




U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
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MEMORANDUM

DATE: November 29, 2021

TO: Archie Soliai, 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 189th COUNCIL MEETING

NOAA Office of General Counsel Pacific Islands Section's Report to the 189th Meeting of the Western Pacific Fishery Management Council is as follows:

Litigation Matters:

1. *Steven Hueter, et al. v. Debra Ann Haaland, et al.*, No. 21-00344 (U.S. District of Hawaii): On August 13, 2021, three residents of Alega Village, American Samoa filed a complaint against the Secretary of the Interior, the Secretary of Commerce, the U.S. Fish & Wildlife Service (and its director), the American Samoa Department of Marine & Wildlife Resources (and its director), John and Jane Doe enforcement agents for the American Samoa Department of Marine & Wildlife Resources, and John and Jane Doe commercial fishermen alleging illegal fishing practices in the private Alega Marine Protected Area. Plaintiffs seek to compel Federal Defendants to enforce alleged violations of the Endangered Species Act, National Marine Sanctuaries Act, and the Ocean Dumping Act in the private Alega Marine Protected Area. Plaintiffs filed an amended complaint and a motion for a temporary restraining order in October. On November 12, 2021, Federal Defendants filed a combined motion to dismiss the complaint and opposition to Plaintiffs' motion for temporary restraining order, arguing that, because Federal Defendants have no mandatory duty to enforce the referenced statutes in the private protected area, the complaint fails to allege claims for which relief



may be granted. Plaintiffs' response is due December 3, and Federal Defendants' reply is due December 10.

- 2. Conservation Council of Hawaii (CCH) Sixty-Day Notice of Intent to Sue for Alleged Violations of the ESA:** NMFS continues to provide regular updates to CCH on the progress of three pending ESA Section 7 consultations (Hawaii deep-set longline, American Samoa longline, and WCPO purse seine fisheries) in response to this 2019 NOI alleging that NMFS has failed to complete consultation and insure that the continued authorization of these fisheries do not jeopardize the threatened oceanic whitetip shark.
- 3. Hawaii Longline Association (HLA) Sixty-Day Notice of Intent to Sue for Alleged Violations of the ESA:** This 2019 NOI alleges that NMFS failed to timely complete the ESA Section 7 consultation for the Hawaii deep-set longline fishery and/or obtain an express agreement from the HLA-applicant to extend the statutory deadline. The consultation is still pending.