



**COMMISSION
FOURTEENTH REGULAR SESSION**
Manila, Philippines
3 – 7 December 2017

**WCPFC CHAIR RESPONSE LETTER TO THE FFC CHAIR ON THE TROPICAL TUNAS
BRIDGING MEASURE**

**WCPFC14-2017-09B
9 November 2017**

This letter was distributed to CCMs and Observers as WCPFC Circular 2017-89 on 9 November 2017

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

**Circular No.: 2017/89
Date: 9 November 2017
No. pages: 10**

**WCPFC Chair Response Letter to the FFC Chair on the Tropical Tunas Bridging
Measure**

Dear All,

I enclose for your information and consideration a letter from the WCPFC Chair, Ms Rhea Moss-Christian dated 9th November 2017 in response to a letter from the FFC Chair Ms Jenny Baldwin dated 3rd November 2017 relating to the Tropical Tuna Bridging Measure which has been posted as delegation paper WCPFC14-2017-DP16.

Yours sincerely,



**Feleti Penitala Teo, OBE
EXECUTIVE DIRECTOR**



9 November 2017

Jenny Baldwin
Chair
Forum Fisheries Committee
Pacific Islands Forum Fisheries Agency
Honiara
Solomon Islands

Dear Jenny,

Thank you for your letter of 3 November 2017 on behalf of the 17 members of the Pacific Islands Forum Fisheries Agency (FFA) to set out the FFA's views on the draft Tropical Tuna Bridging Measure. Your efforts to progress discussions on the draft Measure are much valued.

I am responding via a Circular, as your letter is available to all CCMs as an FFA Delegation Paper on the WCPFC14 webpage (attached here for ease of reference). You have raised a number of points which my response seeks to acknowledge, and which will be of interest to all CCMs.

Your letter raises three key areas which I understand you wish to see addressed:

- 1) Issues of disproportionate burden and FFA member views on specific proposals in Rev5;
- 2) Existing proposals in Rev5, including proposals for addressing non-compliance;
- 3) The "status quo" provisions in Rev5.

I would like to address each of these issues separately. As you all have busy schedules and limited reading time, the most critical points are underlined.

(1) FFA member views on proposals in Rev5 and Disproportionate Burden

The FFA's views on specific proposals in Rev5 are well noted and certainly reflect the importance that FFA members place on addressing the principle of disproportionate burden. Your call to those CCMs with proposals in Rev5 to fulfill the obligations of CMM 2013-06 in advance of the Annual Session is also acknowledged.

As members will know, the recognition of Article 30 and the special requirements of developing States continue to feature in the discussions around management options. How those special requirements are addressed remains core to the current negotiations and I anticipate that SIDS members, in particular, will continue to negotiate with these principles in mind.

In summarizing the status of our discussions of key bridging CMM issues, I would offer that the principle of disproportionate burden is inherent in our ability to reach agreement. That said, I will add "Disproportionate Burden" to an updated traffic light summary ahead of the December 1 meeting.

I note the FFA's opposition to specific flag-based proposals in Rev5, in so far as they apply within EEZs, as directed by the Pacific Islands Forum Leaders Communiqué. I also note that our founding document, the WCPF Convention, is a complex balance of rights and interests of Members which expresses our common objective of conserving and managing highly migratory fish stocks in the Convention Area. So as Chair, I genuinely believe that it is incumbent on all Members, regardless of their strategic and vested interests, to objectively assess management options that contribute positively to the achievement (or delivery) of that common objective.

(2) Additional proposals for Rev5 and process for addressing these in Manila

I thank FFA members for your consideration of specific text in Rev5 and for some drafting suggestions. Your proposals for addressing instances of non-compliance with specific management provisions are also welcomed.

In addition to FFA members' proposals for Rev5, I am expecting other CCMs to have revised or additional proposals in advance of the Annual Session, particularly after SPC's evaluations of the various management options are available in a couple of weeks.

I had considered developing a Rev6 but decided that this would further complicate the text in Rev5 and would not provide for sufficient time to review the changes. Instead, Supplemental papers will be prepared for each CCM (or group of CCMs) that contain revised or additional draft negotiating text to be considered alongside Rev5.

(3) Status Quo provisions in Rev5

I acknowledge the FFA's point that the "status quo" provisions in Rev5 are not exactly as they were in CMM 2016-01 and note the request for a track changed version of CMM 2016-01 against Rev5, to specifically show how the transcriptions were undertaken.

There was a reason for our approach and I would like here to provide more details.

Members will recall our efforts over the last 16 months to remove some exemptions in CMM 2016-01, in response to CCM concerns. As a consequence, the Explanatory Note to Rev4 (WCPFC Circular 2017-51) indicated that exemptions associated with some Rev4 proposals were removed unless a CCM had specifically requested their retention and that exemptions more broadly would be subject to ongoing negotiations.

The process we have all been engaged in since mid-2016 is to improve the existing provisions of CMM 2016-01, so a number of proposals in Rev5 reflect Members' desires to find mechanisms to remove the need for special exemptions.

The provisions of CMM 2016-01 continue to serve as potential options but their inclusion in Rev5 is intended to progress discussion on more robust measures, not to simply propose existing measures that CCMs have considered to be problematic in many ways.

For this reason, I suggest in lieu of preparing a track changed version of CMM 2016-01 against Rev5, that members simply consider those provisions as "modifications of existing measures".

I would also refer CCMs to the Comparison Document circulated with Rev4 in Circular 2017-51, which shows which provisions were carried over into the draft Bridging Measure and the rationale for those provisions which were not.

Where existing provisions are being considered for the new measure, I suggest that members consider the ability of those provisions to be implemented, enforced and evaluated. What we ultimately produce in Manila should be an improvement.

I welcome further views from FFA members over the next few weeks and look forward to your continued constructive engagement in Manila.

Sincerely,



Rhea M Moss-Christian
CHAIR
Western and Central Pacific Fisheries Commission

cc: Feleti Teo, OBE, Executive Director, WCPFC
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**COMMISSION
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TROPICAL TUNA CMM

**WCPFC14-2017-DP16
3 November 2017**

Paper by FFA Member CCMs



FFA

3 November 2017

Rhea Moss-Christian
Chair
Western and Central Pacific Fisheries Commission
PO Box 2356, Kolonia
Federated States of Micronesia

Dear Rhea,

Tropical Tuna CMM

I write on behalf of the 17 members of the Forum Fisheries Agency in my capacity as the Chair of the Forum Fisheries Committee. These views expressed in this letter are without prejudice to the further development of positions and proposals by FFA members individually or collectively.

FFA members thank you for your efforts so far in what has been a challenging process for our members and the Commission. We are acutely aware that despite the deadline for a new bridging CMM looming, CCMs remain far apart on a number of key issues in the management of the tropical tuna fisheries of the WCPFC. Thank you for your letter of 19 October that highlights the number of issues that remain red in the traffic light report, and summarises areas where significant disagreement remains. We would however ask that you add to that list the issue of disproportionate burden, the principal of which underpins a number of FFA member positions on particular measures. The Commission cannot agree to measures, or a package of measures, that continue to impose a disproportionate burden of conservation upon the SIDS members of this Commission. As such, any further consideration of the proposals in front of us, must be prefaced by a commitment to this principal of the WCPFC Convention.

In this regard we are deeply concerned that there has been no assessment of the package of measures, or of specific individual proposals, against the questions set out in CMM 2013-06. In its current form a measure-wide assessment is not possible, but FFA members insist that all proponents should review their own proposals and provide those assessments against 2013-06 well before the WCPFC meeting in Manila. The absence of such a review will render specific proposals moot. We will present an assessment of our own proposals in advance.

As we have expressed many times, a key mechanism for managing disproportionate burden is the implementation of zone based management arrangements to recognise and strengthen coastal State sovereign rights. Our Pacific Island Leaders have expressed concern with the efforts of some WCPFC members to undermine the zone based measures that FFA members have developed in exercise of their sovereign rights under international law and we refer all CCMs to paragraph 17 of

the Pacific Island Forum Communiqué¹. Our Leaders called on those countries to withdraw proposals for flag State based measures. Consistent with the direction from our Leaders, we therefore oppose the following proposals in Rev5 of the bridging CMM in so far as they apply within EEZs:

- Paragraphs 12 and 13 bis: Flag based FAD set limits as an alternative to a 4th month FAD closure.
- Paragraph 16 bis: Vessels catching more than 500 mt have 5 month closure or FAD set limit.
- Paragraph 16: Annual transferable flag based FAD set limits as per Table 1, Attachment 1.
- Paragraph 28: Limits on the number of purse seine vessels a CCM can authorise to fish in its EEZ and on the high seas, as per Table 3, Attachment 2.
- Paragraph 29: Annual transferable flag based purse seine effort limits as per Table 4, Attachment 2 for 20N to 20S.
- Paragraph 30: Annual purse seine flag based effort limits as per Table 4 attachment 2.
- Paragraph 31: CCMs (exc. SIDS) must reduce freezer vessels larger than 24m in 20N to 20S to 31 December 2012 levels.
- Paragraph 45: Flag based BET catch limits for 20N to 20S as per Table 1, Attachment 3.
- Paragraph 46: Limits on the number of longline vessels that a CCMs (exc. SIDS) can authorise to fish in its EEZ and the high seas.
- Paragraph 47: Limits on the number of longline vessels that a SIDS CCM can authorise to fish in its EEZ and the high seas as per Table 2, Attachment 3.
- Paragraph 49: CCMs (exc. SIDS and IND) shall not increase the number of longline freezer vessels above the current level.
- Paragraph 54: CCMs take measures not ensure their purse seine or longline flagged vessels do not increase their catch of yellowfin.
- Paragraph 55: Flag based YFT catch limits as per Table 1, Attachment 4.

Improvement to high seas management of both the purse seine and longline fisheries remains a high priority for FFA members. In this regard, FFA members are committed to establishing a robust framework within WCPFC that will allocate limits for the purse seine fishery amongst all relevant CCMs. Such a process will need to take Articles 10(3) and 30 into account and deliver results that allow WCPFC to meet its obligations to assist developing States to participate in high seas fisheries. Such a framework is in the interests of sustainability as it will allow for a hard limit on high seas purse seine effort. It will also be a significant step forward for the Commission in living up to Article 30 and CMM 2013-07.

FFA members have made good progress on developing a single common proposal for the management of purse seine fishing in the high seas that adequately balances the intentions of the proposals in paragraphs 23 and 27 of Rev5. FFA members are united in seeking an arrangement that paves the way for appropriate levels of SIDS participation in the high seas fishery while also providing the basis for a hard limit on the high seas.

FFA members would like to convey a number of other shared positions on elements of Rev5, including:

- 1) We oppose the addition to the header of the Purse Seine Fishery section on page 8 that seeks to restrict all purse seine measures to the area 20N - 20S, although we do note the need for further discussion about the management arrangements that will apply outside of the core tropical fishery.

¹http://www.forumsec.org/resources/uploads/embeds/file/Final_48%20PIF%20Communique_2017_14Sep17.pdf

- 2) We seek amendment to the text of Amendment of text in 6 ter to remove the insinuation that historical participation is the only relevant consideration in the calculation of catch and effort limits, such that it reads: “~~The catch and effort limits in paragraphs [xx] (FAD sets), paragraph [xx] (high seas purse seine effort limits), paragraph [xx] (bigeye longline catch), and paragraphs [xx] (yellowfin purse seine effort and longline catch) shall be calculated from the relevant historical levels within the Convention Area except for those Member flag States who, consistent with the WCPFC9 decision (paragraph 80 of WCPFC9 Summary Report), notify of their choice to implement IATTC measures in the overlap area. For those Where Member flag States ~~who~~ choose to implement IATTC measures in the overlap area, the calculation of their any calculation of limits for the Convention Area (excluding the overlap area) that are done on the basis of historical catch or effort levels, shall exclude historical catch or effort within the overlap area. Notwithstanding decisions on application of catch and/or effort limits, all other provisions of this measure apply to all vessels fishing in the overlap area.”~~”
- 3) While we support in concept the proposal on non-entangling FADs in paragraphs 18-18ter, we request the EU provide additional detail and guidance on the proposal, including a specific enforceable description of what constitutes “constructed in a manner designed to avoid entangling marine life”, and clarity on the implications for FADs deployed prior to 1/1/19. We understand that there are ongoing research trials in the region and look forward to hearing the outcomes of those.
- 4) We oppose the proposed deletion of paragraph 39. If any BET or YFT catch limits are retained in the final measure, it will be critical to retain reporting requirements in order to determine if the catch limits are being complied with, noting that we have raised concerns over the weakness of longline monitoring for a long period of time.
- 5) We remain concerned with compliance of vessels with the Philippines measure described in Attachment 6. Vessels operating under this arrangement continue to be identified for potential non-compliance including incursions into neighbouring EEZs and unauthorised transshipment. As such, we suggest that this measure be strengthened to cater for these compliance risks.

FFA members took note of the Chair’s request at TCC that CCMs consider the inclusion of compliance and sanction provisions in the CMM, such as penalties for exceeding catch. In this vein, FFA members propose inclusion of the below table in the final provisions of the CMM:

Transgression	Penalty
Non provision of operational data	Double ROP LL observer coverage requirement, rationale is that this provides more real time data and at least addresses lack of data
Overfishing of catch limit	Pay back in following year for 1st offence, payback at double the rate for 2nd offence, black list the fleet for 3rd offence Some further work required on how to operationalise it, whether the second offence must be within a certain timeframe of the first offence, whether different magnitudes of overcatch are treated the same etc.
Ignoring FAD closure	Offence under IUU CMM – so penalty not specified here also reference to national laws
Not carrying an	Offence under IUU CMM – so penalty not specified here. This will also be

observer	a breach of coastal State national laws
Exceeding high seas effort allocation	Same principal as over catch, pay back in following year with increased penalties for repeat offenders

FFA members have become aware of some errors in the transcription of “status quo” paragraphs that have been taken from CMM 2016-01 and placed into Rev5, including the following

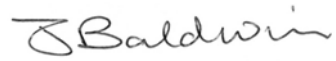
- Paragraph 5 of Rev5 is amended from paragraph 7 of CMM 2016-01 by removing the final sentence “This paragraph shall not be applied to paragraphs [insert relevant paragraphs].” We ask that this wording be reinserted to Rev5. This is a very important component for FFA members because the list of paragraphs to be included therein essentially remove the SIDS exemption from multiple elements of the measure.
- Paragraph 12 of Rev5 is slightly altered from paragraphs 14-16 of CMM2016-01 which rationalise the language, however in doing so footnotes 3 and 4 have been removed from Rev5. The removal of these exceptions must be explicitly reviewed in light of the final CMM to ensure that the disproportionate burden has been sufficiently addressed such that certain exceptions are no longer necessary. Until that final review is possible, such footnotes must be reinstated.
- Similarly footnotes 7 and 8 of CMM 2016-01 have been dropped from the status quo text and need to be reinserted. Footnote 2 in Rev5 has also been amended from footnote 5 in CMM 2016-01, and in doing so has dropped the reference to the Philippines measure, although the Philippines measure is still included in the Attachments.
- Paragraph 19 from CMM 2016-01 has not been included in the status quo provisions in Rev5. If any FAD set limit is retained, then this paragraph on reporting requirements must be reinstated in the bridging CMM.
- Paragraph 21 in Rev5 is different to the status quo in CMM 2016-01 in that it removes the provisions of paragraph 23 which required Coastal States to “establish effort limits or equivalent catch limits”. This may be due to an assumption that all Coastal States have established such limits, however it is the understanding of FFA that this is not the case, and until such evidence is provided that all Coastal States have established limits, the requirement to establish limits must be retained.
- Paragraph 38 of Rev5 has been amended from paragraph 41 of CMM 2016-01 by changing the word “members” to “CMMs” and removing the wording “opportunities for non-members will be decided by the Commission on a case by case basis”. This has the effect of explicitly assigning territories and CNMs a 2000mt limit where this previously had not been the case, and FFA members do not support this amendment.

Given the significance of some of these issues, we ask that the Chair provide a track changed version of CMM 2016-01 to Rev5 that transparently shows any changes that have been made in the transcription.

FFA members have been actively consulting with other CCMs in an effort to find common ground and we welcome efforts from other CCMs to do the same. We remain committed to working proactively with the Chair and other CCMs to develop an effective bridging CMM that will not only achieve the objective of maintaining tropical tuna stocks, but will also provide an appropriate interim arrangement while the Commission develops a strategic and proactive management

arrangement on the basis of the harvest strategy approach. We look forward to the deliberations in Manila and would greatly appreciate if you could make this letter available to other CCMs please.

Yours Sincerely

A handwritten signature in black ink that reads "J Baldwin". The signature is written in a cursive style with a large, stylized initial "J".

Jenny Baldwin

Chair

Forum Fisheries Committee