

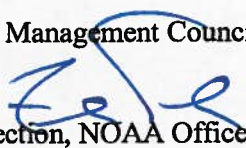


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October 6, 2015

MEMORANDUM

TO: Edwin Ebisui, Chair
Western Pacific Fishery Management Council

FROM: Frederick W. Tucher 
Chief, Pacific Islands Section, NOAA Office of General Counsel

SUBJECT: NOAA OFFICE OF GENERAL COUNSEL, PACIFIC ISLANDS SECTION
REPORT TO THE 164th COUNCIL MEETING

The Pacific Islands Section's Report to the 164th Meeting of the Western Pacific Fishery Management Council is as follows:

Litigation Matters

Conservation Council for Hawaii, et.al., v. NMFS, 14-cv-00528 (D. Haw.) On October 28, 2014, NOAA Fisheries published a final rule implementing Amendment 7 to the Pelagics Fishery Ecosystem Plan, which establishes a framework process by which U.S. Participating Territories (American Samoa, CNMI, and Guam) may transfer a limited amount of available bigeye tuna quota to eligible U.S. longline vessels, subject to accountability measures to ensure sustainability. For 2014, each participating territory was assigned an annual limit of 2,000 mt, of which up to 1,000 mt could be transferred to eligible U.S. longliners through qualifying agreements. On November 20, 2014, plaintiffs filed their complaint, alleging that the rule violates the Administrative Procedure Act and Western and Central Pacific Fishery Convention Implementation Act, and undermines Commission efforts to recover bigeye tuna and other protected species. Thereafter, Plaintiffs amended their complaint to allege a Magnuson-Stevens Act violation. Federal Defendants answered, and lodged its administrative record on May 29, 2015. Plaintiffs filed their motion for summary judgment on July 20, 2015. Federal Defendants and intervenor Defendant Hawaii Longline Association filed their opposition briefs on August 20, 2015, arguing that Commission decisions are generally not enforceable as domestic law until implemented by regulations, and further that NMFS's interpretation of its obligations under Commission conservation measures, as reflected in the final rule, is reasonable and entitled to deference. Oral argument on Plaintiffs' motion for summary judgment was held on September 25, 2015. The Court set a deadline of October 9, 2015 for filing any supplemental briefs. We anticipate that the court will issue its decision by early November.

