

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

TERRITORY OF AMERICAN SAMOA,)	CIVIL 16-00095 LEK-KJM
)	
Plaintiff,)	
)	
vs.)	
)	
NATIONAL MARINE FISHERIES)	
SERVICE; UNITED STATES)	
DEPARTMENT OF COMMERCE;)	
NATIONAL OCEANIC AND)	
ATMOSPHERIC ADMINISTRATION;)	
WILBUR L. ROSS, Secretary of)	
Commerce; KITTY SIMONDS,)	
Executive Director of Western)	
Pacific Regional Fishery)	
Management Council; SAMUEL D.)	
RAUCH, Acting Assistant)	
Administrator of Fisheries,)	
MICHAEL D. TOSATTO, Regional)	
Administrator for NOAA's)	
National Marine Fisheries)	
Service Pacific Islands)	
Regional Office,)	
)	
Defendants.)	
_____)	

ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS

On March 20, 2017, this Court issued an Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment and Denying Defendants' Counter-Motion for Summary Judgment ("3/20/17 Order"). [Dkt. no. 45.¹] This Court granted summary judgment in favor of Plaintiff Territory of American

¹ The 3/20/17 Order is also available at 2017 WL 1073348.

Samoa ("Plaintiff") as to Count I of its Complaint, [filed 3/4/16 (dkt. no. 1),] which alleged that the final rule regarding Pacific Island Pelagic Fisheries; Exemption for Large U.S. Longline Vessels to Fish in Portions of the American Samoa Large Vessel Prohibited Area, 81 Fed. Reg. 5619 (Feb. 3, 2016) ("2016 LVPA Rule"), violated the Magnuson-Stevens Fishery Conservation and Management Act ("MSA") because the rule was not consistent with American Samoa's deeds of cession. See 3/20/17 Order, 2017 WL 1073348, at *1 (describing Plaintiff's claims); id. at *17 (granting summary judgment in favor of Plaintiff as to Count I). This Court concluded that the adoption of the 2016 LVPA Rule was arbitrary and capricious, and therefore the rule was invalid. Further, in light of that ruling, this Court dismissed Plaintiff's other three claims as moot.² See 3/20/17 Order, 2017 WL 1073348, at *17.

Final judgment was entered pursuant to the 3/20/17 Order. See Judgment in a Civil Case, filed 4/11/17 (dkt. no. 48). Defendants National Marine Fisheries Service ("NMFS"); United States Department of Commerce ("DOC"); National Oceanic

² The other claims asserted in the Complaint are: breach of fiduciary duty, in violation of the Administrative Procedure Act ("APA"), § 706(2)(a) ("Count II"); failure by NMFS to conduct adequate review of the deeds of cession before promulgating the 2016 LVPA Rule and failure by the Council to provide training on the deeds of cession, both in violation of the MSA, 16 U.S.C. § 1854, and APA § 706(2)(a) ("Count III"); and arbitrary and capricious action, in violation of APA § 706(2)(a) ("Count IV").

and Atmospheric Administration ("NOAA"); Wilbur L. Ross, in his official capacity as the Secretary of Commerce; Kitty Simonds, in her official capacity as Executive Director of the Western Pacific Regional Fishery Management Council ("the Council"); Samuel D. Rauch III, in his official capacity as Acting Assistant Administrator for Fisheries, NMFS; and Michael D. Tosatto, in his official capacity as Regional Administrator, NMFS Pacific Islands Regional Office (all collectively, "Defendants") filed a motion for reconsideration and for amendment of the judgment, but the motion was denied, and Defendants appealed. See Order Denying Defendants' Motion for Reconsideration and to Amend the Court's Judgment (Dkt. No. 48) Pursuant to Local Rule 60.1 and Federal Rule of Civil Procedure 59(e), filed 8/10/17 (dkt. no. 60); Defendants' Notice of Appeal and Representation Statement, filed 10/6/17 (dkt. no. 62).

The Ninth Circuit Court of Appeals reversed the 3/20/17 Order in a memorandum disposition, holding that the 2016 LVPA Rule was not arbitrary and capricious. See Territory of Am. Samoa v. Nat'l Marine Fisheries Serv., 822 F. App'x 650, 652 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2797 (2021).³ Based

³ The Ninth Circuit's Memorandum is also available at docket number 70, and the Ninth Circuit's November 17, 2020 Mandate is available at docket number 71.

upon the Ninth Circuit's analysis and holding, summary judgment must be GRANTED in favor of Defendants as to Count I. Further, although the 3/20/17 Order did not contain a substantive analysis of Counts II, III, and IV, based upon the Ninth Circuit's analysis of Count I, summary judgment must also be GRANTED in favor of Defendants as to Counts II, III, and IV.

There being no remaining claims in this case, the Clerk's Office is DIRECTED to immediately enter final judgment in Defendants' favor as to all of Plaintiff's claims, pursuant to this Order, and close this case.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAI`I, December 8, 2022.



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

**TERRITORY OF AMERICAN SAMOA V. NATIONAL MARINE FISHERIES
SERVICE, ET AL., CV 16-00095 LEK-KJM; ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF DEFENDANTS**