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**HOW TO AVOID DISPROPORTIONATE BURDENS IN RESOURCE MANAGEMENT? THE
CASE OF TUNA FISHERIES IN THE WESTERN AND CENTRAL PACIFIC - INFORMATION
PAPER**

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How to avoid disproportionate burdens in resource management? The case of tuna fisheries in the western and central Pacific.

Information Paper

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Executive summary

The WCPFC is a world leader in its recognition of the special requirements of developing States and territories and has proactively addressed these concerns through its implementation of Article 30, and its adoption of CMM 2013-06 on avoiding a transfer of disproportionate burden on SIDS and territories. However, it is important that existing measures and approaches are updated to stay relevant. This report provides a starting point for reforms concerning CMM 2013-06, based on expert interviews and document analysis. There are some concerns among the membership regarding the effectiveness of the current measure and the different understandings of how to conduct impact assessments. Based on the results and ideas from participants, the study provides the following recommendations:

1. Establish a working group to improve CMM 2013-06
2. Update FFA guidelines on how to apply CMM 2013-06
3. Streamline consultation process
4. Simplify questions
5. Collect data and develop a burden framework
6. Appoint a liaison officer responsible for coordinating the 2013-06 process

This paper is a draft research paper from the Australian National Centre for Ocean Resources and Security (ANCORS) and is purely for discussion purposes only. We would appreciate any feedback from the WCPFC members to further develop our understanding of the subject and potential improvements. We then hope to further develop the study into a broader paper that can inform WCPFC stakeholders, as well as other RFMOs. For questions or comments concerning this research, please contact Bianca Haas (bhaas@uow.edu.au).

Introduction

Small island developing states (SIDS) and coastal developing states rely heavily on marine resources for food security and livelihood. The special requirements of developing states have been acknowledged in important legislation, such as the United Nations Convention on the Law of the Sea (UNCLOS). For example, article 61, paragraph 2, on conservation of living resources, notes that conservation measures need to take into account the ‘special requirements of developing States’ (UN, 1982). However, conserving marine resources comes with costs and it is imperative that the distribution of such costs do not further deepen global inequities, but are shared fairly and equitably (Hanich et al, 2015; Armstrong, 2019). Article 24, paragraph 1.c, of the United Nations Fish Stock Agreement (UNFSA) on the recognition of the special requirements of developing States, highlights the need *“to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States”* (UNGA, 1995). The UNFSA, however, does not define, nor provide additional clarification on how to determine a disproportionate burden (Azmi et al. 2016). The member States of the Pacific Forum Fisheries Agency (FFA) describe two different types of disproportionate burdens – an administrative burden and an outcome burden (WCPFC, 2014a). An administrative burden describes issues such as costs to implement the proposed conservation and management measure (CMM) or additional administrative burden, while an outcome burden is linked to issues such as reduced catch due to the implementation of a CMM (WCPFC, 2014a). However, these burdens vary depending on the target fish species or gear used to catch the fish (Azmi et al. 2016).

Transboundary and highly migratory fisheries are usually managed by regional fisheries management organizations (RFMOs). The Western and Central Pacific Fisheries Commission (WCPFC) manages tuna and tuna-like species and is one of the leading RFMOs in its recognition of the special requirements of SIDS. The WCPFC is unique among RFMOs due to its high number of SIDS members, which are well organized and work together under the FFA and the Parties of the Nauru Agreement (PNA), and the healthy status of its main target species (except for the North Pacific bluefin tuna) (Hare et al. 2021). Article 30 of the WCPFC Convention addresses the recognition of the special requirements of developing States and paragraph 2.c notes the need to avoid disproportion burdens due to CMMs (WCPFC, 2000). In 2013, the WCPFC member states adopted CMM 2013-06 on the criteria for the consideration of CMMs (WCPFC, 2013). The aim of this CMM is to provide an approach to comply with Article 30 of the Convention. However, in recent meetings members increasingly voiced their dissatisfaction with the current CMM (e.g., WCPFC, 2021), with a rising divide between SIDS and non SIDS.

The CMM 2013-06 is one of the core CMMs in the WCPFC and different opinions among the members concerning the process lead to tensions during the meetings, which might have negative consequences for the managed fish stocks and all the participating States. This paper aims to explore the reasons for the current dissatisfaction with CMM 2013-06. By applying a document and interview analysis, this paper will provide important insights into why the current measure does not work well and how it can be improved. So far, the WCPFC is the only RFMO that has such a measure in place, however, implementing such a measure in other RFMOs, such as the Indian Ocean Tuna Commission (IOTC), would be an important step toward a more equitable fisheries management. Thus, it is important to understand how this measure works, so it can be applied in other RFMOs.

Method

This study analysed WCPFC documents and conducted interviews to assess perceptions and concerns relating to CMM 2013-06. The combination of document analysis and interviews enabled a broader understanding of the topic and provides different kinds of information to answer the research question. The two methods are briefly described in the following paragraphs.

a) Document analysis

For the desktop analysis, we analysed the publicly available WCPFC Commission reports starting with 2014, one year after CMM 2013-06 has been implemented, until 2021. With the help of the software NVivo, we searched for the key term '2013-06' and assess in what context this term was used. After two rounds of coding, the codes had been grouped into categories.

b) Interview

The study conducted interviews with national and observer delegates. Potential participants were contacted by email via their contact details provided in the WCPFC annual reports. Overall, 10 participants were interviewed, including participants from SIDS, coastal states, non-SIDS, and observers. Due to the low number of participants, no further classification of the participants will be provided to ensure their anonymity.

Participants were asked 17 questions and the interviews lasted on average 20 minutes. With the consent of the participants, interviews were recorded, and then de-identified and transcribed. The transcripts were coded with the software NVivo. After three rounds of coding, the codes were grouped into broader categories. The final categories were compared with the results of the document analysis.

The study and interview methodology was approved by the University of Wollongong Ethics Committee (Ethics Number: 2022/059).

Participants' perception of CMM 2013-06

As noted in the previous section a document and interview analysis were conducted to assess criticisms of the current CMM 2013-06. The results of the document and interview analysis showed that there is a general dissatisfaction among some members regarding the current CMM 2013-06 process, with the key concerns targeting the consultation and assessment process. During Commission meetings, FFA members frequently stated that more work needs to be done to implement CMM 2013-06 effectively (e.g., WCPFC, 2018, para. 105; WCPFC, 2019, para. 125).

The interview participants (hereinafter participants) agreed on the importance of CMM 2013-06 and the objective of this CMM has been summarized by one of the participants:

"I think every CMM has two important aspects, one is to make sure that the fish stocks or resources are conserved and managed in an effective way, and another aspect is to make sure that CMMs do not create disproportionate burden for SIDS members. We have these two important aspects and the objective of CMM 2013-06 is to strike a good balance between these two aspects."

Although the participants shared a common understanding concerning the importance of this CMM, only one participant noted that CMM 2013-06 was well drafted, while the majority expressed their concerns in this regard. In most cases, it was noted that the current process of applying, implementing, and complying with CMM 2013-06 is not clear and might not be executed as intended. There is a general lack of understanding of how to conduct the assessment, and it is often perceived to be a tick-box exercise, rather than a genuine engagement with the topic.

When it comes to the question of who should conduct the assessment, the majority of participants agreed that every CCM should conduct such an assessment. During WCPFC Commission meetings, FFA members have repeatedly noted that assessments did not meet their expectations (e.g., WCPFC, 2019, para. 591). However, participants noted that they do not know what the assessment should look like, and a couple of participants expressed their concern that the conducted assessments are almost always inadequate. This might be linked to the questions which two participants described as being too vague, while one participant noted that there are simply too many questions.

As noted in the beginning, one of the two core issues regarding CMM 2013-06 is the consultation process. The results of the document analysis showed that the code used the most was 'need for consultation' (22 references) and commission reports showed that FFA members are not willing to consider proposals that are not developed in consultation with them (e.g., WCPFC, 2021, para. 78). This point of view is not shared with some of the non-SIDS, who stated that, according to their interpretation of CMM 2013-06, prior consultation is not required (WCPFC, 2017, para.91). This is supported by the text of the CMM which does not prescribe any such requirements (WCPFC, 2013), highlighting a need to reform the current CMM 2013-06 to streamline the requirements of this measure. Generally, participants supported the need for consultation, but have been divided on whether such consultation should become mandatory or not. Similarly, participants are divided when it comes to transparency and while three participants believed the process to be transparent, three different participants held different views.

The WCPFC Convention article 30 on special requirements for developing states and CMM 2013-06 apply to all SIDS and territories (WCPFC, 2000; WCPFC 2013). While initial discussions focused on FFA members, recent discussions have broadened to include non-FFA territories such as American Samoa. One participant noted that consultations should include all SIDS and territories and not just FFA members. Most of the participants agreed that this measure should also apply to territories and that the requirements of coastal developing states should be considered. However, 5 participants noted their concern that territories are linked to a metropolitan state and thus exemptions for territories might be used by the metropolitan state.

Questions concerning the compliance process for CMM 2013-06 remain after nine years since its adoption. While non-SIDS noted that the lack of an assessment cannot be considered non-compliance, FFA members shared an opposing view. According to FFA members, the CMM 2013-06 is a binding measure and "they will not consider any proposals that do not include any assessments" (WCPFC, 2017, para 138) and the lack of thereof can be viewed as non-compliant. Generally, participants expressed the view that the implementation of CMM 2013-06 is different compared to other CMMs, hence, the compliance assessment should be different.

Overall, this analysis showed that there is no common understanding of how CMM 2013-06 should be implemented. It appears that the current approach does not bridge the gap between members, can polarise different views, and does not always address the core concern to identify and avoid potential distributional burdens. For example, there have been concerns among four participants that SIDS might use CMM 2013-06 to reject and block proposals.

Next steps

So how can the CMM 2013-06 assessment be improved? Participants were asked this question and this section will provide ideas on how to improve the CMM 2013-06. Overall, participants emphasized the need for a clearer process, which is objective, has standardized criteria, streamlined questions, and does not result in an increased administrative burden for SIDS. CMM 2013-06 provides a platform to support SIDS and territories and should be used to increase the capacity and effective participation of SIDS and territories, as noted by one of the participants - “*Effective participation means you got a team*”. For example, by automatically sponsoring one or two people from SIDS and territories.

As noted during the interviews, as well as in Commission reports, the current process is unclear and often opaque. The CMM 2013-06 is vaguely drafted leaving room for interpretations. Regarding the concern of consultations, Para 1 states that members “shall cooperate, either directly or through the Commission [...]’ (WCPFC, 2013). While the cooperation is mandatory, it does not specify that this means having mandatory consultations with SIDS, as the cooperation can also be done through the Commission. Participants noted the need to have clear guidelines on the consultation process, although including some flexibility.

The CMM 2013-06 places the burden of conducting these assessments on the whole Commission rather than on the proponents. For example, Para 2 notes that “the Commission shall ensure that any conservation and management measure do not result [...] in a disproportionate burden”. This indicates that these assessments could be done during Commission meetings and are not mandatory beforehand. However, given the workload of the Commission meetings, conducting the assessments beforehand would be good practice. FFA members need to formulate their demand for consultation and assessment beforehand more carefully, as it is not supported by the current CMM.

Based on the results and ideas from participants, the study provides the following recommendations:

1. Establish a working group to improve CMM 2013-06
This study interviewed only 10 participants and we note that not all relevant voices have been included. To improve CMM 2013-06, it is important to bring everyone to the table and discuss how to best address the highlighted issues. During such a working group, the role of the Commission needs to be discussed, since the text of the CMM 2013-06 states that the assessments should be done through the Commission.
2. Update FFA guidelines on how to apply CMM 2013-06
At the ‘Implementation of CMM 2013-06 and Disproportionate Burden Workshop’ in 2014, FFA members submitted a working paper (WCPFC11-2014-DBW-05) on how to apply CMM 2013-06, that includes a ‘template’ for a CMM 2013-06 assessment (WCPFC, 2014a). Since writing this working paper, many lessons have been learned and it would be useful to update

the guidelines. When updating these guidelines, it is important to consult with participating territories.

3. Streamline consultation process

Consulting with SIDS and territories is an important component of conducting the assessment, however, it is important to do so in a manner that does not result in an increased administrative burden for all of the WCPFC members and is flexible in its approach. Besides face-to-face meetings, the following aspects, noted by participants, might support improving the consultation process:

- Have a deadline for proposal submission – this is a common approach in other tuna RFMOs and would allow CCMs more time to prepare and get a better understanding of the proposals. This idea has also been noted in the summary report of the WCPFC 2014 workshop on disproportionate burdens (WCPFC, 2014b, para 8)
- Create a cloud to share the proposal – this would allow the proponent to get feedback from all CCMs without the need for direct consultation.
- Provide video recordings – proponents of a proposal would record themselves explaining the proposal and then talk about some of the key points. These recordings will then be shared with all CCMs.

4. Simplify questions

Participants noted that the questions are vague and leave a lot of room for interpretation. It might be useful to simplify the questions and to also include simple yes/no questions.

5. Collect data and develop a burden framework

Currently, there is not enough socio-economic data available to evaluate the potential impact of a CMM on SIDS and territories. Members should start collecting such data as they can then be used to develop a framework that would allow members to assess the implication of their proposals, as proposed by Sinan et al. (2021).

7. Appoint a liaison officer responsible for coordinating the 2013-06 process

The need to avoid further administrative work has been repeatedly noted. Thus, it might be useful to employ an Equity Officer in the WCPFC secretariat who is responsible for screening CMM 2013-06 assessments and communicating with proponents and SIDS and territories. This person could also support the implementation of capacity-building programmes and SIDS' and territories' applications for funding. Overall, this person would directly work in implementing Article 30 and would set apart the WCPFC's commitment to recognizing the special requirements of developing states from other RFMOs, and even from other global organizations. Concerning financing this position, the Equity Officer could be funded by the special requirement fund, to avoid further burdening SIDS with increased costs. A potential Terms of References for such a position has been provided below.

Terms of Reference

Equity Officer

Context

As per Article 30 of the WCPFC Convention, the Commission shall give full recognition to the special requirements of developing States, in particular SIDS and territories, in relation to the conservation and management of highly migratory fish stocks in the Convention Area and development of fisheries for such stocks.

Under this commitment, the Commission aims to avoid transferring a disproportionate management burden onto SIDS and territories. In addition, developed member States are supporting SIDS and territories via funds and capacity-building workshops.

Objectives

The Equity Officer will support the Commission and the WCPFC secretariat on the following issues:

- Adequate implementation of Article 30 of the WCPFC Convention.
- Support SIDS and territories to access funds and capacity-building workshops.
- Effective implementation of CMM 2013-06 and 07.

The Equity Officer may also take up tasks on any matter related to the objectives above.

Scope

The Equity Officer will work closely with the member countries and the secretariat to recognize the special requirements of SIDS and territories and assist members to implement the requirements of 2013-06 and 07. Specifically, the Equity Officer will undertake the following activities:

- Coordinate with proponents and SIDS and territories concerning the CMM 2013-06 assessment.
- Conduct a preliminary 2013-06 assessment with guidance provided by SIDS and territories.
- Communicate the results to proponents and support the implementation of recommendations and comments.
- Support the work by the Commission to strengthen the CMM 2013-06
- Support SIDS and territories to access funds and workshop opportunities for capacity building
- Support SIDS and territories in complying with other CMMs and coordinate with the responsible person from the WCPFC secretariat.

Conclusion

The WCPFC has implemented specific measures to consider and address the special requirements of developing states and territories. However, increasing dissatisfaction among members concerning the CMM 2013-06 process not only widens the gap between SIDS and non-SIDS but might also threaten the sustainability of key target species, for example, by preventing the adoption of adequate measures. This paper showed that the main issues are the assessment process and the consultation process. Both processes have been described as unclear and opaque. There are some concerns regarding different understanding of how to apply the process. While all the interviewed participants highlighted the importance of CMM 2013-06, WCPFC member states need to take the next step and start to actively address the expressed concerns. A strong RFMO is built on collaboration and communication among its members and the current “us vs them” mentality strains the WCPFCs capacity to sustainably managed their target species.

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