

Spoiler Alert: Go Fish

The sheer heft of one of the longest written decisions issued by the U.S. Court of Federal Claims in the past year (85 pages) implies a ruling that will have a little something for everyone. But the result of this ruling is essentially limited to the facts of the case, which is at bottom a title dispute over ownership of the Kingman Reef is a low-lying coral reef atoll located in the Pacific Ocean, about 900 nautical miles south of Hawaii. In fact, much of the decision is devoted to recounting the lengthy history of ownership. The Government ultimately succeeds in proving that it owned the atoll all along, leaving the plaintiffs with what had been valuable fishing rights but no right to fish.

Kingman Reef was first discovered in 1798 and later visited in 1853 by an American ship captain W.E. Kingman, for whom it was named. In 1922, Lorrin A. Thurston and five companions landed on Kingman Reef, planted an American flag, and claimed ownership of the atoll for the United States and the Island of Palmyra Copra Company. In 1934 President Franklin Roosevelt placed the reef under the control of the U.S. Navy, formally asserting American rights to the atoll. During World War II, Kingman was included in a naval defensive area established by Roosevelt. In 1950, Congress enacted a law making Kingman Reef subject to the jurisdiction of the federal district court in Honolulu.

Despite the federal assertion of control over the atoll, the federal government never interfered with private use of the atoll. But this all changed in 2001 when the U.S. Fish and Wildlife Service established the Kingman Reef as a national wilderness area, making the atoll off-limits to commercial fishing and tourism. Plaintiffs, the Kingman Reef Atoll Investments, LLC, which owned lease rights in the property, and Kingman Reef Atoll Investments, LLC, which held legal and equitable title in the property, brought suit in the U.S. Court of Federal Claims seeking \$54.5 million in just compensation for the taking of their valuable fishing rights.

The Government moved for summary judgment on the grounds that the atoll was federally owned property, and thus Plaintiffs had no property rights in the atoll. The trial court agreed, granting the Government's motion. The trial court based its decision largely on an 1823 Supreme Court decision, *Johnson v. M'Intosh*, holding that when a person takes possession of land under the authority of a sovereign—as Thurston did in 1922, and the others did before him, the title first lies in the United States. The individual or corporate entity does not obtain title to the land unless the sovereign officially recognizes the title. Because the United States never officially recognized the Copra Company's ownership of the property, the plaintiff had no property interest in the atoll and could not bring a claim for just compensation:

[A]t best, plaintiff's predecessors-in-interest had inchoate rights to Kingman Reef . . . but that title was never perfected. Instead, the United States government proclaimed Kingman Reef public land [when it proclaimed its sovereignty over the atoll] in 1934 Under the circumstances, the court finds that . . . plaintiff's predecessors-in-interest[] never had a vested ownership right in Kingman Reef and, therefore, no valid property interest was ever conveyed to plaintiff.

Read the full opinion [here](#).