

Appendix A.

Palau’s Maritime Governance Overview

In 2015, Palau enacted the *Palau National Marine Sanctuary Act* (“PNMS Act”) which created two distinct zones in the exclusive economic zone (EEZ): the Palau National Marine Sanctuary (“PNMS”) that covers approximately 80% of its EEZ; and the Domestic Fishing Zone, which comprises approximately 20% of the EEZ. The PNMS officially enters into force on January 1, 2020. Below is an overview of Palau’s maritime zones as established by Title 27 of the Palau National Code and its subsequent amendments, followed by an outline of relevant government authorities and their respective mandates as they relate to the PNMS.

Palau’s Maritime Zones

Internal Waters

Waters landward of Palau’s baseline,¹ including lagoons of atolls or islands, are called Internal Waters.² Palau, in line with the United Nations Convention on

Law of the Sea, has jurisdiction and sovereignty over its Internal Waters.³ In the Constitution, Palau confers on its states “*exclusive ownership of all living and non-living resources, except highly migratory fish*” in the Internal Waters.⁴ However, traditional fishing rights and practices shall not be prejudiced. Additional protections for fishing rights are built into Title 27 of the Palau National Code, noting that traditionally recognized fishing rights in submerged reef areas, wherever located in fishing zones, are preserved and respected.⁵

Territorial Sea

The Territorial Sea starts at Palau’s baseline and extends seaward 12 nm.⁶ Palau has jurisdiction and sovereignty over the Territorial Sea.⁷ In the Constitution, Palau confers the same exclusive ownership of resources to its states and traditionally recognized fishing rights in the Territorial Sea as in Internal Waters. RPPL 10-35 has also added a restriction that only fishing

¹ In the context of maritime zones, baselines are used as fixed coordinates from which to measure maritime zones. Given Palau’s reef system, its baseline is *a line following the contour of the seaward edge of the reef system, which line connects those outermost elevations of the reef which are above water at low tide*.

² 27 P.N.C. §142(b).

³ PALAU CONST. art. 1, §1.

⁴ PALAU CONST. art. 1, §2.

⁵ 27 P.N.C. §146.

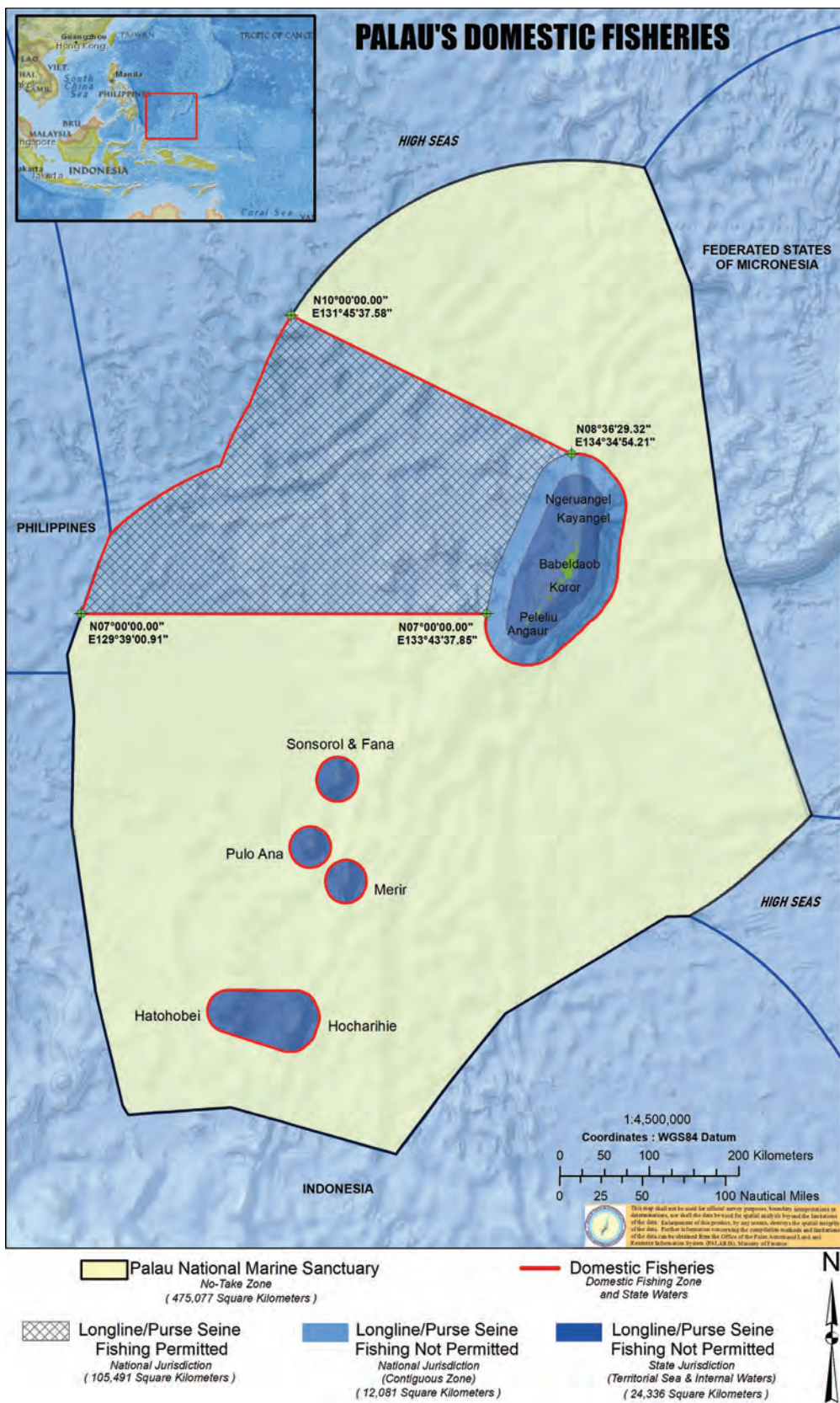
⁶ 27 P.N.C. §142(a).

⁷ PALAU CONST. art. 1, §1; and 27 P.N.C. §142(b).

This document is for informational purposes and is not legal advice. This document is a component of the report titled “*Palau’s National Marine Sanctuary: Managing Ocean Change and Supporting Food Security; Report of an Expert Working Group Convened by PICRC and COS.*” For further information please see <http://picrc.org/picrcpage/palau-national-marine-sanctuary> and <https://oceansolutions.stanford.edu/pnms-report>

Figure 1.

The Palau National Marine Sanctuary comprises 80% of Palau’s Exclusive Economic Zone (yellow) and Palau’s Domestic Fishing Zone (DFZ) comprises the remaining 20% (bounded by the red line encircling the Northern Archipelago and excluding its territorial sea (dark blue)). The DFZ has two zones: the Contiguous Zone (pale blue; 12nm-24nm zone surrounding the Northern Archipelago) and the Fishing Permitted Area (FPA) (hashed) beyond the Contiguous Zone. Pole-and-line and personal and recreational fishing vessels are permitted in the entire DFZ. Purse seine and longline fishing are only permitted in the FPA (hashed) beyond the Contiguous Zone. State rights in the Territorial Sea and Internal Waters remain unaffected. Figure provided by PALARIS.



vessels using pole and line are allowed to fish within 24nm surrounding the baseline of Ngeruangel, Kayangel, Babeldaob, Koror, Peleliu, and Angaur (hereinafter collectively referred to as the “Northern Archipelago”).⁸

Contiguous Zone

The law designates a Contiguous Zone surrounding the Northern Archipelago. The Contiguous Zone is adjacent to the seaward extent of the Territorial Sea and extends out 12 nm. Its outer boundary being every point 24 nm from the baseline.⁹ In the Contiguous Zone, fishing is restricted to fishing vessels¹⁰ using pole-and-line fishing¹¹ and in possession of a valid fishing permit allowed to fish in this zone.¹² The definition of fishing vessels does not include “personal vessels used primarily for recreation or sports” and this is generally understood as a provision for local subsistence fishermen.

Exclusive Economic Zone (“EEZ”)

Palau’s EEZ begins at the seaward extent of the Territorial Sea with its outer boundary being every point 200 nm seaward of the nearest baseline point.¹³ Within the EEZ, Palau has sovereign rights¹⁴ for the “*exclusive management, conservation, and regulatory authority over all living resources within the exclusive economic zone to the full extent recognized by international law.*”¹⁵ It is within this zone that both the Palau National Marine Sanctuary and the Domestic Fishing Zone exist.

Palau National Marine Sanctuary (PNMS)

The PNMS Act establishes the PNMS as all Palau’s waters with the exception of the Domestic Fishing

Zone and the Territorial Sea.¹⁶ The PNMS comprises approximately 80% of the EEZ. The PNMS is a no-take zone, with fishing and other extractive activities expressly prohibited effective January 1, 2020.¹⁷

Domestic Fishing Zone (DFZ)

The DFZ is that demarcated area where fishing is permitted.¹⁸ It comprises approximately 20% of the EEZ and is adjacent to the PNMS. The DFZ includes the Contiguous Zone around the Northern Archipelago and extends to the western boundary of the EEZ.

Fishing vessels may only fish in the DFZ with a valid permit.¹⁹ Applications for fishing permits may be made to the Division of Oceanic Fishery Management at the Bureau of Marine Resources specifying, *inter alia*, vessel identification names and number, details of the vessel including fishing gear, target catch, fishing area and season of fishing.

Only fish caught in the DFZ using purse-seine free-school operations or long-line fishing may be exported for commercial purposes.²⁰ All fish caught in the DFZ for commercial export must be landed in Palau before it is exported,²¹ unless exempted.²² All other fish caught in the DFZ shall only be available for domestic sale.

Authorities and Mandates

Ministry of Natural Resources, Environment and Tourism

The Ministry of Natural Resources, Environment and Tourism (“MNRET”) is established under the Executive branch of the national government of Palau under the

8 27 P.N.C. §165, amended by RPPL 10-35 (2019).

9 27 P.N.C. §143(a).

10 27 P.N.C. §202(d), amended by RPPL 9-49 (2015). “*Fishing vessels* means any vessel, boat, ship or other craft which is used for, equipped to be used for, or of a type normally used for: (1) fishing, but does not include personal vessels used primarily for recreation or sports...”

11 27 P.N.C. §102(x), amended by RPPL 9-49 (2015). “*Pole-and-line fishing* means the method of fishing that involves using a barbless hook attached to a fixed length of line to catch one fish at a time

12 27 P.N.C. §165, amended by RPPL 10-35 (2019).

13 27 P.N.C. §144(a), amended by RPPL 6-36 (2001).

14 UNCLOS art. 56(1)(a).

15 27 P.N.C. §144(b), amended by RPPL 6-36 (2001).

16 27 P.N.C. §147, amended by RPPL 9-49 (2015).

17 27 P.N.C. §149, amended by RPPL 9-49 (2015).

18 27 P.N.C. §§148 and 164, amended by RPPL 10-35 (2019).

19 27 P.N.C. §170, amended by RPPL 9-49 (2015).

20 27 P.N.C. §164(c), amended by RPPL 10-35 (2019).

21 27 P.N.C. §164(d), amended by RPPL 10-35 (2019).

22 27 P.N.C. §164(d), amended by RPPL 10-35 (2019).

Palau National Code.²³ MNRET has broad powers under its mandate as the Executive branch agency responsible for the management of natural resources, including fisheries, agriculture, aquaculture, forests, mineral and other land-based and ocean-based resources; the promotion and development of tourism, and the protection and management of the environment; labor; and other related matters.²⁴

The PNMS Act assigns MNRET central roles in the management and conservation of the PNMS Zone and the DFZ. The PNMS Act mandates MNRET:²⁵

- to adopt regulations for the conservation, management, and exploitation of all living resources in the Palau National Marine Sanctuary and the Domestic Fishing Zone...;
- to negotiate and conclude foreign fishing agreements...;
- to issue foreign fishing permits in accordance with the law and regulations promulgated...;
- to monitor fish stocks and set allowable catch limits within the Domestic Fishing Zone;
- to monitor all fish caught within the Domestic Fishing Zone;
- to coordinate with the Ministry of Justice for the enforcement of all laws, rules and regulations in relation to domestic fishing, transit by foreign and domestic vessels through Palau's waters, and illegal or unreported or unregulated fishing or illegal activities within the Palau National Marine Sanctuary or Domestic Fishing Zone;
- to adopt regulations for the placement of Palau observers aboard all foreign and domestic fishing vessels engaged in fishing within Palau's waters or for Palau's continental shelf resources;

- to coordinate Palau's compliance with all international fishery agreement or foreign fishing agreements, with a focus on maximizing the returns to Palau under any such agreements and negotiate with parties to such international fishery agreements, such as the Nauru agreement; and
- to perform such other duties and functions as may be necessary to carry out the purposes of this chapter

The Minister of MNRET has additional authority and responsibilities under the PNMS Act that includes:

- drafting regulations to “*manage, conserve, and regulate the harvesting of fish throughout their habitat, both within the reef areas of islands and atolls, and in other areas within the jurisdictional competence...*”²⁶
- granting exemptions from the requirement to land fish caught in the DFZ for commercial export purposes in Palau.²⁷
- promulgate regulations and inspection procedures necessary to collect any tax on fish.²⁸
- developing the Minister’s Report that annually reports all activities within Palau’s waters, including the PNMS and the DFZ. This shall contain, inter alia, detailed expenditure of funds by MNRET, all fishing permits, revenues, types and amounts of fish harvested, sustainability of fish stocks, and monitoring and enforcements efforts.²⁹

The Bureau of Marine Resources (“BMR”), under MNRET, has discretion to make regulations to provide for the issuance of permits on reasonable grounds to foreign vessels or parties for research, recreational, or other noncommercial fishing within the PNMS and DFZ.³⁰ BMR may also grant special bait fishing permits for catching bait fish subject to terms and conditions

23 2 P.N.C. §102(a)(8).

24 2 P.N.C. §121(a).

25 27 P.N.C. §123, amended by RPPL 9-49 (2015).

26 27 P.N.C. §101; and §122, amended by RPPL 9-49 (2015). MNRET is developing PNMS Fishing Regulations (“Regulations”) that is likely to go into force on January 1, 2020 coinciding with full implementation of the PNMS Act. The purpose of the Regulations will be to give effect to and implement the PNMS Act. For the purpose of this report, details pertaining to the Regulations are not included as it has yet to be finalized as of the time of publication of this report. However, it should be noted that Regulations will be able to provide additional detail and clarity on many aspects of the PNMS and DFZ.

27 27 P.N.C. §164(d), amended by RPPL 10-35 (2019).

28 40 P.N.C. P.N.C. §1406.

29 27 P.N.C. §124, amended by RPPL 9-49 (2015).

30 27 P.N.C. §174, amended by RPPL 9-49 (2015).

that maintain the sustainability of the bait fish stock and the ecosystem.³¹ The Director of BMR is responsible for exploring, surveying, developing, managing and conserving all near shore marine resources.³²

Ministry of Justice

The Ministry of Justice (“MOJ”) is also established under the Executive branch of the national government of Palau.³³ The MOJ is responsible for providing legal services to the national government and its agencies and political subdivisions, promoting and protecting the safety and peace of the public, maintaining order, enforcing all laws, and related matters.³⁴

The PNMS Act authorized MNRET to coordinate with the MOJ for the enforcement of all laws, rules and regulations in relation to Palau’s waters, and with regard to illegal, unreported, and unregulated (“IUU”) fishing or other illegal activities within the PNMS or DFZ.

In 2019 through an amendment to the PNMS Act, the functions of the Ministry of Justice were expanded to include:

- ...take all necessary lawful actions to defend the integrity of the Republic’s jurisdiction and to promote the safety of persons and wildlife therein.³⁵
- ...be responsible for surveillance of the Republic’s maritime jurisdiction, and for monitoring and enforcing the restrictions pertaining to the Exclusive Economic Zone, the Domestic Fishing Zone, and the Palau National Marine Sanctuary.³⁶

The MOJ has broad enforcement powers under its primary role as well as that specifically listed under the PNMS Act amendment. Interestingly, the newest expansion of its roles extends to surveillance and monitoring of the maritime zones.

Palau International Coral Reef Center (PICRC)

The Palau International Coral Reef Center is established as a non-profit public corporation³⁷ that is an autonomous entity wholly owned by the National Government under the Code and exists in perpetuity.³⁸ The Code notes that PICRC is strictly limited to scientific, research and educational purposes. It also notes activities that PICRC may not engage in and these include: carrying on propaganda or attempting to influence legislation.³⁹

PICRC’s primary objectives, *inter alia*, include:

- Provide information, expertise, assistance and other relevant support to any local government or private agency or non-government organization whose mission requires operating in the marine environment;⁴⁰
- Provide educational resources and assistance for development of marine environment studies programs for the entire Palau education system;⁴¹ and
- Provide information and technical support to Palau’s traditional chiefs in their role of managing the reefs and implementing traditional conservation practices.⁴²

In 2019, through an amendment to the PNMS Act, the primary objectives of PICRC were expanded. These new objectives include:

- Administer the Palau National Marine Sanctuary by coordinating research, education, and outreach activities relating to the Sanctuary and Domestic Fishing Zone established under Title 27 of the Palau National Code;⁴³ and
- Develop and recommend to MNRET, appropriate conservation management measures for the Domestic

31 27 P.N.C. §175, amended by RPPL 9-49 (2015).

32 2 P.N.C. §121(c).

33 2 P.N.C. §102(a)(2).

34 2 P.N.C. §105.

35 2 P.N.C. §105, amended by RPPL 10-35 (2019).

36 2 P.N.C. §105, amended by RPPL 10-35 (2019).

37 24 P.N.C. §3301(f) and (h).

38 24 P.N.C. §3301(a) and (c).

39 24 P.N.C. §3301(a) and (c).

40 24 P.N.C. §3303(f).

41 24 P.N.C. §3303(i).

42 24 P.N.C. §3303(j).

43 24 P.N.C. §3303(k), amended by RPPL 10-35 (2019).



Fishing Zone.⁴⁴

These objectives appear to be complementary and supporting the work of MNRET. MNRET's regulatory powers enable it to make regulations in the future to enhance the role of PICRC.

Taxes and Fees

Fish Export Tax

In the 2019 amendment to the PNMS Act, fish export taxes were amended to include two classes, tuna or billfish, and all other fish. All types of tuna or billfish in any form are subject to an export tax of 50 cents per kilogram, while all other fish receive a tax of 35 cents per kilogram.⁴⁵ Fish export taxes only apply when fish is exported for commercial purposes. The Minister of Finance and MNRET are responsible for creating

regulations and procedures for collecting this tax⁴⁶ with the National Treasury being the entity into which these taxes are deposited.⁴⁷

Pristine Paradise Environmental Fee

The Pristine Paradise Environmental Fee (“PPEF”) was established by an amendment to the Palau National Code in RPPL 10-02 and replaced the Environmental Impact Fee established by the PNMS Act.⁴⁸ The PPEF of \$100 is applicable for international travel into Palau with refunds available to Palau citizens, their spouses and other identified classes. In the 2019 amendment to the PNMS Act, PICRC was allocated \$5 from the PPEF for its administration of the Palau National Marine Sanctuary.⁴⁹ The current allocations of the PPEF are: Fisheries Protection Trust Fund (\$5),⁵⁰ PICRC (\$5),⁵¹ States (\$12.50),⁵² Palau International Airport (\$25),⁵³ Green Fee (\$30)⁵⁴ and National Treasury (\$22.50).⁵⁵

44 24 P.N.C. §3303(i), amended by RPPL 10-35 (2019).

45 40 P.N.C. §1406, amended by RPPL 10-35 (2019).

46 40 P.N.C. §1406, amended by RPPL 10-35 (2019).

47 40 P.N.C. §101.

48 40 P.N.C. §2701, amended by RPPL 10-02 (2017); and RPPL 10-02 §2 (2017) repeals §§ 5,7 and 8 of RPPL 9-49.

49 40 P.N.C. §2706(b), amended by RPPL 10-35 (2019).

50 40 P.N.C. §2706(a), amended by RPPL 10-35 (2019).

51 40 P.N.C. §2706(b), amended by RPPL 10-35 (2019).

52 40 P.N.C. §2706(b), amended by RPPL 10-02 (2017); 70% divided amongst states in equal shares and the remaining 30% apportioned according to population.

53 40 P.N.C. §2706(b), amended by RPPL 10-02 (2017); earmarked and appropriated to relevant agencies for purposes related to the security, operation, maintenance, and improvement of the Palau International Airport; provided that all funds from local revenue or other sources that otherwise would have been appropriated for these purposes shall be appropriated to the Civil Service Pension Fund.

54 40 P.N.C. §2706(d), amended by RPPL 10-02 (2017); 24 P.N.C. §3413 provides that the Green Fee shall be used for the operation of PAN.

55 40 P.N.C. §2706(e), amended by RPPL 10-02 (2017).