



**COMMISSION**  
**ELEVENTH REGULAR SESSION**  
Faleata Sports Complex, Apia, SAMOA  
1 - 5 December 2014

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**Summary Report of the Implementation of CMM 2013-06 and Disproportionate Burden Workshop**

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WCPFC11-2014-11\_rev1  
3 March 2015<sup>1</sup>

**Paper by WCPFC Chair**

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<sup>1</sup> This revision includes updated participants list from that which was circulated on 29 November 2014.



**Summary Report of the Implementation of  
CMM 2013-06 and  
Disproportionate Burden Workshop**

**27 November 2014**

**Faleata Sports Complex  
Apia, Samoa**

1. A WCPFC workshop on the Implementation of CMM 2013-06 and Disproportionate Burden Workshop was held on 27 November 2014 at Faleata Sports Complex in Apia, Samoa.
2. The workshop participants agreed to the following summary outcomes:
  1. **That CMM 2013-06 will continue to be [a] the primary basis for the immediate future for the Commission to assess whether a proposed CMM will create and/or avoid a disproportionate burden on one or more SIDS. (SIDS includes territories) Noting that CCMs agreed that further discussion regarding the implementation of CMM 2013-06 was necessary.**

**Footnote: one CCM believed that “a basis” was appropriate.**

2. **As per that measure, proponents of CCMs should complete the checklist as comprehensively as possible to initiate discussions by the Commission.**
3. **That proponents are strongly encouraged to consult with SIDS in the preparation of their proposals.**
4. **That the Commission will need to determine on a case by case basis whether a DB potentially exists, and if so, how it can be addressed.**
5. **That principles outlined in the WPFMC report will be useful to the Commission to take this step.**
6. **That formal impact assessments, including independent evaluation is one tool that may be available to the Commission, but that such a degree of formality may not be required.**
7. **That the Commission should maintain a flexible suite of tools to address, remedy or mitigate DB, including regulatory approaches such as rights based management, financial instruments and assistance, infrastructure or capacity building.**

8. **It is strongly encouraged that CCMs submit their proposals at least one month ahead of the commission meeting so that the appropriate consultations with SIDS could take place in implementing CMM 13-06.**
3. The following is the Chairs summary of the workshop discussions.

### **AGENDA ITEM 1 - WELCOME AND OPENING**

#### **Opening remarks**

4. Dr Charles Karnella, the WCPFC Chair, welcomed participants and noted that the Commission wanted to hold a workshop on CMM 2013-06 and disproportionate burden to seek an understanding of what disproportionate burden is and how to avoid it. The Chair thanked Samoa for providing a fine facility for the participants to meet in such comfortable circumstances.

#### **Adoption of workshop agenda**

5. The Chair noted that a number of papers had been circulated in the past few months discussing the topic of disproportionate burden and most recently the FFA had suggested modifying the agenda slightly so as to discuss the purpose and objectives of the workshop, discuss ways there can be disproportionate burden placed on SIDS and Participating Territories, and ways to avoid placing disproportionate burden on SIDS and Participating Territories.
6. FFA members explained that they had proposed revisions to workshop agenda in a letter of 25 November to the Secretariat. The suggestions were not additional, but separated out the specific items so as to better guide discussions on two separate issues – disproportionate burden as a concept and how the WCPFC could collectively use *Conservation and Management Measure 2013-06 on the criteria for the consideration of conservation and management proposals* (CMM 2013-06) as a tool to identify it. FFA's objectives were a) moving towards a common understanding of what disproportionate burden is, b) exploring different ways in which disproportionate burden can occur, c) sharing ideas on what can be done to avoid, remedy or mitigate disproportionate burden and d) providing guidance on the use of CMM 2013-06.
7. The USA thanked Samoa for its kind hospitality and the FFA for proposing modifications to the agenda. This CCM stated that it hoped to define disproportionate burden precisely and objectively and that it was important to define a process for how those determinations are made and the process for getting to those objective calculations.
8. The modified agenda WCPFC11-2014-DBW-02\_rev1b was adopted (see Attachment A), with the Chair noting that the USA's comments would be taken on board during discussions.

#### **Meeting arrangements**

9. The following Members and Participating Territories attended the workshop: American Samoa, Australia, Commonwealth of Northern Marianas, Cook Islands, European Union, Federated States of Micronesia, Fiji, France, Guam, Japan, Kiribati, Republic of Korea, Republic of the Marshall Islands, Nauru, New Caledonia, New Zealand, Niue, Papua New Guinea, Samoa, Solomon Islands, Chinese Taipei, Tokelau, Tonga, Tuvalu, United States of America and Vanuatu. Observers from the following government and intergovernmental organisations also attended: Pacific Island Forum Fisheries Agency (FFA), Pacific Islands Forum Secretariat, Parties to the Nauru Agreement (PNA), Secretariat of the Pacific Community (SPC). Observers from the following non-governmental

organisations attended: American Tunaboat Association, Conservation International, International Sustainable Seafood Foundation (ISSF), The Pew Charitable Trusts, Pacific Islands Tuna Industry Association (PITIA), World Wide Fund for Nature (WWF). A full list of participants to the workshop is at Attachment B.

10. The following were submitted as papers to the workshop:
  - WCPFC11-2014-DBW-03. Background to CMM 2013-06. 5 November 2014. Paper by the WCPFC Secretariat.
  - WCPFC11-2014-DBW-04. Addressing disproportionate burden: A framework for implementation. Summary report of a workshop convened in Honolulu, Hawaii, September 18-20, 2014. 1 November 2014. Paper submitted by the United States of America.
  - WCPFC11-2014-DBW-05. Working papers for WCPFC workshop on disproportionate burden. 3 November 2014. Papers submitted by FFA Members.

## **AGENDA ITEM 2 - PURPOSE AND OBJECTIVES OF WORKSHOP**

11. The Chair opened discussions on the four workshop objectives as agreed.
12. Tokelau offered some opening remarks on behalf of FFA, after offering thanks to the Secretariat for organising the workshop. This CCM stated that disproportionate burden was an important topic to Commission as a whole, and will impact how the Commission manages fish stocks. It was not a new topic – in the WCPFC context it stems from the Fish Stocks Agreement and it has been on WCPFC's agenda for more than 10 years now. It is not a new concept in other fields, though was not necessarily known by the term 'disproportionate burden'. FFA produced two delegation papers for this workshop (WCPFC11-2014-DBW-05 "Working papers for WCPFC Workshop on Disproportionate Burden) and recommended that CCMs review WCPFC10-2013-DP01 "FFA Members Discussion Paper on Avoiding Disproportionate Burden" and WCPFC10-2013-DP33 "PNA: Paper to support PNA and Tokelau proposal for avoiding disproportionate burden in the tropical tuna CMM" which were submitted last year to WCPFC10 and contained these members' views on the issue.
13. A short discussion about objectives ensued, with one CCM elaborating on its own objectives for the workshop, which were to develop a process for defining and assessing disproportionate burden, assigning responsibility for demonstrating and defining evidentiary standards for assessing disproportionate burden, discussing mechanisms for resolving disputes about the extent of disproportionate burden. This CCM stated a preference for the involvement of independent experts and peer review and utilising available science, transparency and stakeholder participation.
14. The Chair invited discussion on ways in which disproportionate burden can occur, and be avoided or mitigated.
15. One CCM stressed that disproportionate burden is not a new thing and issues related to it are embedded in measures adopted by WCPFC over the last couple of years. But, speaking on behalf of SIDS, it was a case of 'hit and miss' as measured against Article 30 of the WCPF Convention and obligations contained therein. Disproportionate burden was not something SIDS had to prove but a collective obligation for the Commission to avoid and this CCM suggested not complicating the issue, but starting to working on implementing measures against the special requirements of SIDS. This CCM stressed that thinking twice about the issue as the Commission goes about its business, including when developing and submitting proposed measures. If not, it will impact the Commission's standing.

16. The Chair stated that avoiding disproportionate burden was an obligation on the Commission as a whole, with all participants having obligations in this regard. One reason for holding the workshop was to reach some common understanding on the best way to proceed, to identify disproportionate burdens where they exist and work toward alleviating or eliminating them. He reminded the group that every CMM is passed by consensus and that participants needed to keep working on measures in development until they are fair and adhered to the Commission's own standards.

### AGENDA ITEM 3 - DISPROPORTIONATE BURDEN AS A CONCEPT

#### 3.1 Report from the WPRFMC Workshop on addressing disproportionate burden (WCPFC-2014-DBW-04)

*WPRFMC Workshop report presentation*

17. Dr Paul Callaghan presented the report from the WPRFMC workshop addressing disproportionate burden. The workshop was held in Honolulu on 18-20 September 2014. It was funded by WPRFMC and had 23 participants, representing economics, legal, fishery and Pacific fishery backgrounds and experience. See: <http://www.wcpfc.int/meetings/implementation-cmm-2013-06-and-disproportionate-burden-workshop> for workshop papers including the WPRFMC report (WCPFC11-2014-DBW-04 "Addressing Disproportionate Burden: A summary report from a workshop convened by WPRFMC in Honolulu"), including the list of participants and their biographical details.
18. Dr Callaghan noted that the objectives of the Honolulu workshop were to: a) define disproportionate burden, b) measure disproportionate burden, and c) find ways to mitigate or avoid disproportionate burden. He presented a series of slides (Attachment C) laying out a formula for arriving at a calculation of disproportionate burden, using the following symbols:
- $C_i$  is the added cost borne by a single CCM from implementation of a CMM
  - $\sum_i C_i$  is the sum of added costs borne by all CCMs from implementation of a CMM
  - $S_i^*$  is a CCM's fair percentage share of the sum of added costs borne by all CCMs
19. The presenter explained that there is consideration internationally for *proportionate* burden – when a CCM's cost is equal to its fair share of all the costs. If that is proportionate then it is fair. A *disproportionate* burden is when the cost to a CCM is greater than its fair share of the total costs. The magnitude of a disproportionate burden can be measured by taking a CCM's costs and subtracting its fair share. There are various principles for deducing 'fair share':
- "Beneficiary Pays Principle" – those who gain the most benefit should pay the most. For example, using fish catch, or value of fisheries production as the measure.
  - "Means-based Principle" – those who have the most wealth should pay the most

- “Polluter Pays Principle” – those who are most responsible for causing the harm to the resource should pay the most. For example, a measure might be the bycatch of a species that participants want protected from being caught.
- “Flat Rate Principle” – all members of the group should pay the same portion. For example, if there were 30 members, each country would pay 1/30<sup>th</sup>.

20. Dr Callaghan added an additional item to this list: a “Commission consensus minimum threshold” – a minimum percentage that every country is responsible for, which would be determined by the Commission. The presenter noted that if a country’s costs are greater than its fair share then a disproportionate burden exists.

If  $C_i > S_i^* (\sum_i C_i)$  then DB exists

$S_i^*$  can be determined through principles applied individually or in weighted combination

$$S_i^* = f \left( \frac{B_i}{\sum B_i}, \frac{W_i}{\sum W_i}, \frac{H_i}{\sum H_i}, \frac{1}{N}, S_{i-min} \right)$$

relative benefit, relative wealth, relative harm, flat rate equal share, consensus threshold minimum

21. ‘Fair share’ can be determined using a single principle or in combination. The presenter gave the example of WCPFC already using a similar kind of formula to calculate the annual contribution for members.
22. Dr Callaghan presented ways to measure costs to a country, and noted that costs should be measured in monetary units that reflect real values, and are incurred by governments not commercial entities. They should be measured from a baseline that specifies the costs that would have been incurred without the measure. Costs were subject to the Commission’s discretion but could include primary and secondary multiplier impacts and should be calculated in ways that may require shadow prices substituting when market prices did not exist (or are distorted). Costs change over time, and the calculation would require updates. These calculations would require future estimations, which are subject to variation and uncertainty. Cost calculations may be aided by use of a population dynamic, bio-economic model that incorporates measures of statistical uncertainty and is informed by observed fishery and socio-economic data. A cost measurement should employ internationally accepted best practices for computing costs and benefits.
23. Dr Callaghan noted that the WPRFMC workshop had commented on other issues: avoiding disproportionate burden in the first place by creating CMMs that avoid the burden from the outset, though this requires subjective judgement and consensus compromise, which carries costs as well; and offsetting disproportionate burden with mitigation – cash, in-kind, regulatory exemption – though these also have a downside and have costs of their own. Calculation of disproportionate burden using internationally-accepted best practices was costly and time consuming and should therefore be reserved for most important measures.
24. The workshop provided a suggested way forward – developing a formal WCPFC process that:
- Defines and assesses disproportionate burden
  - Assigns responsibility for demonstrating disproportionate burden
  - Provides evidentiary standards, both quantitative and qualitative

- Sets analytical priorities
- Offers dispute settlement
- Involves independent experts and peer review
- Uses best available science
- Involves transparency and stakeholder engagement.

### *Discussion*

25. One CCM thanked the WPRFMC for hosting the workshop and supported the outcomes. This CCM agreed that the most challenging issue is the determination of fairness, with all the other matters being relatively simple. This CCM agreed with principles outlined for determining a fair share except for the flat rate methodology, stressing that if it was appropriate then Article 30 wouldn't have been required in the Convention.
26. FFA members noted that a large part of the comprehensive report matched their views. These CCMs recognised the diversity of contexts in which disproportionate burden occurs and that there are a range of approaches that can be used. These members strongly agreed with the recognition of rights-based management that was reflected in the report.

### **3.2 General presentation by FFA members (including DBW-05 part 1)**

27. Glen Joseph (RMI), delivered a presentation on behalf of FFA members which presented their views on disproportionate burden in view of the outcomes of the WPRFMC workshop in Honolulu and the upcoming WCPFC11. The presentation (Attachment D) discussed the special requirements of developing States reflected in Article 30 and how it is applied. These CCMs expressed the view that there was no consistent understanding of its applications, especially the obligations it places on the Commission and CCMs. Under Article 30 (2)(c), the Commission recognised the need to not to transfer a disproportionate burden onto developing States and Territories and the Commission cannot implement CMMs that transfer a disproportionate burden. But there is no Commission-wide understanding of this, or assessment.
28. Mr Joseph noted that by adopting CMM 2013-07 on the special requirements of Small Island Developing States and Territories, the Commission agreed to operationalise Article 30. It built on Resolution 2008-01 – Aspirations of Small Island Developing States and Territories, then CMM 2013-06 agreed a basis for assessing whether a disproportionate burden could result from a particular proposal, which moved the Commission towards a fuller consideration of costs and benefits.
29. Mr Joseph noted a focus on two areas in particular: getting disproportionate burden 'right' in measures, and using CMM 2013-06 as a tool to do so. FFA members stressed that this was about the flow of costs and benefits to individual CCMs, not impacts on non-SIDS or on fishing fleets, except insofar as impacts on SIDS fleets prevented participation in the fishery. The issue needed to be addressed carefully and on a case by case basis. It noted the different types of disproportionate burdens: administrative – stemming from the cost of implementing a measure, and outcome – where a CMM results in direct or indirect losses to a SID (or group), and presented specific examples:
- *Port State Measures Agreement*, which imposed an administrative burden. The cost to SIDS was high since all major regional ports are in SIDS. It imposes technical and financial costs, including the need to develop systems to adhere to the requirements. In contrast, the cost to non-SIDS was nil. Benefits were intangible and shared by all, for example in a reduction in IUU fishing.
  - *Bigeye conservation*, which imposed an outcome burden: the cost to SIDS of implementing the measure was high not just in costs but in other burdens such as foregone purse seine access

revenue, restrictions on developing domestic fleets, interrupted product flow to processing plants. In contrast, the benefits to SIDS were very small.

30. Mr Joseph outlined a number of international texts which considered the issue of fairness and disproportionate burden, including the Rio Declaration and the UN Framework Convention on Climate Change. He also gave examples at the national level including progressive tax rates and differing reporting requirements for companies depending on their size.
31. Mr Joseph turned to the issue of what could be done in the case of an identified disproportionate burden, noting that a re-balancing in the flow of benefits, especially to SIDS was required. It expressed FFA members' appreciation for the funding and technical assistance help they receive but stressed that the Commission's success depended on how they delivered benefits and addressed SIDS' disproportionate burden. Henceforth the Commission needed to identify disproportionate burden early and in all aspects of the development of measures. Funding would not always be the solution but there may be instances where it was required in the short term. But over the long term SIDS would pursue the establishment of rights and in this looked to CCMs for support.
32. Mr Joseph concluded the presentation by noting that WCPFC will have incomplete implementation of measures and be in breach of Article 30 if it doesn't adequately address disproportionate burden. FFA members stressed that partnership approaches were needed and that SIDS' tradition, culture and future lay in sustaining the fishery.

### **3.3 Discussion -- with a key focus on key points from DBW-04 and DBW-05**

33. Some CCMs thanked the WPRFMC for holding its workshop and the FFA for its presentation, noting that it was timely to identify and address disproportionate burden and the need to work quickly. Disproportionate burden was about managing disproportional impacts. For these CCMs, the success of the measures which the Commission would consider at WCPFC11 would depend on the speed with which members addressed the issue of disproportionate burden. It was stressed that the Commission's obligation is avoiding disproportionate burden. In instances where disproportionate burden could not be avoided, CCMs as a Commission had to take the next step and mitigate that burden. The status of the Convention Area fisheries requires complex arrangements. SIDS' contribution must be in proportion to their capacities and involves changing the paradigm of the Commission including increased ownership through rights-based approaches and capacity transfers.
34. One CCM stressed that the workshop needed to remain focused on what disproportionate burden is and how CCMs can make determinations about whether a particular measure imposes a disproportionate burden and, if so, how it should be addressed. This CCM stressed that a rigorous and non-flexible approach and economics were needed in the analysis of the level of burden. The WPRFMC's workshop provided a roadmap forward, and the issues and economics of the costs shouldn't be oversimplified. A specific process should be adopted and put into practice. Article 30 referred to disproportionate burden as it is imposed on individual SIDS or Participating Territories, not groups. This CCM noted that the resource intensive process will require data and information to analyse. While this was a Commission function, the CCMs that are impacted would need to provide information for the analysis.
35. One CCM agreed with the need for a rigorous definition of disproportionate burden and a rigorous analytical process to establish the magnitude of that burden. The first step is to determine whether a burden is caused by a measure – it won't always be a disproportionate burden – then whether it is disproportionate on SIDS. Then it should be investigated to reduce that burden. This CCM stated that the WPRFMC's workshop produced good ideas and objective instruments to determine burden, but

not necessarily strong recommendations. It was noted that the Commission already provides financial support to build administrative capacity, such as training, and that this will continue and that the region is consulted. This CCM agreed that a process to evaluate whether a measure creates a disproportionate burden would be time consuming and resource intensive and the Commission might need to identify the most important measures that need to undergo a thorough process (such as the tropical tuna measure). This could be done as a collective exercise paid for by the Commission and it should be objective, robust, independent and fact based.

36. One CCM agreed that data was needed for such a process but made the point that many CCMs currently fail to provide required data, which places a burden on SIDS. Another CCM noted that this issue would be discussed at the Commission meeting.
37. One CCM noted that MOW2 looked at viability of the region's fisheries and stressed there was a difference between measuring the impact of a measure and the burden or impact of some of the decisions which have been made for the fisheries, with variability across the region.
38. In response to the Chair's observation that the group agreed on the need for a definition of disproportionate burden, one CCM noted that Dr Callaghan had provided a precise framework to lead to a definition, stating that a rigorous process was needed but not one that was burdensome in itself and overly bureaucratic – perhaps used when there are signs of gross disproportionate burden.
39. FFA members stressed that there is an expectation that concrete reductions in disproportionate burden, not just identification, would occur. One CCM reiterated the importance of the 'checklist' in CMM 2013-06 in the development of proposals, and noted that even though it was a new measure, a number of CCMs were already doing this successfully. This is where detailed analysis could be submitted with proposals.
40. One CCM questioned determining a process before developing a definition of disproportionate burden and noted that while it is useful to hear from the parties putting a measure forward, all parties should have an opportunity to have input.
41. One CCM stressed that there may not be a single definition of disproportionate burden and that context was critical. This was why, in this CCM's view, the process was important and might be the most fruitful path.
42. The Chair noted that there may not be a silver bullet definition to determine disproportionate burden, noting that disproportionate burden implies 'not fair compared to something else'. In response, the FFA Secretariat noted the need to determine 'fair' proportion, which would have to be flexible, and cited the means test used in the contribution formula for the WCPFC budget as an example. This participant noted the high level of detail in Dr Callaghan's presentation around a definition.
43. One CCM suggested that implementing CMM 2013-06 might be enough – that the checklist in CMM 2013-06 was helpful. This CCM noted that the onus appeared to be on SIDS to ensure that measures are not disproportionate and stressed that under CMM 2013-06, the burden of proof was on the proponent to avoid disproportionate burden, then to ensure the measure was good for the SIDS. Another CCM acknowledged the usefulness of CMM 2013-06 as a way forward, with its simple guidance to understanding how a measure might impact on SIDS, but it was also important to consider what the capacities of SIDS are and their particular settings.
44. The Chair noted that while CMM 2013-06 was helpful, the ultimate burden rests with the Commission. Several CCMs stated their agreement. A proponent could draft a measure, and give

consideration to whether it creates a disproportionate burden, but the Commission would then have to decide. One CCM noted that the proposing party was not in the best position to do the analysis. Another CCM stated that the best way to identify whether a proposal would result in a disproportionate burden on SIDS is to consult with them.

45. An industry observer noted the need for clarity around disproportionate burden, stating all members have to share the burden and noting that industry operates on very small margins, pays large fees and has much to lose.

### **3.4 Next steps – what are the gaps in common understanding and commitment?**

46. In response to the Chair drawing attention to Dr Callaghan’s principles relating to ‘fair share’, noting that FFA had already stated that the ‘flat-rate’ principle was not appropriate, one CCM proposed that rather than single principles, fairness might be measured in some weighting/combination.
47. One CCM reminded participants that CMM 2013-06 had already been adopted and could be used on a case by case basis on measures to be submitted. Instead of a process outcome from the workshop, this CCM reiterated that a Commission decision on a process on top of what already existed risked delay in moving forward; that a focus on a process could render the implementation of CMM 2013-06 incomplete.
48. One CCM did not agree that CMM 2013-06 could answer ‘what is disproportionate burden?’, though it was the start of a discussion. It urged continuing the work of the two workshops.
49. The Chair reminded participants that doing what the agreed measure calls for will provide information for the Commission to consider and that this would happen regardless of any other process put in place.

## **AGENDA ITEM 4 - CMM 2013-06 AS A TOOL TO ASSIST THE COMMISSION**

### **4.1 Secretariat paper on CMM 2013-06 (WCPFC-2014-DBW-03)**

50. Dr Lara Manarangi-Trott, interim Executive Director of the WCPFC Secretariat, noted that the issues which had been raised through the workshop, particularly by the FFA presentation, mostly covered the information in the Secretariat paper WCPFC-2014-DBW-03, which included the WCPFC10 issues and disproportionate burden papers which had been presented, as well as various measures adopted and approaches proposed through delegation papers. The interim Executive Director noted that in each of the submitted proposals, the proponents had made an attempt to consider CMM 2013-06 – not only SIDS and Participating Territories but other members of the Commission. It was noted that attached to WCPFC-2014-DBW-03 was the measure and responses from NZ, France and Japan. Also available were views from FFA members in the form of papers to this workshop.

### **4.2 FFA presentation on CMM 2013-06 (WCPFC-2014-DBW-05\_Att 2)**

51. The workshop discussions had covered much of what would have been presented in this presentation, so a short discussion ensued only.
52. Noting that an extensive body of decisions existed enshrining the special requirements of developing states and the need to avoid disproportionate burden, one CCM stated that in some respects Article 30

is not being implemented. This CCM looked forward to the Commission developing measures in light of CMM 2013-06 and using the checklist in the interests of SIDS and Participating Territories.

#### **4.3 Discussion on DBW-03 and DBW-05\_Att 2 using FFA member examples**

53. The FFA Secretariat noted the usefulness of CMM 2013-06 in helping the Commission become more conversant with disproportionate burden and how measures can be better crafted and shared its experience with drafting proposals in light of the checklist, which highlighted the diversity of potential impacts which can accrue. The FFA's experience lent weight to the WPRFMC workshop's finding, and used a case by case, iterative process to deliver a measure which addressed disproportionate burden.

#### **AGENDA ITEM 5 - NEXT STEPS**

54. The Chair suggested focusing on the Commission meeting and CMM proposals and any analyses which have been done under CMM 2013-06 to see what has been learned through that process and as necessary come back at either the Commission level or as a working group to keep refining the process.
55. One CCM noted that there is a difference in the approaches proposed during the workshop – either a highly analytical process requiring quantification, or a much more informal process. It stressed that the method by which that analysis is conducted is missing. This CCM cited a letter from New Zealand and the Council workshop to reiterate that a clear process has not been suggested. This CCM stressed that it is not up to a CCM to assess what the burden is and noted that the workshop participants had agreed it was the responsibility of the Commission to identify, quantify, and find solutions to disproportionate burden, but that the choices were either time consuming and resource intensive analysis, a superficial analysis, or paralysis in CCM's ability to put forward proposals. This CCM stressed that it was not for one CCM to calculate impact on another CCM. A CCM could probably accurately calculate impact on its own country, but not others.
56. New Zealand clarified that in its letter it was noted that a framework could be usefully developed to help implement CMM 2013-06, and noted that the template was designed to encourage consultation with SIDS and for CCMs to learn how to interpret disproportionate burden. It would require dedicated resources, as proper implementation of the measure is linked to the ability of smaller administrations to monitor compliance.
57. Tokelau stressed the importance of following the CMM 2013-06 process and addressed the question of proponents getting sufficient information to make judgements on their measures. It gave an example for the benefit of the participants to better understand disproportionate burden: CMM 2013-01 (the tropical tuna measure) contains an obligation for a four month FAD closure. Each month closed to FAD fishing costs Tokelau USD400,000 in lost revenue. That is USD1.6 million in a year, which is very significant to a small territory such as Tokelau – representing 18-20% of government-earned revenue or about 9-10% of GDP. It represents 20% of the average wage for a Tokelauan (which is around USD5000 per year). Tokelau will not benefit greatly from the recovery of bigeye tuna, which the CMM seeks to underpin, and Tokelau didn't cause the stock to be fished down. Tokelau offered to provide economic and operational data to any model or methodology the Commission wants to use to determine disproportionate burden.

58. One CCM reiterated that a proper impact assessment is a very lengthy process but is a rigorous method. That kind of process is needed for some of the more important measures and is a collective responsibility.
59. One CCM reminded participants that even though some burdens were crippling, more than 40 CMMs had been adopted, with none blocked on the basis of disproportionate burden.
60. The Chair noted that the group had not come to a consensus on a common understanding or definition of what disproportionate burden was or necessary analytical requirements, other than that the Commission should implement CMM 2013-06 fully and learn from that process. The Chair pointed out that CMM 2013-06 was still a work in process, and should not be thought of as an end but a start in assisting the Commission deal with the issue of disproportionate burden.
61. Kiribati agreed with using CMM 2013-06 as a starting point for assessing future CMMs and shared its own compliance issues: with one of the smaller administrations in the WCPFC, it has different capacities and how Kiribati uses the revenue from fisheries to support its people and government may be different from other CCMs. Fishing is the only generator of economic returns and measures adopted in WCPFC affect greatly how the country is able to help its people. Kiribati noted that consultation would help generate understanding about what is needed by SIDS.
62. Niue joined others in supporting CMM 2013-06 as a good starting point and supported the establishment of a working group to start looking at a set of tools, or some work by the Secretariat. This CCM noted that benefit versus burden was an important matter – almost everything to do with the Commission was a burden – but stressed that if a CCM participates in the fishery, or allows fishing, that CCM accrues benefits. SIDS don't face challenges across the board, but noted that similarly to the WCPFC membership contribution formula, where fishing is taking place and who is fishing should be considered.
63. One CCM found it useful to hear descriptions of the burdens caused by some of the management measures, and noted that CMM 2013-06 forces CCMs to consider and talk with others about the impacts of proposals and will not only address unintended circumstances but make the measures better, including by consulting in small groups before the measure reaches the table. This CCM noted that CMM 2013-06 is an extant measure and has to be applied, but it also *should* be applied, particularly as it helps build understanding. The Commission will have to resolve questions about whether a disproportionate burden is imposed by a particular measure and how measures can be refined to ensure they do not unintentionally prove burdensome.
64. Tokelau was grateful for the discussions about process and analysis and emphasised that it carried a disproportionate burden right now. The Cook Islands noted that it was important not to have more disproportionate burden placed upon it, and was looking for a reduction in its burden.
65. Many of the participants noted that that the earlier the proposals are submitted, the better the analysis required by CMM 2013-06 will be.
66. Tokelau thanked the Commission for hosting the workshop and noted that it was a very important issue for SIDS and all members of the Commission, and thanked the Chair for taking on the difficult task. While Tokelau expressed some disappointment, it saw progress in delivering on members' obligations under CMM 2013-06.

## **Close of Workshop**

67. The Chair closed the meeting at 5:30pm on 27 November 2014.

### **Attachments:**

- A: Provisional workshop agenda - based on FFA suggested changes. WCPFC11-2014-DBW-02\_rev1b. 27 November 2014. (page 14)
- B: List of participants. (page 16)
- C: Presentation on WPRFMC disproportionate burden workshop. (page 25)
- D: General presentation from FFA members. (page 44)



**IMPLEMENTATION OF CMM 2013-06 AND DISPROPORTIONATE BURDEN  
WORKSHOP**

Faleata Sports Complex, Apia, SAMOA  
27 November 2014

**PROVISIONAL WORKSHOP AGENDA - BASED ON FFA SUGGESTED CHANGES**

WCPFC11-2014-DBW-02\_rev1b  
27 November 2014

		Doc list
	<b>AGENDA ITEM 1. WELCOME AND OPENING</b>	
9.00-9.10am	1.1 Opening remarks	
9.00-9.25am	1.2 Adoption of workshop agenda	WCPFC-2014-DBW-02
9.25-9.30am	1.3 Meeting arrangements	
	<b>AGENDA ITEM 2. PURPOSE AND OBJECTIVES OF WORKSHOP</b>	
9.30-10.00am	<p><i>Some suggested objectives from FFA members are:</i></p> <ul style="list-style-type: none"> <li>a. <i>Moving towards a common understanding of what DB is</i></li> <li>b. <i>Exploring different ways that DB can occur</i></li> <li>c. <i>Sharing ideas on what can be done to avoid, remedy or mitigate DB</i></li> <li>d. <i>Providing guidance on the use of CMM 2013-06</i></li> </ul>	
	<b>AGENDA ITEM 3. DISPROPORTIONATE BURDEN AS A CONCEPT</b>	
10 – 10.20 am	3.1 Report from the WPRFMC Workshop on addressing disproportionate burden	WCPFC-2014- DBW-04
10.20 – 10.40am	3.2 General presentation by FFA members (including DBW-05 part 1)	WCPFC-2014- DBW-05_Att 1
10.40 – 11.00am	3.3 Discussion – with a key focus on key points from DBW-04 and DBW-05	
11.00–11.30am	<b>Morning tea</b>	
11.30 – 12 pm	3.4 Next steps – what are the gaps in common understanding and commitment?	
	<b>AGENDA ITEM 4. CMM 2013-06 AS A TOOL TO ASSIST THE COMMISSION</b>	
12 – 12.10 pm	4.1 Secretariat paper on CMM 2013-06	WCPFC-2014- DBW-03
12.10 – 12.30 pm	4.2 FFA presentation on CMM 2013-06	WCPFC-2014- DBW-05_Att 2
12.30 -1.30 pm	<b>Lunch</b>	
1.30-2.30 pm	4.3 Discussion on DBW-03 and DBW-05_Att 2 using FFA member examples	
2.30 – 3.00 pm	<b>Afternoon tea</b>	

		<b>Doc list</b>
<b>3.00 -4.00pm</b>	4.4 Next steps – secure agreement on the level of information required from proponents?	
<b>4.00 -5.00 pm</b>	<b>AGENDA ITEM 5. NEXT STEPS?</b>	
<b>5.00pm</b>	<b>Workshop close</b>	



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**IMPLEMENTATION OF CMM 2013-06 and DISPROPORTIONATE BURDEN WORKSHOP**  
**Faleata Sports Complex, Apia Samoa**  
**27 November 2014**  
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# Disproportionate Burden

Based on a Workshop Convened in Honolulu, Hawaii, September 18-20, 2014, by the Western Pacific Fishery Management Council



# DB Workshop Objectives:

Define

Measure

Mitigation Alternatives

# Symbols Used

- $C_i$  is the added cost borne by a single CCM from implementation of a CMM
- $\sum_i C_i$  is the sum of added costs borne by all CCMs from implementation of a CMM
- $S_i^*$  is a CCM's fair percentage share of the sum of added costs borne by all CCMs

# Proportionate Burden exists if:

$$C_i = S_i^* \left( \sum_i C_i \right)$$

A	=	Its		Total cost
CCM's		fair %	X	to all
cost		share		CCMs
(10)	=	(.01)	X	(1000)

# Disproportionate Burden exists if:

$$C_i > S_i^* \left( \sum_i C_i \right)$$

A		Its		Total cost
CCM's	>	fair %	X	to all
cost		share		CCMs
(30)	>	(.01)	X	(1000)

# The Magnitude of a CCM's DB

Can be expressed as:

$$C_i - S_i^* \left( \sum_i C_i \right)$$

A  
CCM's cost – Its fair %  
share of  
total costs

# What is a fair % share ( $s_i^*$ )??

- 1. “Beneficiary Pays Principle” – those who gain the most benefit should pay the most
- 2. “Means-based Principle” – those who have the most wealth should pay the most
- 3. “Polluter Pays Principle” – those who are most responsible for causing the harm to the resource should pay the most
- 4. “Flat Rate Principle” – all members of the group should pay the same portion

What is a fair % share ( $s_i^*$ )?

“Beneficiary Pays Principle”

$$s_i^* = \frac{B_i}{\sum_i B_i}$$

$$5\% = 5 \div 100$$

$B_i$  is a measure of gross benefit(s) accruing to a CCM as a result of the implementation of a CMM

What is a fair % share ( $s_i^*$ )?  
“Means Based Principle”

$$s_i^* = \frac{W_i}{\sum_i W_i}$$

$$10\% = 20 \div 200$$

$W_i$  is the measure of a CCM's national wealth

What is a fair % share ( $s_i^*$ )?

“Polluter Pays Principle”

$$s_i^* = \frac{H_i}{\sum_i H_i}$$

$$1\% = 1 \div 100$$

$H_i$  is a measure of harm to conservation goals caused by a CCM

What is a fair % share ( $s_i^*$ )?

“Flat Rate Principle”

$$s_i^* = \frac{1}{N}$$

$$3.3\% = 1 \div 30$$

N is the total number of CCMs and  
Territories in WCPFC

What is a fair % share ( $s_i^*$ )?

“Consensus Minimum Threshold”

$$s_{i-min}^*$$

A minimum fair % share (determined by the Commission) to be borne by a CCM

If  $C_i > S_i^* (\sum_i C_i)$  then DB exists

$S_i^*$  can be determined through principles applied individually or in weighted combination

$$S_i^* = f \left( \frac{B_i}{\sum B_i}, \frac{W_i}{\sum W_i}, \frac{H_i}{\sum H_i}, \frac{1}{N}, S_{i-min}^* \right)$$

relative benefit, relative wealth, relative harm, flat rate equal share, consensus threshold minimum

# Considerations Regarding Measurement of $C_i$

- $C_i$  should be measured in monetary units that reflect inflation free (real) values
- $C_i$  are incurred by governments (CCMs) not commercial entities; however, the process of measuring  $C_i$  may require consideration of commercial entities and consumers
- $C_i$  should be measured from a baseline (counter-factual) that specifies cost and benefit levels expected without implementation of the CMM

# Considerations Regarding Measurement of $C_i$ (cont.)

- $C_i$  are subject to Commission discretion, but may under certain conditions include primary and secondary multiplier impacts
- $C_i$  calculation may require shadow price estimates in situations where market prices are distorted and/or nonexistent
- $C_i$  change over time, thus requiring annual update and use of expected net present value

# Considerations Regarding Measurement of $C_i$ (cont.)

- $C_i$  measurement involves expected future estimation that is subject to variation and uncertainty
- $C_i$  calculation may be aided by use of a population dynamic, bio-economic model that incorporates measures of statistical uncertainty and is informed by observed fishery and socio-economic data
- $C_i$  measurement should employ internationally accepted best practices for computing costs and benefits

# Further Concerns

## Avoiding DB in the first place by CMM design

- Involves subjective judgments as to fairness
- Requires consensus and compromise that may cause inefficiencies, higher costs and lower revenue to all
- May provide benefit to parties with negotiating advantage

## Offsetting DB with mitigation – cash, in-kind, regulatory exemption

- Requires precise, costly modeling and analysis
- Involves administrative, information, and transaction costs
- May distort incentives in ways that distract from conservation goals

# Further Concerns (cont.)

## Calculation of DB using internationally accepted best practices

- is costly and time consuming
- should be reserved for only the most important management measures

# A Suggested Way Forward

Develop a formal WCPFC process that:

- Defines and assesses DB
- Assigns responsibility for demonstrating DB
- Provides evidentiary standards, both quantitative and qualitative
- Sets analytical priorities
- Offers dispute settlement
- Involves independent experts and peer review
- Uses best available science
- Involves transparency and stakeholder engagement



**FFA**

# **FFA Member views on Disproportionate Burden**

**WCPFC 11**

November 2014



**FFA**

# Context

- General Introduction
- How Article 30 and CMM 2013-06 and -07 impact on decision making by the Commission
- Different manifestations of DB within WCPFC
- Examination of how DB is dealt with in other cases:
  - International law (non-fisheries)
  - National examples
- Options for dealing with DB within WCPFC
- Outcomes from adequate/inadequate handling of DB within WCPFC



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## Introduction - note on Article 30

- Article 30 is about “special requirements of developing States” and is often referenced.
- But no consistent understanding of its application – ESP the obligations it places on the Commission and CCMs.
- 30(2)(c) – Commission shall recognise the need not to transfer a disproportionate burden to developing States, territories etc.
- Commission cannot implement a CMM that transfers a disproportionate burden.
- No commission wide assessments to date.



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- CMM 2013-07 agreed to operationalise Article (builds on Res 2008-01).
- CMM 2013-06 agreed as a basis for assessing whether a DB could result from a proposal – moving towards fuller consideration of costs and benefits.
- 2 focal areas for FFA members:
  - Getting DB right in measures
  - Using 13-06 as a tool to do so



**FFA**

## DB generally

- Is about the flow of costs and benefits to individual **CCMs** (or groups of similar CCMs).
- Is NOT about the impact on fishing fleets (except insofar as impacts on SIDS fleets prevent participation in the fishery)
- Is NOT about the impacts on non-SIDS (except insofar as assessing whether costs borne by SIDS are actually providing benefits to others)
- Must be approached differently and carefully on a case by case basis.
- 13-06 highlights this difference, including identifying what type of DB might accrue



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# Different “types” of DB

- Administrative Burden – stemming from the cost or other burden on implementing a CMM. Can’t agree to CCMs where there is no capacity to implement them. Small additional reporting requirements are a big issue for small administrations.
- Outcome burden – where the outcomes of a CMM result in direct or indirect losses to a SIDS (or group).



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# Quick Examples

## **Port States Measures Agreement (admin):**

- Costs to SIDS very high (all major regional ports in SIDS) – SIDS need new officers, training and systems
- Costs to non-SIDS – NIL. Very few have ports used by FFV.
- Benefits – intangible and shared by all (reduced IUU)

## **Bigeye Conservation (outcome)**

- Costs to SIDS very high – forgone purse seine access revenue, additional restrictions on developing fleets, interrupted product flow to processing plants
- Benefits to SIDS very small – low level of benefit from LL fishery
- Costs to other CCMs – may be high when examined at fleet level, but in proportion to “affordability” at the CCM level, very low
- Benefits to other CCMs vary – those with BET markets have large benefit, LL fleets in the long term.



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## Outcome DB non-fish - International

- Rio declaration: *“common but differentiated responsibilities”*
- UN Framework on climate change.

*“...and respective capabilities and their social and economic conditions”*

*“...standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries”*

*“...and that, in order for developing countries to progress towards that goal, their energy consumption will need to grow”*



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## UN Framework cont

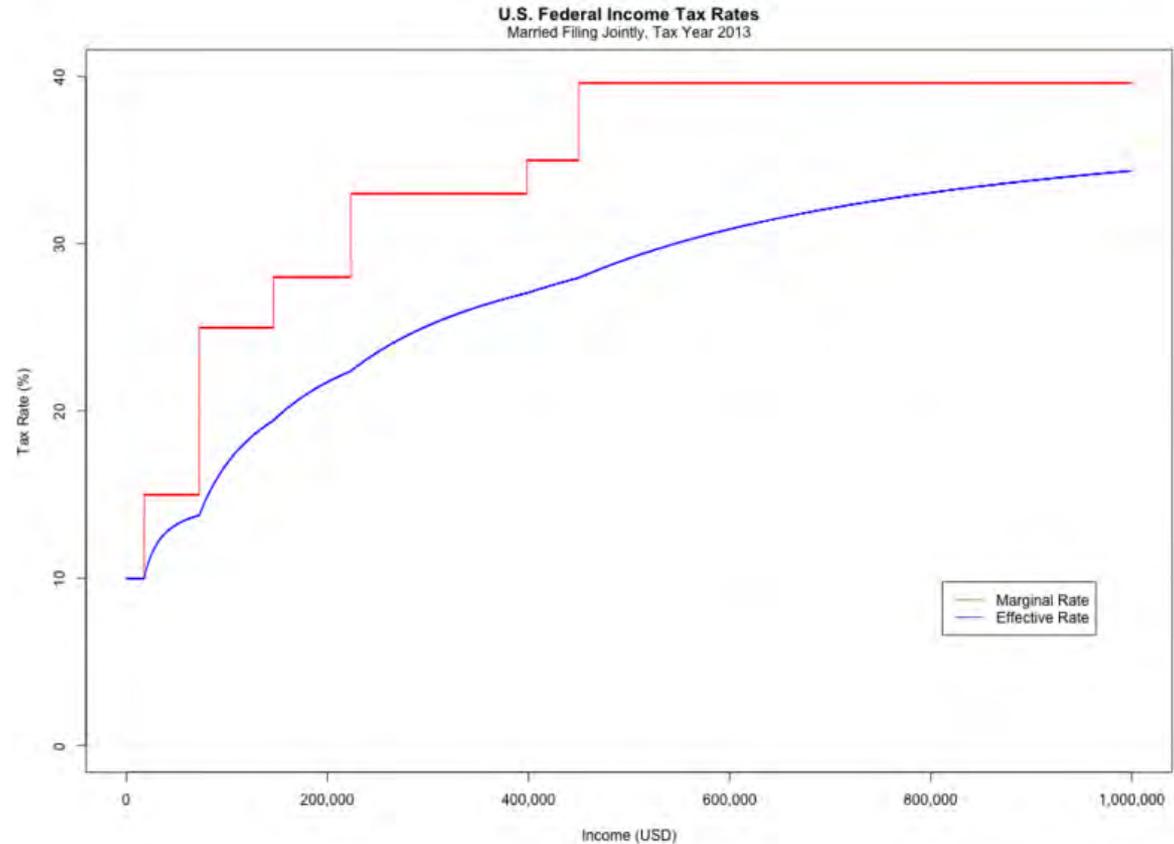
- Recognition that:
  - Responsibilities to implement management measures vary by party;
  - Capability to absorb costs drives expectations;
  - Social and economic conditions are a key criteria; and
  - **Even in a context where net reductions are required – developing States need to, and can grow.**



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# Some National Examples – TAX!!!

- Many many countries employ “progressive tax” systems for income tax.
- Australia, Canada, China, EU (UK, Germany, Italy, Netherlands, France, Spain), Japan, Korea, NZ, Taiwan, US and so on.





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# Progressive Tax

- Progressive tax rates address the OUTCOME DB of income tax.
- They recognise that lower earners do not have the same capacity to absorb taxation at the same rate as high earners (either proportionally or in absolute terms).
- Government specifically tailoring outcomes to mitigate unsustainable and unbearable costs on those who cannot afford them.



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# Business Reporting Requirements

- Some countries have different financial (tax...) reporting requirements for different sized companies.
- Australia, UK, NZ and US – probably more
- Large companies must provide more detailed and more regular reporting
- Smaller companies; more basic requirements
- Recognises different capabilities to absorb responsibilities (and also probably different risks)
- This addresses the ADMIN DB of taxation reporting.



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## What can be done if there is a DB

- Again – will vary with the nature of the issue
- Must focus on rebalancing flow of benefits and costs:
- Funding and technical assistance may help in some cases (PSMA)
- Provide additional benefits to SIDS (zone based longline management)
- Better balance costs – LL:PS & EEZ:HS balance
- Transfer payments – not favoured option but may be essential in short term while rights based solutions are identified.



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# What can be done if there is a DB

## Bottom line

- DB is a real thing, not an abstract concept.
- It must be identified early and specific measures put in place (preferably in the relevant CMM)
- Money is not always the solution, but may be required in some (hopefully short term circumstances)
- Long term arrangements will involve the establishment of rights
- Variety of interests amongst CCMs will always make this difficult.



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## What happens without satisfying Art 30

- No agreement
- **Wider SIDS exemptions**
- Incomplete implementation
- Commission in breach



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## What happens if we get it right?

- Sustainable fisheries
- Partnership approaches to utilise available fishing opportunities
- Contribute to economic development for SIDS
- Commission effective