

**From:** Michael Weiss - NOAA Federal  
**To:** [Bowman, Randal](#)  
**Subject:** Re: Amrican Samoa fishery question  
**Date:** Friday, August 18, 2017 10:13:53 AM  
**Attachments:** [Pacific Territories and Tuna FisheryDOI\\_rev.docx](#)

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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](mailto: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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## Commercial Fishing in the Pacific ~~Territories~~ Monuments

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