



TECHNICAL AND COMPLIANCE COMMITTEE
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**IMPLEMENTING ROBUST AND COMPATIBLE RULES FOR WCPFC FAD
CLOSURES AND CATCH RETENTION**

WCPFC-TCC5-2009/DP-01
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Submitted by the Parties to the Nauru Agreement

Introduction

1. In May 2008, the Parties to the Nauru Agreement (PNA) agreed upon the Third Implementing Arrangement (3IA) as a package of measures for the conservation and management of bigeye tuna in the tropical purse seine fishery in their EEZs where the most of the purse seine effort covered by CMM 2008-01 occurs. A three-month FAD closure and catch retention are fundamental components of this package.
2. The 3IA was implemented in response to the WCPFC's call in 2007 for CCMs to take action for the conservation and management of bigeye tuna. WCPFC5 introduced compatible measures for the high seas purse seine fishery and also for the logline fishery.

Context

3. CMM 2008-01 reflects the 3IA measures, but does not provide operational level guidance or rules to ensure robust, compatible application across all fleets and CCMs. The PNA understand that lack of specific rules was one issue leading to the failure of FAD closures and catch retention as management tools in other RFMOs.
4. The IWG-ROP recognised this issue at its 3rd meeting in Guam in March 2009 when it attempted to develop a definition of a "FAD set" for voluntary application during the 2009 two-month FAD closure in the CMM. However, there remains a need to ensure that this definition is robust, and also to consider a much wider range of issues that also require further guidance.
5. At TCC4, the PNA submitted DP-04, which described the operational rules that the Parties were seeking to implement in their national laws to ensure effectiveness of the 3IA. DP-04 requested advice and feedback from other CCMs about those rules, although none was received.
6. At WCPFC5, FFA members noted the need for such guidance to be developed in the future to ensure success of the measures in CMM 2008-01.
7. The PNA have now finalised "template Regulations" on these matters (**Attachment 1**). Those template Regulations are being reflected in national law and will apply to all purse seine vessels fishing in PNA EEZs.

8. In the absence of such rules, there are many ways that fishing operators can effectively catch fish that are aggregated to FADs, move fish away from FADs, or make cases for the discard of small fish. Such loopholes undermine the effectiveness of the measure and are also incompatible with in zone arrangements.

3IA Regulations

9. The content of the PNA template Regulations is described below and specific rules are provided in the Attachment. The Parties recommend that TCC recommend that:

- i. the attached rules to apply in the high seas; and
- ii. non-PNA CCMs adopt compatible rules for their EEZs, recognising the right of coastal State CCMs to adopt more stringent rules for their EEZS.

FAD Closure

10. There are significant ambiguities or loopholes in a measure such as a FAD closure that could result in fish that are, or recently were aggregated to a FAD. If such practices are not prevented, then the FAD closure will not meet its objective of providing temporary protection for small fish, particularly bigeye. The 3IA template Regulations contain the following rules:

11. Definition of FAD: A very strict definition of a FAD has been applied. Such an inclusive definition is required to avoid potential disagreement between observers and crew as to whether a particular floating object is covered by the closure or not. It also recognises that small bigeye and yellowfin aggregate equally around all floating objects. The definition is relatively similar to that in CMM 2008-01, but provides clarity on several issues such as the inclusion of live animal sets that is debatable under the CMM.

12. Prohibition on sets: Vessels are not permitted to conduct a set within one (1) nautical mile of a FAD. This means that no part of the set may occur within the 1nm “buffer zone” to remove issues of vessels setting near (but not “on”) FADs. Depending on the interpretation of the IWG-ROP definition of a FAD set, this may be substantially more effective. PNA understands that the IWG definition could be interpreted as meaning that a vessel could deploy the skiff at a distance greater than 1nm from the FAD and then run the net in towards the FAD. Given the length of nets used on some vessels now (up to 3km), this could result in the take of significant amounts of fish that are aggregated to the FAD while perhaps not contravening the closure. This would not be acceptable.

13. Use of Vessels: Under the 3IA, vessel operators are prohibited from using their vessel to aggregate fish. This rule applies to intentional actions taken by the operator. The most common of these is to tie up to a FAD in darkness and then use lighting while drifting away from the FAD towards dawn so that fish leave the FAD and become aggregated to the vessel. The vessel can then set on the fish, effectively negating the closure. As indicated by recent correspondence from the WCPFC Secretariat, there is a need for specific guidance to prevent this.

14. FAD Retrieval: Vessels will be permitted to retrieve FADs or associated electronic equipment during the closure. However, once a FAD or electronic equipment has been retrieved, it cannot be re-deployed until after the end of the FAD closure period. In addition, after retrieving a FAD, the vessel must not conduct any fishing for a period of seven days, or within a radius of fifty (50) nautical miles of the point of retrieval.

15. The intention of these measures is to allow vessels to retrieve their property, such as to carry out maintenance, but also to remove any possibility of somehow using FAD retrieval as a means to catch aggregated fish.

16. A second rule regarding FAD retrieval deals with the inevitable situation of one vessel retrieving a FAD so that a second vessel can set on the aggregated fish. This could occur due to collaboration between fishing vessels, or even through use of a tender vessel. The template Regulations therefore make it illegal for a set to be conducted within 1nm of a point where a FAD has been retrieved by another vessel within the preceding 24 hours.

17. Lastly, a wide definition of “retrieval” has been implemented to ensure that it is not interpreted as only relating to objects that have been deployed by the particular vessel that retrieves them.

18. FAD Deployment and servicing: Vessels will not be permitted to deploy or service FADs or associated electronic equipment during the closure. Definitions for “electronic equipment” and “servicing” are included to ensure common understanding.

Catch Retention

19. There are three circumstances under which tuna do not have to be retained. In any circumstance, fish cannot be discarded until an observer has estimated the species composition of the fish to be discarded. Exemptions from full catch retention are:

- i. Fish that are clearly and demonstrably unfit for human consumption, which is defined in the attachment.
- ii. Fish that are taken on the final set of the trip where there is insufficient well-space to retain the entire set. In this case, the master must attempt to release the excess fish alive and the vessel must not engage in any further fishing activity until it has unloaded or transhipped its catch.
- iii. In some cases it may be possible for the master to identify that the catch consists of small fish early in the process of set retrieval. In this case, fish may be discarded / released, but only before the net is fully pursed and one half of the net has been retrieved.

20. The CMM allows discard of fish *unfit for human consumption* but does not define what that includes and does not include. Similarly, the guidelines for releasing fish (as opposed to discarding them) are not reflected in the CMM.

21. The CMM includes a third exemption, *when serious malfunction of gear occurs*, and this needs further guidance so as not to be a loophole.

22. The vessel master will be required to complete a form detailing the circumstances and reason for any discard.

Future Management Options

23. The SC has reviewed information that suggests that the package of measures in CMM 2008-01 is highly unlikely to achieve the intended purpose of reducing bigeye mortality by 30%. The impact of the measure could be further diluted through the irresponsible actions of vessels or fleets.

24. The PNA are actively considering further options for the management of FADs and FAD fishing and strongly encourages flag states to impress upon their vessels the importance of complying with the 3IA Regulations in order to avoid further, more restrictive measures.

Recommendations

25. TCC should consider the information provided herein and recommend that:

- i. the attached rules to apply in the high seas

- ii. non-PNA CCMs adopt compatible rules for their EEZs, recognising the right of coastal State CCMs to adopt more stringent rules for their EEZs.

Template Regulations

This Attachment contains extracts from the 3IA “template Regulations”. The extracts have been modified slightly, such as to remove reference to domestic Acts, so as to be directly applicable to the recommendation in the paper that the Commission implement these rules in the high seas.

Interpretation

“Associated electronic equipment” means any device or system that can be used by any vessel to locate, track or otherwise monitor a Fish Aggregating Device;

“Deployment” means the introduction into the sea of a FAD or associated electronic equipment;

“Fish Aggregating Device” or “FAD” means an object or group of objects, of any size, that has or has not been deployed, that is living or non-living, including but not limited to [buoys](#), floats, netting, webbing, plastics, bamboo, logs and whale sharks floating on or near the surface of the water that fish may associate with;

“Operator” means any person who is in charge of, directs or controls a fishing vessel, including the owner, master or charterer;

“Prohibition period” means the period of time between 0001 hours GMT on 1 July and 2359 hours GMT on 30 September each year.

“Retrieval” or “retrieved” in relation to fish aggregating devices or associated electronic equipment means the collection or removal from the water of any fish aggregating device or associated electronic equipment by a vessel;

“Servicing” means the cleaning, maintenance, repair, enhancement, movement and any other related activity, of fish aggregating devices or associated electronic equipment;

“Taken” in relation to catch retention means the capture of fish but does not include the release or discard of fish;

“Transshipment” means the transfer of any or all of the fish on board a vessel onto another vessel, either directly or by off-loading the fish from the vessel onto the shore and thence immediately onto another vessel, for the purposes of transporting that fish elsewhere.

Requirement for Catch Retention – Regulation 6

1. (a) All bigeye, skipjack and yellowfin tuna taken by any purse seine vessel shall be retained on board and then landed or transhipped.

(b) Where the operator of a purse seine vessel determines that fish should not be retained on board for reasons related to the size, marketability, or species composition, the said fish shall only be released before the net is fully pursed and one half of the net has been retrieved.

2. Subject to sub-Regulations 3, 4 and 5, the requirement specified in sub-Regulation 1(a) of this Regulation shall not apply to:

(a) fish clearly and demonstrably unfit for human consumption; and

(b) fish caught during the final set of a trip when there may be insufficient well space to accommodate all fish caught in that set.

3. For the purposes of sub-Regulation 2(a), fish clearly and demonstrably unfit for human consumption:

- (a) includes, but is not limited to fish that:
 - i. is meshed or crushed in the purse seine net; or
 - ii. is damaged due to shark or whale depredation; or
 - iii. has died and spoiled in the net where a gear failure has prevented both the normal retrieval of the net and catch and efforts to release the fish alive; and
- (b) does not include fish that:
 - i. is considered undesirable in terms of size, marketability, or species composition; or
 - ii. is spoiled or contaminated as the result of an act or omission of the crew of the fishing vessel.

4. Where the operator of a vessel determines that fish is clearly and demonstrably unfit for human consumption in accordance with sub-Regulation 3, the said fish shall not be discarded from the vessel until after an observer has estimated the species composition of the fish to be discarded.

5. For the purposes of sub-Regulation 2(b), any excess fish that cannot be accommodated in the fishing vessel may only be discarded if:

- (a) the vessel master and crew attempt to release the fish alive as soon as possible;
- (b) an observer has estimated the species composition of the fish to be discarded; and
- (c) no further fishing is undertaken after the discard until the fish on board the vessel has been landed or transshipped.

6. The operator of the vessel shall submit a report [*in the approved form*] within [48] hours after any discard.

Use of Fish Aggregating Devices prohibited- Regulation 7

1. The deployment or servicing of a fish aggregating device and/or any associated electronic equipment is prohibited during the prohibition period.

2. A fish aggregating device and/or associated electronic equipment shall not be retrieved by a vessel during the prohibition period unless:

- (a) the fish aggregating device and/or associated electronic equipment are retrieved and kept on board the vessel until landed or until the end of the prohibition; and
- (b) the vessel does not conduct any set either for a period of seven (7) days after retrieval or within a fifty (50) mile radius of the point of retrieval.

4. No purse seine fishing vessel shall conduct any set during the prohibition period within one (1) nautical mile of a FAD or of a point where a FAD has been retrieved by another vessel within twenty four (24) hours immediately preceding the set.

5. The operator of a vessel shall not allow the vessel to be used to aggregate fish.

Minimum Data For Discard Reporting

- 1. Name, flag and WCPFC Identification Number of the vessel;
- 2. Name and nationality of master;
- 3. Licence number;

4. Name of observer on board;
5. Date, time and location (latitude/longitude) that discarding occurred;
6. Date, time, location (latitude/longitude) and type (drifting FAD, anchored FAD, free school etc) of the shot;
7. Reason that fish were discarded (including statement of retrieval status if fish were discarded according to Regulation 6, sub-Regulation 1.b);
8. Estimated tonnage and species composition of discarded fish;
9. Estimated tonnage and species composition of retained fish from that set;
10. If fish were discarded according to Regulation 6, sub-Regulation 2.b, a statement that no further fishing will be undertaken until the catch on board has been unloaded; and
11. Any other information deemed relevant by the vessel master.