



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

**DATE:** September 10, 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 187<sup>th</sup> COUNCIL MEETING

NOAA Office of General Counsel Pacific Islands Section's Report to the 187th Meeting of the Western Pacific Fishery Management Council is as follows:

### Litigation Matters:

1. *Territory of American Samoa v. National Marine Fisheries Service, et al.*, No. 17-17081 (U.S. Court of Appeals for the Ninth Circuit): On June 21, 2021, the U.S. Supreme Court denied American Samoa's request for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Ninth Circuit. In 2020, the Ninth Circuit had reversed the U.S. District Court of Hawaii's decision vacating NMFS's 2016 rule establishing an exemption from the American Samoa Large Vessel Prohibited Area to eligible longline vessels 50 feet and longer. Consistent with the Ninth Circuit's November 17, 2020 mandate, on July 9, 2021 NMFS published a final rule (86 Fed. Reg. 36239) that re-implements the 2016 exemption.
2. *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 “other anti-commercial fishing laws” in the private Alega Marine Protected Area.

- 3. 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.
- 4. 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.