

From: Bowman, Randal
To: [Michael Weiss - NOAA Federal](#)
Subject: Re: Amrican Samoa fishery question
Date: Monday, August 21, 2017 1:57:14 PM

Can you give me a call - I should be here all afternoon

On Mon, Aug 21, 2017 at 2:31 PM, Michael Weiss - NOAA Federal

<michael.weiss@noaa.gov> wrote:

Thank you Randy.

Glad the information has been helpful, at least for some....

Have not yet received any more than DOI's draft recommendations for NE Canyons for which we have been providing factual comments/information to inform the decision-makers. Possibly Earl is waiting to receive the drafts on the other monuments before responding.

On Mon, Aug 21, 2017 at 12:25 PM, Bowman, Randal <randal_bowman@ios.doi.gov> wrote:

Great weekend - did not work for first time in I don't know how long.

Thank you for the response on AS - timing is perfect, as I am meeting with Insular Affairs on this at 2. I am concerned that there could be complications from the court decision that we were not aware of.

It is my understanding that Downey conveyed our preliminary recommendations on all of the marine monuments - some of which were "no change" - to Earl Friday late afternoon. I've no idea if he has responded yet. The information you have provided played a considerable role in the discussion leading to those preliminary decisions and may continue to do so.

On Mon, Aug 21, 2017 at 12:06 PM, Michael Weiss - NOAA Federal

<michael.weiss@noaa.gov> wrote:

Hi Randy. Hope you had a nice weekend.

Response from NMFS below.

Thanks

To clarify: Established in 2002, the AS LVPA includes the EEZ waters out to roughly 50 miles (it's a rectangle so the corners are further...). The LVPA was continuous in the South Island groups (Tutuila, Manua group and Rose) and a non-contiguous box around Swains Island. The territory has 3 miles around all islands except Rose Atoll where the EEZ extends to the shore. The RAMNM overlaid the LVPA in 2009. The LVPA exemption for longlining that we approved but was later vacated applied only to the LVPA areas outside of the monument. The LVPA remains underneath the monument and like other subordinate designation (e.g. Refuge) must comply with the proclamation first.

To expand: if the fishing prohibition were removed, the LVPA restrictions would still remain and longliners would need the similar relief that we proposed (but vacated) before they could fish there.

On Fri, Aug 18, 2017 at 12:03 PM, Bowman, Randal <randal_bowman@ios.doi.gov>

wrote:

I'll try, but am operating on the run on this, since I did not get a sense of what is specifically under consideration, other than New England, until recently and was only yesterday asked to fact-check other issues. I think the item below is the last question unless something else comes up unexpectedly.

I've accepted all of the edits, but would like confirmation on one point, since the news article on the lawsuit explains the large vessel closure area differently than what I received earlier. The article says the closure was shore out to 50 miles, but the earlier information indicated it also included the Rose Atoll monument waters, put in place prior to designation.

Because of the difference in explanations, I would appreciate confirmation that the large vessel closed area includes the Monument waters. I realize this seems a duplicative request, since my statement to that effect in the Pacific Territories paper was not changed, but this could be important in internal discussions here and I need to be able to say for certain it is one way or the other.

On Fri, Aug 18, 2017 at 11:12 AM, Michael Weiss - NOAA Federal
<michael.weiss@noaa.gov> wrote:

Thanks Randy.

Attached is NMFS input to your draft synopsis.

Any chance you can please bundle any additional follow up questions so I do not have keep circling back one by one. Folks have to stop the presses to respond and would be more efficient.

Thanks much,

Michael

On Fri, Aug 18, 2017 at 9:27 AM, Bowman, Randal
<randal_bowman@ios.doi.gov> wrote:

The material from NFMS referenced an effort to reduce the Large Vessel closure area in and near the Rose Atoll monument and Sanctuary being overturned by a court, but did not mention the issues involved. In trying to track down the court decision to see what was involved, I found this story, which indicates the issue is much more complicated than indicated - could you get a status report on where this stands?

Judge Sides With American Samoa Local Fishermen Over Feds
March 22, 2017

By FILI SAGAPOLUTELE, Associated Press

PAGO PAGO, American Samoa (AP) — A federal judge in Honolulu has ruled that the decision to reduce the area off-limits to large vessels along the coast of American Samoa "is invalid," clearing the way for exclusive access by local fishermen and small boats.

U.S District Court Judge Leslie E. Kobayashi also ruled that National Marine Fisheries Service's change of the rule "was arbitrary and capricious."

Fishing waters had been preserved for the local "alia" — or small boat — fishing fleet from the shoreline out to 50 miles since 2002. Last year, the National Marine Fisheries Service reduced the large-vessel-protected area, or LVPA, to 12 miles from the shoreline, allowing vessels 50 feet and longer to net hauls once reserved for local fishermen.

The plaintiffs, through the American Samoa government, filed the lawsuit in March 2016 arguing that American Samoa's cultural fishing rights are found in the two Deeds of Cession — the 1900 Deed of Cession for Tutuila and Aunu'u islands and the 1904 Deeds of Cession for Manu'a islands — with the U.S.

The defendants, who include the National Oceanic and Atmospheric Administration, countered in court documents that deeds say nothing, about fishing or marine resources and "that silence should not be read to establish rights."

In a 42-page ruling issued Monday, Kobayashi says the Deeds of Cession require the United States to respect the American Samoans' customary practices — such as fishing — even though the deeds do not specifically identify the practices.

American Samoa Gov. Lolo Matalasi Moliga said he hopes the case serves as a reminder to the federal government that "we have rights and they should not be easily dismissed."

American Samoa Attorney General Talauega Eleasalo Ale, who appeared for the territorial government at federal court during oral arguments last month, describes the ruling as "thorough and well-reasoned."

"This decision is the first federal case law to articulate the meaning of the deeds as it relates to our direct dealings with the federal government," Ale said. "It establishes a critical pathway towards clarifying our relationship with the federal government, as well as our status as a people and culture within the American family."

Federal defendants in the lawsuit include NMFS, the Secretary of Commerce, Western Pacific Regional Fishery Management Council executive director Kitty Simonds and the Fisheries Service's Pacific Islands Regional Office administrator Michael Tosatto. Tosatto said late Tuesday afternoon from Honolulu that NOAA Fisheries is reviewing the court's decision and evaluating its next steps. Council spokeswoman Sylvia Spalding said that the council may discuss the ruling as it meets in Honolulu this week.

Legal counsel Frederick Tucker with the NOAA Office of General Counsel-Pacific Islands Section said NOAA hasn't had an opportunity to discuss the ruling extensively with other federal parties including the US Justice Department, which represented defendants in the lawsuit.

"Currently, we're in the evaluation state," Tucker said.

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