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**PNA: PAPER TO SUPPORT PNA AND TOKELAU PROPOSAL FOR AVOIDING
DISPROPORTIONATE BURDEN IN THE TROPICAL TUNA CMM**

WCPFC10-2013-DP33

26 November 2013



25 November 2013

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Executive Director
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Dear Glenn,

I write in my capacity as the Chair of the Parties to the Nauru Agreement on behalf of the 8 members of the PNA, and Tokelau. Please find attached, a delegation paper prepared by PNA members and Tokelau to provide supporting information for the proposal on Disproportionate Burden in the Tropical Tuna CMM.

We look forward to discussing this issue under the agenda item on CMM 2013-01 Tropical Tuna Measure, and hope it provides the relevant information and explanations to guide and inform further consideration of the Disproportionate Burden aspects proposed by PNA and Tokelau.

Yours Sincerely,

Mr Sylvester Diake
Chairman
Parties to the Nauru Agreement

PAPER TO SUPPORT PNA & TOKELAU PROPOSAL FOR AVOIDING DISPROPORTIONATE BURDEN IN THE TROPICAL TUNA CMM

Introduction

This paper is aimed at providing relevant information and explanations on the disproportionate burden aspects of the Joint Draft, proposed by PNA and Tokelau. This is in response to the request by some CCMs at TCC9, for additional information on the subject, to guide and inform further consideration. The paper goes together with the FFA paper on *Avoiding Disproportionate Burden* (DP01) that was submitted to the Commission, but it addresses, more specifically, the disproportionate burden aspects of the Joint Draft that are not provided by the FFA paper.

Background

As stated in DP01, the WCPFC Convention focusses strongly on the fact that unlike most other oceans, tuna fishing in the WCPO occurs very heavily in the EEZ of coastal States, and, in particular, of Small Island Developing States and Territories (SIDS). As such, the Convention, under Article 30, pays particular attention to the development aspirations and special requirements of SIDS and, in turn, the WCPFC Rules of Procedure also includes the issue as a standing agenda item for each session of the Commission and its subsidiary bodies.

PNA Members and Tokelau acknowledge those non-SIDS members of the Commission who have sought to discuss and address these issues and, while common understanding remains elusive, their effort hasn't gone unnoticed and is highly appreciated and represents excellent progress. However, the Commission has not given adequate attention to actively considering and resolving these issues when developing and implementing conservation and management measures. In developing the Joint Draft for the Tropical Tuna CMM, PNA and Tokelau have taken the disproportionate burden into account because it should be a fundamental aspect of all Commission measures to ensure that they do not place a disproportionate burden on SIDS.

Article 30

The disproportionate burden aspects proposed by PNA and Tokelau in the TT CMM Joint Draft is based on Article 30 (2(c)) which states:

2. *In giving effect to the duty to cooperate in the establishment of conservation and management measures for highly migratory fish stocks, the Commission shall take into account the special requirements of developing States Parties, in particular small island developing States, and of territories and possessions, in particular:..*
 - (c) *the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States Parties, and territories and possessions.*

Article 30 (2) (c) in particular obliges the Commission to ensure that developing States do not bear a disproportionate burden. Essentially, this means that the Commission cannot put in place a measure unless there is agreement that it does not transfer a disproportionate burden.

Assessment of the Disproportionate Burden

The subject of how the disproportionate burden should be assessed is covered in DP01. It is most likely that the proportionality needs to be assessed differently for different areas and measures.

In the context of a tropical tuna CMM (TT CMM), it is more appropriate to assess the flow of costs and benefits to SIDS to determine whether there is an overall burden, and if so, whether it is disproportionate. This conclusion is reached on the basis that it is implausible to contemplate a pro-developing State convention condoning a measure that applies a cost to SIDS for conservation action that benefits non-SIDS. Such an outcome would have to be viewed as an anomaly under any circumstance, but in the context of a convention that obliges the avoidance of “disproportionate burden” on SIDS, it is inconceivable.

As such, the relative “burden” of a conservation and management measure can only really be assessed through examining the flow of costs and benefits to an individual or groups of CCMs.

Qualitative Assessment of the Tropical Tuna Measure (TT CMM)

In the case of bigeye conservation, the delineation of fisheries and interests is relatively clear cut and this facilitates an assessment of the distribution of the conservation burden.

For the purposes of this assessment, the tropical tuna fishery has been divided into 4 components: EEZ Purse Seine, High Seas Purse Seine, Longline and “Other” fisheries. The crux of the qualitative assessment below is based on the joint PNA, Tokelau, Philippines and Japan proposal that was considered in Tokyo and by TCC. Comments are included about some other proposals as well.

EEZ Purse Seine

The proposal places a hard cap on purse seine effort in the primary EEZs and establishes a process to determine similar hard caps in other EEZs (non-PNA members have now submitted their self-nominated limits). The effort limit provisions are substantially stronger than was the case in 2008-01, which had numerous exemptions and flexible provisions.

The proposal also retains the three Month FAD closure in all areas and provides a flag State choice on how to implement further reductions basically equivalent to a fourth month with a continued 100% observer coverage and catch retention. Because of the prevalence of fishing in EEZs, the bulk of this additional reduction is also exercised there.

The proposal includes a range of options for achieving the conservation equivalent of three additional months of FAD closure. An area that is square bracketed is the concept of a transfer payment, the basis for which is described below.

High Seas Purse Seine

Unlike CMM 2008-01, CMM 2012-01 has very weak provisions for the regulation of purse seine limits on the high seas. The wording of the measure only requires flag States to “*take measures not to increase fishing days on the high seas*”. This is fundamentally weak as it provides no baseline for the effort and would not be binding to that limit anyway as long as the CCM could demonstrate that it had “taken measures”. There is no requirement to demonstrate those measures or measure their effectiveness. The Joint Proposal therefore seeks to implement a competitive effort limit for the high seas that would match the EEZ hard limits.

The proposal also suggests the inclusion of a complete ban on FAD fishing in the high seas.

Longline

Catch limits continue to apply to developed CCMs in the longline fishery. The Joint Proposal suggests additional catch reductions that were intended to achieve an equal reduction of fishing

mortality to the FAD closure. Unfortunately, because of the very high baselines used (2001-04 for most and 2004 for some), the proposed catch reductions will fall short of achieving parity to 6 month equivalent FAD closure.

PNA and Tokelau has also proposed a high seas longline closure of equal duration to the FAD closure as a way of ensuring that there are effort reductions in the fishery to match the catch reductions.

Other Fisheries

WCPFC measures have never been particularly strict on “other fisheries” that catch tropical tunas, including the artisanal fisheries of some developing CCMs that use a range of gear and catch a substantial amount of juvenile tuna.

General Assessment

The mix of measures that apply to the purse seine fishery (and particularly the EEZ component) are there for good reason and represent essential contributions to the conservation and management of bigeye and other tuna stocks. They do, however, come at a cost: each additional measure reduces the profitability of the vessel, which therefore comes at a direct opportunity cost to SIDS coastal States that licence those vessels, and to SIDS fisheries businesses whose vessels are often smaller, less able to roam for free schools and more dependent on FADs. This statement is made on the fact that access revenue and additional development benefits can only be leveraged from the resource rent available in a fishery, or the super-profit at the vessel level. Reducing the profitability of vessels is therefore a direct impact on SIDS earning potential.

Assessing the Overall Burden of the TT CMM

Using the process presented in DP01, the overall burden of the TT CMM is determined through an assessment of costs and benefits as follows:

Step 1 – Who are the beneficiaries?

Reducing overfishing of bigeye is the key objective of the CMM. The beneficiaries of these actions are clear:

The first group of beneficiaries are longline fishing vessels, who stand to gain increased yields and increased catch rates (and therefore profitability). Added to this direct benefit, longline fleets also benefit from the greater security of investment that comes with sustainable fish stocks.

The second set of beneficiaries are those who consume high value bigeye. The value of benefit to consumers is less easy to quantify and would require market studies, product substitutions etc. However, using the simple test of willingness to pay, it is clear that bigeye sashimi is a highly valued and therefore sought after commodity. Particularly in the Japanese and US markets, the imputed value of continued, protected and enhanced supply are significant.

At a third and far less significant level, some SIDS are also bigeye beneficiaries. Many licence at least some longline vessels and there is a growing interest towards onshore investment tied to the longline fishery. However, by and large, the returns currently achieved and therefore the gains that could be made from improvement in the stock status are relatively minor compared to the purse seine fishery. This is a reflection of the current management framework and operating environment, where the majority of participatory rights in the tropical longline fishery, in the WCPFC context, are held by developed flag States and exercised, to a high degree, on the high seas.

There are cases where the packages of measures do bring benefits to SIDS and this should not be discounted. Two primary examples are:

- (i) The increases in the value of the catch during a FAD closure because larger skipjack are caught. This increase in price per tonne is moderate and only partially offsets the catch rate declines that a FAD closure brings, but nevertheless is a component of benefit to SIDS; and
- (ii) The observed transfer of effort from high seas pockets to EEZs as a result of the 3IA and CMM 2008-01 also represent a valuable increase for some SIDS. This increase in value has largely offset the overall cost of the existing 3 month FAD closure.

Step 2 – Who bears the costs?

As the qualitative assessment above describes, the bulk of the cost of bigeye conservation is borne by the purse seine fishery – and most of that is within EEZs. There are three sets of stakeholders that therefore lose:

(i) The first is the purse seine vessels themselves. The magnitude of the loss is large, but relatively minor compared to the level of economic rent already available in the fishery. This means that while there is a cost, it is the cost of lost super-profit rather than a cost, that needs to be recouped to remain operational.

(ii) The second group is skipjack, and, to a lesser extent, yellowfin consumers. Decreased purse seine production could jeopardise supply. However, given the prevalence of new and improved canneries in the region and throughout the world, supply does not seem to be under threat, so the cost is probably minor.

(iii) The third group is the SIDS that are overwhelmingly reliant on the purse seine fishery. SIDS rely on this fishery in three main ways – domestic fleets, foreign vessel access fees, and onshore development. All three of these benefit streams are threatened by the cost of measures to protect bigeye in order to benefit others:

- Domestic vessels are perhaps the most affected as their nature makes it difficult to operate without FADs.
- Foreign vessel access is based on the profitability of the vessels, so while a slight decrease in super profit does not impinge on the economic viability of a vessel, it has a dramatic effect on the capacity to pay fees, as these are often levied from profit.
- Domestic processing plants rely on continuity of supply either from domestic or foreign vessels. As above, domestic purse seine vessels are often the first to suffer from measures to protect bigeye. Foreign vessels suffer some loss in profitability and just as that compromises the ability of a SIDS to charge optimum access fees, it also reduces the attractiveness and value of access and therefore the willingness to invest in onshore processing in return for that access.

The combination of these costs on those SIDS that are highly reliant is significant. It can be quantified to some degree, but, in general, should be viewed in the context of making a concession and, as described above, that concession is for the benefit of others.

Quantifying the Costs to SIDS¹

The joint proposal includes a provision for a \$15 million transfer payment per additional month of FAD closure, which is designed as short term mitigation to the disproportionate burden of the measure as a whole (discussed further below). This figure, which is likely to be an underestimate, is

¹ NOTE –summary information provided by FFA.

based on a simple assessment of the change in value of the purse seine fishery in FFA EEZs as a result of the FAD closure (or equivalent reductions).

The table below provides a comparison for FFA EEZs and other waters, of:

1. Average 3rd Quarter catch 2009-12 as well as an estimate of the amount that would have been taken if no FAD closure was in place.
2. The expected ex-vessel price received under each scenario for each area.

Using the derived prices, the difference in the value of the catch with and without the FAD closure (or forgone value) is calculated for each area as:

$$\text{Forgone value} = \text{Predicted catch} \times P_{\text{NOCLOSE}} - \text{Observed catch}_{3\text{rd}Q,2009-12} \times P_{\text{FADCLOSE}}$$

The results indicate that the FAD closure resulted in a reduction in the value of the catch in FFA waters by around \$58.4 million while the reduction in value elsewhere was around \$500,000.

Comparison of average 3rd Quarter catch and value of catch under 2012 prices with and without a FAD closure

	FAD closure			No FAD closure			Difference		
	Catch	Price ^b	Value	Catch ^a	Price	Value ^b	Catch	Price	Value
FFA EEZ	201,088	2,080	418.3	236,325	2,017	476.7	-35,237	63	-58.4
Other waters	46,367	2,071	96.0	48,149	2,004	96.5	-1,783	67	-0.5

a - The predicted catch without a FAD closure is estimated as follows:

- Starting with the 2004-08 3rd quarter CPUE as a base.
- Factor the base CPUE upwards to reflect the fact that during non-FAD closure months in 2009-12, CPUE was 6% higher than during the same months in 2004-08.
- This gives an estimated CPUE without a FAD closure of 28.0 mt/day, which is 17.5% higher than the observed CPUE during the FAD closure and a predicted average annual 3rd Quarter catch over 2009-12 17.5% higher than observed.

b - Unassociated sets have a greater composition of larger fish and of yellowfin. Larger fish sizes attract a premium across all species, while larger yellowfin also attract a premium over similar sized skipjack. As a result, average price per tonne of catch will be higher from unassociated sets during a FAD closure than from mixed sets in the absence of a closure. Given this, an average price per tonne caught with and without the FAD closure is calculated based on:

- July-September 2012 skipjack and yellowfin Bangkok prices by size category (for skipjack, for example, there are four size categories, 0-3lbs, 3-4lns, 4-7.5lbs and 7lbs and up).
- The average size composition for each species by set type over the period July-September 2004-08.
- The species composition of each set-type made outside of the 3rd Quarter over 2008-12.
- The proportion of associated and unassociated catch in the total – for the FAD closure 100% of the catch is assumed to be from unassociated sets while for no FAD closure the proportion is set at the proportion observed over the rest of the year during 2009-12.
- This gives an average price per tonne of \$2,080/mt with the FAD closure and \$2,017 without the FAD closure.

This analysis shows a decrease in the value of purse seine fishing in FFA member EEZs of approximately \$60 million from the three month FAD closure. This is a direct removal of rent from

the fishery as a result of the conservation action to protect bigeye tuna. It is important to note that the data from 2010 heavily influences these calculations. As has been noted, conditions in 2010 were extremely favourable to free-school fishing and the FAD closure therefore did not have the magnitude of impact on catch rates and effort that have since been observed in 2011, 2012 and 2013. If 2010 were not included, the value differential from the FAD closure would be even greater.

Addressing the Disproportionate burden

There is a range of options available to WCPFC to mitigate and avoid the disproportionate burden that arises from the application of measures to reduce FAD use, which apply mainly in SIDS waters, for the benefit of longline fisheries that occur mainly outside SIDS' waters.

Transfer of tropical longline fishery rights to SIDS

The most effective solution to addressing the disproportionate burden associated with measures to reduce FAD use is to restructure rights to align incentives for bigeye conservation. The very low level of benefit to SIDS from the longline fishery is at the heart of this issue. This can be addressed, by transferring tropical longline rights to SIDS so that they can benefit more fully from bigeye conservation and have an incentive to reduce juvenile bigeye and yellowfin mortality from FAD use, which they don't now have. This requires the development and formalisation of rights in the longline fishery, and the transfer from the current system of inferred flag State holding, to rights controlled and leveraged by SIDS.

The longline VDS being developed by PNA and Tokelau, and similar measures being considered for albacore, will assist to deliver such transformation, but will always rely on WCPFC ensuring that its own arrangements for the high seas, are compatible and embrace rights transfer as a means to addressing a Commission-wide problem, rather than to become a forum where flag States simply seek to protect their historic participation. Implementation of zonal rights will allow the Commission to remove problematic provisions such as SIDS exemptions from many measures.

Proposals in the Joint Draft

The Joint Draft provides a number of proposals that can be adopted to mitigate the disproportionate burden on SIDS associated with FAD measures. These include:

- a) **High seas FAD closure:** this is a very clear case. The Commission can achieve roughly the same conservation effect, or better, either by adopting a 12 month high seas FAD closure or by adopting an additional one month FAD closure in EEZs and high seas. The high seas FAD closure transfers no disproportionate burden to SIDS overall, and may in addition create additional benefits to SIDS by making fishing in their EEZs relatively more attractive. On the other hand, the additional month FAD closure in EEZs clearly transfer a disproportionate burden in relation to the benefits to SIDS in whose waters FAD fishing is largely undertaken.
- b) **Reductions in longline and other fisheries:** this proposed CMM relies very largely on purse seine measures in EEZs, which transfer the cost burden mostly onto fishing in SIDS waters. By reducing longline and other fisheries, the cost borne by SIDS is reduced and, consequently, the disproportionate burden is reduced.
- c) **High seas purse seine effort limits:** the lack of clear definition of high seas purse seine effort limits and the associated lack of compatibility with limits in PNA and Tokelau EEZs undermine the effectiveness of measures to manage skipjack and conserve bigeye, and at the same time undermine the effectiveness and value of the management arrangements for purse seine effort in the EEZs of PNA and other FFA members, including the PNA VDS. Hard limits on high seas purse seine effort at recent levels would both achieve important

conservation and management gains and contribute to mitigating the disproportionate burden from FAD measures.

- d) **High seas longline closure:** the proposed high seas longline closure will contribute to controlling longline effort and IUU fishing by longline fleets in the high seas, and increase economic benefits to SIDS from the longline fishery. In the situation where the longline fishery is unable or unwilling to make an appropriate contribution to the conservation of bigeye, its major target stock, the high seas longline closure is a logical alternative for the Commission to adopt.
- e) **Cash transfer:** the payments from the Fund proposed by PNA and Tokelau are critical for the immediate implementation of more stringent measures that will conserve bigeye. However, these proposed payments are proposed as a short term solution, while the Commission works to implement management regime that does not impose the disproportionate burden in the first place. This can be achieved by making changes to arrangements that alter the flow of costs and benefits.

Various options have been discussed as to how resources for the Fund would be sourced. Given the expected substantial long-term benefits to the longline fishery, it is reasonable to expect that this sector would contribute, such as through a levy on high seas longline catch. Payments for high seas purse seine fishing have also been proposed. Failing these concepts for cost recovery, direct contribution from developed States is a mechanism that has been used in other fora, such as in the financial mechanism under the Montreal Protocol.

Conclusion

There is no doubt that the cost to SIDS of the proposed conservation action for bigeye tuna outweighs the cost that those SIDS stand to gain from the action. In contrast, other stakeholders who will not suffer such a cost actually stand to gain benefits from the proposed measures. Practical and justified short term and long term options to mitigate, reduce and avoid this disproportionate burden can be, and have been identified. These options will contribute to removing the risk of transfer of a disproportionate burden to SIDS from the FAD related measures, and enable the Commission to adopt the proposed FAD related measures for the reduction of fishing mortality on juvenile bigeye and yellowfin tuna. PNA Members and Tokelau are confident that the Commission can achieve its objectives for sustainable fish stocks while also complying with its obligations to do so in ways that do not undermine the development opportunities and rights of developing coastal States in the region.