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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

CONSERVATION COUNCIL FOR
HAWAII, a non-profit corporation, and
MICHAEL NAKACHI, an individual,

Plaintiffs,

v.

NATIONAL MARINE FISHERIES
SERVICE, Department of Commerce;
NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION,
Department of Commerce; and GINA
RAIMONDO, in her official capacity as
Secretary of the United States Department
of Commerce,

Defendants.

Civil No. 22-cv-00224

**PLAINTIFFS' COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiffs Conservation Council of Hawai‘i and Michael Nakachi bring this action for declaratory and injunctive relief to remedy Federal Defendants’ (collectively, the National Marine Fisheries Service (“NMFS”)) failure to protect threatened oceanic whitetip sharks from harm caused by fisheries in the Western Pacific Ocean. Specifically, NMFS has failed to complete required consultation under the Endangered Species Act (“ESA”) regarding the effects of NMFS’s continued authorization of two fisheries managed under the Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region (“Pelagic FEP”) on the oceanic whitetip shark. By failing to complete consultation, NMFS is failing to ensure that these activities do not jeopardize the continued existence of the species, in violation of Section 7 of the ESA and its implementing regulations.

2. The oceanic whitetip shark has suffered a precipitous population decline of up to 88 percent in recent decades. The decline is due primarily to significant fishing pressure in the form of incidental capture and death in fisheries targeting other species (“bycatch”) and targeted catch. Ongoing fishing-related mortality and harm continue to threaten the shark’s existence.

3. In recognition of its population decline and ongoing threats, NMFS issued a final rule in January 2018 listing the oceanic whitetip shark as a threatened

species under the ESA.

4. Section 7 of the ESA requires every federal agency to ensure, through consultation with the relevant federal wildlife agency (here, NMFS's Office of Protected Resources), that any agency action that may affect a threatened or endangered species will not jeopardize the species' continued existence.

5. In the time since it listed the oceanic whitetip shark, NMFS's Office of Sustainable Fisheries has continued to authorize fisheries managed under the Pelagic FEP that affect the oceanic whitetip shark through bycatch. Capture in these fisheries can kill or seriously harm individual oceanic whitetip sharks, contributing to population reductions and diminishing the likelihoods of its survival and recovery.

6. NMFS has not completed the required ESA consultation on the effects of two of these fisheries—the Hawai'i deep-set longline fishery and the American Samoa longline fishery—on numerous ESA-listed species, including the oceanic whitetip shark.

7. NMFS's continued authorization of the Hawai'i deep-set longline fishery and American Samoa longline fishery without first completing this required consultation violates the agency's procedural duty to complete consultation and its substantive duty to avoid jeopardy to the continued existence of listed species under Section 7 of the ESA. 16 U.S.C. § 1536(a)(2).

8. Plaintiffs therefore ask this Court to declare that NMFS is in violation of the ESA and its implementing regulations and to order NMFS to complete the required consultations and issue final biological opinions on the effects of the Hawai‘i deep-set longline fishery and the American Samoa longline fishery on the oceanic whitetip shark within 90 days.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) and 16 U.S.C. § 1540(c), (g) (ESA citizen suits).

10. Plaintiffs provided written notice of the legal violations alleged in this Complaint to the named Defendants on February 7, 2019, as required by the ESA. *See id.* § 1540(g)(2)(C). Defendants have not corrected their violations of law.

11. This Court has authority to grant Plaintiffs’ requested relief pursuant to the ESA, *id.* § 1540(g), the Administrative Procedure Act (APA), 5 U.S.C. § 706, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202. Defendants’ sovereign immunity has been waived under the ESA’s citizen suit provision, 16 U.S.C. § 1540(g)(1)(A), and the APA, 5 U.S.C. § 702.

12. Venue is properly vested in this District pursuant to 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e)(i) because a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this District and Plaintiffs reside in this District.

PARTIES

13. Plaintiff Conservation Council for Hawai‘i (“CCH”) is a non-profit citizens’ organization based in Hawai‘i with approximately 5,000 members in Hawai‘i, the United States mainland, and foreign countries. CCH is the Hawai‘i affiliate of the National Wildlife Federation, a non-profit membership organization with over 5.8 million members and supporters nationwide. CCH’s mission is to protect native Hawaiian species, including threatened and endangered species, and to restore native Hawaiian ecosystems for future generations. CCH and its members have advocated for increased protection for marine life by supporting shark protection bills in the state legislature, a statewide ban on lay gillnets, and the establishment of marine protected areas. In 2015, CCH, along with others, successfully challenged NMFS’s decision to permit the U.S. Navy’s use of high-powered sonar and explosives off the coast of Hawai‘i and Southern California, which harm marine life. In the local community, CCH has produced a series of wildlife viewing interpretive signs to help protect marine species and held beach clean-ups.

14. CCH members include wildlife biologists, Native Hawaiian practitioners, farmers, fishermen, hunters, educators, artists, community leaders, and others who study and enjoy native Hawaiian wildlife. CCH members who live in other states visit the islands to observe and enjoy Hawai‘i’s native wildlife. CCH

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