



U.S. DEPARTMENT OF COMMERCE
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May 29, 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 163rd COUNCIL MEETING

The Pacific Islands Section's Report to the 163rd Meeting of the Western Pacific Fishery Management Council is as follows:

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 reported at the 162nd meeting, the appeal is pending before the Ninth Circuit Court of Appeals and no hearing date has been scheduled. This appellate case stems from Plaintiffs' appeal – on January 29, 2014 - of the district court decision in favor of NMFS/FWS on all claims (ESA, NEPA, and MBTA) relating to the shallow-set fishery. Appellate briefing was completed on May 14, 2014.
- *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. 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. With the agreement of Plaintiffs and intervenor defendant HLA, the Federal Defendants lodged a replacement administrative record on May 29, 2015, incorporating additional records requested by Plaintiffs, and removing certain records that were subject to privilege and erroneously included in the original administrative record. A proposed briefing schedule and hearing date were submitted to the court on May 29, 2015.