

SOSS2, Inc. v. Army Corps of Engineers, No. 8:19-cv-462-T-23JSS 2019 WL 3767043 at *1
(M.D. Fla. Aug. 9, 2019).

A Federal Court States Administrative Agencies Do Not (Necessarily) Have to Assess the Impact of Red Tide When Authorizing Permits

In June of 2018, the Army Corps of Engineers (“Corps”) and the City of Sarasota (“Sarasota”) jointly issued a coastal permit authorizing a project in Lido Key that was designed to mitigate the damage from storms and hurricanes. The project included plans to dredge sand from an area that overlapped with an estuary system. This estuary system received special protection from the state.

Federal agencies, like the Corps, are required to prepare an environmental assessment (“EA”) to determine whether certain projects will have a “significant impact” on the environment. If the EA shows the action will not have a significant impact, then the agency issues a “finding of no significant impact.” However, if the assessment shows the project will have a significant impact, then the agency is required to produce an Environmental Impact Statement (“EIS”), which must articulate a “full and fair discussion of [the] significant environmental impacts.” In the instant case, the Corps determined the project would not have a significant impact so it did not develop and EIS.

The plaintiff, SOSS2, an environmental advocacy group that claimed that the Corps’ EA failed to take into account a number of environmental factors, including the red tide outbreak that impacted the Sarasota coast in 2018. SOSS2 sought a court order to have the Corps supplement the administrative record with documents that discussed the economic and environmental impacts of red tide. Further, it argued that the Corps’ authorization of the project was void as a matter of law because not issuing an EIS analyzing the impacts the project would have on red tide meant the permit was issued in an arbitrary and capricious manner.

The court, however, found SOSS2’s argument unpersuasive because it did not present any evidence that would demonstrate how the dredging component would impact the frequency or severity of red tide. Because SOSS2 could not make this factual connection the court found the Corps’ finding no significant impact and authorization of the dredging project was not arbitrary and capricious and, therefore, was not void as a matter of law.