



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

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DATE: December 12, 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 205TH COUNCIL MEETING

NOAA Office of General Counsel Pacific Islands Section's Report to the 205th 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 challenged 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. In August, the court granted Plaintiffs' motion for partial summary judgment, vacating the NMFS letter. 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. An early settlement conference is scheduled for January 28, 2026 and the non-jury trial has been set for December 7, 2026.

2. ***Wille v. Raimondo*, No. 822-cv-689 (D. Md.); No. 24-1734 (4th Cir.)**: As previously reported, in 2021, three Hawaii residents challenged the National Marine Fisheries Service’s (NMFS’s) rule prohibiting approach of Hawaiian spinner dolphins on the grounds that the rule violated the Appointments Clause of the U.S. Constitution. In particular, Plaintiffs argued that the rule violated the Appointments Clause because it was signed and promulgated by the Deputy Assistant Administrator, who is not a principal officer. After Plaintiffs filed suit, a principal officer – the NOAA Administrator – ratified the regulation. In June 2024, a federal district court granted summary judgment to Federal Defendants, holding that the ratification cured any constitutional defects that may have existed when the rule was published. Plaintiffs appealed to the Fourth Circuit Court of Appeals, and, on October 31, 2025, the Fourth Circuit affirmed the district court’s decision.