

Fijian Fisheries and the U.S. MMPA Imports Rule¹

October 4, 2023

I. Executive Summary

With 130,450 km² of archipelagic waters, 45,000 km² territorial waters and over 322 islands, Fiji is home to a high diversity of marine life. Fiji's marine biodiversity is a natural resource base on which the Fijian economy relies. About 80% of Fiji's population lives in coastal areas and are highly dependent on inshore and fisheries for subsistence.² The indigenous peoples of Fiji, iTaukei Fijians, rely on ocean resources for food and livelihoods and have deeply rooted cultural practices regarding fishing that are informed by traditional ecological knowledge. Fiji also has a strong industrial fishery sector, with substantial exports to the United States.

Fiji does not possess a fisheries management system that addresses marine mammal bycatch, nor does it collect information on marine mammal populations or assess the impact any bycatch has on those populations. While it appears that Fiji legally bans the intentional killing of marine mammals, it does not have specific policies aimed at mitigating bycatch. Lack of data is a strong theme in Fijian fisheries.

Under the U.S. Marine Mammal Protection Act (MMPA), the U.S. government "shall ban" all seafood imports caught with fishing gear that kills or seriously injures marine mammals "in excess of United States standards."³ To implement the requirement, NMFS issued the MMPA Imports Rule,⁴ setting out standards that nations must demonstrate to continue exporting fish to the United States after December 31, 2022. Under the Rule, Fiji must apply for and receive a "comparability finding" from the National Marine Fisheries Service, which is essentially a determination that Fiji's bycatch and bycatch program for exports to the United States meet U.S. standards.⁵

This report provides a brief assessment of Fiji's export fisheries, its marine mammal populations, potential bycatch issues, and Fiji's legal regime related to bycatch, as applied to the MMPA Imports Rule. Our examination of available data indicates that Fiji's current policies and practices, with the potential exception of its National Longline fishery, are unlikely to meet the requirements of the MMPA Imports Rule. The shortcomings include: underreporting of bycatch by fisheries and fishers; a lack of standardized and enforced monitoring programs; a lack of baseline information on cetacean and marine mammal populations, distribution, and abundance; and a lack of regulatory measures requiring bycatch mitigation.

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² **United Nations Development Programme.** *Strengthening Fiji's Network of Locally Managed Marine Areas (LMMAs) to Support Globally Significant Marine Biodiversity.* Fiji: World Wildlife Fund (WWF), 2018.

³ 16 U.S.C. § 1371(a)(2).

⁴ 81 Fed. Reg. 54,415 (Aug. 16, 2016).

⁵ 50 C.F.R. § 216.24(h)(6).

II. Maps of Fiji and Regional EEZs

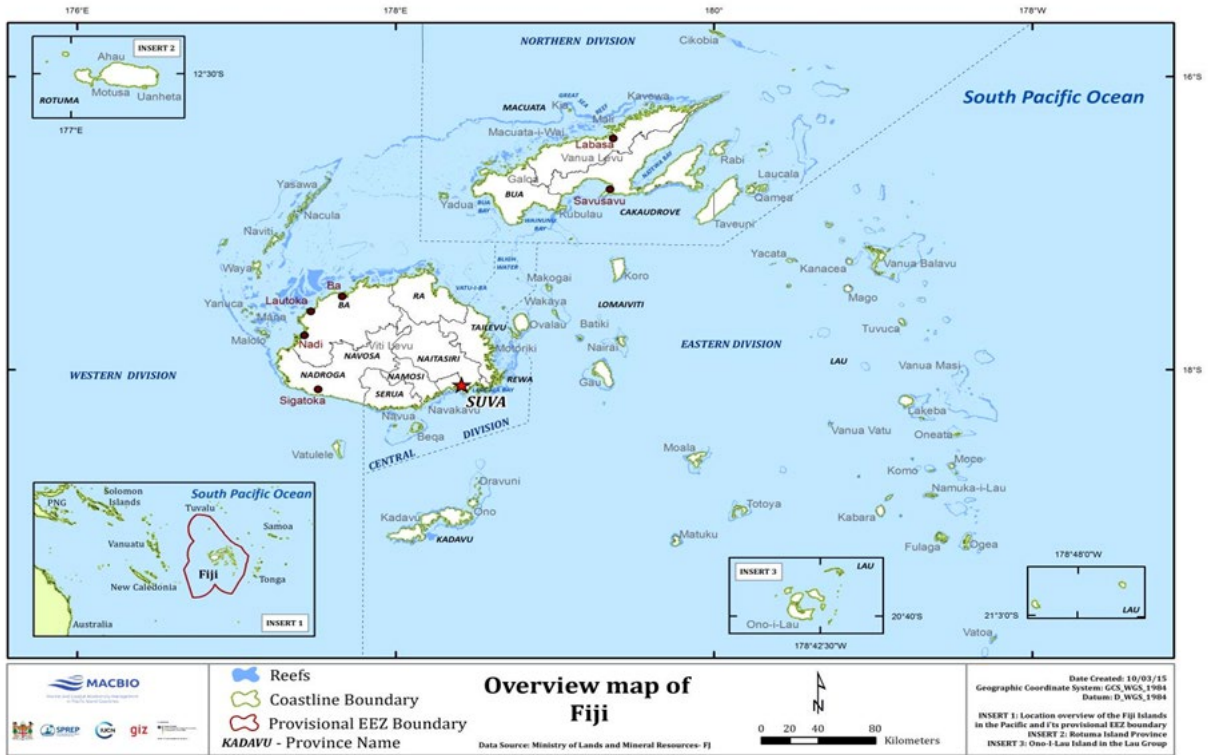


Figure 1. Map depicting an overview of Fiji. Source: (MACBIO n.d.).



Figure 2. Estimated exclusive economic zones (EEZs) of Pacific Island countries and territories. Source: (Bell et al. 2013).

III. Export Fisheries

Fiji divides its marine fisheries into three sub-sections: subsistence, coastal commercial, and offshore industrial. The nation’s fish exports come from the coastal commercial and offshore industrial fleets.⁶ Fiji’s largest export to the United States by both volume and USD value is tuna.⁷ According to the 2020 List of Foreign Fisheries (LOFF), Fiji’s export fisheries included albacore, bigeye tuna, dolphinfish, swordfish, yellowfin tuna, mackerel, flatfish and righteye flounder. The LOFF also reports that Fiji’s export fisheries use a variety of fishing gear including set longlines and set gillnets. The mackerel fishery did not report gear types.⁸

Year	Volume (kg)	Value (USD)
2018	12,416,522	\$78,260,346
2019	10,839,081	\$76,778,999
2020	12,663,594	\$90,199,319
2021	10,606,443	\$70,031,277
2022	12,872,041	\$86,403,831
Total	59,397,681	\$401,673,772

Table 1. US imports of fish and fish products from Fiji.⁹

In addition to exporting directly to the United States, Fiji is a source nation that exports its fishery goods to intermediary nations. The intermediary nations then process and export the goods to the United States.¹⁰ Fiji’s exports to other intermediary nations present a risk of non-MMPA compliant fishery products from Fiji being exported to the United States through other nations. Fiji is listed as a product source for intermediary export products from Thailand.¹¹

IV. Marine Mammals

The Pacific Islands region is habitat to more than 30 cetacean species that use the region on a year-round, seasonal, or more sporadic basis. Unfortunately, “[f]or most of these species, there is limited information available for important characteristics such as abundance, birth rates, potential biological removal, level of residency or site fidelity, genetic distinctiveness, or critical

⁶ **Food and Agriculture Organization of the United Nations.** “Information on Fisheries in Individual Pacific Island Countries.” Accessed February 28, 2022. <https://www.fao.org/3/AC682E/ac682e06.htm>.

⁷ **National Oceanic and Atmospheric Administration Fisheries.** “US Trade in Fishery Products.” August 2023. <https://www.fisheries.noaa.gov/foss> (searched total annual imports by product from Fiji for each year from 2018 to 2022).

⁸ **National Oceanic and Atmospheric Administration Fisheries.** “2020 Final List of Foreign Fisheries (LOFF).” (2020). 217.

⁹ *Ibid.*, 7.

¹⁰ *Ibid.*, 8.

¹¹ *Ibid.*, 8.

habitat.”¹² Despite this lack of research and stock assessments, the limited information that does exist suggests a relatively high diversity of marine mammals in the region.

The International Union for Conservation of Nature (IUCN) has assessed 18 species that use Fijian waters which include the Endangered sei whale (*Balaenoptera borealis*) and blue whale (*Balaenoptera musculus*), the Vulnerable fin whale (*Balaenoptera physalus*) and sperm whale (*Physeter macrocephalus*), and two Near Threatened species, the Antarctic minke whale (*Balaenoptera bonaerensis*) and the false killer whale (*Pseudorca crassidens*). IUCN has assessed twelve additional species as Least Concern and one species, the killer whale (*Orcinus orca*), as Data Deficient. Population trends are unknown for the majority of these species.¹³

While the IUCN has assessed the status of some of these species on a global scale, there has been relatively little marine mammal research conducted in the Pacific Islands region and even more sparse research for Fiji specifically.¹⁴ For a vast majority of cetacean species in Fiji, a detailed understanding of their life history, geographic range, stock assessments, and habitat of individuals and populations is lacking.¹⁵ This lack of data and lack of regularly conducted research on marine mammals and marine mammal bycatch is one of the largest barriers for marine mammal conservation in the region.¹⁶ A robust, multiyear survey in Fijian waters is necessary to understand the status of cetaceans and other marine mammals.¹⁷ And additional research is needed to assess whether any of the species occurring in Fijian waters are genetically distinct, island-associated populations or stocks, which can be a characteristic of some of the marine mammals occurring in the region.¹⁸ Thus, while many species are assessed as “Least Concern” at the global level, stocks within Fiji may nonetheless be threatened.

Fiji does not have comprehensive stock assessments for its marine mammals. Various scientific journals have identified species present or potentially present within the nation’s waters (Table 2).

¹² **Miller, Cara.** 2023. *Review of Cetacean Diversity, Status and Threats in the Pacific Islands Region 2021*. Apia, Samoa: Secretariat of the Pacific Regional Environment Programme. 87 pp.

¹³ **IUCN Red List of Threatened Species.** “The IUCN Red List of Threatened Species.” Accessed April 11, 2023. <https://www.iucnredlist.org/>.

¹⁴ **Miller, Cara.** *Current State of Knowledge of Cetacean Threats, Diversity and Habitats in the Pacific Islands Region*. Australia: WDCS Australasia Inc., 2007.

¹⁵ *Ibid.*

¹⁶ **Secretariat of the Pacific Regional Environmental Programme.** *Pacific Islands Regional Marine Species Programme 2022- 2026*. 2021. <https://www.sprep.org/circular/cir2151-1-seeking-comments-on-draft-regional-marine-species-programme-2022-2026-2-participation-in-regional-marine-species-programme-online-meeting>.

¹⁷ *Ibid.*

¹⁸ **Braulik, G., & Reeves, R.** 2018. *Stenella longirostris (errata version published in 2019)*. The IUCN Red List of Threatened Species 2018: e.T20733A156927622. <https://dx.doi.org/10.2305/IUCN.UK.2018-2.RLTS.T20733A156927622.en>.

Common Name	Scientific Name	Sighting status in Fiji ^{19,20}	CITES appendix	IUCN Status	IUCN Stock Assessments of Mature Individuals
Common minke whale	<i>Balaenoptera acutorostrata</i>	Documented	Appendix I	Least Concern	200,000 (Global); Data Deficient (Southern Hemisphere)
Antarctic minke whale	<i>Balaenoptera bonaerensis</i>	Documented	Appendix I	Near Threatened	Data Deficient
Sei whale	<i>Balaenoptera borealis</i>	Documented	Appendix I	Endangered	50,000 (Global); Data Deficient (Southern Hemisphere)
Bryde's whale	<i>Balaenoptera edeni</i>	Documented	Appendix I	Least Concern	Data Deficient
Blue whale	<i>Balaenoptera musculus</i>	Anecdotal	Appendix I	Endangered	5,000-15,000 (Global); 5,000 (Southwest Pacific)
Fin whale	<i>Balaenoptera physalus</i>	Documented	Appendix I	Vulnerable	100,000 (Global); Data Deficient (Southern Hemisphere)
Common dolphin	<i>Delphinus delphis</i>	Anecdotal	Appendix II	Least Concern	Data Deficient
Short-finned pilot whale	<i>Globicephala macrorhynchus</i>	Documented	Appendix II	Least Concern	Data Deficient

¹⁹ *Ibid.*, 12.

²⁰ Paton, David, Nadine Gibbs, and Phil Clapham. "The Fiji Islands Whale Sanctuary." Web log. *Owl Fiji (blog)*, n.d. <https://www.owlfiji.com/the-fiji-islands-whale-sanctuary/>.

Pygmy sperm whale	<i>Kogia breviceps</i>	Documented	Appendix II	Least Concern	Data Deficient
Fraser's dolphin	<i>Lagenodelphis hosei</i>	Anecdotal	Appendix II	Least Concern	Data Deficient
Humpback whale	<i>Megaptera novaeangliae</i>	Documented	Appendix I	Least Concern	84,000 (Global)
Blainville's beaked whale	<i>Mesoplodon densirostris</i>	Documented	Appendix II	Least Concern	Data Deficient
Killer whale	<i>Orcinus orca</i>	Anecdotal	Appendix II	Data Deficient	Data Deficient
Sperm whale	<i>Physeter macrocephalus</i>	Documented	Appendix I	Vulnerable	Data Deficient
False killer whale	<i>Pseudorca crassidens</i>	Documented	Appendix II	Near Threatened	Data Deficient
Pantropical spotted dolphin	<i>Stenella attenuata</i>	Documented	Appendix II	Least Concern	Data Deficient
Spinner dolphin	<i>Stenella longirostris</i>	Documented	Appendix II	Least Concern	Data Deficient
Rough-toothed dolphin	<i>Steno bredanensis</i>	Anecdotal	Appendix II	Least Concern	Data Deficient
Bottlenose dolphin	<i>Tursiops truncatus</i>	Documented	Appendix II	Least Concern	Data Deficient

Table 2. Marine mammals in Fiji.^{21,22,23}

These reports sourced this information from collecting scientific and anecdotal biodiversity knowledge from scientists, government and NGOs, community members and marine tourism representatives.^{24,25} Because of the variety of sources, all species and/or population data should be viewed as conservative estimates of varying reliability and while there may be global

²¹ Miller, Cara. 2023. *Review of Cetacean Diversity, Status and Threats in the Pacific Islands Region 2021*. Apia, Samoa: Secretariat of the Pacific Regional Environment Programme. 87 pp.

²² Paton, David, Nadine Gibbs, and Phil Clapham. "The Fiji Islands Whale Sanctuary." Web log. *Owl Fiji (blog)*, n.d. <https://www.owlfiji.com/the-fiji-islands-whale-sanctuary/>.

²³ IUCN Red List of Threatened Species. "The IUCN Red List of Threatened Species." Accessed April 11, 2023. <https://www.iucnredlist.org/>.

²⁴ *Ibid.*, 21.

²⁵ *Ibid.*, 22.

population estimates for some marine mammals that occur partially in Fijian waters, there are no population estimates for any species in Fijian waters.

a. Humpback Whales

Fiji's waters have been confirmed as breeding grounds for the Oceania population of humpback whales. This subpopulation is listed as Endangered by the IUCN, though the Scientific Committee of the International Whaling Commission (IWC) has stated that a new assessment is needed.²⁶ It was estimated that the subpopulation contained about 4,300 whales in 2005, which made it the least abundant breeding population of humpback whales in the southern hemisphere.²⁷ While up to 150 humpback whales were seen *weekly* in surveyed Fijian waters between 1956 and 1958, a 3-year study from 2010 to 2012 counted 33 individual over 480 hours of effort from Ovalau Island and 68 individuals over 300 hours of effort from Makogai Island, demonstrating a significant decrease in humpback whales occurring in Fijian waters after commercial whaling.²⁸

The Oceania population of humpback whales has four regional breeding grounds, with Fijian waters sandwiched between the New Caledonia and Tonga regions.²⁹ The IWC recognizes these two regions as Breeding Stock E2 and Breeding Stock E3, respectively.³⁰ The Oceania population of humpback whales is genetically isolated from adjacent breeding stocks in Eastern Australia and Colombia.³¹

V. Bycatch

There is a significant lack of documentation of marine mammal bycatch within Fiji's fisheries outside of the Western and Central Pacific Fisheries Commission (WCPFC), and questionable value of bycatch information and reporting within the WCPFC, with one report noting that "the catch estimates for the WCPFC Convention Area as a whole, are unlikely to be reliable and

²⁶ **Thomas, Peter O., et al.** "Status of the World's Baleen Whales." *Marine Mammal Science* 32, no. 2 (2015): 682–734. <https://doi.org/10.1111/mms.12281>.

²⁷ **Constantine, R. et al.** "Abundance of humpback whales in Oceania using photo-identification and microsatellite genotyping." *Marine Ecology Progress Series* 453 (2012): 249-261. <https://doi.3354/meps09613>.

²⁸ **Miller, C., et al.** "Very Low Numbers of Endangered Oceania Humpback Whales Seen in Fijian Waters." *The South Pacific Journal of Natural and Applied Sciences* 33, no. 2 (2015): 39. <https://doi.org/10.1071/sp15006>.

²⁹ **Steel, D., et al.** "Migratory Interchange of Humpback Whales (Megaptera Novaeangliae) among Breeding Grounds of Oceania and Connections to Antarctic Feeding Areas Based on Genotype Matching." *Polar Biology* 41, no. 4 (2017): 653–62. <https://doi.org/10.1007/s00300-017-2226-9>.

³⁰ *Ibid.*

³¹ *Ibid.*

should be viewed in that context.”^{32,33,34,35} The estimate of marine mammal bycatch within the Pacific Islands is limited by the lack of scientific research, government monitoring programs, bycatch documentation, fishing vessel monitoring, and comprehensive observer coverage. Nonetheless, bycatch “by commercial oceanic purse seine and longline vessels fishing within the Exclusive Economic Zones of Pacific Island countries and territories is identified as the most serious current threat to cetaceans based on reports from on board fisheries observers.”³⁶

Bycatch reports are varied in Fiji which we believe is due to the lack of a unilateral reporting system for Fiji’s waters. Undocumented threats to cetaceans may be present in Fiji, including entanglement in pelagic longlines, artisanal fishery, and gillnets.³⁷ Without species stock or abundance studies, Fiji is unable to calculate a Potential Biological Removal Level (PBR) or equivalent.

a. Longline Fisheries

The Fiji National longline fleet predominantly targets albacore but also targets bigeye tuna, dolphinfishes, swordfish, and yellowfin tuna.³⁸ In 2020, roughly 64% of the fleet’s fishing occurred in Fiji’s EEZ and 36% occurred in international waters.³⁹ Fiji lists 90 vessels, 60 licenses, and 950 participants for its longline fishery on the 2020 LOFF.⁴⁰ The data in the 2020 LOFF differs from Fiji’s annual report to the WCPFC, in which it reported 86 vessels in its National longline fleet and an additional 6 foreign vessels that are licensed to fish within Fiji’s EEZ.⁴¹

Fiji’s LOFF-reported ships were listed as fishing for albacore, bigeye tuna, dolphinfishes nei, swordfish, tunas nei, and yellowfin tuna within the high seas, Solomon Islands, and Fiji’s Archipelagic waters, territorial seas and EEZ.⁴² Overall catch from the national fleet within the

³² **Peatman, Tom, and Simon Nicol.** “Updated Longline Bycatch Estimates in the WCPO” *Western and Central Pacific Fisheries Commission Scientific Committee 16th Regular Session*. WCPFC-SC16-2020/ST-IP-11, Electronic Meeting, August 11-20, 2020. <https://www.bmis-bycatch.org/references/schg9ibe>

³³ **Peatman, Tom, and Simon Nicol.** “Updated Purse Seine Bycatch Estimates in the WCPO” *Western and Central Pacific Fisheries Commission Scientific Committee 17th Regular Session*. WCPFC-SC17-2021/ST-IP-06, Electronic Meeting, August 11-19, 2021. <https://meetings.wcpfc.int/node/12542>

³⁴ **Secretariat of the Pacific Regional Environmental Programme.** *Pacific Islands Regional Marine Species Programme 2022- 2026*. 2021. <https://www.sprep.org/circular/cir2151-1-seeking-comments-on-draft-regional-marine-species-programme-2022-2026-2-participation-in-regional-marine-species-programme-online-meeting>.

³⁵ *Ibid.*

³⁶ **Miller, Cara.** 2023. *Review of Cetacean Diversity, Status and Threats in the Pacific Islands Region 2021*. Apia, Samoa: Secretariat of the Pacific Regional Environment Programme. 87 pp.

³⁷ **Smith, Brian D, et al.** “Status of Cetaceans in the Vatu-i-Ra Seascape and the Development of Local Capacity for Their Research and Conservation.” *Wildlife Conservation Society*, 24 (2011).

³⁸ **National Oceanic and Atmospheric Administration Fisheries.** “2020 Final List of Foreign Fisheries (LOFF).” (2020). 217.

³⁹ **Offshore Fisheries Division Ministry of Fisheries.** *Annual Scientific Report to the Western and Central Pacific Fisheries Commission: Part 1: Information on Fisheries, Research and Statistics for 2020 Fiji*. Government of Fiji, 2021.

⁴⁰ *Ibid.*, 38.

⁴¹ *Ibid.*, 39

⁴² *Ibid.*, 38.

WCPFC occurred 21% in other EEZs, 64% in Fiji's EEZ and 15% in the high seas.⁴³ From 2015-2019, the total annual catch for Fiji's longline fleet fluctuated between 14,559 to 15,336 mt, with the 15,336 being closer to the historical average. However, Fiji experienced a significant drop in 2020 with a total catch of 12,661 mt due to the Covid-19 pandemic.⁴⁴ The fishery has a total allowable catch of 12,000mt within Fiji's EEZ. In 2020, 60% of the total allowable catch was harvested at 7,171 mt.⁴⁵

Miller (2023) states that “[e]stimated annual median longline by-catch for all marine mammals (estimated collectively as a group) varied between approximately 1,700 in 2006 to 5,000 in 2017” throughout the Pacific Island countries and territories, which includes Fiji.⁴⁶ Our review of the WCPFC's public domain bycatch database indicates observed captures of marine mammals from 2013 to 2019 within Fiji's EEZ based on reported latitude and longitude coordinates.⁴⁷

A 2020 report for the sixteenth meeting of the WCPFC Scientific Committee stated:

It is difficult to obtain reliable estimates of WCPO [western and central Pacific Ocean] longline catches from observer data, given the low levels and imbalanced nature of observer coverage, and additionally the low coverage of available aggregate effort data disaggregated by hooks between float in the mid-2000s. Observer coverage has been particularly low in the north west Pacific. As such, the catch estimates for the region north of 10°N, and consequently the catch estimates for the WCPFC Convention Area as a whole, are unlikely to be reliable and should be viewed in that context.⁴⁸

While the WCPFC requires five percent coverage of the effort for longline fisheries in the Convention Area, Fiji has been exceeding this percentage in recent years, although the numbers differ between what Fiji reports to the WCPFC and what the Marine Stewardship Council finds in its audits.^{49, 50, 51} A WCPFC report for the longline fishery reported an estimate of up to 2,600

⁴³ *Ibid.*, 39.

⁴⁴ *Ibid.*, 39.

⁴⁵ *Ibid.*, 39

⁴⁶ **Miller, Cara.** 2023. *Review of Cetacean Diversity, Status and Threats in the Pacific Islands Region 2021*. Apia, Samoa: Secretariat of the Pacific Regional Environment Programme. 87 pp.

⁴⁷ **Western and Central Pacific Fisheries Commission.** “Bycatch data Excel file (BDEP) issued on July 27, 2020.” <https://www.wcpfc.int/doc/bycatch-data-file-bdep>.

⁴⁸ **Peatman, Tom, and Simon Nicol.** “Updated Longline Bycatch Estimates in the WCPO” *Western and Central Pacific Fisheries Commission Scientific Committee 16th Regular Session*. WCPFC-SC16-2020/ST-IP-11, Electronic Meeting, August 11-20, 2020. <https://www.bmis-bycatch.org/references/sehg9ibe>.

⁴⁹ **Western and Central Pacific Fisheries Commission.** 2018. “Conservation and Management Measure for the Regional Observer Programme (CMM 2018-05).” <https://cmm.wcpfc.int/measure/cmm-2018-05>.

⁵⁰ **Offshore Fisheries Division Ministry of Fisheries.** *Annual Scientific Report to the Western and Central Pacific Fisheries Commission: Part 1: Information on Fisheries, Research and Statistics for 2019 Fiji*. Government of Fiji, 2020.; **Offshore Fisheries Division Ministry of Fisheries.** *Annual Scientific Report to the Western and Central Pacific Fisheries Commission: Part 1: Information on Fisheries, Research and Statistics for 2020 Fiji*. Government of Fiji, 2021.

⁵¹ **Ackroyd, J. and McLoughlin, K.** 2023. *Acoura Marine Ltd. (trading as LRQA) Fourth Surveillance Report, Fiji Albacore, Yellowfin and Bigeye Tuna Longline*. 30 January 2023. 61 pp.

marine mammals bycaught in 2018, with up to 1,000 of these caught south of 10 degrees South, which includes the waters surrounding Fiji.⁵² Yet part one of Fiji’s 2020 Annual Scientific Report to the Western and Central Pacific Fisheries Commission stated that its longline fishery interacted with three marine mammals in 2020.⁵³

b. Purse Seine Fisheries

While Fiji does not have a purse seine fleet, fishing vessels from other nations use purse seines in Fijian waters and any bycatch from these purse seines must be considered as Fiji estimates PBR.⁵⁴ These purse seine ships are subject to WCPFC observer coverage requirements and other WCPFC Conservation and Management Measures (CMMs) as well as the laws and regulations of Fiji while within the Fiji EEZ. In addition, Fiji has several fish processing operations, including the government owned Pacific Fishing Company (www.pafcofiji.com) that contracts with Bumble Bee Foods, which may process and export purse seine-caught fish. While Fiji is not on the Final List of Intermediary Nations and Products, we urge NMFS to reassess whether fish and fish products processed in Fiji are exported to the United States and whether those products are sourced from other harvesting nations.

The WCPFC’s scientific committee extrapolated the purse seine bycatch rates from observer data into estimates for the entire fleet. The individual marine mammal bycatch estimation for the large-scale purse seine fishery across the WCPFC Convention Area was 1,848-1,980 marine mammals in 2019, and 2,062-2,569 for 2020.⁵⁵ The committee found that approximately half of the estimated marine mammal bycatch was accounted for by sets on free schools and schools associated with whales and whale sharks.⁵⁶ The committee also found that the bycatch rates of whales and whale sharks have likely been underreported in past WCPFC records. It believes this is due to the use of school association-specific reported effort when raising observed catch rates to total bycatch estimates, as well as the low rates of reported whale and whale-shark bycatch in vessel logbooks compared with observer data.⁵⁷ The committee stated that “Future work should consider estimating marine mammal bycatch at a finer taxonomic resolution, to allow more meaningful monitoring of bycatch and bycatch rates of marine mammal species.”⁵⁸

<https://cert.msc.org/FileLoader/FileLinkDownload.aspx/GetFile?encryptedKey=Y5Jr8cNxd+Mteq4mmfluyonf5LipS8WNC76jVj8UjMhX+HVZUzo8ZCxWy3MEWsO8>.

⁵² *Ibid.*, 48.

⁵³ **Offshore Fisheries Division Ministry of Fisheries.** *Annual Scientific Report to the Western and Central Pacific Fisheries Commission: Part 1: Information on Fisheries, Research and Statistics for 2020 Fiji.* Government of Fiji, 2021.

⁵⁴ **Offshore Fisheries Division Ministry of Fisheries.** *Annual Scientific Report to the Western and Central Pacific Fisheries Commission: Part 1: Information on Fisheries, Research and Statistics for 2019 Fiji.* Government of Fiji, 2020.

⁵⁵ **Peatman, Tom, and Simon Nicol.** “Updated Purse Seine Bycatch Estimates in the WCPO” *Western and Central Pacific Fisheries Commission Scientific Committee 17th Regular Session.* WCPFC-SC17-2021/ST-IP-06, Electronic Meeting, August 11-19, 2021. <https://meetings.wcpfc.int/node/12542>

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

c. Gillnet Fisheries

The presence of cetacean bycatch, especially in gillnet catches, has long been recognized. In fact, gillnets are the primary gear responsible for cetacean mortality worldwide.^{59,60,61,62} While we were unable to find detailed information on gillnet fisheries in Fiji, published data show that gillnets are used in local fisheries.⁶³ Due to the well documented levels of bycatch seen within global gillnet data and lack of any evidence indicating that these impacts do not occur in Fijian gillnet fisheries, NMFS should conclude that Fiji's gillnet fisheries present a risk to marine mammals within Fijian waters.

VI. National and Sub-National Laws and Regulations

a. Ban on Killing, Taking, or Selling Protected Marine Mammals

Together, Fiji's Offshore Fisheries Management Decree (Decree No. 78 of 2012) and Offshore Fisheries Management Regulations 2014 make it an offense for any person to "kill, take, land, sell or offer or expose for sale, deal in, transport, receive or possess any endangered or protected fish."⁶⁴ The term "fish" is defined as "any aquatic plant or animal, whether piscine or not, and includes any oyster or other mollusk, crustacean, coral, sponge, holothurian, or other echinoderm, turtle and marine mammal, and includes their eggs, spawn, spat and all juvenile stages and any of their parts."⁶⁵ Fiji protects any fish species listed on Appendix I or Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as an endangered or protected fish.⁶⁶ All of the marine mammals that are present or potentially present within Fiji's waters are listed on CITES Appendix I or II.⁶⁷

In addition, in March 2003, the Fijian Government declared its Exclusive Economic Zone as a Whale Sanctuary, making the direct hunt of cetaceans illegal within the 1.3 million km²

⁵⁹ **Anderson, R. C.** 2014. *Cetaceans and Tuna Fisheries in the Western and Central Indian Ocean*. IPNLF Technical Report 2, International Pole and Line Foundation, London. 133 pages.

⁶⁰ **MRAG.** 2012. *A review of by catch in the Indian Ocean gillnet tuna fleet focusing on India and Sri Lanka*. ISSF Technical Report 2012-05. International Seafood Sustainability Foundation, Washington, D.C., Washington, D.C., USA.

⁶¹ **Kiszka, J. et al.** "Marine mammal bycatch in the Southwest Indian Ocean: Review and need for a comprehensive status assessment" *Western Indian Ocean Journal of Marine Science* 7, no. 2, (2009): 119-136.

⁶² **International Whaling Commission (IWC).** 2019. *Report of the IWC Workshop on Bycatch Mitigation Opportunities in the Western Indian Ocean and Arabian Sea*. Participants at the IWC Workshop on Bycatch Mitigation Opportunities in the Western Indian Ocean and Arabian Sea. Nairobi, Kenya.

⁶³ **Prince, K., Lalavanua, W., Tamanitoakula, J., et al.** "Spawning potential surveys in Fiji: A new song of change for small-scale fisheries in the Pacific" *Conservation Science and Practice* 3:e271 (2021).
<https://doi.org/10.1111/csp2.273>

⁶⁴ **Government of Fiji Gazette Supplement.** *Supplement of Off-Shore Fisheries Management Decree 2012 (Decree No. 78 of 2012)*, No. 12 (Legal Notice No. 18). Fiji: Government of Fiji Gazette, 2014.

⁶⁵ *Ibid*

⁶⁶ *Ibid*

⁶⁷ **Convention on International Trade in Endangered Species of Wild Fauna and Flora.** "Appendices." Accessed February 17, 2022. <https://cites.org/eng/app/appendices.php>.

zone.^{68,69} While numerous sources reference Fiji’s creation of the Whale Sanctuary and one source cites a specific government declaration and corresponding Cabinet Decision, we were unable to find a copy of the underlying official documents that would confirm the scope of protections.⁷⁰

b. Fishing Gear Restrictions

Fiji prohibits the use of any driftnet, shark lines, demersal trawlers, and longline targeting deep water sharks or any bottom dwelling fish species.⁷¹

c. Fishery Registration/Licensing

Fiji reported 1414 ships engaged in export fishing in the 2020 LOFF.

Section 1 of Regulation 15 of Fiji’s Offshore Fisheries Management Regulations 2014 states that a “Fiji fishing vessel shall not be used for fishing or related activity within Fiji fisheries waters except with a license to fish.”⁷² Section 2 states:

The owner or operator of a Fiji fishing vessel applying for a license to fish within Fiji fisheries waters may apply to be licensed to fish for the following fish species in the application form set out in Schedule 6A—

- (a) Tuna species;
- (b) Straddling fish species;
- (c) Deep-water Snapper, unless the Fiji fishing is 100 percent owned by Fiji nationals;
- (d) Billfish species, unless the Fiji fishing vessel is 100 percent owned by Fiji nationals;
- (e) Mahimahi, unless the Fiji fishing vessel is 100 percent owned by Fiji nationals;
- (f) Swordfish, unless the Fiji fishing vessel is 100 percent owned by Fiji nationals; and
- (g) other species of fish prescribed by the Permanent Secretary.⁷³

Schedule 6A of the Offshore Fisheries Management Regulations 2014, appended below, includes sections for collecting vessel information, authorizations for the area of operation, the period of validity, gear type, and target species.⁷⁴ Any individual who uses a fishing vessel for fishing or fishing related activity within Fiji fisheries waters without a license, those who fail to comply

⁶⁸ **Miller, Cara, et al.** “Cetacean Diversity, Common Occurrence and Community Importance in Fijian Waters.” *Pacific Conservation Biology* 22, no. 3 (2016): 272. <https://doi.org/10.1071/pc14933>.

⁶⁹ **Smith, Brian D, et al.** “Status of Cetaceans in the Vatu-i-Ra Seascape and the Development of Local Capacity for Their Research and Conservation.” *Wildlife Conservation Society*, 24 (2011).

⁷⁰ *Ibid.*, 68.

⁷¹ *Ibid.*, 64.

⁷² **Government of Fiji Gazette Supplement.** *Supplement of Off-Shore Fisheries Management Decree 2012 (Decree No. 78 of 2012)*, No. 12 (Legal Notice No. 18). Fiji: Government of Fiji Gazette, 2014.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

with the terms of the license, and those who fail to provide true, complete or accurate information commit an offense.⁷⁵

Vessels or individuals fishing for export from Fiji must also acquire an exporting license. These licenses are maintained and recorded by the Director of Fisheries and must include the following information: company structure including parent and subsidiary companies associated with the fish exporter; fish and fish products exported; location of registered office, processing and storage facilities; and the details of export markets and consignee.⁷⁶ In addition, an export permit will not be issued unless it is accompanied by relevant Fiji Catch Certificates. An application for a Fiji Catch Certificate must include information on the fishing vessel name and license number, species, product codes, catch area(s), and dates.

All licensed or otherwise authorized fishing vessels are subjected to post-fishing inspection at the completion of each fishing trip to verify the catch, ship logs and other documents, markings of the vessel, gear and equipment, crew list and the vessel's compliance with the Decree.⁷⁷ In addition, the operators of such vessels must maintain daily records of catch and bycatch by species and provide such reports to the government.⁷⁸ Neither the 2012 Decree nor the 2014 Regulations provide a definition of catch or bycatch, therefore it is unclear whether licensed fishers must record marine mammal bycatch or just fish bycatch. The 2012 Decree provides a definition of "fishing" that includes "searching for, catching, taking or harvesting fish."⁷⁹ And the 2014 Regulations state that "'taken' in relation to catch retention means the capture of fish but does not include the release or discard of fish."⁸⁰ Finally, the various forms contained in the 2014 Regulations' List of Schedules, include sections for identifying catch, but often limit that reporting to pre-identified fish species (e.g., albacore, yellowfin, or bigeye) and catch "on board" or "landed." The forms do not contain specific areas for listing bycatch or any species discarded or released.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ **Government of Fiji Gazette Supplement. Supplement of Off-Shore Fisheries Management Decree 2012 (Decree No. 78 of 2012).**, No. 12 (Legal Notice No. 18). Fiji: Government of Fiji Gazette, 2014.

⁷⁹ **"Offshore Fisheries Management Regulations 2014," section 2.** 2014. *Government of Fiji Gazette Supplement, Supplement of Off-Shore Fisheries Management Decree 2012 (Decree No. 78 of 2012).*, No. 12 (Legal Notice No. 18).
http://www.fisheries.gov.fj/images/Fisheries_Legislations/Offshore_Fisheries_Management_Regulations_2014.pdf.

⁸⁰ *Ibid.*

d. Traditional Knowledge & Marine Management

The indigenous peoples of Fiji, iTaukei Fijians, have deeply rooted cultural practices that involve the use of marine life for ceremonies and celebrations. They also have a rich history of customary laws and practices that are informed by traditional ecological knowledge and emphasize principles of stewardship.⁸¹ Traditional conservation practices include *tabu* (seasonal closures) and the designation of sacred fishing grounds where the number of individuals allowed to harvest fish and the fishing practices that can be used and the number of fish that can be taken are dictated.⁸²

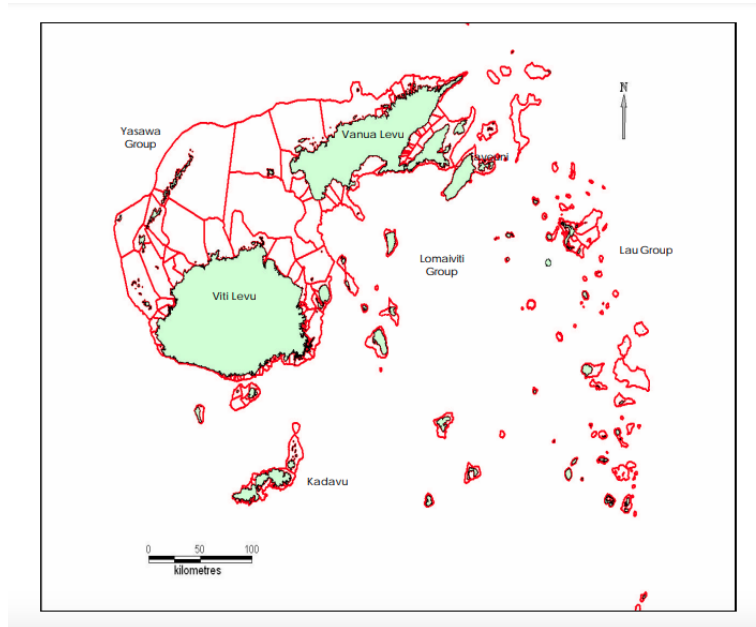


Figure 3. Fiji Traditional Customary Fishing Ground ‘Qoliqoli.’ Source: (Korovolavula et al. 2008)

Reflecting this strong custom, Fiji’s inshore and coastal fisheries are guided by a multifaceted system that incorporates both a legal framework and a deeply rooted traditional *iTaukei* system of governance. There are 410 traditionally managed fishing grounds (385 marine and 25 freshwater *Qoliqoli*) in Fiji. These fishing grounds cover 3.1 million hectares of inshore waters and provide resources for 400,000 individuals in coastal villages.⁸³ Indigenous Fijians have various rights to fish in a *Qoliqoli*.⁸⁴ The management and structure of *Qoliqoli* varies widely and many suffer from overfishing. When areas have become overfished, fishermen have been known to move to a different region to fish within a different *Qoliqoli* where they have ancestral connections.⁸⁵ Of the 410 traditionally managed fishing grounds, in 2011, at least 70 (17%) were

⁸¹ **United Nations Development Programme.** *Strengthening Fiji’s Network of Locally Managed Marine Areas (LMMAs) to Support Globally Significant Marine Biodiversity.* Fiji: World Wildlife Fund (WWF), 2018.

⁸² **United Nations Development Programme.** *Strengthening Fiji’s Network of Locally Managed Marine Areas (LMMAs) to Support Globally Significant Marine Biodiversity.* Fiji: World Wildlife Fund (WWF), 2018.

⁸³ *Ibid.*

⁸⁴ **Vierros, Marjo Alifereti.** *Tawake, Francis Hickey, AnnTiraa, Ana and Raheera Noa, Traditional Marine Management Areas of the Pacific in the Context of National and International Law and Policy.* Darwin, Australia: United Nations University – Traditional Knowledge Initiative, 2010.

⁸⁵ *Ibid.*

considered overexploited.⁸⁶ It is unclear how many fisheries under traditional management are export fisheries to the United States.

e. Conserved Marine Areas

1. Marine Protected Areas

The Government of Fiji has committed to establishing a network of Marine Protected Areas (MPAs) covering at least 30% of ocean areas under Fiji’s jurisdiction by 2030 to support restoration and conservation of biological diversity and ecosystem services.⁸⁷ This commitment builds on the 17 commitments made by Fiji in 2017 as host of the United Nations Ocean Conference to advance the protection and sustainable management of the ocean.⁸⁸ Conceivably, the establishment of an MPA network could lend protections to marine mammals relevant to fisheries management. However, we were unable to identify any existing MPA regulations that are relevant to assessing or managing fishery interactions with marine mammals.

2. Vatu-i-Ra Conservation Park

The Vatu-i-Ra Conservation Park encompasses Vatu-i-Ra Island and over 100 square kilometers. The island supports a wide diversity of breeding seabirds and is classified as an Important Bird and Biodiversity Area. Dolphins and whales also heavily populate the marine ecosystems surrounding the island. The park was established in 2017 to protect the biodiversity of the island’s marine and terrestrial ecosystems. Around 80% of Vatu-i-Ra Conservation Park is a “no-take” zone, and the remainder of the park’s waters are a “catch-and-release” zone.⁸⁹

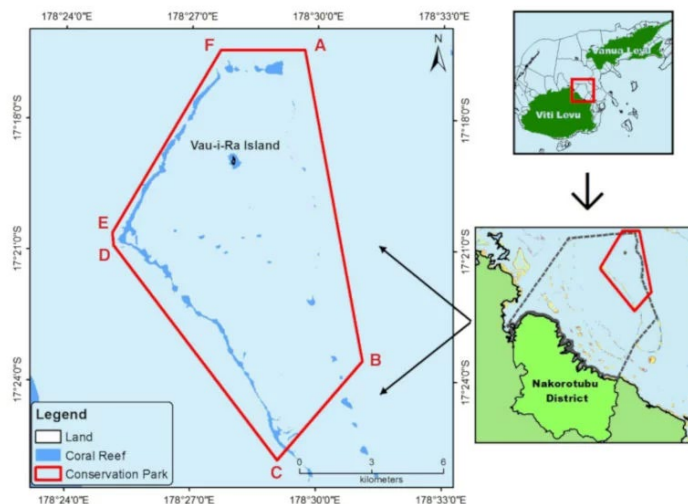


Figure 4. Location and boundaries of the Vatu-i-Ra Conservation Park. Source: (“About the Vatu-i-Ra Conservation Park” n.d.)

⁸⁶ Smith, Brian D, et al. “Status of Cetaceans in the Vatu-i-Ra Seascape and the Development of Local Capacity for Their Research and Conservation.” *Wildlife Conservation Society*, 24 (2011).

⁸⁷ Ministry of Economy, Republic of Fiji. 2021. *Republic of Fiji National Ocean Policy 2020-2030*.

⁸⁸ Mangubhai, Sangeeta. 2017. “Fiji Makes 17 Major Commitments to the Ocean.” *Wildlife Conservation Blog*. <https://medium.com/wcs-marine-conservation-program/fiji-makes-16-major-commitments-to-the-ocean-c6f8efce02cd>.

⁸⁹ Vatu-i-Ra Conservation Park. “About the Vatu-i-Ra Conservation Park.” Accessed February 14, 2022. <https://www.vatu-i-ra.org/about-the-park/>.

3. Locally Managed Marine Areas (LMMAs)

The implementation of LMMAs originated in Fiji and has been largely adopted by local communities. Tying into the traditional Fiji concept of Qoliqoli, the LMMAs empower local communities to engage in sustainable management of their fishing grounds in a method that utilizes traditional customs and conserves important fish stocks. LMMAs have limited or no formal legal protection or regulatory systems within Fiji. Instead, the LMMAs rely on the developed network between communities across the country and various different marine ecosystems to make collective conservation and management decisions over their LLMA waters.⁹⁰ LMMAs have been adopted by the Government of Fiji as a key management system for sustainable inshore and coastal fisheries due to their ability to provide both biodiversity conservation and sustainable resource access to local communities.⁹¹ As with MPAs, it is conceivable that LMMAs could lend protections to marine mammals relevant to fisheries management. However, we were unable to identify any guidelines, regulations, or practices associated with existing LLMAs relevant to assessing or managing fishery interactions with marine mammals.

f. Goals for the Future

1. National Fisheries Policy Draft

In June 2020, Fiji released the National Fisheries Policy draft.⁹² This policy draft states many fisheries management and strategic policy goals related to the nation's fisheries. One of the goals for the offshore fisheries is to address the management of incidental catch and species of special interest. The report's strategic goals for this problem are to "Develop, adopt, and implement national plans of action to minimize interaction with, for example, turtles, cetaceans, sharks, rays and seabirds;" "Ensure compliance with treaties on trade management of incidental catches and species of special interest;" and "Develop and implement harvest and utilization strategies to minimize incidental catch and develop by-products where sustainable and appropriate."⁹³ While these goals indicate a desire to address marine mammal bycatch, the goals contain no requirements and are not regulations, provide no details of actions to reduce bycatch, and provide no timeline or suggestions of direct actions to achieve these goals.

The National Fisheries Policy was not included in an extensive list of over 55 policies, legislations, action plans and frameworks meant to provide guidance for the development of objectives for Fiji's National Ocean Policy, which was released a year later and is further discussed below. The exclusion of the plan as a guiding tool for the National Ocean Policy, the failure to mention the development of a National Fisheries Policy or include it as an ongoing

⁹⁰ **Vierros, Marjo Alifereti.** *Tawake, Francis Hickey, AnnTiraa, Ana and Raheera Noa, Traditional Marine Management Areas of the Pacific in the Context of National and International Law and Policy.* Darwin, Australia: United Nations University – Traditional Knowledge Initiative, 2010.

⁹¹ **United Nations Development Programme.** *Strengthening Fiji's Network of Locally Managed Marine Areas (LMMAs) to Support Globally Significant Marine Biodiversity.* Fiji: World Wildlife Fund (WWF), 2018.

⁹² **Ministry of Fisheries Fiji.** *National Fisheries Policy Draft June 2020.* Fiji: Ministry of Fisheries Fiji, 2020. http://www.fisheries.gov.fj/images/National_Fisheries_Policy_draft_June_2020.pdf.

⁹³ **Ministry of Fisheries Fiji.** *National Fisheries Policy Draft June 2020.* Fiji: Ministry of Fisheries Fiji, 2020. http://www.fisheries.gov.fj/images/National_Fisheries_Policy_draft_June_2020.pdf.

management effort in the National Ocean Policy, and the fact that we can no longer find or access the plan on Fiji’s websites, suggest that it may no longer be an accurate representation of Fiji’s future fisheries policy. Given the uncertain status of any National Fisheries Policy, we urge NMFS to seek clarification from Fiji about the policy before relying on it for any purpose.

2. National Ocean Policy

In February 2021, Fiji released its National Ocean Policy 2020-2030.⁹⁴ The vision of the policy is “a healthy ocean that sustains the livelihoods and aspirations of current and future generations of Fiji” and the mission of the policy is “to secure and sustainably manage all of Fiji’s ocean and marine resources.”⁹⁵ While the National Ocean Policy does not specifically discuss marine mammals, it does identify numerous outputs that could be relevant to fisheries management including those related to strengthening scientific data, underpinning ocean-related decision making with the best available science, and increasing enforcement through surveillance of fishing hotspots.⁹⁶ However, as with the draft National Fisheries Policy, the National Ocean Policy does not mandate any particular activity under force of law and provides no specific timelines or further details on how achieving its goals is relevant to assessing the status of Fiji’s marine mammals, the management of fisheries, or to assessing the impact of Fiji’s fisheries on marine mammals.

VII. International Organizations and Regulations

a. Secretariat of the Pacific Regional Environment Programme (SPREP)

Fiji joined SPREP in 1995 as a member nation. SPREP’s mandate is to “promote cooperation in the Pacific region and provide assistance in order to protect and improve its environment and to ensure sustainable development for present and future generations.”⁹⁷ SPREP has identified numerous marine mammal conservation challenges within Fiji and other member countries, including:

- 1) a lack of data and information, including basic population parameters and long-term data sets;
- 2) an absence of ongoing and long-term research, survey and monitoring programmes;
- 3) limited public awareness and educational programmes;
- 4) Limited in-country capacity to provide leadership in marine species conservation management;
- 5) Limited national management mechanisms to protect marine animals and their habitats;
- 6) lack of resources, including accessing sustained funding; limited information exchange, linkages and collaboration at the national and regional levels;

⁹⁴ **Fiji Ministry of Economy.** (2021). *Republic of Fiji National Ocean Policy 2020-2030*. Suva, Fiji: Ministry of Economy. 70 pp. http://fijiclimatchangeportal.gov.fj/wp-content/uploads/2021/01/Fiji_NationalOceansPolicy_2020.pdf.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ **Secretariat of the Pacific Regional Environment Programme.** “About US.” Accessed February 26, 2022. <https://www.sprep.org/about-us><https://www.zotero.org/google-docs/?5aYY9N>

7) lack of enforcement capacity across the Pacific Islands region.⁹⁸

In an attempt to alleviate some of these shortcomings, SPREP has developed the Pacific Islands Regional Marine Species Programme 2022-2026 and within the Programme, the Whale and Dolphin Action Plan. SPREP states, “These action plans and their implementation are the collective responsibility of SPREP member states, the SPREP Secretariat, partner non-governmental and intergovernmental organizations and private sector organizations.”⁹⁹ SPREP will facilitate the exchange of information, coordinating efforts, securing resources and regularly monitoring the Action Plan implementation but the member countries are responsible for actively supporting marine species biodiversity conservation by committing resources and funds to the efforts as well as setting and enforcing legislation in their home nation.¹⁰⁰

While the SPREP Action Plans and Programmes set goals and initiatives for member countries, the organization lacks enforcement capabilities for these efforts. Some of the marine mammal related goals include:

- 1) collaborating with Fiji and other voyaging societies to promote traditional knowledge related to the conservation and management of whales and dolphins;
- 2) encourage collaboration between WCPFC and researchers to enable improved collected of data on cetacean species interacting with tuna fisheries;
- 3) foster partnerships to trial suitable mitigation methods relating to cetacean interactions with fishing gear;
- 4) collaborate with international organizations such as the IWC and Convention on the Conservation of Migratory Species of Wild Animals (CMS) to provide technical advice and support for reducing bycatch of cetaceans.¹⁰¹

In partnership with SPREP, CMS and other parties finalized a Memorandum of Understanding for the Conservation of Cetaceans and Their Habitats in the Pacific Islands Regions in 2006. Fiji is a Party to the MOU, which seeks to achieve and maintain a favorable conservation status for all cetaceans and their habitats occurring in the region.¹⁰² Pursuant to the MOU, Fiji committed, among other things, to pursue threat reduction, habitat protection, and research and monitoring for cetaceans.

⁹⁸ Secretariat of the Pacific Regional Environment Programme. *Pacific Islands Regional Marine Species Programme 2022- 2026*. 2021. <https://www.sprep.org/circular/cir2151-1-seeking-comments-on-draft-regional-marine-species-programme-2022-2026-2-participation-in-regional-marine-species-programme-online-meeting>.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ Secretariat of the Pacific Regional Environment Programme. *Pacific Islands Regional Marine Species Programme 2022- 2026*. 2021. <https://www.sprep.org/circular/cir2151-1-seeking-comments-on-draft-regional-marine-species-programme-2022-2026-2-participation-in-regional-marine-species-programme-online-meeting>.

¹⁰² **Memorandum of Understanding for the Conservation of Cetaceans and Their Habitats in the Pacific Island Region**. Concluded under the auspices of the Convention on the Conservation of Migratory Species of Wild Animals (CMS) in partnership with The Pacific Regional Environment Programme (SPREP). Opened for signature at the 17th SPREP Meeting, Noumea, 15 September 2006. <https://www.cms.int/pacific-cetaceans/en/documents/agreement-text>.

b. Western and Central Pacific Fisheries Commission (WCPFC)

The Western and Central Pacific Fisheries Commission (WCPFC) is an international fisheries agreement that manages the fishing of highly migratory fish stocks in the western and central Pacific Ocean. Over time, the WCPFC has assessed the impacts of fisheries operating within the area on non-target species and has adopted several Conservation and Management Measures (CMMs) related to scientific observer programs and bycatch. Specific CMMs related to seabirds, sea turtles, and sharks are applicable to all fisheries. The CMM focused on protecting cetaceans applies to the purse seine fishery.¹⁰³ In addition, in 2021, the WCPFC adopted guidelines for best handling practices of cetaceans for purse seine and longline vessels fishing for tuna and tuna-like species in the western and central Pacific Ocean.¹⁰⁴

1. Purse Seine Fishery

The WCPFC's Conservation and Management Measure for Protection of Cetaceans from Purse Seine Fishing Operations (CMM 2011-03) prohibits vessels from member countries from setting purse seine nets on a school of tuna associated with cetaceans. If an unintentional encirclement occurs, the master of the vessel must take all reasonable steps to ensure the animal's safe release and report the incident to the flag State. Countries are then required to include these instances in their annual report to WCPFC.¹⁰⁵

In addition, CMM 2021-01 (consolidating and replacing previous CMMs) requires 100% observer coverage for purse seine vessels between 20 degrees North and 20 degrees South.¹⁰⁶ This zone includes the waters surrounding Fiji's main islands but does not include the southern portion of Fiji's EEZ. Purse seine vessels operating within the remainder of Fiji's southern EEZ should have at least 5% observer coverage pursuant to CMM 2018-05 which requires 5% coverage in all WCPFC fisheries.¹⁰⁷

¹⁰³ **Western and Central Pacific Fisheries Commission.** 2018. "Conservation and Management Measure for the Regional Observer Programme (CMM 2018-05)." <https://cmm.wcpfc.int/measure/cmm-2018-05>.

¹⁰⁴ **Western and Central Pacific Fisheries Commission.** 2022. Summary Report of the Eighteenth Regular Session of the Commission, 1-7 December 2021. <https://meetings.wcpfc.int/node/14500>

¹⁰⁵ **Western and Central Pacific Fisheries Commission.** 2012. "Conservation and Management Measure for Protection of Cetaceans from Purse Seine Fishing Operations (CMM 2011-03)." <https://cmm.wcpfc.int/measure/cmm-2011-03>.

¹⁰⁶ **Western and Central Pacific Fisheries Commission.** 2021. "Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean (CMM 2021-01)." <https://cmm.wcpfc.int/measure/cmm-2021-01>.

¹⁰⁷ *Ibid.*, 103.

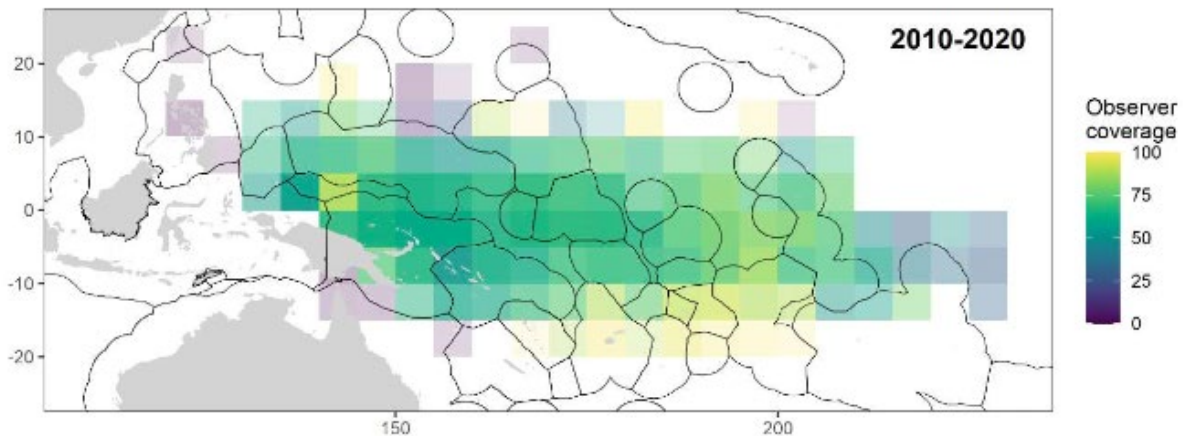


Figure 5. Observer coverage of the large-scale equatorial purse seine fishery for 2010-2020. Observer coverage is defined as the percentage of sets for which observer data are available in SPC data holdings. The transparency of each cell is a function of reported efforts, such that cells with less reported effort are more transparent. Source: (T Peatman and Nicol 2021”).

From 2010 to 2019, annual observer coverage ranged from 62-78% of total purse seine sets. For 2020, the observer rate dropped to 29% of total sets.¹⁰⁸ The Scientific committee attributed this drop in observer coverage to the Covid-19 pandemic.

2. Longline Fishery

As noted above, CMM 2018-05 is the default for all fisheries and, consequently, requires 5% observer coverage of efforts in longline fisheries.¹⁰⁹ Fiji reported to the WCPFC scientific committee that its National Observer Coverage for Longline Fisheries was 16% in 2021, 23% in 2020, and nearly 21% in 2019.¹¹⁰ Fiji observers are placed on board Fiji’s National Longline Fleet within Fiji’s EEZ. Fiji also contributes its observers to sub-regional observer programmes like the US Multilateral Treaty.¹¹¹ Fiji observers are de-briefed at the end of each trip to ensure

¹⁰⁸ Peatman, Tom, and Simon Nicol. “Updated Purse Seine Bycatch Estimates in the WCPO” *Western and Central Pacific Fisheries Commission Scientific Committee 17th Regular Session*. WCPFC-SC17-2021/ST-IP-06, Electronic Meeting, August 11-19, 2021. <https://meetings.wcpfc.int/node/12542>.

¹⁰⁹ Western and Central Pacific Fisheries Commission. 2018. “Conservation and Management Measure for the Regional Observer Programme (CMM 2018-05).” <https://cmm.wcpfc.int/measure/cmm-2018-05>.

¹¹⁰ Offshore Fisheries Division Ministry of Fisheries. *Annual Scientific Report to the Western and Central Pacific Fisheries Commission: Part 1: Information on Fisheries, Research and Statistics for 2020 Fiji*. Government of Fiji, 2021.; **Annual Report to the Commission, Part 1: Information on Fisheries, Research and Statistics (2022)**, Western and Central Pacific Fisheries Commission Scientific Committee Eighteenth Regular Session, <https://meetings.wcpfc.int/node/15322>. Note that these numbers differ from what the Marine Stewardship Council found in its audit. See Ackroyd, J. and McLoughlin, K. 2023. *Acoura Marine Ltd. (trading as LRQA) Fourth Surveillance Report, Fiji Albacore, Yellowfin and Bigeye Tuna Longline*. 30 January 2023. 61 pp. <https://cert.msc.org/FileLoader/FileLinkDownload.aspx/GetFile?encryptedKey=Y5Jr8cNxd+Mteq4mmfluyonf5LipS8WNC76jVj8UjMhX+HVZUzo8ZCxWy3MEWsO8>.

¹¹¹ Offshore Fisheries Division Ministry of Fisheries. *Annual Scientific Report to the Western and Central Pacific Fisheries Commission: Part 1: Information on Fisheries, Research and Statistics for 2020 Fiji*. Government of Fiji, 2021.

that their data quality is maintained through the reporting process. In 2020, a total of 126 trips were debriefed, registered and processed and in 2021 a total of 72 trips were debriefed.¹¹² Fiji claims a minimum of 95% accuracy debriefing standards on observer placement trip reports but does not articulate how they achieve or ensure this accuracy.¹¹³

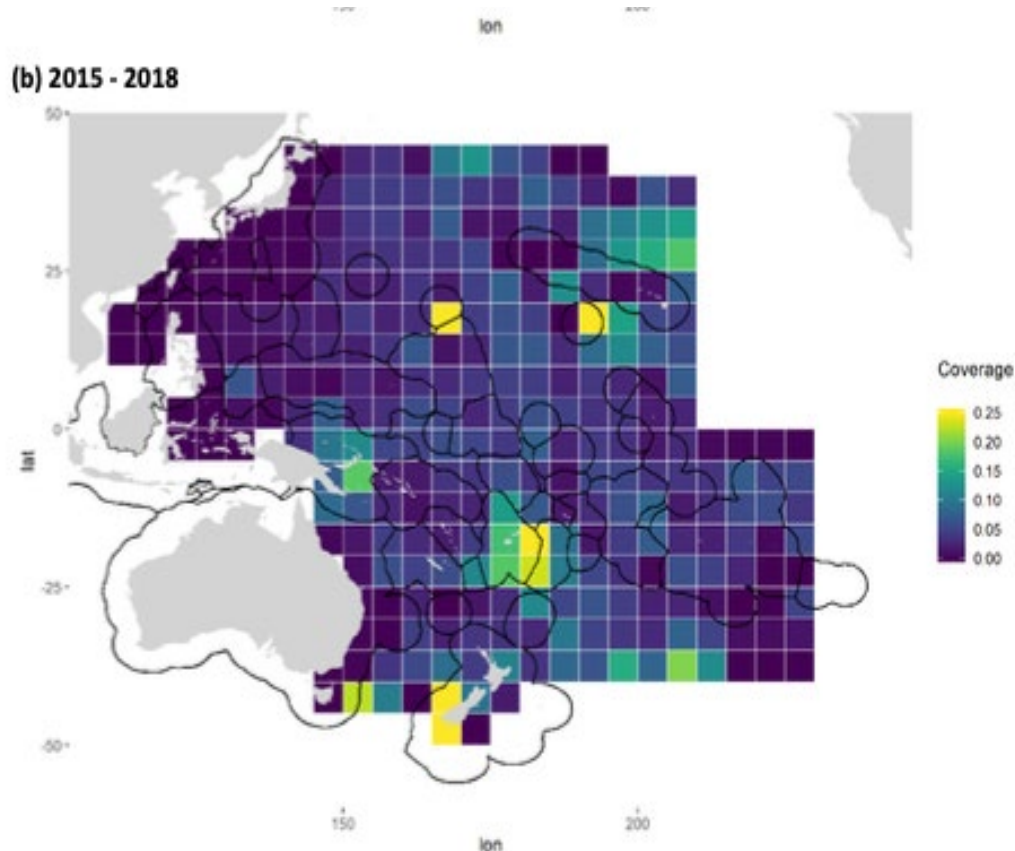


Figure 6. Observer coverage of longline fleets in the WCPFC for 2015-2018. Cells with coverage above 25% were capped at 25%. Source: (T Peatman and Nicol 2021”).

VIII. List of Foreign Fisheries (LOFF) and List of Intermediary Nations and Products

Fiji did not provide complete information for the 2020 List of Foreign Fisheries (LOFF). In 2019 Fiji failed to submit a 2019 Progress Report to NMFS and many datalines were listed as “unknown,” “Not provided,” or left blank in the 2020 LOFF.¹¹⁴ Fiji is not on NMFS’s List of Intermediary Nations and Products.¹¹⁵

¹¹² *Ibid.*, 111.; **Annual Report to the Commission, Part 1: Information on Fisheries, Research and Statistics (2022)**, Western and Central Pacific Fisheries Commission Scientific Committee Eighteenth Regular Session, <https://meetings.wcpfc.int/node/15322>

¹¹³ *Ibid.*, 111. <https://www.zotero.org/google-docs/?VUEbJ0>

¹¹⁴ **National Oceanic and Atmospheric Administration**. “Fish and Fish Product Import Provisions of the Marine Mammal Protection Act 2020 List of Foreign Fisheries.” *Federal Register* 85. (March 17, 2020): 2020-05380.

¹¹⁵ *Ibid.*

Within the export fisheries, there are inconsistencies or a lack of data in many locations. Firstly, Fiji lists 90 vessels, 60 licenses, and 950 participants for its longline fishery on the 2020 LOFF.¹¹⁶ The data in the 2020 LOFF differs from Fiji’s annual report to the WCPFC, in which they reported 86 vessels in its National longline fleet and an additional 6 foreign vessels that are licensed to fish within Fiji’s EEZ.¹¹⁷ Within the same longline fishery, the 2020 LOFF for Fiji reports zero for each marine mammal listed in the “Marine Mammal Species/Stock and Annual Average Mortality Estimates.” This is inconsistent with Fiji’s 2020 annual report to the WCPFC in which Fiji reported its longline fishery interacted with three marine mammals, including one in the “dolphin and porpoises” category, one “short-finned pilot whale,” and one “toothed whale.” Two of these mammals, the “dolphin and porpoise” and the “Short-finned pilot whale” were classified as “dead.” It was not reported how these mammals died.¹¹⁸

This lack of reported information continues in the 2020 LOFF for Fiji’s Mackerel nei (Scombridae) fishery. Fiji failed to provide the gear types used by this fishery, the number of vessels and/or licenses issued, the area of operation, the marine mammal interactions or co-occurrence by group, species or stock, or the marine mammal species/ stock and annual average mortality estimates. This lack of information is troubling. Without any form of submitted data, it will be difficult for NMFS to find the Fiji Mackerel nei (Scombridae) fishery comparable under the MMPA Imports Rule.

While NMFS did not include Fiji on its List of Intermediary Nations and Products, Fiji reports a significant amount of fresh fish re-exports. For example, in 2020 it re-exported \$116.9 million of fresh fish, which represented more than 60 percent of the total value of all fish exports in 2020.¹¹⁹ In addition, in 2020 Fiji recorded 26 offshore fishing companies with 155 vessels using its ports and an additional 190 foreign flagged vessels for the “Entry and Use of Fijis Ports.” Fiji issued permits to facilitate these companies’ activities, including permits covering landings, export (fresh and frozen), and transshipment.¹²⁰ NMFS should seek clarification regarding Fiji’s exports and, as appropriate, update its List of Intermediary Nations and Products.

IX. Fiji’s Compliance with the MMPA Imports Rule

a. MMPA Imports Rule Requirements

Under the U.S. Marine Mammal Protection Act (MMPA), the U.S. government “shall ban” all seafood imports caught with fishing gear that kills or seriously injures marine mammals “in

¹¹⁶ **National Oceanic and Atmospheric Administration Fisheries.** “2020 Final List of Foreign Fisheries (LOFF).” (2020). 217. <https://www.zotero.org/google-docs/?qGfi93>

¹¹⁷ **Offshore Fisheries Division Ministry of Fisheries.** *Annual Scientific Report to the Western and Central Pacific Fisheries Commission: Part 1: Information on Fisheries, Research and Statistics for 2020 Fiji.* Government of Fiji, 2021.

¹¹⁸ *Ibid.*

¹¹⁹ **Ministry of Fisheries.** *Annual Report for the period 1 August 2020 -31 July 2021.* Parliamentary Paper No. 90 of 2022. <https://www.parliament.gov.fj/wp-content/uploads/2023/02/Ministry-of-Fisheries-Annual-Report-2020-2021.pdf>.

¹²⁰ **Ministry of Fisheries.** *Annual Report for the period 1 August 2020 -31 July 2021.* Parliamentary Paper No. 90 of 2022. <https://www.parliament.gov.fj/wp-content/uploads/2023/02/Ministry-of-Fisheries-Annual-Report-2020-2021.pdf>.

excess of United States standards.”¹²¹ In applying this requirement, the U.S. “shall insist on reasonable proof” from the exporting nation of the effects of its exporting fisheries on marine mammals – i.e., its marine mammal bycatch.¹²²

To implement this provision, NMFS issued its MMPA Imports Rule.¹²³ Under the Rule, for Fiji to continue exporting fish to the United States after December 31, 2023, Fiji must apply for and receive a “comparability finding” from NMFS for each export fishery, which is essentially a determination that Fiji’s bycatch and bycatch program as applied to each fishery meets U.S. standards.¹²⁴

Under the Rule, for export fisheries operating within Fiji’s EEZ to receive a comparability finding, Fiji must show:

- (1) Fiji “[p]rohibits the intentional mortality or serious injury of marine mammals in the course of commercial fishing in the fishery;” and
- (2) For any fishery deemed an export fishery on NMFS’s LOFF, Fiji “maintains a regulatory program” for the fishery “that is comparable in effectiveness to the U.S. regulatory program.”

To demonstrate a comparably effective regulatory program, Fiji must show it maintains a program “that includes[] or effectively achieves comparable results as” the following components:

- (a) “Marine mammal assessments . . . for stocks . . . that are killed or seriously injured in the fishery;”
- (b) “An export fishery register,” listing all fishing vessels in the fishery, including time, season, gear type, and target species;
- (c) Regulatory requirements that include:
 - (i) A requirement that vessel operators report all marine mammal injury or death;
 - (ii) A requirement that fishers implement measures to reduce mortality/serious injury;
- (d) Monitoring procedures in the export fishery to estimate mortality/serious injury from the fishery and cumulatively from other export fisheries on same marine mammal stocks;
- (e) Calculation of bycatch limit for marine mammals taken in fishery. The “bycatch limit” is the potential biological removal (PBR) level or a “comparable scientific metric;” and
- (f) Demonstration that mortality/serious injury from the fishery (and cumulatively with other export fisheries) “[d]o[es] not exceed the bycatch limit.”¹²⁵

Under both the MMPA and the MMPA Imports Rule, Fiji bears the burden of demonstrating each export fishery meets these requirements. The Rule states that the “harvesting nation shall

¹²¹ Moratorium on Taking and Importing Marine Mammals and Marine Mammal Products, 16 U.S.C. § 1371(a)(2).

¹²² *Ibid.*

¹²³ Fish and Fish Products Import Provisions of the Marine Mammal Protection Act, 81 Fed. Reg. 54,415 (Aug. 16, 2016).

¹²⁴ 50 C.F.R. § 216.24(h)(6).

¹²⁵ *Ibid.* § 216.24(h)(6)(iii)(C).

submit ... an application ... along with documentary evidence demonstrating” the conditions have been met “for each” fishery.¹²⁶

Accordingly, in order to achieve a comparability finding for the MMPA Import Rule, Fiji must demonstrate and document that it meets each of the conditions above or that it maintains a regulatory program that “effectively achieves comparable results,” a strict standard.

b. Fiji Likely Does Not Meet All Requirements of the MMPA Imports Rule

As detailed above, to continue exporting seafood to the United States, Fiji bears the burden of demonstrating both that it bans the intentional killing and serious injury of marine mammals during commercial fishing and that it “maintains a regulatory program” for the fishery “that is comparable in effectiveness to the U.S. regulatory program.” This requires that Fiji have a regulatory program including (or somehow achieving comparable effectiveness as including) stock assessments, a fisheries register, marine mammal bycatch reporting, mitigation requirements, bycatch monitoring, and calculation and proof that bycatch does not exceed PBR or a comparable metric.¹²⁷

Based on our assessment of publicly available information, Fiji is unlikely to be able to meet this burden for all of its export fisheries. While Fiji may ban the intentional killing of relevant marine mammals, it does not provide for marine mammal surveys for all stocks, does not appear to require an adequate fisheries register, and based on publicly-available information, does not maintain adequate regulatory requirements for bycatch, including requiring reporting, mitigation measures, bycatch monitoring, and calculating PBR. As such, it is unlikely Fiji will be able to demonstrate that serious injury and mortality from many of its export fisheries do not exceed PBR.

1. It Is Unclear if Fiji Bans Intentional Killing and Serious Injury of Relevant Marine Mammals

The MMPA Imports Rule requires that, to export seafood to the United States, Fiji must demonstrate that it “[p]rohibits the intentional mortality or serious injury of marine mammals in the course of commercial fishing in the fishery.”¹²⁸ It is unclear if Fiji meets this requirement.

Fiji’s Offshore Fisheries Management Decree 2012 defines the term “fish” as “any aquatic plant or animal, whether piscine or not, and includes any oyster or other mollusc, crustacean, coral, sponge, holothurian (beche-de-mer), or other echinoderm, turtle and marine mammal, and includes their eggs, spawn, spat and all juvenile stages and any of their parts.”¹²⁹ Fiji’s Offshore Fisheries Management Regulations 2014 states that “[a] person shall not kill, take, land, sell or offer or expose for sale, deal in, transport, receive or possess any endangered or protected fish listed in Schedule 2B” and makes it an offense for any person to contravene this regulation.¹³⁰ Schedule 2B of the regulation lists seabirds and “[a]ny fish species covered under appendix I or

¹²⁶ Moratorium on Taking..., 16 U.S.C. § 1371(a)(2); Taking and Related Acts..., 50 C.F.R. § 216.24(h)(5).

¹²⁷ 50 C.F.R. § 216.24(h)(6)(iii)(C).

¹²⁸ 50 C.F.R. § 216.24(h)(6)(iii)(C).

¹²⁹ **Government of Fiji Gazette Supplement.** *Supplement of Off-Shore Fisheries Management Decree 2012 (Decree No. 78 of 2012)*, No. 12 (Legal Notice No. 18). Fiji: Government of Fiji Gazette, 2014.

¹³⁰ *Ibid.*

II of Convention on International Trade on [sic] Endangered Species of Wild Fauna and Flora; – restricted throughout the year.”¹³¹ All the marine mammals occurring in Fijian waters (see Table 2, above) are listed on Appendix I or II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

It is not entirely clear how these provisions work together and whether they prohibit the intentional mortality or serious injury of marine mammals in the course of commercial fishing in Fijian fisheries. The term “fish” appears to include marine mammals, but it is not clear that the term “fish species” used in Schedule 2B applies the decree’s definition or CITES’s definition. It is also unclear how the phrase “restricted throughout the year” found in Schedule 2B modifies or suggests limitations on the 2014 regulation. In addition, while the 2014 regulation prohibits the killing or taking of any endangered or protected fish listed in Schedule 2B, it is not clear if it applies only to targeted fishing of covered species, or if it also covers intentional mortality or serious injury of marine mammals in the course of fishing for a different target species. Finally, it is unclear if the language of the decree and regulation prohibit serious injury as required by the MMPA Imports Rule.

While it is possible to piece together the language of Fiji’s 2012 decree and 2014 regulation in such a way to assume a ban on intentional killing and serious injury, NMFS should insist upon clarity from Fiji to support a finding that Fiji adequately prohibits the intentional mortality or serious injury of marine mammals in the course of commercial fishing in its fisheries. In addition, NMFS should not rely upon Fiji’s 2003 declaration of a whale sanctuary without documentation associated with the declaration that demonstrates the kind of prohibition required under the MMPA Imports Rule.

2. Based on Publicly Available Information, Fiji Does Not Maintain a Regulatory Program “Comparable in Effectiveness” to the U.S. Program for Bycatch

As detailed above, under the MMPA Imports Rule, Fiji must demonstrate it “maintains a regulatory program” for each export fishery “that is comparable in effectiveness to the U.S. regulatory program,” including the six components laid out in the Rule or that it effectively achieves comparable results as maintaining such a program.¹³²

a. Fiji Does Not Conduct Regular Marine Mammal Assessments for Stocks Interacting with Its Fisheries

The MMPA Imports Rule requires Fiji to demonstrate that it “maintains a regulatory program that provides for ... [m]arine mammal assessments ... for marine mammal stocks ... that are incidentally killed or seriously injured in the export fishery” or that the nation “effectively achieves comparable results as” the U.S. program of regular stock assessments.¹³³ It is critical that stock assessments for bycaught stocks be conducted; without this information, it is impossible to know whether bycatch is below PBR.

¹³¹ *Ibid.*

¹³² 50 C.F.R. § 216.24(h)(6)(iii)(C).

¹³³ 50 C.F.R. § 216.24(h)(6)(iii)(C).

Fiji does not have a regulatory program requiring or providing for regular stock assessments. In addition, as stated numerous times in this report, Fiji does not otherwise have current or accurate data relating to marine mammal stocks nor the bycatch estimates for its fisheries and waters. Without this critical data, Fiji cannot calculate PBR or demonstrate that bycatch in its export fisheries does not exceed PBR.

Fiji lacks regulations or directives that require or provide for regular assessment of marine mammal stocks that interact with its export fisheries. Fiji must provide for regular stock assessments for marine mammals that interact with export fisheries within its waters to meet the MMPA Imports Rule and NMFS must deny comparability for any Fijian fishery for which Fiji does not initiate and demonstrate that it provides for regular stock assessments.

b. It Is Unclear if Fiji Maintains an Export Fishery Register and it Has Not Reported Information for All Export Fisheries

The MMPA Imports Rule requires that export nations either maintain an “export fishery register” listing all fishing vessels in the fishery—including time, season, gear type, and target species—or effectively achieve comparable results.¹³⁴

It is unclear if Fiji’s Offshore Fisheries Management Regulations 2014 achieves comparable results for Fiji’s export fisheries. While the licensing and application process often references various forms that require information on licenses, time, season, gear type, and target species (e.g., “License to Fish within Fiji’s Fisheries Water Application,” “Fiji Catch Certificate,” “Application for Entry and Use of Port in Fiji,” and “Export and Import Application”), there is no indication that Fiji collects and consolidates this information in a uniform manner that would qualify as a “register” or similar for all fisheries. In addition, the regulations are unclear as to whether certain information on gear type, time, and season, is collected for all licenses. For example, while applicants “may” use Schedule 6A, for certain fish species, the regulation does not appear to apply for some species if the vessel “is 100 percent owned by Fiji nationals.”¹³⁵ Whether Schedule 6A is used is important because it is the schedule that gathers information on season, target species, and gear type.

Nonetheless, Fiji reported fishery information that was included in the LOFF, including the number of vessels, gear type, the target species and FAO fishing area, with the exception of the Mackerel nei fishery which was listed as having unknown gear types, and unknown location. The number of fishing vessels and/or licenses was also missing for this fishery. However, we do note that information reported in the LOFF and to the WCPFC does not always match, suggesting that while certain fishery information is required, it may not be reliably reported, collected, or maintained. It is also unclear whether the any fisheries register maintains all relevant information, including time and season of fishing and gear type.

¹³⁴ 50 C.F.R. § 216.24(h)(6)(iii)(C).

¹³⁵ **Government of Fiji Gazette Supplement.** *Supplement of Off-Shore Fisheries Management Decree 2012 (Decree No. 78 of 2012).*, No. 12 (Legal Notice No. 18). Fiji: Government of Fiji Gazette, 2014.

c. Fiji Does Not Maintain Adequate Regulatory Requirements for Bycatch for Its Export Fisheries

Next, under the MMPA Imports Rule, Fiji must demonstrate it has a regulatory program that both requires reporting of marine mammal bycatch and requires fishers to implement measures to reduce mortality/serious injury or “effectively achieves comparable results as” U.S. requirements. As discussed below, available evidence does not support a finding that Fiji meets the latter requirement for all export fisheries.

i. Fiji Requires Reporting of Bycatch, but its Scope is Unclear

The MMPA Imports Rule requires that exporting nations require that vessel operators “report all intentional and incidental mortality and injury of all marine mammals in the course of commercial fishing operations” or achieve comparable results to such a requirement.¹³⁶

As noted in the above section on fishery registration/licensing, vessel operators are required to “duly complete in the English language, daily records or reports in the form of all—(i) catch; and (ii) by-catch by species” and provide these records to the Fishery Director.¹³⁷ However, neither “catch” nor “bycatch” is defined and the definitions that do exist in the 2012 Decree and 2014 Regulations undermine a conclusion that vessel operators are required to report marine mammal injury or bycatch that is discarded. None of the forms in the 2014 Regulations List of Schedules designate a place for recording bycatch and when there are places to designate catch, the forms often prepopulate the field with species like bigeye and yellowfin. In addition, the 2014 Regulations’ definition of “taken” suggests that reporting of fish catch (which presumably includes marine mammals if people are utilizing the definition of “fish” contained in the 2012 Decree) does not include fish that are released or discarded.

Finally, while the technical requirement to report bycatch exists, it is not clear if any reliable reporting takes place and, if it does, whether such daily records or reports are uniformly collected and consolidated for incorporation into Fijian bycatch reports or if these reports are publicly available. We were unable to identify any reports on bycatch directly linked to the reporting requirement.

Our review of publicly available information does not support a conclusion that Fiji requires vessel operators to report the intentional and incidental mortality and injury of all marine mammal or that it achieves comparable results. NMFS should seek clarification on the application of the 2014 Regulations.

¹³⁶ 50 C.F.R. § 216.24(h)(6)(iii)(C).

¹³⁷ **Government of Fiji Gazette Supplement.** *Supplement of Off-Shore Fisheries Management Decree 2012 (Decree No. 78 of 2012).*, No. 12 (Legal Notice No. 18). Fiji: Government of Fiji Gazette, 2014. <https://www.zotero.org/google-docs/?0HF0vu>

ii. Fiji Does Not Require that Fishers Implement Measures to Reduce Mortality/Serious Injury Comparable to the United States in All Export Fisheries

Next and critically, under the MMPA Imports Rule, Fiji must maintain regulatory requirements that require fishers to implement measures to reduce mortality and serious injury or “effectively achieves comparable results” as requiring such measures.¹³⁸

Fiji lacks regulatory requirements as well as the enforcement necessary to reduce marine mammal bycatch. While Fiji’s draft National Fisheries Policy indicates a desire to address marine mammal bycatch, we were unable to find any evidence that a corresponding regulatory regime has been put in place to achieve the draft Policy’s bycatch goals.¹³⁹

d. Fiji Has Monitoring Procedures to Estimate Bycatch for One Fishery but Not for Any Others

The MMPA Imports Rule also requires Fiji to demonstrate it has monitoring procedures in place to estimate mortality and serious injury for each export fishery both individually and cumulatively for each stock or that the nation effectively achieves comparable results as conducting such monitoring.¹⁴⁰

Fiji maintains an observer program within its National Longline Fishery Fleet that reached 23.10% in 2020 and 16% in 2021. These rates exceed the 5% minimum observer coverage mandated by the WCPFC. Outside of the National Longline Fishery Fleet, Fiji lacks an observer program and/or any monitoring requirements for its fisheries.

e. Fiji Has Not Calculated a Bycatch Limit for its Export Fisheries

The MMPA Imports Rule requires Fiji to calculate a bycatch limit for marine mammals taken in each fishery.¹⁴¹ The “bycatch limit” is PBR or a “comparable scientific metric.”¹⁴²

We are not aware that Fiji has calculated a marine mammal bycatch limit for any of its export fisheries. Because of the lack of data pertaining to marine mammal populations/stock and the lack of observer reported bycatch numbers, the calculation of reliable bycatch limits for Fijian fisheries and its marine mammals is not currently possible.

f. Fiji is Unlikely to Be Able to Demonstrate that Mortality/Serious Injury from Export Fisheries Is Below the Bycatch Limit

Finally, the MMPA Imports Rule requires Fiji to demonstrate that mortality/serious injury from the fishery and cumulatively with other export fisheries “[d]o not exceed the bycatch limit.”¹⁴³

¹³⁸ 50 C.F.R. § 216.24(h)(6)(iii)(C).

¹³⁹ **Ministry of Fisheries Fiji**. *National Fisheries Policy Draft June 2020*. Fiji: Ministry of Fisheries Fiji, 2020. http://www.fisheries.gov.fj/images/National_Fisheries_Policy_draft_June_2020.pdf.

¹⁴⁰ 50 C.F.R. § 216.24(h)(6)(iii)(C).

¹⁴¹ 50 C.F.R. § 216.24(h)(6)(iii)(C).

¹⁴² 50 C.F.R. § 216.3.

¹⁴³ 50 C.F.R. § 216.24(h)(6)(iii)(C).

Based on our assessment, Fiji will not be able to demonstrate that mortality/serious injury from its export fisheries “[d]o not exceed the bycatch limit.” Because of the lack of stock assessments and a bycatch limit, it is impossible to determine whether any mortality or serious injury occurring in Fijian export fisheries is below such a limit.

c. Fishery-Specific Findings

Unless Fiji fully demonstrates that it meets the various components of the MMPA Imports Rule, NMFS must not make a comparability finding for its export fisheries:

1. WCPFC Longline Fishery

Fiji must provide more information to demonstrate full compliance with its obligations under the WCPFC to secure a comparability finding. The 2020 LOFF is missing bycatch data for this fishery despite the WCPFC publicly reporting its 2020 bycatch rates and species, and Fiji reporting its national fleet’s specific bycatch to the WCPFC. Fiji has the burden of providing accurate data on its WCPFC longline fishery to NMFS. The inconsistency between the 2020 LOFF, the WCPFC report, and Fiji’s national fleet report to the WCPFC, as well as questions about the reliability of reporting within the WCPFC, even from observers, raises significant concerns about the RFMO’s management pertaining to marine mammals and the fishery’s comparability under the MMPA.

Given the uncertainties and discrepancies around reporting of marine mammal mortality and injury for this fishery and other obligations pertaining to interactions by its longline fishery (e.g., stock assessments and calculation of PBR), Fiji must provide more information to demonstrate comparability for this fishery.

2. Fiji Mackerel nei (Scombridae) Fishery

Fiji failed to provide the gear types used by this fishery, the number of vessels and/or licenses issued, the area of operation, the marine mammal interactions or co-occurrence by group, species or stock, or the marine mammal species/ stock and annual average mortality estimates to the 2020 LOFF. In addition, we were unable to find publicly available external bycatch reports, regulations, and/or studies regarding this fishery. Given this lack of information, it is improbable that Fiji will be able to demonstrate that its Fiji Mackerel nei (Scombridae) fishery meets US standards.

3. Gillnet Fisheries

It is unlikely that Fiji will be able to demonstrate that it meets the MMPA Imports Rule for its gillnet fisheries that catch Flatfishes and Righteye flounders. Fiji failed to report bycatch data for this fishery in the LOFF and we were unable to find bycatch reports, regulations, and/or studies regarding this fishery.

X. Conclusion

In sum, it is unlikely that Fiji will be able to demonstrate that it meets the requirements of the MMPA Imports Rule for all of its export fisheries.

As detailed above, to continue exporting seafood to the United States, Fiji bears the burden of demonstrating both that it bans killings and serious injury of marine mammals during commercial fishing and that it “maintains a regulatory program” for the fishery “that is comparable in effectiveness to the U.S. regulatory program.” This requires that Fiji has a regulatory program including (or somehow achieving comparable effectiveness as including) stock assessments, a fisheries register, marine mammal bycatch reporting, mitigation requirements, bycatch monitoring, and calculating and proving that bycatch does not exceed PBR or a comparable metric.¹⁴⁴

Overall, based on our assessment of publicly available information, it is improbable Fiji will be able to demonstrate comparability under the Rule for all of its fisheries. First, while Fiji may be able to demonstrate that it prohibits the intentional mortality of marine mammals in the course of commercial fishing, it must do more to show that its prohibitions apply to serious injury. Second, it does not appear that Fiji maintains an adequate regulatory program. Critical elements of such a program do not exist: Fiji does not require or provide for regular stock assessments, it lacks regulatory requirements to reduce marine mammal bycatch, it lacks an observer program or monitoring outside of the national longline fishery fleet, it has not calculated a bycatch limit nor can it show that bycatch is below PBR. And other elements require more information, such as the requirement for vessel operators to report intentional and incidental mortality and injury of all marine mammals.

¹⁴⁴ 50 C.F.R. § 216.24(h)(6)(iii)(C).

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Western and Central Pacific Fisheries Commission. *Handbook of Conservation Management Measures & Resolutions for WCPFC Regional Observer Programmes.* Western and Central Pacific Fisheries Commission. 2018.
<https://www.wcpfc.int/system/files/2018%20CMM%20Handbook%20of%20%20CMMs%20%20for%20WCPFC%20ROP%20%20Observer%20Programmes.pdf>.

Appendices

Appendix I: Applications for Fiji fisheries and fisheries operating in Fiji waters.¹⁴⁵

134

SCHEDULE 6A
(Regulation 15(2))



Fiji Government
Fisheries Department

LICENCE TO FISH WITHIN FIJI'S FISHERIES
WATER APPLICATION

The fee for processing of your application is contained in schedule 7 of the Offshore Fisheries Management Regulations

Payments can be made to:
Department of Fisheries

What you need to do
Post, fax or email the completed form along with any attachment(s) to:

Fiji Fisheries Department
Offshore Fisheries Division
PO Box 2218
Government Buildings
Suva, Fiji

PART A – Owner

1 Name of Registered Owner / Company

2 Postal address

 Postcode

3 Other Vessels owned/ table name, flag, TRCS, (attach details)

4 Contact person's name

Business phone

Mobile

Fax

Email address

PART B – Charterer

1 Name of Company

2 Contact person's name

Business phone

Mobile

Fax

Email address

PART C – Master

1 Name of Master

2 Nationality

Passport

3 Contact details

Postal address

Phone number

 ()

Mobile

Phone/Satphone

Fax number

Email

PART D – Vessel

1 Name of Vessel

2 Vessel type (e.g. longline, purse seine, pole and line)

3 IMO number

4 Vessel registration

5 International radio

Call sign

6 Current flag state

7 Previous name(s)

and flag State(s)

8 Insurance Cover

 Y/N

9 Description of Vessel (e.g. size, colour, scheme, GRT)

GRT

LOA

Beam

Net Ton

Depth

Colour

Fish hold tonnage

Carrying capacity

Freezer type

Hull type –steel/ib

Engine power kw

10 Number of crew members onboard

Nationality	Number

Attach a crew list giving names, nationalities and passport numbers of each crew member (attachment)

11 MTU details

Serial number

Model/type

Intarsat Mobile No

¹⁴⁵ Government of Fiji Gazette Supplement. Supplement of Off-Shore Fisheries Management Decree 2012 (Decree No. 78 of 2012), No. 12 (Legal Notice No. 18). Fiji: Government of Fiji Gazette, 2014.

PART E – Fishing Authorisation held

1 Authorisations

Area	Validity	Gear

2 Species

3 Fishing gear authorised

I.I. FI. PS IM. other _____

PART F – Species and other information

1 Target species (toto; Tuna etc)

- a.
- b.
- c.
- d.

2 Catch area applying for

- Archipelagic Waters EEZ
 Territorial Sea High seas

Other: _____

3. Intended Port of landing, transhipment, provision

- Mualulu Fiji Fish
 Lautoka Levuka
 Princess Wharf Other: _____

PART G – Declaration by Agent/Owner

IMPORTANT

I, the Owner detailed in Part A or the Agent detailed in Part B:

- Apply for the grant of an Offshore License in respect of the vessel described in Part D, and
- Declare that the information provided on this form is, to the best of my/our knowledge, true and correct.
- Consent to comply with the requirements under the Offshore Fisheries Management Decree and its Regulations.

Signature and date

--

Full name (Company Seal)

--

Position held in the Company (if applicable)

--

Checklist of attachments

The attachments to this application are:

- Registration certificate
- Inmarsat Distress Alert (IDA) Contact Details Form
- Crew list
- Colour Scanned Passport (Master, Owner etc)
- Copies of authorisation
- Photo of Vessel (plan view, side view, stern)

PART H – OFFICIAL USE ONLY

1. Status - approved/ not approved/ pending

2. Amount Received

3. Receiving Officer

--

4. Signature

--

5. Receipt No -

Official seal

SCHEDULE 6B
(Regulation 16(2))



Fiji Government
Fisheries Department

LICENCE TO FISH WITHIN FIJI'S ECONOMIC
EXCLUSIVE ZONE APPLICATION

The fee for processing of your application is contained in Schedule 7 of the Offshore Fisheries Management Regulations. Foreign fishing vessels can only target tuna within Fiji's EEZ.

Payments can be made to:
Department of Fisheries

What you need to do
Post, fax or email the completed form along with any attachment(s) to:

Fiji Fisheries Department
Offshore Fisheries Division
PO Box 2215
Government Buildings
Suva, Fiji

PART A – Owner

1 Name of Registered Owner /Company

2 Postal address

Postcode

3 Other Vessels owned/ table- name, flag, IRCS. (attach details)

4 Contact person's name

Business phone

Mobile

Fax

Email address

PART B – Agent

1 Name of Company

2 Contact person's name

Business phone

Mobile

Fax

Email address

PART C – Master

1 Name of Master

2 Nationality

Passport

3 Contact details

Postal address

Phone number

Mobile

Phone/Satphone

Fax number

Email

PART D – Vessel

1 Names of Vessel

2 Vessel type (e.g. longline, purse seine, pole and line)

3 IMO number

4 Vessel registration

5 International radio

Call sign

6 Current flag state

7 Previous name(s)

and flag State(s)

8 Insurance cover

Y/N

9 Description of Vessel (e.g. size, colour, scheme, GRT)

GRT

Net Ton

LOA

Depth

Beam

Colour

Fish hold tonnage

Carrying capacity

Freezer type

Hull type steel/ib

Engine power kw

10 Number of crew members onboard

Nationality	Number
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

Attach a crew list giving names, nationalities and passport numbers of each crew member (attachment)

11 MTU details (DNID)

Serial number	
Model/Type	
Inmarsat Mobile No	

PART E – Fishing Authorisation held
1 Authorisations

Area	Validity	Gear

2 Species

3 Fishing gear authorised
LL PL PS DL other _____

PART F – other information

1. Intended Port of landing, transshipment, provision

Musaiwatu Fiji Fish
 Lautoka Levuka
 Princess Wharf Other: _____

PART G – Declaration by Agent/Owner
IMPORTANT

I, the Owner detailed in Part A or the Agent detailed in Part B:

- Apply for the grant of a Foreign Fishing Licence in respect of the vessel described in Part D, and
- Declare that the information provided on this form is, to the best of my/our knowledge, true and correct, and
- Consent to comply with the requirements under the Offshore Fisheries Management Decree 2012 and its Regulations and the Laws of Fiji.

Signature and date

--

Full name (Company Seal)

--

Position held in the Company (if applicable)

--

Checklist of attachments

The attachments to this application are:

- Registration certificate
- Inmarsat Distress Alert (IDA) Contact Details Form
- Crew list
- Colour Scanned Passport [Master, Owner etc]
- Copies of authorisation
- Photo of vessel (plan, side, stern)

PART H – OFFICIAL USE ONLY

1. Status- approved/ not approved/ pending

2. Amount Received

--

3. Receiving Officer

--

4. Signature

--

5. Receipt No:

--

Official seal
