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**DISCUSSION PAPER ON IMPROVING THE EFFECTIVENESS OF CMM 2018-01**

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**Submission by European Union**

# **17<sup>th</sup> Regular Session of the WCPFC**

## **DELEGATION PAPER**

### **Submitted by the European Union**

#### **Discussion paper on improving the effectiveness of CMM 2018-01**

##### **(under agenda item 7.2.2)**

#### **Explanatory note**

The conservation and management measure for tropical tunas (CMM 2018-01) and all its predecessors are at the center of the WCPFC regulatory framework that aims at achieving the Convention's objectives for these Highly Migratory Species. Its adoption generally involves a lengthy process and several negotiation rounds aiming at reconciling CCMs by interpreting their collective overarching conservation objectives, together with relevant environmental targets and often diverging socioeconomic interests of the fishing/processing sectors and stakeholders.

Being the end product of such a complex process, the tropical tuna measure (as other CMMs) at times might include provisions that seem rather cryptic and ambiguous (e.g., rationale difficult to understand; not obvious how they are/can be implemented; not clear who should be implementing them, etc.), or questionable in terms of alignment with the general spirit of the measure itself.

In particular, the tropical tunas measure, in its various versions, included and still includes a range of exemptions, granted in general to address the potential "disproportionate burden" that conservation and management measures might pose to Small Island Developing States (SIDS) and Territories and allow them developing their domestic fisheries, as well as, to avoid a situation where no management framework would be in place to govern this multispecies/gear/billion fishery. However, sometimes it appears that various CCMs interpret these exemptions in different ways, which ultimately might result, either in using the exemptions beyond their intended purpose, or worst, in using them in a scale and extent that sometimes overrides the rule and might put at stake the sustainability of the tropical tuna fishery.

It is generally considered that open-ended broad exemptions are likely to undermine the effectiveness of the measures to which they derogate. Therefore, they should be avoided to the extent possible, or when granted they should be as clear as possible and limited in scope and duration. The practice has shown that the formulation of the exemptions contained in the current tropical tuna measure is sometimes unclear or too broad in scope. Notably, the measure carries over a number of provisions related to exemptions that, on one hand, challenge TCC's ability to undertake conclusive compliance assessments concerning both their implementation and CCMs performance and, on the other hand, raise the question of their potential collateral impact in terms of conservation cost for the species concerned.

The aim of this paper is to address, in particular, the unintended effect of exemptions contained in CMM 2018-01, requested by Small Island Developing States (SIDS) and Territories with the stated objective to allow them to develop their own fisheries for the benefit of their people. The paper also aims at advocating the need to better understand how

existing exemptions are used and to take into account the full range of implications and potential impacts deriving from their use, on the effectiveness of the CMM for tropical tunas and/or its successors.

## 1. FADs closure

The FADs closure is considered by many WCPFC members as one of the key management measures adopted by WCPFC, that has contributed in maintaining the main tropical tuna stocks around the agreed abundance levels ensuring the biological sustainability of these stocks (far above MSY). However, CMM 2018-01 foresees through the footnote 1 an exemption from the obligation to prohibit setting on FADs during the 3 months FAD closure that applies in the EEZs of a group of WCPFC Members<sup>1</sup>. These members are requested to notify to the Commission their domestic fishing vessels to which this exemption apply.

Since the adoption of the exemption, the number of fishing vessels (f/v) listed in the notifications sent to the Secretariat has increased from approximately 50 f/v in 2018, up to approximately 150 f/v in 2020<sup>2</sup>. According to the latest information provided by the Scientific Service Provider at SC16<sup>3</sup> the total number of purse seine (PS) vessels that operated in the tropical tuna PS fishery in 2019 was 285. It must also be noted that the number of PS sets of CCMs that can potentially benefit from footnote 1 has increased steadily from c. 20% in 2011 to c. 50% in 2019<sup>4</sup>.

It is therefore possible that footnote 1 of CMM 2018-01 could potentially allow more than 50% of the PS fleet harvesting tropical tunas to benefit from the derogation from the prohibition to set on FADs during the FADs closures. If this is the case, then not only would the exemption have become the rule, but more importantly the conservation benefit of these closures would be much more limited than expected. The fact that there is no limit to the number of vessels that can benefit from the FADs closure exemption and that in practice that number keeps increasing, raises a number of questions on the effectiveness of CMM 2018-01 which could, in turn, potentially undermine the sustainability of the stocks.

Hence, it seems necessary to undertake a scientific evaluation of the impact of footnote 1, on the effectiveness of CMM 2018-01. To do so, clarity and predictability on the use of the exemption would be needed for simulating more robust scenarios for PS effort when projecting the status of the tropical tuna stocks into the future. Also, for such an evaluation it would be necessary to clarify a range of connected questions, such as:

- Do all the notified f/v set on FADs during the closures?
- What is the exact number of sets on FADs from these vessels during the closures?
- Are those sets taken into account during the scientific evaluations (e.g., evaluation of performance of CMM2018-01)?
- Do these f/v use the exemption also in the High Seas (HS)?
- Do these f/v use compatible measures and have those been tested to demonstrate their compatibility in terms of conservation benefits?

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<sup>1</sup> CMM 2018-01; footnote 1: Members of the PNA may implement the FAD set management measures consistent with the Third Arrangement Implementing the Nauru Agreement of May 2008. Members of the PNA shall provide notification to the Commission of the domestic vessels to which the FAD closure will not apply. That notification shall be provided within 15 days of the arrangement being approved.

<sup>2</sup> WCPFC Circular 2018-67 re Notifications CMM 17-01 footnote 2 dated 30 October 2018; WCPFC Circular 2020/80 dated 3 August 2020; WCPFC Circular 2020/94 dated 31 August 2020

<sup>3</sup> WCPFC-SC16-2020/GN IP-1 rev 3 Overview of tuna fisheries [...] in WCPFC – 2019

<sup>4</sup> WCPFC-TCC16-2020-IP05\_rev1 CMM Tropical Tunas data summary (FINAL)-revision 1

- Does the FADs closure exemption affect the robustness of the regular simulations of future scenarios for purse seine effort when projecting the status of the tropical tuna stocks into the future and in that case, what is the scale of the bias introduced and how can this be overcome in future evaluations?

## **2. HS PS effort limits**

Catch and effort limits constitute the backbone of the tropical tuna measure. CMM 2018-01 defines limits for all CCMs and TCC reviews annually compliance with these limits. The measure also includes a payback provision requiring that any catches in excess of a CCM's quota in a given year are deducted from its quota of the following year. This is to reflect the necessity to strictly comply with these limits because of their critical importance in maintaining fishing mortality at appropriate levels.

However, the arrangements agreed in the tropical tunas measure for the HS allow for some CCMs to operate without any PS effort limit in that area. In practice, this constitutes an exemption since these CCMs are not listed in Attachment 1, Table 2 of CMM 2018-01, and they are therefore in theory and in practice allowed to fish at their discretion in the HS.

During the recent years, an increasing trend has been observed in the fishing effort of the CCMs not bound by effort limits in the HS and their fishing effort (from 243 fishing days in 2012 to 3,653 in 2019<sup>5</sup>) resulting in a fishing effort in 2019 that seems to exceed by 50% the total allowable fishing effort of all CCMs listed in Attachment 1, Table 2 of CMM 2018-01.

Leaving aside for the moment the rationale and background of this arrangement (or rather absence of arrangement), the exponential growth in the fishing effort and the open-ended nature of the current arrangement no longer makes it possible to ignore the impact on the conservation status of the concerned stocks. Therefore, it is necessary that the Scientific Provider undertakes an urgent evaluation of the impact of this additional fishing effort on the sustainability of the stocks and on the management of the fishery.

Without any prejudice to the outcome of the pending specific arrangement still to be agreed, we strongly suggest that, as a minimum, there should be a net halt in the increase in the additional PS effort in the HS. This would also provide the necessary predictability for the Scientific Provider to simulate the future scenarios for purse seine effort when projecting the status of the tropical tuna stocks into the future.

## **3. Potential for use of exemptions beyond their intended purpose through misinterpretation of the attribution of catch and effort under paragraph 8 of CMM 2018-01**

On various occasions, including at the recent TCC16 meeting, we have noted that the interpretation of the provisions concerning chartering arrangement of paragraph 8 of CMM 2018-01 is not consistent amongst CCMs.

This provision affects directly the determination of the attribution (flag vs chartering Member) of catch and effort, but also on the determination of the f/v entitled to use an existing exemption (SIDS vs non-SIDS). This perceived ambiguity not only represents a challenge for the assessment of compliance by the TCC but, ultimately, it can also affect the effectiveness of the CMM.

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<sup>5</sup> WCPFC-TCC16-2020-IP05\_rev1 CMM Tropical Tunas data summary (FINAL)-revision 1

At this point, it is important to consider the historical perspective of chartering provisions in the tropical tuna CMM. In fact from 2014 until 2017 (included), these provisions were covering specifically, “FADs measures”, “HS PS effort”, “Longline catch limits”, “YFT catch”, “PS capacity”, “LL capacity”:

*(CMM 2013-01 to CMM 2016-01) 5. For the purposes of paragraph 9, 10, 16-18, 25, 28, 40, 43, 49, 50, 51, and 52, attribution of catch and effort shall be to the flag State, except that catches and effort of vessels notified as chartered under CMM 2011-05 shall be attributed to the chartering Member, or Participating Territory. Attribution for the purpose of this Measure is without prejudice to attribution for the purposes of establishing rights and allocation.*

However, since 2018 the chartering provisions have been modified and include only “Longline catch limits” and “Capacity limits”:

*(CMM 2017-01 to CMM 2018-01) 8. For the purposes of paragraphs 39-41 and 45-49, attribution of catch and effort shall be to the flag State, except that catches and effort of vessels notified as chartered under CMM 2016-05 or its replacement shall be attributed to the chartering Member, or Participating Territory.*

By comparing the two provisions it would appear clear that since the entry into force of CMM 2018-01, the catch and effort of chartered f/v vessels should be allocated to the chartering Member only in relation to longline catch. Otherwise, what would have been the rationale for removing the paragraphs referring to purse seine fisheries while maintaining the ones related to longline fisheries?

Furthermore, according to paragraph 8 of CMM 2018-01, catch and effort of chartered PS vessels, operating in an EEZ or in the HS, should be allocated to the Flag State and not to the chartering Member. The purpose of this important change in paragraph 8 was to avoid that exemptions granted to SIDS could be used by f/v flagged to non SIDS Members through chartering arrangements, rather than benefitting SIDS’ domestic fisheries. It was supposed to ensure among other that:

- f/v flagged to non SIDS Members would not be able to operate in the HS beyond their limit in Attachment 1, Table 2 of CMM 2018-01, using the absence of HS effort limits for SIDS through chartering arrangements (with a specific, one year exemption under footnote 1 of CMM 2017-01);
- f/v flagged to non SIDS Members would not be able to use the exemptions granted to SIDS to circumvent the FADs closure.

During TCC16, the Secretariat confirmed the EU’s interpretation in relation to the allocation of effort and catch in the HS to the flag State. It was clarified that both SPC and the Secretariat were allocating HS fishing effort of chartered f/v to the flag State. It was also confirmed that the exemption related to the FADs closure was only applied to the EEZs of the PNA by the f/v notified to the Commission.

However, it was not clear whether f/v flagged to non SIDS Members could benefit from the FADs exemption through chartering (or other) arrangements and subsequently could set on FADs during the FADs closure. In this regard, it is very worrying to note that in the notifications received by the Secretariat appear vessels flagged to non SIDS CCMs and that their number has increased from 12 in 2018 to 16 in 2020. It is important to clarify if these f/v make use of the exemption during the FADs closure, especially since it seems that they have not been identified during the compliance monitoring process.

As mentioned above, the exemptions to the FADs closure were intended for the benefit of SIDS and territories. The possibility to grant those exemptions to chartered PS from non-

SIDS Members not only increases significantly the potential number of vessel that might be allowed to set on FADs during the FADs closure, but also undermines the primary objective of the exemption.

It is therefore appropriate to clarify the current provisions, including, for example by clearly excluding f/v flagged to non-SIDS Members, to ensure at least that the exemption is not used beyond its initial purpose.

### **Conclusion**

The issues mentioned above, mainly related to the use of exemptions, potentially make the TCC assessments difficult and most importantly, might severely weaken the effectiveness of CMM 2018-01 in the near future.

Dealing adequately with these exemptions in the context of the revision of the current tropical tuna CMM (and/or the development of its successors), would significantly strengthen the regulatory framework and facilitate the work of WCPFC subsidiary bodies. This would involve a clarification of the scope, scale and beneficiaries of existing exemptions, as well as, a scientific evaluation of their potential impacts on the conservation of tropical tunas.