Marine Mammal Protection Act Import Provisions Comparability Finding Application Final Report

Palau

Summary

Based on Palau's initial application, its responses to the clarification questions, and the information described below, NMFS has determined that all of Palau's exempt and export fisheries are comparable in effectiveness to the U.S. regulatory program. Palau currently only has active exempt fisheries, but they do have an export fishery that is not active yet.

Palau prohibits the intentional killing or serious injury of marine mammals in the course of commercial fishing operations. Palau requires permits for fishing vessels. Palau has a program to monitor for incidental injuries and mortalities of marine mammals. Palau requires vessel operators to report all incidental injuries and mortalities of marine mammals that have occurred as a result of fishing operations. Palau prioritizes fisheries for mitigation in response to reported bycatch of 16 U.S.C. § 1387(f)(3) stocks/species.

Palau did not provide information on whether it prohibits the use of large-scale pelagic drift gillnets but its fisheries on the LOFF do not use drift gillnets. Palau and the United States are both members of the Western and Central Pacific Fisheries Commission (WCPFC). While Palau's export fishery is not active, its exempt purse seine fishery operates under WCPFC and is compliant with WCPFC's prohibition on the intentional encirclement of cetaceans by purse seine vessels and requires the safe handling and release of Cetaceans. Palau and the United States do not share any transboundary stocks. Palau does not have any critically endangered species interacting with its fisheries.

Comparability Finding Analysis

1. **Does the nation have a prohibition on the intentional killing or serious injury of marine mammals in the course of commercial fishing operations? OR Does the nation have procedures to reliably certify that fish and fish products were not caught in association with the intentional killing or serious injury of marine mammals in the course of commercial fishing operations?**

Response: Yes. Palau prohibits the intentional killing or serious injury of marine mammals in the course of commercial fishing operations.

Palau provided a copy of Presidential Declaration No. 10-14 and the Palau National Marine Sanctuary Act to answer this question. See below for the relevant sections:

Presidential Declaration No. 10-14

Article 1: The exclusive economic zone of the Republic of Palau a Sanctuary for all marine mammals.
Article 2: The purpose of the Sanctuary is to contribute towards the protection of marine mammals by prohibiting the deliberate hunting and harassment of marine mammals.
(NOTE that this sanctuary was later changed to 80% of the EEZ, allowing for fishing in the other 20%, but hunting of marine mammals is still prohibited.)
Article 3: Any accidental capture of or injury to a marine mammal during fishing operations and the utilization of stranded marine mammal carcasses in the Exclusive Economic Zone will require to be reported to the Bureau of Marine Resources within the Ministry of Natural Resources, Environment, and Tourism.

Palau National Marine Sanctuary Act

Section 6.8(A)(B)(C): Fishing vessels shall not fish for any reef fish, turtle, ray, marine mammal seabird, or any part of any such creature or seabird, or otherwise intentionally mutilate or injure any such sea creature or seabird. If any such reef fish, turtle, ray, marine mammal, or seabird is inadvertently caught or captured alive, it shall be released whether dead or alive. If caught alive, it shall be released in a manner in accordance with Best Practices Guidelines that afford it the greatest opportunity for survival.

2. Does the nation have a Marine Mammal Bycatch Reduction Program? A bycatch reduction program, for purposes of compliance with the import provisions, is defined as having the following components:

a. The ability to control/monitor its fishing operations that may take marine mammals (e.g., authorizations, permits, licenses, and/or registrations for vessels)

Response: Yes. Palau requires permits for fishing vessels.

Palau provided a copy of Title 27 Fishing and Palau National Marine Sanctuary. The relevant section states:

170: A fishing vessel may engage in fishing in the Republic only if such vessel has on board a valid permit issued under this chapter for each vessel.

b. A program to monitor its fisheries for incidences of marine mammal mortality and serious injury in the course of commercial fishing operations

Response: Yes. Palau has a program to monitor for incidental injuries and mortalities of marine mammals.

Palau's one export fishery (tuna longline Fishery ID 2147) uses 100% vessel log books. The vessel logbook uploaded with Palau's application includes space to note fish species and "other", which would be a place to record any marine mammal bycatch.

c. A requirement to report all marine mammal mortality and serious injury in the course of commercial fishing operations

Response: Yes. Palau requires vessel operators to report all incidental injuries and mortalities of marine mammals that have occurred as a result of fishing operations.

The document Palau provided did not mention reporting of marine mammal bycatch. NMFS looked at readily available information online. See below for the relevant information:

Palau National Marine Sanctuary Act

6.11: In accordance with any existing rules or guidelines, it is the responsibility of every fishing vessel operator to record all bycatch in the vessel's logbook. All bycatch data contained in logbooks shall assign with data obtained from port sampling, observers, and electronic monitoring systems.

Presidential Declaration No. 10-14 (Palau Declaration on the Establishment of a Marine Mammal Sanctuary)

This declaration states that "any accidental capture of or injury to a marine mammal during fishing operations and the utilization of stranded marine mammal carcasses in the Exclusive Economic Zone will require to be reported to the Bureau of Marine Resources within the Ministry of Natural Resources, Environment, and Tourism."

d. Prioritization of fisheries for mitigation of unsustainable marine mammal bycatch as described in 16 U.S.C. § 1387(f)(3) (in particular those over the bycatch limit, of small population size, or declining rapidly, based on available financial resources) in response to reported bycatch occurring in fishing operations. Prioritization of fisheries should be similar to U.S. take reduction teams and development of take reduction plans and including an evaluation of whether the nation has provided a bycatch limit and whether that bycatch limit is exceeded for any 16 U.S.C. § 1387(f)(3) stock(s), and whether any mitigation is effective or reconsidered if not effective.

Response: Yes. Palau prioritizes fisheries for mitigation in response to reported bycatch of 16 U.S.C. § 1387(f)(3) stocks/species.

Palau's export Fishery ID 2147 is comprised solely of foreign flagged vessels. Palau noted that it anticipates future participation of Palau flagged vessels in the fishery. At this time, Palau only has active exempt fisheries.

Palau has indicated no documented interactions for any of its exempt fisheries. Palau lists several specific marine mammal species, baleen whale unknown, or toothed whale unknown occurring in the same area as its exempt fisheries. None of these are 16 U.S.C. § 1387(f)(3) stocks/species.

However, in the overall marine mammal section of its application, Palau's list does include the sperm whale which is a 16 U.S.C. § 1387(f)(3) stocks/species. The sperm whale could be occurring in the same area as some of its exempt fisheries, or could also occur in the same area as the export longline fishery which would be of note when Palau-flagged vessels start participating in the fishery. Palau also provided a bycatch limit for the sperm whale. At this time, there are no reported sperm whale interactions or evidence of bycatch limits being exceeded in Palau's fisheries.

In addition to the species listed in its overall marine mammal list, 16 U.S.C. § 1387(f)(3) stocks/species blue whales and humpback whales could also occur in Palau's waters. Similar to the sperm whale, the blue whale and humpback whale could occur in the same area as Palau's exempt fisheries and the same area as the longline fishery if Palau-flagged vessels begin participating.

In the Western and Central Pacific Fisheries Commission (WCPFC) Scientific Committee Seventh Regular Session Electronic Meeting Annual Report to the Commission, Information on Fisheries, Research, and Statistics, Palau (August 11-19, 2021), the bycatch of marine mammals is listed for the last 5 years. This report noted the bycatch of one unidentified dolphin/porpoise (alive) in 2018. No other marine mammal bycatch was reported. This coincides with what Palau reported in its application.

Mitigation reported includes area-based fishery closure and marine protected areas based on the Palau National Marine Sanctuary (80% closure, 20% domestic fishing zone). It also uses WCPFC's *Best Practices for the Safe Handling and Release of Cetaceans*. Palau reported that there is a research program at the regional level being conducted by The Pacific Community (SPC), but it did not provide any documentation related to this program.

Palau reported that it could use assistance in planning an abundance survey, estimating abundance from survey data, calculating bycatch limits, deriving bycatch estimates from observer data, developing bycatch monitoring programs, developing bycatch mitigation strategies, developing risk assessment models, developing legal language for a regulatory program, and translating or interpreting MMPA import provisions materials.

3. Does the nation ban the use of large-scale high seas drift gillnet gear or other gear prohibited for use by U.S. fishermen?

Response: Palau did not provide information on whether it prohibits the use of large-scale pelagic drift gillnets. However, its fisheries on the LOFF do not use drift gillnets.

4. Does the nation implement marine mammal bycatch reduction measures in fisheries regulated under a regional fishery management organization (RFMO), which are required for U.S. fishermen by that RFMO?

Response: Yes. Palau and the United States are both members of the Western and Central Pacific Fisheries Commission (WCPFC). Palau has no active vessels on the WCPFC registry of fishing vessels. WCPFC prohibits the intentional encirclement of cetaceans by purse seine vessels and requires purse seine vessels to use WCPFC's *Best Practices for the Safe Handling and Release of Cetaceans*. When it had active fisheries in WCPFC, Palau implemented these WCPFC requirements.

5. In cases where a U.S. Take Reduction Team has implemented marine mammal bycatch reduction measures for transboundary stocks shared with the United States, are the nation's measures similar or comparable in effectiveness? (Include in the response if the nation has provided a bycatch limit and if the bycatch limit is exceeded for any 16 U.S.C. § 1387(f)(3) stocks, either in one fishery or cumulatively over a number of fisheries)

Response: Palau and the United States do not share any transboundary stocks.

6. For marine mammal stocks that are not transboundary but are considered at high risk of extinction, does the nation implement mitigation/risk reduction measures comparable to what is or would be required in the United States? (Include in the response if the nation has provided a bycatch limit and if the bycatch limit is exceeded for any 16 U.S.C. § 1387(f)(3) stocks, either in one fishery or cumulatively over a number of fisheries)

Response: Palau does not have any critically endangered species interacting with its fisheries.

Additional Considerations

In reviewing a nation's fisheries and marine mammals stocks, how do they compare to:

1. **U.S. implementation of its regulatory program for similar marine mammal stocks and similar fisheries (e.g., considering gear or target species), including transboundary stocks governed by regulations implementing a take reduction plan (50 CFR § 229.2), and any other relevant information received during consultations**

Response: Not applicable.

2. **The extent to which the harvesting nation has successfully implemented measures in the export fishery to reduce the incidental mortality and serious injury of marine mammals caused by the harvesting nation's export fisheries to levels below the bycatch limit**

Response: Not applicable.

3. **Whether the measures adopted by the harvesting nation for its export fishery have reduced or will likely reduce the cumulative incidental mortality and serious injury of each marine mammal stock below the bycatch limit, and the progress of the regulatory program toward achieving its objectives**

Response: Not applicable.

4. **Other relevant facts and circumstances, which may include the history and nature of interactions with marine mammals in this export fishery, whether the level of incidental mortality and serious injury resulting from the fishery or fisheries exceeds the bycatch limit for a marine mammal stock, the population size and trend of the marine mammal stock, and the population level impacts of the incidental mortality or serious injury of marine mammals in a harvesting nation's export fisheries and the conservation status of those marine mammal stocks where available**

Response: Not applicable.

5. **The record of consultations under 50 CFR § 216.24(h)(5) of this section with the harvesting nation, results of these consultations, and actions taken by the harvesting nation and under any applicable intergovernmental agreement or regional fishery management organization to reduce the incidental mortality and serious injury of marine mammals in its export fisheries**

Response: Not applicable.

6. **Information gathered during onsite inspection by U.S. government officials of a fishery's operations**

Response: Not applicable.

7. For export fisheries operating on the high seas under an applicable intergovernmental agreement or regional fishery management organization to which the United States is a party, the harvesting nation's record of implementation of, or compliance with, measures adopted by that regional fishery management organization or intergovernmental agreement for data collection, incidental mortality and serious injury mitigation or the conservation and management of marine mammals; whether the harvesting nation is a party or cooperating non-party to such intergovernmental agreement or regional fishery management organization; the record of United States implementation of such measures; and whether the United States has imposed additional measures on its fleet not required by an intergovernmental agreement or regional fishery management organization

Response: Not applicable.

8. For export fisheries operating on the high seas under an applicable intergovernmental agreement or regional fisheries management organization to which the United States is not a party, the harvesting nation's implementation of and compliance with measures, adopted by that regional fisheries management organization or intergovernmental agreement, and any additional measures implemented by the harvesting nation for data collection, incidental mortality and serious injury mitigation or the conservation and management of marine mammals and the extent to which such measures are comparable in effectiveness to the U.S. regulatory program for similar fisheries

Response: Not applicable.

Overall Summary for Additional Considerations

The additional considerations did not reveal any new information that would otherwise affect NMFS's conclusions about the fisheries determined to be fully comparable in effectiveness to the U.S. regulatory program.

Engagement History

NMFS held a virtual technical consultation with Palau in December 2020 and additional email exchanges. Palau has been responsive to questions. Palau also submitted a 2019 Progress Report.