program



Louisiana Coastal Parishes' Land Loss Lawsuit Reaches the Supreme Court

Also in this issue

Our Staff

Editor:
Terra Bowling

Production & Design:
Barry Barnes

Contributors:
Kelly Burton
Ilinca Johnson
Charles Miller
Bradley Reimer
Taylor Young

Follow us on **Facebook** at:
facebook.com/nsglc

Follow us on **X** at:
x.com/sglawcenter

Follow us on **LinkedIn** at:
linkedin.com/company/national-sea-grant-law-center

The University of Mississippi complies with all applicable laws regarding affirmative action and equal opportunity in all its activities and programs and does not discriminate against anyone protected by law because of age, creed, color, national origin, race, religion, sex, handicap, veteran or other status.

ISSN 1947-3966 NSGLC-25-02-04 *October 2025*
ISSN 1947-3974

THE SANDBAR is a quarterly publication reporting on legal issues affecting the U.S. oceans and coasts. Its goal is to increase awareness and understanding of coastal problems and issues. To subscribe to *THE SANDBAR,* visit: nsglc.olemiss.edu/subscribe. You can also contact: Barry Barnes at bdbarne1@olemiss.edu.

Sea Grant Law Center, Kinard Hall, Wing E, Room 258, University, MS, 38677-1848, or contact us via email at: tmharget@olemiss.edu. We welcome suggestions for topics you would like to see covered in *THE SANDBAR*.

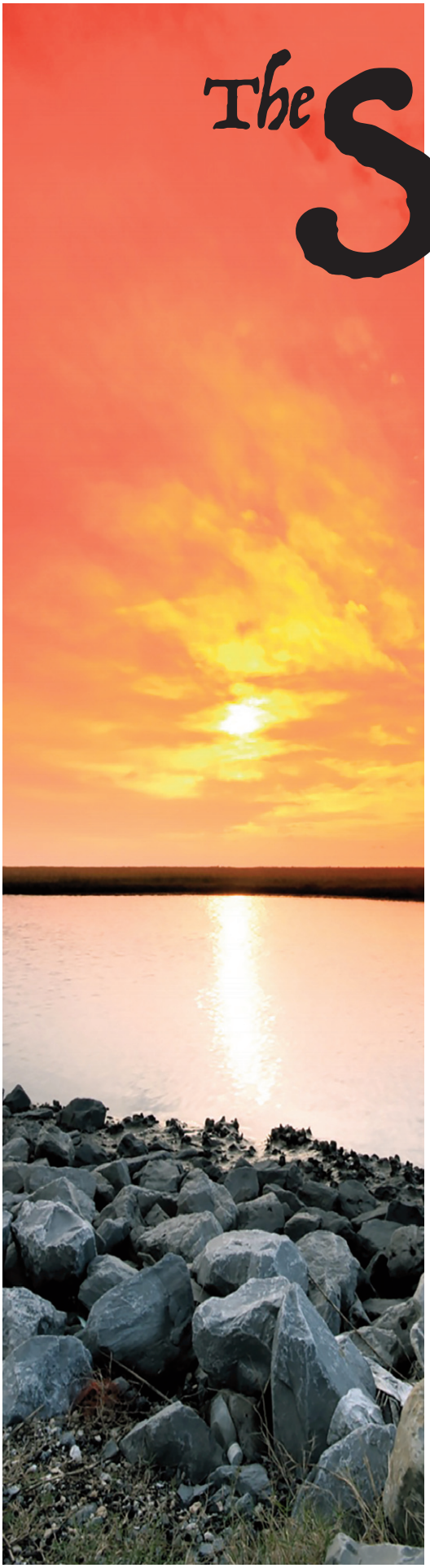
THE SANDBAR is a result of research sponsored in part by the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, under award NA24OARX417C0025-T1-01, the National Sea Grant Law Center, Mississippi Law Research Institute, and University of Mississippi School of Law. The U.S. Government and the Sea Grant College Program are authorized to produce and distribute reprints notwithstanding any copyright notation that may appear hereon.

Recommended citation: Author's Name, *Title of Article*, 24:4 SANDBAR [Page Number] (2025).

Cover page photograph of a shoreline view in Louisiana, courtesy of Luca Sartoni.

Contents page photograph of sunset over Grand Isle, Louisiana, courtesy 23am Media.

Sea Grant
LAW CENTER



The SandBar

Contents

Louisiana Coastal Parishes' Land Loss Lawsuit Reaches the Supreme Court

Charles Miller[1]

View of the Louisiana coast, courtesy of Christoffer Grann.

The U.S. Supreme Court has agreed to hear a case seeking to hold various oil companies, including BP, Chevron, Exxon, and Shell, responsible for damage to the Louisiana coast. For the last twelve years, the case has ping-ponged between state and federal courts. The case has ballooned into one that may have long-lasting effects for environmental restoration efforts and beyond as the Court's ruling may determine when federal contractors can move a case to federal court and escape state jurisdiction.

What's At Stake

The rapid coastal erosion of Louisiana began with human activity. Leveeing of the Mississippi River after the 1927 floods cut off a sediment supply to the coastal plain and increased rates of land loss.[2] The state has lost over 2,000 miles of coastline since the 1930s and has been increasingly vulnerable to hurricane damage due to this loss.[3] Oil companies, which ramped up production after World War II, preferred to dredge canals rather than constructing roads, exacerbating land subsidence.[4]

Gas burning at the Deepwater Horizon oil spill site, courtesy of Patrick Kelley/U.S. Coast Guard.

Additionally, exploratory wells have created destructive air pockets in the bayous.[5] The petroleum industry estimates that they are responsible for at least 36% of all wetlands loss in Southeast Louisiana. Other estimates place the largest driver of jobs in Louisiana as the cause of nearly 90% of the damage.[6]

In recent years, funding to address coastal erosion has become scarce. The 2011 Deepwater Horizon oil spill settlement money is beginning to run out.[7] The Mid-Barataria Sediment Diversion, the most extensive component of the state's master plan to restore the coast, was recently cancelled.[8] The onus for coastal restoration has now passed to local bodies, and a large settlement in this case could fund projects for years.

What's Taking So Long?

In 2013, several Louisiana coastal parishes, joined by the Louisiana Attorney General and the Louisiana Secretary of Natural Resources, filed forty-two lawsuits in state court against a myriad of oil and gas companies, alleging that those companies had violated Louisiana's State and Coastal Resources Management Act of 1978 (SLCRMA).[9] This act requires companies engaging in "activities within the coastal zone which has a direct and significant impact on coastal waters" to obtain permits.[10] The coastal parishes argued that the companies either violated the permits granted under SCLRMA or failed to get the permits altogether.

After twelve years, the litigation has not yet reached the merits of the parishes' arguments on the responsibility of environmental degradation. Rather it is dominated by the oil company's attempts to have their case heard in federal rather than state court. The parishes claimed the case should be in state court because "past 'exploration and production activities'—'such as the use of dredged canals and earthen pits, the spacing of wells, and the lack of saltwater reinjection wells'— [] harmed the Louisiana coast."[11] State courts are generally more favorable to plaintiffs, as shown by a recent $700 million jury award in one of the coastal parish lawsuits.[12]

After a first failed attempt to move the cases from state to federal court, the oil companies asked for clarification about those state law violations in 2018. The expert report produced in response represented the position of the plaintiffs in all forty-two cases.[13] It created a new strategy for the defendants. It "triggered" the oil companies' use of a grandfather clause within SCLRMA.[14] The oil companies contended that their WWII era military contracts allowed them to be heard in federal, rather than state court. The argument turns on federal officer removal.

Eighty-Year-Old Contracts

Removal is when the defendant moves a case from state court to federal court. This is only possible if the case could have been brought in federal court initially. Federal officer removal is one way to make that move. Federal courts have jurisdiction over civil actions against "any person acting under [an] officer" of the United States "for or relating to any act under color of such office."[15] The statute was amended in 2011 by Congress to change the type of cases that could be removed. The amendment expanded the scope of federal officer removal beyond cases "for" an act under color of federal office to also include case *relating to* such actions.[16]

Since 2018, the oil companies have argued that they were acting under a federal officer when extracting crude oil because they had contracts to refine aviation fuel supervised by the Petroleum Administration for War. After many removal attempts, remands, and appeals, the Fifth Circuit Court of Appeals ruled on the issue in 2024. The court found that the oil companies were "acting under" a federal officer in fulfilling the refining contracts, but that the actions within the contract were unrelated to the production of crude oil.[17] Removal was therefore not appropriate as the parishes' environmental claims related to production activities. The case was remanded again to state court. The oil companies appealed to the Supreme Court, which granted a writ of certiorari in June 2025.

More than Louisiana

The case has implications reaching far beyond environmental law. A mechanism for reaching federal court could be gained for whole industries based on government contracts. This could be true even for actions loosely related to those contracts. The plaintiffs argue that this would establish limitless opportunities for removal.[18]

The various oil companies secured amicus briefs from heavy hitters across industry and military to persuade the Supreme Court to take up the case. The U.S. Chamber of Commerce, with the National Association of Manufacturing and Goodwin Proctor filed an amicus brief, and another was filed by two former Chairmen of the Joint Chiefs of Staff. The Joint Chiefs of Staff stated that a ruling to send the case to state court would deter federal contractors from assisting the military in wartime.[19] The brief of the world's largest business federation and lobbying group argued that the ruling has wide ranging implications for military contracts ranging from health care to helicopter manufacturers.[20] However, the State of Louisiana dismissed these arguments as "industry bemoan[ing] the trials and tribulations of litigating in state court."[21] It is expected that various environmental and plaintiff advocate groups will write briefs on the side of the coastal parishes. In a case that turns on questions of civil procedure, the consequences for environmental litigation still loom large.

Conclusion

Litigation involving large corporations tends to take a long time. This case is one so bogged down in procedural issues that it has so far avoided being heard on the merits. While finding the companies' removal proper could help streamline litigation, it would deprive plaintiffs of having their cases heard in state courts. The Supreme Court begins hearing cases on the first Monday of October. At the time of publication, an oral argument date for the case has not been set.

Endnotes

1 NSGLC Research Associate; 2L University of Mississippi School of Law.

2 Harry Roberts and Irv Mendelssohn, *Loss of Louisiana's Coastal Wetlands*, excerpt from From Air to Land to Sea: 50 Years of Educating Coastal Leaders. (Jan. 12, 2022).

3 *A Changing Landscape*, Coastal Protection and Restoration Authority.

4 Catherine Hunt, Louisiana Land Loss and Jurisdiction Tug of War: An Analysis of Federal Officer Removal Among the Circuits and in Parish of Plaquemines v. Chevron Usa, Inc., 11 LSU J. Energy L. & Resources, 489 at 491 (2023).

5 Nathaniel Rich, The Most Ambitious Environmental Lawsuit Ever, N.Y. Times Mag., (last updated Oct. 14, 2014).

6 Jacob J. Pritt, *Litigating Land Loss: An Analysis of Three Attempts to Hold Oil Companies Accountable for Coastal Erosion*, 93 Tul. L. Rev., 387 (2018).

7 *Projects Funded through the Deepwater Horizon Oil Spill Settlement*, Coastal Protection and Restoration Authority.

8 Bryan Gottlieb, *Louisiana Pulls Plug on $3B Sediment Diversion Project*, Engineering News Record (Jul. 18th, 2025).

9 La. Stat. Ann. § 49:214.30.

10 *Id.*

11 Brief of Respondent-Appellee at 1, Chevron USA Inc., v. Plaquemines Parish, Louisiana, No. 24-813 (U.S. 2025).

12 Jack Brook, *Chevron Ordered To Pay More Than $740 Million To Restore Louisiana Coast In Landmark Trial* APNews (April 4, 2025).

13 Par. of Plaquemines v. Chevron USA, Inc. (Plaquemines I), 7 F.4th 362 at 366-67 (5th Cir. 2021).

14 Par. of Plaquemines v. Rozel Operating Co., No. CV 18-5189, 2023 WL 3336640 (E.D. La. May 10, 2023).

15 28 U.S.C. § 1442(a).

16 Plaquemines Par. v. BP Am. Prod. Co., 103 F.4th 324 at 335 (5th Cir. 2024).

17 *Id.*

18 Brief of Respondent-Appellee at 4, *Chevron v. Plaquemines Parish*, No. 24-813.

19 Brief for General Richard B. Meyers as Amicus Curiae Supporting Petitioners-Appellant at 2, *Chevron v. Plaquemines Parish*, No. 24-813.

20 Brief for Chamber of Commerce of the United States as Amicus Curiae Supporting Petitioners-Appellant at 15-18, *Chevron v. Plaquemines Parish*, No. 24-813.

21 Brief of Respondent-Appellee at 1, *Chevron v. Plaquemines Parish*, No. 24-813.

ICJ Rules Countries Have Obligation to Protect Climate System

Bradley Reimer[1]

The International Court of Justice at the Peace Palace, courtesy of Jeroen Bouman.

In a new advisory opinion released in July 2025, the International Court of Justice (ICJ) unanimously agreed that countries have an obligation and shared responsibility to fight climate change and to protect the planet.[2] The ICJ published this opinion "with the hope that its conclusions will allow the law to inform and guide social and political action to address the ongoing climate crisis."[3] Though currently not legally enforceable, this opinion will have far reaching consequences in environmental law and international climate policy.

Background

The campaign to bring the issue of environmental accountability to the ICJ started in 2019 with a group of 27 students from the University of the South Pacific.[4] These students, concerned with rising sea levels and the effect of climate change on the planet, started a grassroots effort to persuade the leaders of the Pacific Islands Forum (PIF) to endorse a request for an advisory opinion. After years of campaigning, the PIF unanimously endorsed a request in 2022.[5] The United Nations General Assembly then unanimously passed Resolution 77/276 in 2023, formally requesting an advisory opinion from the ICJ.[6]

In December 2024, 96 countries and 11 different international organizations presented arguments in front of the ICJ.[7] Some countries like Spain, Samoa, the Philippines, Cameroon, Colombia, Albania, and Saint Vincent and the Grenadines were vehemently in support of legal obligations on climate change, particularly focusing on human rights issues.[8] However, other countries, including the United States, the United Kingdom, Kuwait, Germany, and Russia, instead highlighted the complexities of climate policy while championing the Paris Agreement as being sufficient law.[9]

Many do not approve of the approach of these latter countries. For example, Rachel Cleetus, policy director for the Climate and Energy Program at the Union of Concerned Scientists, remarked how "it was really ironic […] to hear the U.S. uphold the Paris Agreement so loudly and clearly," despite

their "series of attempts to undermine the goals of that agreement."[10] Since President Trump took office in early 2025, the United States has withdrawn from the Paris Agreement.[11]

Recent Developments

Released in late July 2025, the strongly worded unanimous opinion is unique since it marks the first instance of the ICJ weighing in on climate change.[12] The ICJ clearly states that countries "have a duty to prevent significant harm to the environment by acting with due diligence and to use all means at their disposal to prevent activities carried out within their jurisdiction or control from causing significant harm to the climate system and other parts of the environment."[13] The ICJ also clarifies that a country who does not uphold this duty is committing an "internationally wrongful act" and is therefore subject to consequences. These include being ordered to halt the "wrongful actions or omissions," providing "assurances and guarantees of non-repetition of wrongful actions or omissions," or owing "full reparation to injured States in the form of restitution, compensation and satisfaction."[14]

Future Impact

Since the ICJ only released an advisory opinion, it is not officially legally binding. However, the opinion will nonetheless reshape the future of international environmental law both in the U.S. and abroad. The court argues it is a country's legal duty to fight climate change, and this duty is owed to the international community. There could be consequences for those who refuse to act; for example, a smaller coastal country more vulnerable to the effects of climate change could theoretically sue a larger country for inaction.[15]

There could be consequences for those who refuse to act; for example, a smaller coastal country more vulnerable to the effects of climate change could theoretically sue a larger country for inaction.

Regarding the U.S. specifically, the future is not as clear. Given the Trump administration's desire to depart from traditional climate policy, it seems that the U.S. will disapprove of the ICJ opinion.[16] The consequences of this disapproval may go beyond simple policy and legal decisions, though. Paul Rink, associate professor at Seton Hall Law School, posits that the U.S. refusing international cooperation could create a power vacuum, and "nations that demonstrate sincere efforts to abide by their climate obligations under international law could wrestle significant soft power away from the US within the global community."[17]

The ICJ advisory opinion represents a significant shift in the legal world. As more climate litigation reaches the highest courts across the globe,[18] this new opinion is sure to influence lawsuits in the coming months. Regardless, many argue that this new opinion should not be used as a weapon in the courtroom. Cynthia Houniuhi, one of the original 27 student protesters, wrote for Time Magazine asserting that "the heart of this opinion is not a call to litigate; it is a call to unite in action."[19]

Endnotes

1 Summer 2025 NSGLC Community Engaged Intern; Legal Studies Major at the University of Mississippi.

2 Obligations of States in Respect to Climate Change, I.C.J. Advisory Opinion (Jul. 23, 2025).

3 *Id.* at ¶ 456.

4 *Our Journey*, Pacific Islands Students Fighting Climate Change.

5 *Fifty-First Pacific Islands Forum*, Pacific Islands Forum (Jul. 11-14, 2022).

6 Resolution 77/276, *Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change*, A/RES/77/276 (Mar. 29, 2023).

7 Joie Chowdhury & Vishal Prasad, *"Will the Law Rise to Meet Its Highest Calling?" The Historic ICJ Climate Hearings on Climate Justice*, Center for International Environmental Law (Mar. 26, 2025),

8 *Id.*

9 *Id.*

10 Karen Zraick, *What to Know About a Landmark Court Case*, New York Times (Dec. 5, 2024).

11 Exec. Order No. 14162, 90 Fed. Reg. 8455 (Jan. 20, 2025).

12 Karen Zraick & Marlise Simons, *Top U.N. Court Says Countries Must Act on Climate Change*, New York Times (Jul. 23, 2025).

13 Obligations of States, *supra* note 2, at ¶ 457.

14 *Id.*

15 Lukas Schaugg, Natalie Jones, & Jeffrey Qi, *Historic International Court of Justice Opinion Confirms States' Climate Obligations*, International Institute for Sustainable Development (Jul. 28, 2025).

16 Exec. Order No. 14154, 90 Fed. Reg. 8353 (Jan. 29, 2025); Press Release, E.P.A., *EPA Releases Proposal to Rescind Obama-Era Endangerment Finding, Regulations that Paved the Way for Electric Vehicle Mandates* (Jul. 29, 2025).

17 Paul Rink, *Climate Change Ruling from International Court Puts US on Notice*, Bloomberg Law (Aug. 5, 2025).

18 Press Release, Grantham Research Institute, *Climate Litigation Increasingly Reaching the Highest Courts Around the World, Report Finds* (Jun. 25, 2025).

19 Cynthia Houniuhi, *ICJ Climate Ruling Is a Call for Unity, Not Lawsuits*, C.N.N. (Aug. 4, 2025).

Fishing for Authority: Courts Reaffirm Procedural Safeguards for National Monuments

Taylor Young[1]

Reef fish in the Papahānaumokuākea Marine National Monument, courtesy of Karen Bryant/HIBM.

For more than a century, the Antiquities Act of 1906 has given the U.S. President the power to swiftly protect lands and waters by designating areas as national monuments.[2] This power is limited to federal lands and waters, with the added stipulation that these zones are meant to be the "smallest area compatible with the proper care and management of the objects to be protected."[3] Originally, Congress intended for this power to be used to protect archaeological and historic sites, but over time presidents began to apply it more broadly. Today, national monuments include vast landscape and waters, together covering millions of square miles.[4]

Recently, President Donald Trump sought to reshape this authority by reducing protections for the Pacific Remote Islands Marine National Monument (PRMNM), arguing that their current designations were overly burdensome and ineffective.[5] Consequently, several environmental groups came together to challenge this executive action. On August 8, 2025, the U.S. District Court of Hawaii issued a decision in their favor, officially halting the administration's efforts.[6] The court's decision, however, left unanswered whether or not the president has the power to modify existing national monuments.

Background

On June 8, 1906, President Theodore Roosevelt signed the Antiquities Act into law. This marked the beginning of a new era of conservationism and preservation with Roosevelt alone establishing 18 national monuments and protecting nearly 1.5 million acres of land.[7] Roosevelt, speaking of this change in America, noted that the U.S. was turning its "*rivers and streams into sewers and dumping-grounds… but at last it looks as if our people were awakening.*"[8] While Roosevelt was predominantly focused on the preservation of historic and archeological sites, future presidents would expand upon his work to safeguard landscapes and eventually marine environments.

Green sea turtle in the Papahānaumokuākea Marine National Monument, courtesy of John Burns/NOAA.

In 2006, President George W. Bush created the first marine national monument, the Papahānaumokuākea Marine National Monument in the Northwestern Hawaiian Islands.[9] At the end of the Bush presidency, he issued a presidential proclamation which established the PRMNM, protecting over 80,000 square miles of the ocean from commercial fishing, mineral extraction, and other activities.[10] In 2014, President Barack Obama expanded PRMNM through Proclamation 9173 to cover approximately 490,000 square miles, citing that more protections were needed to properly protect migratory paths for aquatic life, sea turtles, and seabirds.[11] Additionally, President Obama claimed this expansion was necessary due to changing environmental conditions and the acidification of the waters which would require further monitoring.

More recently, President Trump has attempted to reshape presidential authority under the Antiquities Act by reducing protections or shrinking previously established national monuments. This was first seen in Proclamations 9681 and 9682 in which President Trump sought to reduce the size of several national monuments in Utah during his first term in office.[12] Those actions sparked major controversy and litigation about whether the Antiquities Act authorizes the President to eliminate previously designated monuments. Ultimately, the courts never reached a conclusion on the matter due to President Biden winning the 2020 election and restoring and even partially expanding those national monuments during his term.[13] Now this question is once again being asked with President Trump seeking to reduce protections to the PRMNM.

Recent Developments

In April 2025, President Trump signed Proclamation 10918 "*Unleashing American Commercial Fishing in the Pacific*," reducing the protective scope of the monument by allowing commercial fishing between 50 to 200 nautical miles from specific islands.[14] Trump's administration argued such steps were justifiable because current restrictions placed the U.S. seafood industry at a competitive disadvantage in international markets. It further suggested that these restrictions implicate broader national interests, including concerns about the U.S. becoming overly reliant upon other nations for seafood.

Following the issuance of the Proclamation, the National Marine Fisheries Service (NMFS), an agency within the Department of Commerce, sent letters to commercial fishing permit holders informing them that commercial fishing would now be allowed within the monument.[15] The letter seemingly took the position that Proclamation 10918 effectively invalidated all existing protections/regulations. Soon after the letter was sent out, a coalition of several environmental organizations and unincorporated Native Hawaiian groups filed suit against President Trump and his Administration, challenging the President's authority to diminish previously enacted national monuments.[16] Specifically, the plaintiffs alleged that the actions violated the Antiquities Act, among other acts primarily based on the theory that Congress gave the President only the authority to establish national monuments and only Congress can diminish or do away with them.[17]

On June 24, the plaintiffs filed a motion for summary judgment arguing there was no genuine dispute of material fact and they were entitled to judgment as a matter of law. Specifically, they contended that the administration erred procedurally by bypassing the notice and comment process which is required under both the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act) and the Administrative Procedure Act (APA).[18] The review process is intended to promote greater transparency, accountability, and, in theory, more informed policymaking by allowing at least 30 days for the public to comment and requiring the agency to consider such comments.[19] Here, the administration skipped this process.

In response, the administration did not defend bypassing the notice and comment process but rather argued that the plaintiffs did not have standing because they had not suffered a concrete injury. The plaintiffs, arguing on behalf of their members, needed to prove 1) that at least one member suffered an injury, 2) it was caused by the defendant, and 3) a judicial ruling in their favor would remedy the injury. On August 8, 2025, the court affirmed the plaintiff's request on its fifth and sixth claims for procedural errors.

Here, the plaintiffs successfully demonstrated injury and causation, but they still had to grapple with the issue of whether the court could redress this injury. Redressability became a major issue in the case because there was a question as to whether the proclamation or the letter was the cause of the plaintiffs' injuries. Furthermore, the government argued that the letter merely informed commercial fishery permit holders of the contents of the proclamation and was not an official action from NMFS. The plaintiffs argued and prevailed on the matter by asserting that if the proper procedures were followed, then the injuries or harm might not have occurred. As a result, the court vacated the letter sent by NMFS on April 25, 2025, finding it to be procedurally invalid.[20]

Significance and Conclusion

The court's August 8 ruling is significant because it reaffirms that presidents and their administrations must uphold statutory procedures when altering national monument protections. However, the decision left unanswered questions about the scope of the president's authority under the Antiquities Act, and it seems inevitable litigation over this question will persist. For conservation advocates, the ruling is a short-term victory because it ensures the immediate protection of the monuments and it guarantees the public has a voice in the matter. On the other hand, the decision prolongs uncertainty, for both the fishing industry and the future of national monuments. Ultimately, this question once answered could affect national monuments and the president's power for decades to come.

Endnotes

1 NSGLC Research Associate; 2L, University of Mississippi School of Law.

2 54 U.S.C. § 320301.

3 *Id.*

4 *Monuments, Conservation Areas and Similar Designations*, U.S. Department of the Interior Bureau of Land Management (last visited Sept. 25, 2025).

5 Proclamation No. 10918, 90 Fed. Reg. 16,987 (Apr. 22, 2025).

6 Kapa'a v. Trump, No. CV 25-00209 MWJS-WRP, 2025 WL 2300605, at *18 (D. Haw. Aug. 8, 2025).

7 *All National Monuments Designated Under the Antiquities Act*, Natural Resources Defense Council (May 8, 2025).

8 *Roosevelt, Muir, and the Grace of Place*, Natural Park Service (Aug. 26, 2021).

9 Proclamation No. 8031, 71 Fed. Reg. 36,443 (June 26, 2006).

10 Proclamation No. 8336, 74 Fed. Reg. 1565 (Jan. 12, 2009).

11 Proclamation No. 9173, 79 Fed. Reg. 58,645 (Sept. 29, 2014).

12 Proclamation No. 9681, 82 Fed. Reg. 58,081 (Dec. 8, 2017); Proclamation No. 9682, 82 Fed. Reg. 58,089 (Dec. 8, 2017).

13 Proclamation No. 10285, 86 Fed. Reg. 57,321 (Oct. 15, 2021); Proclamation No. 10286, 86 Fed. Reg. 57,335 (Oct. 8, 2021).

14 Proclamation No. 10918, 90 Fed. Reg. 16,987 (Apr. 22, 2025).

15 *Kapa'a*, WL 2300605, at *1.

16 *Id.* at *4.

17 *Id.*

18 *Id.* at *2.

19 5 U.S.C. § 553; 16 U.S.C. § 1855(d).

20 *Kapa'a,* WL 2300605, at *18.

So, What if it's Good for Us?

The Point Farm Mitigation Bank in Charleston County, South Carolina

Ilinca Johnson[1]

Edisto River, courtesy of Mogollon Photography.

Wetlands are essential to our ecological infrastructure, yet modern society also depends on concrete infrastructure. Balancing these competing needs is the goal of the Clean Water Act's compensatory mitigation program, which allows the preservation of an aquatic resource to compensate for the loss of wetlands developed elsewhere. Recently, one compensatory mitigation bank was at the center of local conflict between ecological and developmental needs in South Carolina.

How the Point Farm Mitigation Bank Trouble Started

The case revolved around Point Farm, a 2,027-acre property on the southwestern point of Wadmalaw Island in Charleston County, South Carolina. Located just 20 miles from downtown Charleston, Point Farm borders the Leadenwah Creek and North Edisto River.[2] Its wild areas are home to birds, insects, fish, mammals, and alligators. Point Farm represents one of the last large tracts of undeveloped waterfront in the county.

In 2017, the "Point Farm Investor" group acquired 1,312 acres of the property. The land—wetlands, forests, and farmland—had been owned by the same family since 1699. The property was originally granted to the family by the Lord Proprietors of England.[3] The investors obtained a conservation easement from the U.S. Army Corps of Engineers (Corps) with the intent to create a mitigation bank on the property.

Under Section 404 of the Clean Water Act (CWA), a permit is required for the discharge of dredged or fill material into waters of the United States and any potential impacts from permitted activities must be minimized. Compensatory mitigation may offset remaining unavoidable impacts to aquatic resources.[4] The mitigation may be provided through mitigation banks—an aquatic resource established, enhanced or restored to generate credits to offset unavoidable impacts at another site.[5] Through a mitigation bank at Point Farm, the investors could sell mitigation credits, offsetting marsh impacts caused by other development projects in Charleston County.

In 2021, the Point Farm owners applied for a conservation easement over the Point Farm wetlands. The Corps approved the Point Farm Mitigation Bank, which included nearly 900 acres of freshwater wetlands and uplands and around 1,100 acres of salt marsh. Approximately 700 acres of the property would remain outside of the bank. The Corps also issued the plaintiffs authorization under Nationwide Permit 27 (NWP 27) for certain activities related to the creation of the mitigation bank.

The plaintiffs filed a complaint in 2023, claiming that pursuant to general requirements for compensatory mitigation under the CWA, Point Farm's wetlands were not "under threat of destruction or adverse modifications" that would qualify them for preservation efforts by the Corps.[6] Primarily, the plaintiffs argued that the marsh is not under threat because it is a public trust tideland protected by the state. Further, if it were under threat, the easement created a 100-foot buffer in an area already protected by a 50-foot buffer. The plaintiffs also took issue with the Corps identifying the construction of "docks" or the presence of cattle to be potential means of destruction of the property's wetlands. They argued that the environmental impacts from dock construction are regulated by the state and there are no cattle currently grazing on the property. The plaintiffs also claimed that the more than 700 acres not included in the bank would remain available for development that could potentially impact the island's ecosystem.

How the Point Farm Mitigation Bank Case Resolved

On May 15, 2025, a federal district court judge granted partial summary judgment to the Corps because the plaintiffs no longer had standing. The court explained that plaintiffs "must have . . . a concrete and particularized injury in fact that is fairly traceable" to development of the mitigation bank that could be resolved with a favorable judicial decision.[7] The court found that the plaintiffs no longer had a concrete injury that could be redressed by a court because the mitigation bank on Point Farm was already built. Second, the court found plaintiffs' concerns of further residential development on the remaining, unprotected 700 acres of land cannot currently be litigated because no such alleged residential development on the property is currently occurring. The judge pointed out that the construction of a mitigation bank would be "environmentally beneficial" to plaintiffs anyway.[8]

The Point Farm Mitigation Bank

There are 240,000 acres of wetland in Charleston County, without even factoring in marine wetlands.[9] Approximately 42 new residents move into Charleston County each day. In fact, Charleston is one of the fastest growing metropolitan areas in the country.[10] The amount of wetland and fast population growth in Charleston County requires compensatory mitigation to meet the requirements of CWA.

Protecting wetlands even as South Carolina faces development provides several ecological and recreational benefits for South Carolina residents. However, the creation of the Point Farm mitigation bank led to a challenge by residents concerned that the mitigation efforts either weren't needed or would lead to more development impacts down the road. Overall, this case reflects the difficult tensions of meeting a population's infrastructure needs against the important interests of healthy wild ecology.

Endnotes

1 Summer 2025 NSGLC Community Engaged Legal Intern; 3L Vermont Law School.

2 Stuhr v. U.S. Army Corps of Eng'rs, Charleston Dist., No. 2:23-3357, 2025 WL 1285988 (D.S.C. May 1, 2025).

3 *Point Farm*, Unique Places to Save (last visited June 3, 2025).

4 Clean Water Act § 404, 33 U.S.C. § 1344 (2025); *Background about Compensatory Mitigation Requirements Under CWA Section 404*, EPA (last updated Nov. 6, 2024).

5 *Mitigation Banks Under CWA Section 404*, EPA (last updated June 28, 2024). 33 C.F.R. § 332.2.

6 Compl. ¶ ¶ 60-61, Stuhr v., U.S. Army Corps of Eng'rs, No. 2:23-cv-3357-RMG (D. S.C. 2023); General compensatory mitigation requirements, 33 C.F.R. § 332.3(h)(iv).

7 *Id.* at *4.

8 *Id.* at *5.

9 Greenbelt System Component: Rural Greenbelt Lands, Comprehensive Greenbelt Plan (adopted June 6, 2006).

10 *Population Data*, Charleston Cnty SC Econ. Dev. (last visited June 6, 2025).

Lessons Learned: Exploring the Veto of California's Microfiber Filtration Bill

Kelly Burton[1]

Across the United States, a new class of legislation is emerging to tackle microfiber pollution at its source: the washing machine. From California to New York, states are introducing bills that would require built-in filtration systems to prevent microfibers–tiny threads shed during laundry– from entering waterways and soil. In 2023, California came closer than any other state in enacting such a law. But, despite passing both legislative chambers, AB 1628 was ultimately vetoed by Governor Gavin Newsom.[2] That decision marked a pivotal moment, raising the question: what can be learned from the first microfiber filtration mandate to reach a governor's desk, and how can future bills succeed where this one fell short?

What AB 1628 Set Out to Do

AB 1628 would have required all new residential washing machines sold in California after January 1, 2029 to include a built-in or in-line microfiber filtration system with mesh to capture fibers less than 100 micrometers in size before they enter wastewater systems.[3] The bill also proposed visible labeling for users and penalties for non-compliance. Its aim was to reduce the release of microfibers into the state's water and soil systems, aligning with the California Ocean Protection Council's *Statewide Microplastics Strategy*, which recommends promoting or requiring such filtration technology beginning in 2024.[4]

Supporters of the bill cited the growing evidence that washing machine filtration is one of the most cost-effective and scalable ways to reduce microfiber emissions.[5] According to recent studies, washing machines can release millions of microfibers per load, and although wastewater treatment plants remove a high percentage, enough remain to pose significant ecological risks.[6] Microfibers are now found across California's aquatic environments, including the San Francisco Bay, Lake Tahoe, and Monterey Bay, and downstream impacts have been documented in marine life, farmland soils and even human tissues.[7]

Key Lessons from the Veto

Lesson 1: Fiscal Clarity is Essential

One of the Governor's stated concerns was cost; especially for consumers. Legislative committee analyses noted that replacing state-owned machines could result in procurement costs "in the hundred of thousands of dollars, in the aggregate."[8] While not overwhelming relative to California's budget, the bill's lack of clarity on rollout timing invited worst-case assumptions. AB 1628 included no language to specify the machine replacements would occur only as part of normal procurement and replacement cycles. Language explicitly stating that the requirement applies only to new machines purchased after 2029 and does not require early replacement could have neutralized this objection.

Lesson 2: Technology Readiness Requires Verified Standards

Industry opposition, primarily from the Association of Home Appliance Manufacturers (AHAM), focused on claims that filters would clog, reduce energy efficiency, or fail to capture more than 25% of fibers. Yet peer-reviewed studies and field data consistently show that properly designed filters can capture 70-90% of synthetic microfibers.[9] Multiple global manufacturers, including Electrolux, Hitachi, and Panasonic, already sell high-performance built-in filters.[10] Rather than reacting to unsupported claims, future legislation should prioritize evidence-based performance standards and transparency. Requiring third-party certification for minimum capture efficacy (e.g. 70%) would prevent misinformation from shaping policy outcomes and ensure public trust.

Lesson 3: Narrowing Scope Doesn't Always Lower Risk

Amendments in September 2023 removed commercial washing machines from the bill. The final version applied only to residential appliances, yet this did little to appease opponents. In fact, it may have undercut the environmental impact while still exposing the bill to fiscal and logistical criticism. It also complicated enforcement, raising questions about dual systems for different machine classes. A phase-in strategy for commercial machines or a mandate for state-owned commercial equipment could have preserved ambition while addressing complexity through timeline design.

Lesson 4: Incentives May Be Politically Preferable - For Now

Governor Newsom's veto message indicated a preference for incentivizing filters, rather than mandating them. This tracks with the Ocean Protection Council's strategy, which also recommends rebates and post-market retrofits.[11] The veto may reflect a broader trend toward incentive-first policymaking, at least until consumer cost analyses and technological awareness improve. Embedding a rebate or pilot program within the bill, especially for state-owned or publicly funded institutions, might have made the measure more politically durable.

Conclusion: A Veto, But Not a Defeat

AB 1628 was the first U.S. bill focused specifically on built-in microfiltration in residential washing machines to pass both legislative chambers and reach a governor's desk. Its veto was illuminating. It showed where strong policy design must anticipate political friction, fiscal scrutiny, and organized opposition.

Microfiber filtration remains one of the most immediate and practical ways to reduce microplastic pollution at the source. As policy makers, environmental agencies, and researchers continue their work, AB 1628 stands out not just as a missed opportunity, but as a blueprint for how to get the next bill over the finish line.

What's Next: State and Federal Efforts

Despite AB 1628's veto, microfiltration legislation continues to gain momentum. Several states have introduced or reintroduced bills modeled on California's approach, while adjusting for its political and procedural pitfalls.

Jurisdiction	Session	Bill	Key Feature
NY	2025-2026	A4716C	Requires filters on new washers sold after 2027
	2025-2026	S.5605A	
PA	2024	HB 2568	Mandates filters in new residential machines sold after January 2030
OR	2023	SB 405	Requires filters on new washers sold after 2030
IL	2025	HB 3816	Requires filters on new res. and comm. washers after 2030
NJ	2024-2025	4802	$2.5 million for rebate program
HI	2025	HB965	Rebate program for res. and comm. filter purchases
Federal	2023-2024	S.4884	Requires filters on new res. and comm. washers after 2030
	2025-2026	HB 4604	

Recommendations for Future Bills

Future microfiber filtration legislation, whether federal or state, should apply the lessons of AB 1628 directly:

- Include procurement phase-in language: Clarify that requirements apply only to new machines purchased after a given date, as part of standard replacement cycles.
- Require third-party efficacy certifications: Set a minimum verified capture rate (e.g. 70%) and allow flexibility in filter design, mesh size and technology pathway.
- Confront misinformation with transparency: Rather than conceding to false claims of clogging or inefficacy, require publicly reported performance data and filter testing protocols.
- Pair mandates with incentive programs: Voluntary retrofits, rebates, or pilot funding can improve uptake and support broader market transition.
- Incorporate lifecycle standards: Encourage the use of recyclable or low-plastic filters, consider product take-back programs.

Endnotes

[1] 3L CUNY School of Law; 2025 New York Sea Grant Law and Policy Fellow.

[2] AB 1628, 2023–2024 Reg. Sess. (Cal. 2023).

[3] A micron (short for micrometer) is a unit of measurement equal to one-millionth of a meter. For perspective, a human hair is about 70 microns wide.

[4] Ocean Protection Council, *Statewide Microplastics Strategy*, Draft (Dec. 2021).

[5] Ocean Conservancy, Fibers to Filters; A Toolkit for Microfiber Solutions, (June 2024).

[6] *Id.*

[7] Ocean Protection Council, *supra* note 4 at 6.

[8] AB 1628, Senate Committee On Appropriations, 2023–2024 Reg. Sess. 1.

[9] McIlwraith, H. K., Lin, J., Erdle, L. M., Mallos, N., Diamond, M. L., & Rochman, C. M. (2019). Capturing microfibers – marketed technologies reduce microfiber emissions from washing machines. Marine Pollution Bulletin, 139, 40–45.

[10] Cal. AB 1628, section 1(m).

[11] Ocean Protection Council, *supra* note 4 at 19.

The University of Mississippi

THE SANDBAR

Sea Grant Law Center
Kinard Hall, Wing E, Room 258
University, MS 38677-1848

Sea Grant
LAW CENTER

Littoral Events

National Working Waterfront Network Conference

San Diego, CA
February 4-6, 2026

For more information, visit:
https://nationalworkingwaterfronts.com/nwwn-2025-conference-san-diego

Aquaculture America

Las Vegas, NV
February 16-19, 2026

For more information, visit:
https://was.org/meeting/code/AA2026

Association of Flood Plain Managers Conference

Milwaukee, WI
May 31 – June 4, 2026

For more information, visit:
https://www.floods.org/conference