



U.S. Department of Justice

Office of the Solicitor General

The Solicitor General

Washington, D.C. 20530

February 5, 2025

The Honorable Mike Johnson
Speaker
U.S. House of Representatives
Washington, DC 20515

Re: *Lofstad v. Raimondo*, No. 24-1420 (3d Cir. Sept. 25, 2024)

Dear Mr. Speaker:

Consistent with 28 U.S.C. 530D, I write to advise you that the Department of Justice has decided not to file a petition for a writ of certiorari in the above-referenced case. A copy of the opinion of the U.S. Court of Appeals for the Third Circuit is enclosed.

The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, empowers the Secretary of Commerce to manage and conserve the Nation's fisheries with the assistance of eight Regional Fishery Management Councils. The plaintiffs in this case challenged an amendment to a fishery plan on the ground that the Act's provisions governing the selection of the Councils' members are invalid. They argued that the members are officers of the United States who must be selected in accordance with the Constitution's Appointments Clause. The district court rejected the Appointments Clause challenge in full.

The Third Circuit reversed. The court upheld the Magnuson-Stevens Act's core features, holding that most of the Councils' functions consist of making recommendations and therefore comply with the Appointments Clause. But the court held that three rarely invoked ancillary provisions of the Act, under which the Secretary must obtain a Council's concurrence before taking certain types of actions, are invalid.

The Department of Justice has argued in this case and in other cases that the Act complies with the Appointments Clause. But the Third Circuit upheld the Act's most important elements, and the provisions it held invalid are of limited practical significance. For those reasons, review of the constitutional issue is not warranted at this time.

A petition for a writ of certiorari would be due February 21, 2025. Please let me know if we can be of any further assistance in this matter.

Sincerely,

Sarah M. Harris
Acting Solicitor General

Enclosure