



IMPLEMENTATION OF CMM 2013-06 AND DISPROPORTIONATE BURDEN WORKSHOP

Faleata Sports Complex, Apia, SAMOA
27 November 2014

BACKGROUND TO CMM 2013-06

WCPFC11-2014-DBW-03
5 November 2014

Paper by the WCPFC Secretariat

Background

1. At WCPFC10, FFA and PNA members tabled papers on the Special Requirements of Small Islands Developing States and Avoiding Disproportionate Burden:
 - WCPFC10-2013-DP01: FFA Members: Discussion paper on Avoiding Disproportionate Burden;
 - WCPFC10-2013-DP02: FFA Members: Letter on Special Requirements of Small Island Developing States;
 - WCPFC10-2013-DP33: PNA: Paper to support PNA and Tokelau proposal for avoiding disproportionate burden in the tropical tuna CMM.
2. As an outcome of WCPFC10 the Commission agreed to two new CMMs:
 1. **CMM 2013-06:** *Criteria for the Consideration of Conservation and Management Measure Proposals*
 2. **CMM 2013-07:** *Conservation and Management Measure on the Special Requirements of Small Island Developing States and Territories*
3. In addition **CMM 2013-01** *Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean* includes the following paragraphs:

Noting further that Article 30(2) of the Convention requires the Commission to take into account the special requirements of developing States, in particular small island developing States and Territories. This includes ensuring that conservation and management measures adopted by it do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States, Parties and Territories;

7. Unless otherwise stated, nothing in this Measure shall prejudice the rights and obligations of those small island developing State Members and Participating Territories in the Convention Area seeking to develop their domestic fisheries. This paragraph shall not be applied to paragraphs 14 - 24, 30 and 32 – 37.

15. The Commission shall at WCPFC11 adopt arrangements to ensure that this CMM, consistent with the Convention Article 30 2(c), does not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto SIDS. The fifth month FAD closure and alternative FAD set limit in paragraph 17 shall only take effect when these arrangements are agreed.

Consideration of CMM 2013-06 during 2014

i) FFA member submitted TCC10 draft CMM proposals

4. Three proposals for new CMMs which were submitted to TCC10 (two FFA proposals and one proposal from PNA + Tokelau) contained an explanatory cover note which included a section titled: “**Application of CMM 2013-06**”. Copies of relevant excerpts from these draft CMM proposals are attached herein as **Attachment 1**.

ii) WCPFC Circulars and Member replies

5. In WCPFC Circular 2014/56 it was suggested that a one-day Chairman’s workshop be held immediately prior to WCPFC11 in Samoa, to consider how to operationalize CMM 2013-06. The stated purpose of the workshop as described in the Circular was to:

1. Discuss and agree on the nature and application of the term disproportionate burden.
2. Address the questions raised in WCPFC Circular 2014/56 and determine a process to resolve them prior to the commencement of WCPFC11;
3. Consider paragraphs 361 and 407 of the WCPFC11 report and discuss and agree their application in the context of CMM 2013-06.

6. The Secretariat received responses from three CCMs to Circular 2014/56 providing their support to the hosting of a workshop prior to WCPFC11:

- New Zealand (WCPFC Circular 2014/64)
- France (WCPFC Circular 2014/69)
- Japan (WCPFC Circular 2014/69)

Copies of the three WCPFC Circulars are attached here for your reference and information (**Attachment 2**). These circulars were the basis of the decision to hold this workshop.

iii) WPRFMC Workshop on addressing disproportionate burden

7. The Western Pacific Regional Fishery Management Council convened a workshop on Disproportionate Burden, Honolulu, 18 – 20 September 2014. A copy of the workshop report is provided for consideration by workshop participants as **WCPFC11-2014-DBW-04**

iv) FFA member papers for WCPFC11/DB Workshop

8. FFA members have provided two working papers as inputs to the workshop:

- i. Working Paper on conceptual issues on Disproportionate Burden; and
- ii. Working Paper on Applying CMM 2013-06, with suggested “template” for CCM proposals

A copy of the two papers and cover letter from FFC Chair is provided for consideration by workshop participants as **WCPFC11-2014-DBW-05**.

v) WCPFC11 CMM proposals submitted by CCM delegations

9. At the time of writing, ten (10) delegation papers from CCMs of proposals for new CMMs or proposals to refine existing CMMs had been submitted to WCPFC11. All ten proposals did include a cover note that in some way considered the CMM 2013-06 criteria. Copies of all proposals and their cover notes can be found on the WCPFC11 meeting page: <https://www.wcpfc.int/meetings/11th-regular-session-commission>. ---

**Attachment 1: EXTRACTS FROM TWO CMM PROPOSALS FROM FFA MEMBERS
WHICH WERE TABLED AT TCC10**



TECHNICAL AND COMPLIANCE COMMITTEE

Tenth Regular Session

25 - 30 September 2014

Pohnpei, Federated States of Micronesia

**FFA MEMBER'S PROPOSAL ON A CONSERVATION AND MANAGEMENT MEASURE
ON PROVISION OF OPERATIONAL DATA.**

WCPFC-TCC10-2014-DP07

23 September 2014

Submitted by FFA Members

Application of CMM 2013-06

The following information is offered to assist the Commission to meet the requirements of CMM 2013-06 in respect of this draft CMM.

a. Who is required to implement the proposal?

All CCMs will be required to implement this proposal but most are already doing so.

b. Which CCMs would this proposal impact and in what way(s) and what proportion?

This proposal will:

- i. Have the greatest impact on those CCMs failing to provide operational data by clarifying their obligation to provide this data; and
- ii. potentially provide benefits to all participants in WCPO fisheries and the global community from the improvements in scientific advice, compliance and Commission decision-making, and enhancement of the conservation, management and sustainable use of highly migratory fish stocks and protection of associated or dependent species that will flow from large gains in the quality of data available for Commission functions

c. Are there linkages with other proposals or instruments in other regional fisheries management organizations or international organizations that reduce the burden of implementation? No

d. Does the proposal affect development opportunities for SIDS?

Yes, the proposal will enhance development opportunities for SIDS through:

- i. reducing uncertainty in scientific analyses, including stock assessments that is resulting from the lack of operational data potentially resulting in a greater burden of conservation action on SIDS than might be the case if the operational data was available to improve the scientific analysis and advice; and
- ii. Reducing IUU fishing, especially by longliners on the high seas that is damaging south Pacific

albacore and bigeye stocks that are important for the development of SIDS' domestic longline fisheries.

e. **Does the proposal affect SIDS domestic access to resources and development aspirations?** No

f. What resources, including financial and human capacity, are needed by SIDS to implement the proposal?

No resources are needed by SIDS to implement the proposal

g. What mitigation measures are included in the proposal? Not applicable

h. What assistance mechanisms and associated timeframe, including training and financial support, are included in the proposal to avoid a disproportionate burden on SIDS? Not applicable



TECHNICAL AND COMPLIANCE COMMITTEE
Tenth Regular Session
 25 - 30 September 2014
 Pohnpei, Federated States of Micronesia

FFA PROPOSAL: CONSERVATION AND MANAGEMENT MEASURE ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING

WCPFC-TCC10-2014-DP01
 11 September 2014

The proposal includes a specific section on the Special Requirements of Small Island Developing States and Participating Territories to address the capacity development, technical and financial assistance, and fishery participation. However in accordance with CMM2013-06 *Conservation and Management Measure on the criteria for the consideration of Conservation and Management proposals* the following assessment has been undertaken. As a result a new paragraph 26 bis has been added to address transfers of disproportionate burden. It should be noted that these inclusions to the proposal and the following assessment were undertaken by the FFA Secretariat.

Components	Response
Who is required to implement the proposal?	The proposal makes specific reference to port State CCMs, flag State CCMs, and the Secretariat, however CCMs in general can implement components of the proposed measure particularly in relation to CCMs making requests for port inspections and addressing the Special Requirements of Small Island Developing States and Participating Territories. The busiest ports in the fishery area are located in SIDS, meaning that a large proportion of inspections and subsequent reporting will need to be undertaken by SIDS
Which CCMs would this proposal impact and in what way(s) and what proportion?	The proposal provides flexibility for implementation in that CCMs choose which, if any <i>designated ports for fisheries inspection</i> they will notify to WCPFC, and will subsequently come under the provisions of the CMM. CCMs that are able to immediately implement the measure can do so, whilst others are able to assess and determine whether the application of the measure is appropriate. The largest impact would be to port States within the WCPF-CA who decide to implement this measure and designate ports for fisheries inspections, however the impact would depend upon the level of use of the port, and the number of requests received to undertake inspections. Again though it cannot be overstated that busiest ports in the fishery area are located in SIDS, meaning that a large proportion of inspections and subsequent reporting will need to be undertaken by SIDS if full coverage is to be achieved.
c. Are there linkages with other proposals or instruments in other regional fisheries management organizations or international organizations that reduce the burden of	FAO has commenced development of a SIDS assistance fund under the PSMA. As yet though, no assistance is available and FFA members are concerned that such assistance would only be available <i>after</i> they ratify and become bound by the PSMA, whereas assistance is actually needed beforehand, such as to develop systems and procedures and to recruit and train inspectors. The proposal takes in to account port State measures adopted through international legal instruments, as well as the sovereignty of CCMs and national laws, and is therefore sufficiently flexible to recognise the various port State measures implemented by different CCMs. Furthermore, the proposal requires

implementation?	the publication of port State measures implemented by CCMs, which promotes transparency and an understanding of what different CCMs are implementing. This measure proposes to complement existing arrangements by encouraging greater cooperation and sharing of MCS information and resources amongst CCMs.
d. Does the proposal affect development opportunities for SIDS?	<p>The overall aim of the measure is to strengthen overall port controls and thereby reduce IUU fishing. From that perspective the proposal actively supports development opportunities for SIDS by reducing the impact of IUU fishing on the stocks.</p> <p>In terms of development aspirations, paragraph 26 encourages the promotion and use of SIDS ports; with the assumption that the use of designated ports would stimulate socio-economic benefits, noting also though that the potential increase in inspection measures may also deter vessels from frequenting these ports.</p> <p>Overall, impacts on <i>development opportunities</i> are expected to be positive, but will be better assessed at each review period and the identification of potential issues affecting development opportunities.</p>
e. Does the proposal affect SIDS domestic access to resources and development aspirations?	<p>As per the response above, detection and deterrence of IUU fishing in the region supports those SIDS that have aspirations to develop their own fleets by protecting the resource.</p> <p>The implementation of port State measures is not a high priority for most SIDS in the context of other competing national priorities and resourcing requirements, however the proposal should not affect domestic access to resources.</p>
f. What resources, including financial and human capacity, are needed by SIDS to implement the proposal?	<p>Specific areas of assistance to implement this measure are listed in paragraphs 23 through 25 of the proposal. However, it is envisaged that additional human and financial resources will be needed in particular, to undertake and report on port inspections.</p> <p>The difficulty for SIDS is that this assistance is required before SIDS can agree to become bound by some of the provisions in the measure – otherwise they are agreeing to requirements that they do not have the capacity to deliver against.</p>
g. What mitigation measures are included in the proposal?	<p>The option for each CCM to decide which, if any, of its ports to designate under paragraph 6 is the largest mitigation of disproportionate burden in the proposal. This is well supported through the exploration of assistance mechanisms in paragraphs 23 to 26 and the addition of paragraph 26 bis.</p> <p>In summary, paragraphs 6 and 26bis work together as an “opt-in/opt-out” mechanism, and it will be incumbent on developed CCMs and the Commission at large to facilitate the assistance in paragraphs 23 to 26 in order to incentivise SIDS participation.</p>
h. What assistance mechanisms and associated timeframe, including training and financial support, are included in the proposal to avoid a disproportionate burden on SIDS?	<p>Although the proposal makes specific references to the areas where assistance would be required, the actual operationalisation is a task the Commission must address. It is suggested that TCC consider this issue and how best to address this. Until this is addressed through Commission processes, and noting that the majority of ports in the WCPF-CA are based in the jurisdiction of SIDS, paragraphs 6 and 26 bis remain imperative to avoid a disproportionate burden on SIDS.</p>



TECHNICAL AND COMPLIANCE COMMITTEE
Tenth Regular Session
25 - 30 September 2014
Pohnpei, Federated States of Micronesia

PNA'S DRAFT CONSERVATION AND MANAGEMENT MEASURE ON A
TARGET REFERENCE POINT FOR SKIPJACK TUNA.

WCPFC-TCC10-2014-DP06
23 September 2014

Submitted by PNAMembers and Tokelau

Application of CMM 2013-06

The following information is offered to assist the Commission to meet the requirements of CMM 2013-06 in respect of this draft CMM.

a. Who is required to implement the proposal?

All CCMs will be required to implement this proposal in their cooperation to establish a harvest strategy for skipjack tuna. However it should be noted that those CCMs who are Parties to the Palau Arrangement bear a large proportion of the effort of implementation through the setting of the Total Allowable Effort under the Vessel Day Scheme.

b. Which CCMs would this proposal impact and in what way(s) and what proportion?

This proposal will have an impact on all CCMs involved in fisheries for WCPO skipjack, and all CCMs participating in the Commission's cooperative effort to establish a harvest strategy for skipjack. The impact will be greatest on SIDS in whose waters fishing for skipjack largely takes place, and who are in many cases substantially dependent on fisheries targeting skipjack for their sustainable development. The impact on SIDS will depend on how the Commission applies the Target Reference Point, noting the importance of the Commission giving full recognition to the special requirements of SIDS in the application of the Target Reference Point.

c. Are there linkages with other proposals or instruments in other regional fisheries management organizations or international organizations that reduce the burden of implementation? No

d. Does the proposal affect development opportunities for SIDS?

Yes, in some respects the proposal has the potential to limit growth, but in general it will enhance development opportunities for SIDS through the application of the precautionary approach, including the adoption of limit and target reference points, to improve the effectiveness of the management and conservation of the WCPO skipjack stock.

e. Does the proposal affect SIDS domestic access to resources and development aspirations?

The proposal should not adversely affect SIDS domestic access to resources and development aspirations. The proposal will contribute to effective management and conservation of the WCPO skipjack stock which should enhance SIDS domestic access to resources and promote development of sustainable fisheries for skipjack to the benefit of SIDS.

f. What resources, including financial and human capacity, are needed by SIDS to implement the proposal?

SIDS will need assistance in the further development and application of the precautionary approach to the conservation and management of skipjack tuna, including the application of the Target Reference Point that is adopted. This is a recognised priority, with assistance already being provided by the SPC, FFA, the PNAO and the WCPFC through a range of workshops and technical advisory activities, including the WCPFC Management Objectives Workshops, supported also by Australia, GEF, Pew, WWF and the World Bank. Work in this area will need to continue to be recognised as a priority.

g. What mitigation measures are included in the proposal? Not applicable

h. What assistance mechanisms and associated timeframe, including training and financial support, are included in the proposal to avoid a disproportionate burden on SIDS?

Current and projected programmes of assistance are expected to meet the needs for training and technical assistance, provided the current priority is maintained.

Attachment 2: COPIES OF RELEVANT 2014 WCPFC CIRCULARS



TO ALL COMMISSION MEMBERS, COOPERATING NON-MEMBERS AND PARTICIPATING TERRITORIES

Circular No.: 2014/56

Date: 7 July 2014

No. pages: 6

Operationalizing CMM 2013-06 “Conservation and Management Measure on the Criteria for the Consideration of Conservational and Management proposals.”

PLEASE NOTE: THIS CIRCULAR REQUIRES A RESPONSE ON OR BEFORE 30 JULY 2014.

Dear All,

At WCPFC10 the Commission made the following decision in creating CMM 2013-06:

360. WCPFC10 adopted a new CMM on criteria for consideration of the impact of conservation and management proposals on SIDS and Participating Territories (Attachment O: CMM 2013-06).

361. WCPFC10 agreed that similar consideration shall be given to small fishing communities of non-SIDS CCMs.

I have attached 2013-06 to this circular for ease of reference. It is also useful to read 2013-07 in thinking about how this process is to apply as the two CMMs have common linkages.

Many in the WCPFC have struggled with how to describe and deal with issues of disproportionate burden and the application of CMMs to SIDS since the start of the Commission in 2004 and people have acknowledged its importance in agreeing CMM 2013-06. This Circular in supporting 2013-06 highlights some challenges we now have before us and issues that require careful thought so that we can move forward collectively. My interest is to support the measure by exploring how it can best be implemented.

With the above comment in mind, for some time now I have been trying to determine how this CMM will be applied to the Commission work and how we actually operationalize it to make decisions necessary for the good conduct of business at the WCPFC meetings. I have had a number of discussions with the Chairman and others about this CMM and he has suggested that I write to you with my thoughts and suggestion I have on a process that might help us resolve any issues of application prior to WCPFC11.

I must confess in advance that I write to you with some trepidation but in the spirit of cooperation my thoughts and a series of questions are below. They are to commence discussion and facilitate a common understanding of what the CMM means. If I have misunderstood any of it then I suspect others have as well, but if I have please accept that it is not intentional and that the motives behind this circular is really to try to help clarify and move this process forward.

The first point of clarification in this circular seems to surface in the chapeau and also in the paragraph (2) and that is whether we all have a clear understanding of what “disproportionate burden” is. This seems to

be one of the fundamental points we have always debated, do we have a common understanding of what disproportionate burden is and how it should be evaluated and against what criteria? If we could resolve this then it would seem that a lot of these issues would be far easier to assess and agree. Without some agreement on what constitutes “disproportionate burden” and how it should be considered against the backdrop of fisheries management the stalemate we have always had would seem to remain. FFA and PNA members set their views on the matter forward in several papers at WCPFC10 and I know there was some informal discussion at TCC9, but I understand that different views still exist in the membership.

Once we have established an agreed position on what disproportionate burden is and how it is applied/assessed, then if I read this CMM correctly then before we consider any future conservation and management proposals, the questions outlined in (3) must be applied, then following this process, the mitigation measures in (4) can then be considered and applied. The following questions then arise:

- 1 There are many different forms of conservation and management proposals brought before the Commission for consideration, most are in the form of CMM’s but other might be recommendations from TCC or SC that come to the Commission as part of the recommendations from these committees. The chapeau text to (3) reads:

(3). In considering any new proposal the Commission shall apply the following questions to determine the nature and extent of the impact of the proposal on SIDS and territories in the Convention Area. The question then is when does this get done and who does it? If it is a relatively simple measure then I would assume that a lot of this work would be done by the proposing member. If there is a complex measure such as 2013-01, is the expectation that the Secretariat would do the assessment, or alternatively is the proposal for this to be undertaken by a Committee at the Commission meeting.

- 2 (3a) *Who is required to implement the proposal?* This assessment would depend on the individual proposal, however, if I understand this correctly, it would be the flag states.
- 3 (3b) *Which CCMs would this proposal impact and in what way(s) and what proportion?* This question does not only require an assessment of impact on SIDS but on all 43 CCMs as it states “CCMs”. What are the impact assessment criteria? Is it social, economic, and ecological or is it to be based on 3 (d,e,f, and g) below. The assessment cannot be based on these three (3) criteria alone as they are written to apply to SIDS and not CCMs.
- 4 (3c) *Are there linkages with other proposals or instruments in other regional fisheries management organizations or international organizations that reduce the burden of implementation.* Again this depends on the content of the proposal and it would be possible to undertake the first part of this assessment by looking at CMMs in other regional fisheries organizations (note the FAO website lists 62 of these). What would need to be determined is what the term “international organizations” would actually cover?
- 5 (3d) *Does the proposal affect the development opportunities of SIDS?* If the intention is that the proponent conducts this assessment, then the question would be whether or not it is a subjective assessment or if it has to be supported by evidence and if so what that evidence would need to be. In reality, proponents are not likely to have the information at hand for a detailed quantitative assessment so I am assuming that this would need to be done at a committee or through discussion cross the floor.
- 6 (3e) *Does the proposal affect SIDS domestic access to resources and development aspirations?* The first part of this could be assessed by the proponent of a CMM, however, the second part could really only be judged by an individual SIDS. Again is this subjective or supported by hard evidence of impact?

- 7 (3f) *What resources, including financial and human capacity, are needed by SIDS to implement the proposal?* This would need to be judged against an individual CMM and its content and also against the individual capacity of the SIDS required to implement the proposal. This would need to be considered when the final text has been decided and before adoption.
- 8 (3g) *What mitigation measures are included in the proposal?* I am assuming that this means does the CMM include mitigation measures that would mitigate against the impact of the measure for SIDS and as such evaluation should be reasonably clear.
- 9 (3h) *What assistance mechanisms and associated timeframe, including training and financial support, are included in the proposal to avoid disproportionate burden on SIDS?* I think a reference to 2013-07 probably helps here and evaluating CMMs back against this CMM would help although each individual SIDS requirements will vary.
- 10 (4 chapeau text) *In cases where the transfer of a disproportionate burden of conservation action has been demonstrated by a SIDS or territory, CCMs shall cooperate, to mitigate the burden for the implementation by relevant SIDS and territories of specific obligations including through;* The question here is that in 3 above the onus of demonstrating a disproportionate burden seem to rest with assessment through the Commission and applying the criteria in 3 to each of the potentially affected members. In reading this chapeau text literally the requirement only seems to be for the SIDS to demonstrate the burden.....*disproportionate burden of conservation action has been demonstrated by a SIDS or territory...* It might be that this just needs clarification that it relates to the outcome of considerations in Section 3 and then should it read*demonstrated as affecting a SID or territory....*
- 11 (4d) *Establish a compensatory funding mechanism in accordance with the financial regulations of the Commission.* This will require discussion and agreement on the nature of the fund, who contributes, what the contributions should be, and how the funds are to be disbursed. This would appear to be a relatively lengthy process and no doubt proceeded by discussion on the nature of disproportionate burden.
- 12 (Paragraph 361) WCPFC10 Annual Report Record agreed that similar consideration shall be given to small fishing communities of non-SIDS CCMs. The question in this seems to lie in the definition or interpretation of the phrase..."similar consideration shall be given..." Does this mean that 3 and 4 of 20013-06 will be applied to all CCMs to be considered in the context of any "small fishing communities" they may have? Alternatively does the whole of CMM 2013-06 apply to these small communities and the challenge in this is that this CCM specifically references Article 30. A discussion and agreement on just what this paragraph 361 means in terms to the evaluations and application of 2013-06 is required in order that we move forward.

In considering how to apply paragraph 361, paragraph 407 of the Annual Report, where FFA members set out their concerns about the treatment of non-SIDS in manners the same as SIDS is relevant. Paragraph 4078 reads as follows:

"407. FFA members expressed their satisfaction with the two new CMMs regarding the rights of SIDS and thanked the Chair for his leadership. FFA members wished to clarify that they consider the use of the term SIDS to include WCPFC Participating Territories. However, FFA members stated their grave concern regarding a growing trend, evidenced by the agreement language proposed by Japan in relation to its coastal communities and the insertion of Indonesia in the SIDS exemptions from the capacity measure, to equating these countries' social and economic challenges to those of SIDS. The special legal

status of SIDS under the WCPF Convention and many other international legal instruments must be respected, and not undermined by placing other groups at the same level.”

The above then appear to be the issues that this measure and the decision in paragraph 361 raise. The chapeau text to Section 3 of 2013-06 states very clearly...*“In considering any new proposal the Commission shall apply the following questions to determine the nature and extent of impact of the proposal on SIDS and territories in the Convention area”*. That being the case we need to find a way to address these issues prior to WCPFC11 or immediately before WCPFC11 commences as we cannot consider any revised or new proposal until we have agreed how 2013-06 and paragraph 361 are to be applied. Already we have numerous provisions of 2013-01 that we have agreed we will discuss at WCPFC11 and some of these issues are essential in agreement management measures for 2015 fishing year.

Proposed strategy

In discussion with the Chair and noting that this needs resolution so that all members fully understand its application the Chair has suggested that he host a one day Chairman’s Workshop immediately prior to WCPFC11 in Samoa. If necessary it is proposed that we utilize the day set aside for MOW3 and have the MOW3 discussions in the main Commission meeting.

The purpose of the meeting would be to:

- 1 Discuss and agree on the nature and application of the term disproportionate burden.
- 2 Address the questions raised above and determine a process to resolve them prior to the commencement of WCPFC11.
- 3 Consider paragraph 361 and 407 and discuss and agree their application in the context of 2013-06.

Can you please:

- 1 provide feedback on the issues raised in 1 to 12 in this circular and provide any alternative understandings that CCMs have so that these can be circulated to members;
- 2 Consider the proposed approach to resolving these issues and provide guidance to the Secretariat and the Chair by 6 August 2014.

Thank you and I look forward to your thoughts following your consideration of the issues raised.



Professor Glenn Hurry
Executive Director



**COMMISSION
TENTH REGULAR SESSION**
Cairns, Australia
2-6 December 2013

**CONSERVATION AND MANAGEMENT MEASURE ON THE CRITERIA FOR THE
CONSIDERATION OF CONSERVATION AND MANAGEMENT PROPOSALS**

Conservation and Management Measure 2013-06

***The Commission for the Conservation and Management of Highly Migratory Fish
Stock in the Western and Central Pacific Ocean:***

Recognising the functions of the Commission as set out in Article 10 of the Convention, including the adoption of conservation and management measures and recommendations;

Acknowledging that 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;

Mindful of the vulnerabilities of SIDS and territories in the Convention Area and the impact of the transfer of a disproportionate burden of conservation action onto such SIDS and territories;

Further acknowledging the goals and requirements identified by the Commission at its seventh annual session;

Desiring to adopt criteria for the consideration of conservation and management proposals and the taking of decisions that fully recognize the special requirements of SIDS and territories in the Convention Area;

***Adopts the following conservation and management measure in accordance with
Articles 10 and 30 of the Convention:***

General

1. CCMs shall develop, interpret and apply conservation and management measures in the context of and in a manner consistent with the 1982 Convention and Articles 24, 25 and 26 of the Agreement. To this end, CCMs shall cooperate, either directly or through the Commission, to enhance the ability of developing States, particularly the least developed among them and SIDS and territories in the Convention Area, to develop their own fisheries for

highly migratory fish stocks, including but not limited to the high seas within the Convention Area.

2. The Commission shall ensure that any conservation and management measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto SIDS and territories.

Impact of new proposals on SIDS and territories

3. In considering any new proposal the Commission shall apply the following questions to determine the nature and extent of the impact of the proposal on SIDS and territories in the Convention Area:
 - a. Who is required to implement the proposal?
 - b. Which CCMs would this proposal impact and in what way(s) and what proportion?
 - c. Are there linkages with other proposals or instruments in other regional fisheries management organizations or international organizations that reduce the burden of implementation?
 - d. Does the proposal affect development opportunities for SIDS?
 - e. Does the proposal affect SIDS domestic access to resources and development aspirations?
 - f. What resources, including financial and human capacity, are needed by SIDS to implement the proposal?
 - g. What mitigation measures are included in the proposal?
 - h. What assistance mechanisms and associated timeframe, including training and financial support, are included in the proposal to avoid a disproportionate burden on SIDS?

4. In cases where the transfer of a disproportionate burden of conservation action has been demonstrated by a SIDS or territory, CCMs shall cooperate, to mitigate the burden for the implementation by the relevant SIDS and territories of specific obligations including through:
 - a. Phased or delayed implementation of specific obligations;
 - b. Exemption of specific obligations;
 - c. Proportional or rotational implementation;
 - d. Establishment of a compensatory funding mechanism in accordance with the financial regulations of the Commission.

.....



**TO ALL COMMISSION MEMBERS, COOPERATING NON-MEMBERS AND
PARTICIPATING TERRITORIES**

**Circular No.: 2014/64
Date: 1 August 2014
No. pages: 4**

Comment on WCPFC Circular 2014/56 – New Zealand

Dear All,

Please find attached a response from New Zealand to WCPFC Circular 2014/56 regarding operationalizing CMM 2013-06 “Conservation and Management Measure on the Criteria for the Consideration of Conservational and Management proposals”. It is circulated for your information, and noting New Zealand’s interest in working with other CCMs to consider the issues further.

I will be writing to you next week after talking to the Chair about a suggested way forward from here given that we only received one response to this important issue.

Thanks,

Professor Glenn Hurry
Executive Director



30 July 2014

Glenn Hurry
Executive Director
Western and Central Pacific Fisheries Commission
PO Box 2356
Kolonias, Pohnpei State 96941
Federated State of Micronesia

Dear Glenn

Re: Operationalising CMM 2013-06: “Conservation and Management Measure on the Criteria for the Consideration of Conservation and Management proposals”

Thank you for your letter requesting that members consider how the Commission could define and apply the term disproportionate burden, and how we might operationalise CMM2013-06 (Circular 2014/56). New Zealand welcomes the opportunity to comment on these matters.

As noted at the start of your letter, many in the Western and Central Pacific Fisheries Commission (WCPFC) have struggled with how to describe and deal with issues of disproportionate burden and the application of Conservation and Management Measures (CMMs) to Small Island Developing States (SIDS) since the start of the Commission in 2004. The adoption of CMM2013-06 and CMM2013-07 by the Commission acknowledges the importance of appropriately addressing Articles 10 and 30 of the Convention.

New Zealand agrees that the nature and application of the term disproportionate burden needs to be resolved by the WCPFC. A common understanding between members of what disproportionate burden means, and how it is to be evaluated and applied, is vital to the work of the Commission.

Regarding your proposed approach to determining the nature and application of the term disproportionate burden:

While we support the proposal for a one day workshop, we would note that the expectation that members can achieve the proposed goals of the workshop in one day is very ambitious. Discussions on this issue to date between members would suggest that there is still work to be done to reach agreement on the meaning of, and determine processes for, the application of the term disproportionate burden.

New Zealand would welcome the opportunity to work with others to progress discussion prior to the workshop if appropriate.

Relevance of paragraphs 361 and 407 of the WCPFC10 Annual Report

New Zealand considers that paragraph 407 of the WCPFC10 Annual Report should be given appropriate significance. This paragraph makes it clear that *“The special legal status of SIDS under the WCPF Convention and many other international legal instruments must be respected”*.

New Zealand considers that SIDS face a unique combination of social and economic challenges which are not comparable to the circumstances of non-SIDS members and which should be taken into account when assessing whether there is an appropriate burden.

Paragraph 361 of the Report must be considered in this context. The need to recognise and give proper consideration of the special legal status of SIDS should take precedence over any consideration given to small fishing communities of non-SIDS CCMs.

Operationalising CMM2013-06 (Questions 1-12)

New Zealand would support an appropriately resourced approach to operationalising CMM2013-06. This may include dedicated resources from the Secretariat, at least in the short term, to develop a suitable process for the assessments required under paragraphs 3 a-h of the measure.

Equally, development of a framework or approach under paragraph 4 (mitigation of the burden) requires due consideration and should be appropriately resourced.

It will not serve any members well if we develop an *ad hoc* approach to operationalising CMM2013-06. Additionally, the burden for SIDS would be exacerbated if SIDS are required to undertake complex analysis of the implications of every measure and proposal put before the Commission.

Summary

A priority for WCPFC members should be developing a common understanding of what disproportionate burden means. This is needed to enable the Commission to decide how CMM2013-06 should be evaluated and applied.

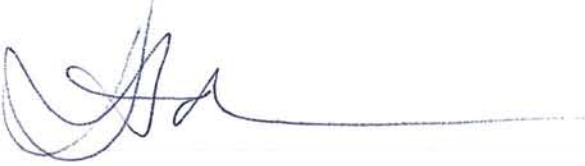
In operationalising CMM2013-06, New Zealand would support the Secretariat providing dedicated resources to ensure that all CCMs, both SIDS and CCMs with proposals for the Commission, are suitably equipped to operationalise this measure.

As noted, the purpose of CMM2013-06 is to ensure that the Commission is fulfilling its statutory obligations to SIDS under the Convention. Implementing CMM2013-06 to the satisfaction of all members through appropriate consideration and resourcing is needed for this to happen.

New Zealand supports the strategy proposed by the Executive Director, to hold a one day workshop prior to WCPFC11. We would suggest that work on the issues raised in this letter needs to begin well in advance of this meeting. We would also like to note our concerns around the proposal to use the day set aside for MOW3 without greater consideration of how members could continue this valuable work.

We are happy to discuss this letter in greater detail if required, and to work with other members to consider these issues further.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Joanna Anderson', with a long horizontal flourish extending to the right.

Joanna Anderson
International Fisheries Management
Joanna.Anderson@mpi.govt.nz



**TO ALL COMMISSION MEMBERS, COOPERATING NON-MEMBERS AND
PARTICIPATING TERRITORIES**

**Circular No.: 2014/69
Date: 11 August 2014
No. pages: 5**

Further comments on WCPFC Circular 2014/56 – France and Japan

Dear All,

Please find attached responses from France and Japan to WCPFC Circular 2014/56 regarding operationalizing CMM 2013-06 “Conservation and Management Measure on the Criteria for the Consideration of Conservational and Management proposals”. They are circulated for your information. Like New Zealand, France and Japan have expressed their interest in working with other CCMs to consider the issues further.

We have now received three responses to this important issue. I will be writing to you soon with regard to a suggested way forward.

Thanks,

A handwritten signature in black ink, appearing to read "Glenn Hurry".

Professor Glenn Hurry
Executive Director



PREMIER MINISTRE

**Secrétariat
Général de la Mer**

Le Secrétaire général adjoint

Paris, le 30 juillet 2014

N° 01014 /SGMER

Affaire suivie par Marie-sophie DUFAU-RICHET
01 42 75 66 53
marie-sophie.dufau-richet@pm.gouv.fr

Sir,

The French authorities wish to thank you for this circular expressing your in-depth reflections and suggestions for moving forward on the implementation of CMM 2013-06. This is truly an issue that needs further discussion between parties, and we are grateful for your work to start this discussion.

As for working towards a common understanding of what disproportionate burden is, and how it should be evaluated, and discussing paragraphs 361 and 407: we support your proposal to hold a one-day workshop in Samoa just before WCPFC 11.

As a feedback on the issues raised in your letter:

First and foremost, point 12: our understanding is that the legal basis remains article 30 of the Honolulu convention. Article 30.2 gives obligation to the commission, in giving effect to the duty to cooperate in the establishment of conservation and management measures, to take account of the special requirements of developing States parties, in particular of SIDS, of territories and possessions, particularly in the following areas : a) their vulnerability (dependency on marine living resources) b) the need to avoid adverse impacts on subsistence, small-scale and artisanal fishers and fishworkers, as well as indigenous people (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.

It is clear for us that territories are included in the term SIDS, as was stated by FFA (par. 407 of the annual report). The « disproportionate burden » formally appears only in 30.2 c) which is about effort for the conservation of resources. However, the spirit in the whole article is that « possible adverse impacts » to paragraphs a) and b) would constitute disproportionate burden relating to resources management. Consequently, the « disproportionate burden » should not be linked to c) alone but also cover a) and b).

.../...

We also acknowledge that (par. 407 again) there is a recent trend towards the insertion of small fishing communities or States in the exemptions for SIDS. Our position on this issue is that the specific status of SIDS and territories under all legal instruments (the Honolulu convention, the 1982 Convention and the 1995 Agreement) has to be kept very clear. Consideration may be given by the commission, on a case by case basis, to the impact of proposed measures on small fishing communities belonging to a State that does not have SIDS status, as stated in paragraph 361. Indeed, article 3.b of CMM 2013-06 requires an assessment of the impact of a proposal on all CCMs. But the whole of 2013-06 is based on article 30.

If we now go back to your points, in list of order:

Once we have established an agreed position on what disproportionate burden is and how it is applied/assessed, then if I read this CMM correctly then before we consider any future conservation and management proposals, the questions outlined in (3) must be applied, then following this process, the mitigation measures in (4) can then be considered and applied. The following questions then arise:

1 (3). We favour the alternate solution (committee)

2 (3a) The question being : which CCMs will have to implement the CMM if it is adopted, the involved CCMs will have to be listed, and we agree with you that in most cases it would be the flag States.

3 (3b) *Which CCMs would this proposal impact and in what way(s) and what proportion?* This question does not only require an assessment of impact on SIDS but on all 43 CCMs as it states "CCMs". What are the impact assessment criteria? Is it social, economic, and ecological or is it to be based on 3 (d,e,f, and g) below. The assessment cannot be based on these three (3) criteria alone as they are written to apply to SIDs and not CCMs. Following 3a) here for each identified CCM the level of impact has to be assessed : in what area, and to which level ?

4 (3c) As there is no specification all international organisations might be involved, but it would be legitimate to restrict to those that have an interest in the conservation and management of fishing resources.

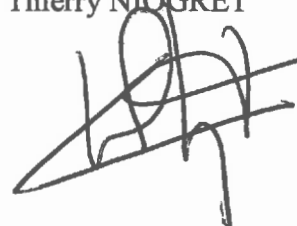
5 (3d) We concur with you: this would need to be done at a committee or through discussion cross the floor.

6 (3e) For consistency, this kind of question would have to be answered in the same manner as 3d, on the basis of informations brought by the SIDS, territories or possessions involved.

.../...

7 (3f), 8 (3g) and 9 (3h) and 10: we agree that the chapeau in 4 needs clarification.
11 (4d) might be discussed in the workshop, if timeframe allows.

Thierry NIOGRET

A handwritten signature in black ink, appearing to be 'Thierry NIOGRET', written over the printed name.

Glenn Hurry Executive Director of the west
And central pacific fisheries commission
PO Box 2356
Koselieh Street
Kolonias
Pohnpei State 96941
Federated states of Micronesia



FISHERIES AGENCY

MINISTRY OF AGRICULTURE, FORESTRY AND FISHERIES, GOVERNMENT OF JAPAN

1-2-1, Kasumigaseki, Chiyoda-ku, Tokyo 100-8907, Japan

TEL: *81-3-3502-8204 FAX: *81-3-3591-5824

6 August 2014

Professor Glenn Hurry
Executive Director
Western Central Pacific Fisheries Commission

Dear Executive Director Hurry,

In response to WCPFC Circular 2014/56, I would like to provide our comments as follows:

- We support the Chair's idea to hold a one day workshop in order to discuss these issues related to CCM 2013-06. However, we're afraid that one day meeting without any prior discussion might be difficult to reach agreement. Therefore, we would suggest that this issue be also discussed in TCC under the specific agenda.
- Regarding paragraph 361 of WCPFC 10 report, while we respect the special status of SIDS under Article 30, we consider that the similar consideration to determine impact of new proposal and the same consideration to mitigate the disproportionate burden of conservation action shall be applied to small fishing communities of non-SIDS CCMs. Japan is happy to participate discussion on this issue.

Regards,

for 

Yujiro AKATSUKA
Assistant Director, International Affairs Division,
Fisheries Agency of Japan