



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

OFFICE OF GENERAL COUNSEL  
Pacific Islands Section  
Daniel K. Inouye Regional Center  
1845 Wasp Blvd., Bldg. 176  
Honolulu, Hawaii 96818

(808) 725-5205 • Fax: (808) 725-5216

DATE: September 5, 2024

**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 200<sup>th</sup> COUNCIL MEETING

NOAA Office of General Counsel Pacific Islands Section's Report to the 200<sup>th</sup> Meeting of the Western Pacific Fishery Management Council is as follows:

**Litigation Matters:**

1. ***Wille v. Raimondo*, No. 822-cv-689 (D. Md.); No. 24-1734 (4th Cir.):** On August 2, 2024, Plaintiffs filed a timely notice of appeal of the district court's order granting summary judgment to Federal Defendants on all counts. The complaint alleged, in relevant part, that NMFS's 2021 rule prohibiting approach of Hawaiian spinner dolphins was promulgated by an official who lacked rulemaking authority, and therefore violated the Appointments Clause of the U.S. Constitution. The district court found that NOAA Administrator Spinrad's subsequent ratification of the rule cured any alleged defects in the rule. Appellees' opening brief is due October 7, 2024, and Appellants' response is due November 6, 2024.



2. ***Center for Biological Diversity v. NMFS, No. 1:23-cv-00306 (D. Haw.):*** On July 20, 2024, the Center for Biological Diversity (CBD) filed a motion for summary judgment on its claim that NMFS's denial of CBD's petition to issue protective regulations for 20 threatened coral species under Section 4(d) of the Endangered Species Act violates both the Administrative Procedure Act and the ESA. Of the coral species identified, 15 occur in the Pacific Islands Region. NMFS filed its cross motion for summary judgment on August 30, 2024. Under the amended joint briefing schedule, the Plaintiff shall file any opposition to defendants' cross-motion and/or any reply in support by October 11, 2024. Defendants shall file any reply in support by November 8, 2024.
  
3. **Territory of American Samoa's notice of intent to sue for alleged violations of federal law:** The status of this action has not changed since the last report. On November 18, 2022, the Territory of American Samoa sent NOAA a letter notifying the agency of its intent to file a lawsuit if NMFS finalizes a proposed rule (87 Fed. Reg. 55,768 (Sept. 12, 2022)) that establishes separate purse seine effort limits on the high seas and in the U.S. Exclusive Economic Zone under the Western and Central Pacific Fisheries Convention Implementation Act. NOAA Fisheries responded in January 2023, explaining that NMFS was obligated to implement the plain requirements of the WCPFC's conservation and management measure.