




U.S. DEPARTMENT OF COMMERCE
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February 27, 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 162nd COUNCIL MEETING

The Pacific Islands Section's Report to the 162nd Meeting of the Western Pacific Fishery Management Council is as follows:

1. Litigation Matters

- *Turtle Island Restoration Network, Center for Biological Diversity v. U.S. Department of Commerce, U.S. Department of Interior*, CV-12-00594 (D. Haw.) and 13-17123 (9th Cir.). As previously report, on January 29, 2014, Plaintiffs appealed the district court decision upholding the final rule implementing sea turtle incidental take levels for the Hawaii-based shallow set fishery, as well as a USFWS permit authorizing the fishery to interact with migratory birds under the Migratory Bird Treaty Act. Federal Defendants and Intervener-Defendant Hawaii Longline Association filed their appellate briefs on March 31, 2014, and all appellate briefing was completed on May 14, 2014. As of this date, the Ninth Circuit Court of Appeals has not scheduled a hearing date on the appeal.
- *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. Hawaii Longline Association intervened as a defendant in the claim asserted by Plaintiffs. After the Court granted Plaintiffs leave to amend their complaint and add a Magnuson-Stevens Act claim, the Federal Defendants filed their answer and administrative record on February 2, 2015. A scheduling conference was conducted on February 26, 2015. No briefing schedule has been issued.

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