

Judge Declares South Carolina Department of Health and Environmental Control Commits Take Through Modification of Sea Turtle Habitat

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Earlier this week, a federal district judge out of South Carolina issued a Preliminary Injunction mandating the immediate removal of certain structures because there had been a “take” under the Endangered Species Act for habitat modification which “significantly impairs” their ability to successfully nest.

The State of South Carolina, through budget proviso, authorized the construction of what the state called “wave dissipation devices.” The structures were constructed as a research project, which is critical under South Carolina law because new *erosion control structures* are prohibited. The structures were “vertical plastic pylons drilled into the sand and horizontal plastic bars stacked within the pylons,” which the court referred to as “seawalls.” If necessary the horizontal plastic bars could be removed to minimize potential impact to sea turtles.

The plaintiffs filed a lawsuit challenging the “sea walls as a violation of the Endangered Species Act.” As part of their case, the plaintiffs moved for a preliminary injunction, an extraordinary remedy that is rarely granted by the courts. In this case, however, the court granted this extraordinary remedy. Discussing the basis for its decision, the court focused on documented false crawls – when a sea turtle emerges from the water to lay her eggs but returns to the water without laying a nest – in the vicinity of the structures.

Despite the temporary nature of the structures as a research activity, and the flexibility to remove the horizontal plastic bars in front of any turtle’s nest, the Court required removal of the temporary structures during nesting season through the pendency of the underlying case. The Court noted that the Endangered Species Act has been called the statutory “pit bull of environmental laws” and the Congressional intent of the Endangered Species Act is to halt and reverse the trend of species extinction, “whatever the cost.”

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