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Authors

Seto, Katherine

Hanich, Quentin

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The Western and Central Pacific Fisheries Commission and the New Conservation and Management Measure for Tropical Tunas

Katherine Seto

ANCORS, University of Wollongong, Australia

katyseto@uow.edu.au

Quentin Hanich

ANCORS, University of Wollongong, Australia

hanich@uow.edu.au

The Western and Central Pacific Ocean (WCPO) is home to the world's most productive tuna fisheries, supplying global markets with canned tuna, sashimi, and other tuna products. Industrial catches of skipjack, yellowfin, bigeye, and albacore are collectively worth approximately US\$5.3 Billion per year and account for 56% of the global tuna catch.¹ However, unlike the predominately high seas tuna fisheries in other oceans, WCPO tuna are overwhelmingly fished in waters under national jurisdiction, which are largely owned by a small group of Pacific small island developing States (SIDS).² These tuna fisheries represent the only substantial resource for some Pacific SIDS, particularly the atoll States, and have long been viewed as the primary sector for development opportunity. In some cases, revenue from tuna can contribute up to 75 per cent of government income and support the livelihoods of more than 90 per cent of local households.³ Tuna fisheries are also critically important to some Pacific Island States for local food security and employment in artisanal fisheries.⁴ In the context of climate and other global environmental change, scientists have

1 Peter Williams, Peter Terawasi & Chris Reid, *Overview of tuna fisheries in the Western and Central Pacific Ocean, including economic conditions* – 2016 1–70 (2017).

2 Quentin Hanich, *Distributing the bigeye conservation burden in the western and central pacific fisheries*, 36 *Marine Policy* 327–332 (2012).

3 Robert E Gillett, *Fisheries in the economies of Pacific Island countries and territories* 1–688 (2016).

4 Johann D Bell et al., *Planning the use of fish for food security in the Pacific*, 33 *Marine Policy* 64–76 (2009).

recommended that Pacific island governments increase local access to tuna fisheries to address looming food security challenges.⁵

While the Pacific SIDS hold sovereign rights over the most productive tropical fishing grounds, most of the catch is taken by vessels owned by companies from developed distant water fishing States: Japan, USA, Taiwan, China, Korea and the European Union. These foreign vessels may either be based in a Pacific Island State (due to licensing or joint venture requirements) or operate from a distant home port.⁶ Conservation is an increasing concern, as some tuna and associated species are threatened by overfishing and overcapacity within the fishing fleets.⁷ In addition, fishing levels often exceed maximum economic yields, impacting significantly on revenue through decreased productivity and profitability.⁸

For the past two years, the Western and Central Pacific Fisheries Commission (WCPFC) has been negotiating a replacement conservation and management measure to manage the tropical tuna fisheries for skipjack, yellowfin and bigeye tuna stocks. The WCPFC was established by treaty in 2004 with a mandate to ensure the long-term conservation and sustainable use of the WCPFC tropical tuna fisheries.⁹ The WCPFC comprises all of the key coastal and distant water fishing States and meets annually to negotiate and adopt conservation and management measures.¹⁰

5 Johann D Bell et al., *Diversifying the use of tuna to improve food security and public health in Pacific Island countries and territories*, 51 *Marine Policy* 584–591 (2015); Johann D Bell et al., *Effects of climate change on oceanic fisheries in the tropical Pacific: implications for economic development and food security*, 119 *Climatic Change* 199–212 (2016).

6 Elizabeth Havice, *The structure of tuna access agreements in the Western and Central Pacific Ocean Lessons for Vessel Day Scheme planning*, 34 *Marine Policy* 979–987 (2010).

7 Hanich, *supra* note 2; WCPFC, 6–14 August 2014 *Report of the Tenth Regular Session of the Scientific Committee of the Western and Central Pacific Fisheries Commission* 1–229 (2014).

8 Tom Kompas, R Quentin Grafton & Tuong Nhu Che, *Bioeconomic losses from overharvesting tuna*, 3 *Conservation Letters* 177–183 (2010).

9 *Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean*, *Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean* 1–40 (2001).

10 Members include: Australia, China, Canada, Cook Islands, European Union, Federated States of Micronesia, Fiji, France, Indonesia, Japan, Kiribati, Republic of Korea, Republic of Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Samoa, Solomon Islands, Chinese Taipei, Tonga, Tuvalu, United States of America, Vanuatu. For participating territories, cooperating non-members, and current information, see <https://www.wcpfc.int/about-wcpfc>.

The WCPFC faces a complex negotiation challenge. Scientific assessments have recommended implementation of limits consistent with WCPFC requirements to adopt a precautionary approach and protect broader ecosystem concerns.¹¹ Otherwise, the world's largest tuna fishery will decline in productivity and value, wasting a critically important resource and resulting in the overfishing of key species. Such a management failure would first impact on the vulnerable bigeye tuna, then yellowfin and albacore, and lastly skipjack. Even the highly productive and resilient skipjack has sustainability limits.

This challenge is complicated by the multi-gear, multi-species and transboundary characteristics of these tuna fisheries.¹² Each species of tropical tuna is caught by each gear in a tightly inter-meshed manner that is difficult, if not impossible, to separate. For example, while longline and handline fishers generally target adult yellowfin and bigeye, the close association of these fish with other species frequently leads to substantial bycatch of juveniles by purse seine vessels targeting skipjack and yellowfin. The migratory and interconnected characteristics of the WCPO tropical tuna fisheries make it difficult to sufficiently limit catches of vulnerable bigeye, without impacting on fleets targeting the more resilient skipjack.

In December 2017, approximately 700 delegates from more than 30 countries and territories met in Manila to debate the replacement measure. Despite two years of preparatory work, and some inspiring leadership from the Chair, Rhea Moss-Christian from the Federated States of Micronesia, delegates struggled to reach agreement. The key obstacle to successfully negotiating a sufficiently strong conservation measure is the argument over how any potential conservation burden is distributed among WCPFC member states.¹³ Given current fishing levels, some or all member states must necessarily compromise their interests and carry some share of the conservation burden to ensure healthy stocks.¹⁴

11 See Article 5 of the *Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean*, *supra* note 9.

12 Megan Bailey, *Can Cooperative Management of Tuna Fisheries in the Western Pacific Solve the Growth Overfishing Problem?* 3 SBE 31–66 (2013).

13 Quentin Hanich et al., *Research into fisheries equity and fairness—addressing conservation burden concerns in transboundary fisheries*, 51 *Marine Policy* 302–304 (2015); Brooke Campbell & Quentin Hanich, *Principles and practice for the equitable governance of transboundary natural resources: cross-cutting lessons for marine fisheries management*, 14 *Maritime Studies* 1–20 (2015).

14 Quentin A Hanich and Yoshitaka Ota, *Moving beyond rights-based management: a transparent approach to distributing the conservation burden and benefit in tuna fisheries*, 1–38

Under international law, the WCPFC is obligated to ensure that conservation measures do not transfer a disproportionate burden of conservation action onto developing States.¹⁵ Simultaneously, the global community has recognised the importance of fisheries to SIDS, and in Sustainable Development Goal 14 (SDG14) has committed to increase the economic benefits to Small Island Developing States and least developed countries from the sustainable use of marine resources by 2030.¹⁶ Yet, during negotiations, developed distant water fishing nations did little more than pay lip service to the special requirements of SIDS. While Japan and the Pacific SIDS proactively drove negotiations for strong conservation measures that would avoid a disproportionate burden on Pacific SIDS and enable their development aspirations, the United States and China demanded increases in their limits above recommended levels. Under pressure from the USA to limit participation, the Chair limited most negotiations within the meeting to heads-of-delegation only, undermining the ability of some SIDS to effectively participate without technical support staff, and eliminating any pretence of transparency. All of this occurred in spite of WCPFC Convention articles 21 and 30 that explicitly require the WCPFC to consider the special requirements of developing States and promote transparency, including enabling non-government organisations to participate in meetings.¹⁷

In the final hours of the Commission meeting, some provisional outcomes began to emerge. In order to reach agreement, and avoid cascading increases in longline vessel limits, Japan effectively gifted some of its unused limits from previous measures to China, while the USA aggregated all the unused potential limits from its Pacific territories into one pool, enabling its Hawaiian longline fishing fleet to almost double its allowable quota. Similarly, within the purse seine fishery, the Commission agreed to a three-month closure of fish aggregating devices (FADs) within countries' exclusive economic zones (EEZs) and an additional two months on the high seas; a deal struck in order to create compatible regulations for the high seas purse seine fishery and avoid a disproportionate burden on fisheries within SIDS waters.

(2016); Kamal Azmi et al., *Defining a disproportionate burden in transboundary fisheries: Lessons from international law*, 70 *MARINE POLICY* 164–173 (2016).

15 See Article 30 of the *Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean*, *supra* note 9.

16 UN General Assembly, *Transforming Our World: the 2030 Agenda for Sustainable Development* 1–35 (2015).

17 *Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean*, *supra* note 9.

In the end, the overall package of measures passed at the 2017 14th Regular Session of the Commission was insufficient to limit fisheries to scientifically recommended levels. While there was no official assessment of risk for the final negotiated outcomes, bigeye stocks have a greater than 20 per cent risk of falling below acceptable biomass, with other stocks at varying levels of risk. However, it does include two key provisions that offer hope. First, it establishes target reference points (TRP) for skipjack, yellowfin and bigeye that will enable the development of long term harvest strategies. These strategies will ultimately include pre-agreed management rules to prevent overfishing and rebuild stocks to maximum productivity. Second, it includes a requirement for the WCPFC to establish a high seas allocation process to equitably distribute rights to the high seas fisheries. The Pacific SIDS allocated and limited the tropical tuna fisheries within their EEZs under the sub-regional Palau Arrangement.¹⁸ Now it is time to allocate rights for the high seas fisheries, compatible with the existing EEZ arrangements. These two provisions provide an opportunity for the WCPFC to resolve its ongoing conflict, and transparently answer the important equity questions fundamental to conservation negotiations in the Pacific context. This will provide concrete steps that explicitly determine what conservation burden each State should carry, depending on their characteristics.¹⁹ This would modernise fisheries management, making it more consistent with broader developments in common resource management. This approach is observed in climate change negotiations, where there are principles of differentiated responsibilities between developed and developing states.²⁰

These processes will need to move beyond traditional economics and address critical equity concerns that are fundamental to the implementation of SDG14. The WCPFC currently struggles to address these concerns in an *ad hoc* process for each conservation measure. This process results in the WCPFC discussing deeply political and economic arguments within a management and science framework ill-suited to the task. Within this process, the framework inevitably became politicized as members propose conservation arguments

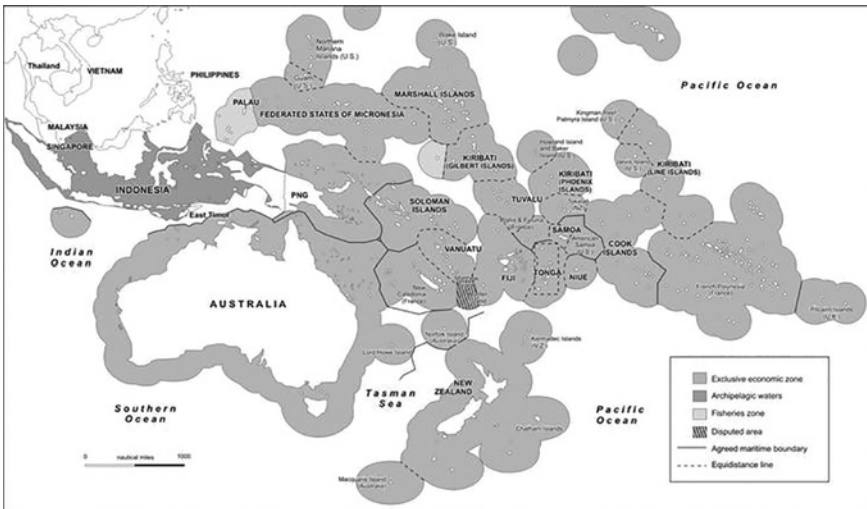
18 The Palau Arrangement for the Management of the Purse Seine Fishery in the Western and Central Pacific, opened for signature 19 September 1990 (entered into force 1 November 1995). <<http://www.ffa.int/node/91#attachments>> at 14 March 2010. The Palau arrangement was subsequently significantly developed and transformed into the Vessel Day Scheme. Further background at: Transform Aqorau, *Recent Developments in Pacific Tuna Fisheries: The Palau Arrangement and the Vessel Day Scheme The International Journals of Marine and Coastal Law* (2009) 24 557.

19 Hanich et al., *supra* note 13; Campbell and Hanich, *supra* note 13.

20 See Article 3 of the *United Nations, United Nations Framework Convention on Climate Change* 1–25 (1992).

for measures that best protect their own interests, and refute conservation arguments for measures that compromise their interests.

Looking forward, the new harvest strategy and allocation process provides an opportunity for members to slowly negotiate and create transparent and equitable rules to guide management and allocation decisions, and implement their conservation obligations consistent with the WCPFC Convention.



The Pacific Islands Region. Q. Hanich & M. Tsamenyi (eds) Navigating Pacific Fisheries: Legal and Policy Trends in the Implementation of International Fisheries Instruments in the Western and Central Pacific Ocean. University of Wollongong, Wollongong, Australia. 2009., Author provided.