From: Bowman, Randal
To: Tanya Joshua
Subject: Re: American Samoa fishing question
Date: Friday, August 18, 2017 9:17:44 AM

Can you get this to Nik while he is on travel? Sec's office likely will want to discuss Monday or Tuesday, so I'd like him not to go into discussion cold.

On Fri, Aug 18, 2017 at 9:36 AM, Bowman, Randal <randal_bowman@ios.doi.gov> wrote:

> Nik, FYI - this seems to complicate incredibly any effort to (b) (5) DPP [redacted] since the closure involved here overlaps the entire monument.
>
> ---------- Forwarded message ----------
> From: **Bowman, Randal** <randal_bowman@ios.doi.gov>
> Date: Fri, Aug 18, 2017 at 9:31 AM
> Subject: American Samoa fishing question
> To: Joseph McDermott <joseph_mcdermott@ios.doi.gov>
>
> There seems to be an aspect to this that no one has mentioned - see story below. (b) (5) DPP [redacted] It doesn't appear that the local small boat fishermen supply the cannery. NMFS indicated only 1 "alia" is still operating.
>
> 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.