



**U.S. DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
 OFFICE OF GENERAL COUNSEL  
 Pacific Islands Section  
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DATE: June 1, 2022

**MEMORANDUM**

**TO:** Archie Soliai, Chair  
 Western Pacific Fishery Management Council

**FROM:** Frederick W. Tucher K.W.1030316289  
 Chief, Pacific Islands Section, NOAA Office of General Counsel

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**SUBJECT:** NOAA OFFICE OF GENERAL COUNSEL, PACIFIC ISLANDS SECTION  
 REPORT TO THE 191<sup>ST</sup> COUNCIL MEETING

NOAA Office of General Counsel Pacific Islands Section's Report to the 191st Meeting of the Western Pacific Fishery Management Council is as follows:

**Litigation Matters:**

1. ***Conservation Council of Hawaii (CCH) et al. vs. NMFS, et al., No. 1:22-cv-00224 (D. Haw.)***: On May 17, 2022, CCH and Michael Nakachi filed a complaint against the National Marine Fisheries Service (NMFS) demanding declaratory and injunctive relief for alleged substantive and procedural violations of the Endangered Species Act (ESA). Plaintiffs allege that the NMFS has failed to insure, through completion of a biological opinion under Section 7 of the ESA, that the authorization of the Hawaii deep-set longline and American Samoa longline fisheries will not jeopardize the oceanic whitetip shark, a species listed as threatened in January 2018. Plaintiffs seek declaratory relief and a court order requiring NMFS to complete the consultations within 90 days. Plaintiffs submitted a Notice of Intent to Sue on February 7, 2019. Federal Defendants' response is due July 19, 2022.



2. ***Wille v. Raimondo et al.*, No. 822-cv-689 (D. Md.):** On March 21, 2022, three Hawaii residents filed suit against NMFS, Secretary of Commerce Raimondo, NOAA Administrator Spinrad, and Assistant Administrator Coit alleging that NMFS's September 2021 rule prohibiting approach of Hawaiian spinner dolphins within 50 yards violated the Appointments Clause of the U.S. Constitution. Plaintiffs argue that the rule was not issued by an official who possesses rulemaking authority, and also challenge the delegations of authority from the NOAA Administrator to the Assistant Administrator and from the Assistant Administrator to the Deputy Assistant Administrator. Plaintiffs seek a judgment declaring that the rule and delegations of authority violate the Appointments Clause, and an injunction setting aside the rule and delegations of authority. Federal Defendants' response is due June 10, 2022.
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.