



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

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DATE: September 2, 2025

MEMORANDUM

TO: William Sword, 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 204TH COUNCIL MEETING

NOAA Office of General Counsel Pacific Islands Section's Report to the 204th Meeting of the Western Pacific Fishery Management Council is as follows:

Litigation Matters:

1. ***Kāpa'a, et al., v. Trump, et al., No. 1:25-cv-00209 (D. Haw.)***: As previously reported, Plaintiffs filed suit on May 22, 2025 challenging President Trump's Proclamation 10918 regarding the Pacific Islands Heritage Marine National Monument Expansion. Plaintiffs allege that the Proclamation opening the Monument Expansion Area (between 50 and 200 nm) to commercial fishing exceeds the President's authority under the Constitution and the Antiquities Act. Plaintiffs also challenge a National Marine Fisheries Service (NMFS) letter informing permit holders that NMFS regulations implementing the commercial fishing prohibition are no longer effective under the new Proclamation. Plaintiffs filed a motion for partial summary judgment on June 24, arguing that NMFS violated the Magnuson-Stevens Act and/or Administrative Procedure Act by issuing the letter without engaging in notice-and-comment rulemaking. Federal Defendants argued that Plaintiffs lacked standing because the NMFS letter merely informed permit holders of the



Proclamation and did not cause Plaintiffs' harm. The court issued its decision on August 8, 2025, granting Plaintiffs' motion and vacating the NMFS letter. In vacating the letter, the court held that the letter was reviewable as final agency action by creating a safe harbor for commercial fishing operations within the Monument Expansion Area, and that it was improper for NMFS to do so without notice and comment rulemaking. The remaining claims allege that the President exceeded his authority under the Antiquities Act and Constitution in issuing the Proclamation; that the agencies failed to comply with the 2014 Proclamation; that NMFS failed to comply with NEPA before issuing the letter; and that NMFS failed to comply with "applicable law," including the ESA, as required under the MSA. The parties will attend a scheduling conference on September 16, 2025.

2. ***Center for Biological Diversity v. NMFS, No. 1:23-cv-00306 (D. Haw.):*** As previously reported, the U.S. District Court for the District of Hawaii granted in part and denied in part the parties' motions for summary judgment on CBD's complaint challenging NMFS' denial of its petition for 4(d) rulemaking on listed corals in the Indo Pacific and Caribbean. The court remanded to NMFS its decision not to issue protective regulations to address climate change and its decision declining to issue protective regulations to address localized threats to the threatened Caribbean corals; the court found in favor of NMFS on CBD's other claims. CBD filed a notice of appeal to the Ninth Circuit in May 2025, and by stipulation of the parties, the appeal was dismissed.