

Implementing the Convention on the Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean

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Abstract. In September 2000, the *Convention for the Conservation and Management of the Highly Migratory Fish Stocks in the Central and Western Pacific* (WCPFC) was concluded by the seventh session of the Multilateral High Level Conference (MHLC). The WCPFC, amongst other things, establishes a tuna Commission, which will have powers to impose limits on, catch and effort, and impose conservation and management measures for the tuna stocks in the Western and Central Pacific Ocean (WCPO) region. The principal objective of the WCPFC is to ensure the long-term conservation and sustainable use of the highly migratory fish stocks in the WCPO.

The paper describes the problems associated with managing the tuna fisheries in the WCPO. Upon its entry into force, the WCPFC will potentially bring high seas fishing in the region under control. The WCPFC builds on the principles of the 1995 United Nations Fish Stocks Agreement (UNFSA). It elaborates on the principles of conservation and management to be applied in both areas under national jurisdiction and on the high seas. Fundamentally, it entrenches the principle in the UNFSA that members of a regional fisheries management organisation can board vessels belonging to other States who are also members on the high seas. It transforms the customary rule of international fisheries law that only the flag State can enforce fisheries conservation and management measures on the high seas.

The WCPFC provides a framework for fisheries cooperation between member countries of the South Pacific Forum Fisheries Agency, and the distant water fishing nations operating in the region. The paper describes the principal features of the WCPFC, which include an innovative legally binding decision-making regime and steps being taken to prepare for the implementation of the Convention.

1. INTRODUCTION

The western and central Pacific Ocean (WCPO) is the only region in the world that does not have an international tuna management organisations. Paradoxically, the WCPO supplies approximately 60 percent of the world's raw tuna. This will, however, change with the conclusion on 4 September 2000 of the Convention for the Conservation and Management of the Highly Migratory Fish Stocks in the Central and Western Pacific (WCPFC)¹. The WCPFC establishes a new tuna Commission (the Commission). The WCPFC represents a new era in international tuna management because it is one of the first regional fisheries agreements to be adopted since the conclusion of the UNFSA in 1995.² The WCPFC is a comprehensive treaty, which contains detailed rules about how the Commission is to operate, and contains explicit rules covering a broad range of operational requirements for fishing vessels.

The WCPFC was negotiated over seven sessions and three inter-sessional meetings of the Multilateral High Level Conference (MHLC) spanning seven years.³ Some States who are already members of other regional fisheries management organisations (RFMO) may have found difficulty in accepting the paradigm shift in the new

¹ Forum Fisheries Agency, *Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific*, (Honiara: Forum Fisheries Agency, 2000) (hereinafter referred to as the "WCPFC")

² For a comprehensive discussion of the implications of the WCPFC see Transform Aqorau, "Tuna Fisheries Management in the Western and Central Pacific Ocean: A Critical Analysis of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean and its Implications for the Pacific Island States", *International Journal of Marine and Coastal Law*, Vol. 16(3), pp. 379-431

³ The MHLC process was conducted over seven sessions between December 1994 and September 2000

international fisheries management arrangement especially in the light of the UNFSA. The parties to the MHLN negotiations included independent States, territories and dependencies of the western and central Pacific Ocean and distant water fishing nations (DWFNs) fishing in the region.

The paper provides an overview of the WCPFC and issues pertaining to its implementation. The tuna fishery of the WCPO is described followed by a discussion of the main features of the Convention. Some issues that are likely to arise in the implementation of the Convention are highlighted. The paper concludes that in spite of uncertainties with regards to the WCPFC, the Convention provides a comprehensive framework for the conservation and management of the WCPO's tuna resource.

2. THE TUNA FISHERY OF THE WESTERN AND CENTRAL PACIFIC OCEAN

The tuna fisheries of the WCPO is the largest in the world with an estimated annual catch between 1.5 million mt to 2.0 million mt, comprising four principal species including skipjack tuna (*Katsuwonus pelamis*), yellowfin tuna (*Thunnus albacares*), bigeye tuna (*Thunnus obesus*) and albacore tuna (*Thunnus alalunga*).

In 2001 the tuna catch in the WCPO represented 75% of the total estimated Pacific Ocean catch (2,564,213 mt) and 49% of the provisional estimate of world tuna catch (3,863,435 mt) of the four species. The fishery until now has remained relatively safe from overexploitation, although scientists have concluded from their assessment of the status of the stocks that at least two of the four tuna species (bigeye and yellowfin) are being exploited at levels that are considered to be unsustainable⁴.

Managing the tuna fishery is a challenge because the species are highly migratory and are caught by a variety of gears. During 2001, the principal gears include purse seine (56% of the total catch), pole-and-line (17%), longline fishery (13%), troll and a variety of artisanal gears mostly in Indonesia and the Philippines. Both troll and a variety of artisanal fishing gear took about 14% of the catch (Lewis and Williams 2002). Figure 1 indicates the total catch taken by each gear from 1972 – 2001.

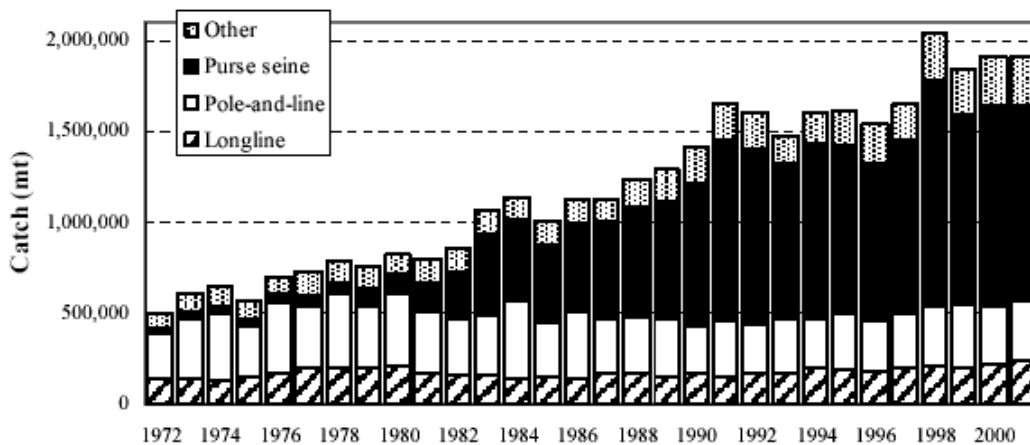


Figure 1. Catch (mt) of albacore, bigeye, skipjack and yellowfin in the WCPO, by longline, pole-and-line, purse seine and other gear types. (With permission from Lewis and Williams, 2002)

The highly migratory nature of the stocks coupled with oceanic and climatic conditions, in particular the El Niño Southern Oscillation Index (ENSO) ensures a highly mobile fishing fleet that move in and out of the EEZs of the Pacific Island countries (Lewis and Williams, 2002).

Unlike other oceans, fishing in the WCPO is carried out mostly within the EEZs of the Pacific Island countries and territories. Many of these countries and territories have little alternative natural resources for economic and social livelihood and depend entirely on the sustainable harvesting of the tuna resource.

⁴ Conclusion of the fifteenth meeting of the Standing Committee on Tuna and Billfish held in Honolulu, 22-27 July 2002.

The need for a regional fisheries management organisation for the WCPO underscores the importance of cooperation in the management of the region's tuna resource. Without such an organisation, it would not be possible to control fishing effort particularly on the high seas and could result in the overexploitation of the tuna stocks. The conclusion of the WCPFC merely represents a cooperative effort to prevent the overexploitation of the resource.

3. THE MAJOR FEATURES OF THE CONVENTION

The WCPFC establishes a framework through which coastal States within the Convention Area and States whose nationals fish for highly migratory fish stocks within the Area cooperate to manage and conserve the tuna stocks. The major principle underpinning the Convention is the long-term conservation and sustainable use of the highly migratory fish stocks in the Convention Area. The Convention sets out institutional arrangements upon which the objective of the Convention can be achieved. It establishes a Commission for the Conservation and Management of Highly Migratory Fish Stocks for the Western and Central Pacific Ocean, and two subsidiary Committees which are charged with providing scientific advice and technical and compliance advice respectively. It also prescribes explicit rules with regards to conservation measures to be determined by the Commission, and rules appertaining to enforcement of those measures.

The geographic area over which the Commission will have regulatory powers is broad and includes the areas (see Figure 2):

“From the south coast of Australia due south along the 141° meridian of east longitude to its intersection with the 55° parallel of south latitude; thence due east along the 55° parallel of south latitude to its intersection with the 150° meridian of east longitude; thence due south along the 150° meridian of east longitude to its intersection with the 60° parallel of south latitude; thence due east along the 60° parallel of south latitude to its intersection with the 130° meridian of west longitude; thence due north along the 130° meridian of west longitude to its intersection with the 4° parallel of south latitude; thence due west along the 4° parallel of south latitude to its intersection with the 150° meridian of west longitude; thence due north along the 150° meridian of west longitude”⁵.

⁵ Article 3; Convention on Conservation and Management of the Highly Migratory Fish Stocks in the Central and Western Pacific

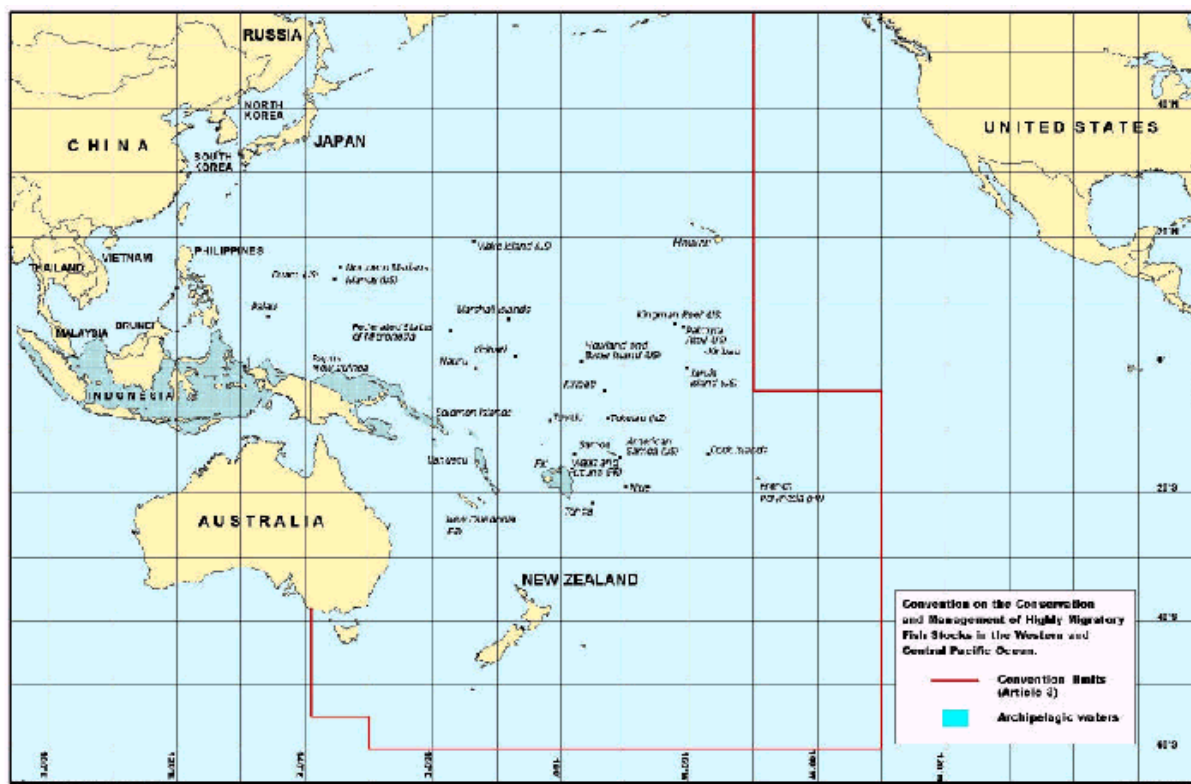


Figure 2: The Convention Area (From Chairman’ Report MHL7)

The geographic scope of the Commission’s powers reflect the need to ensure broad coverage of the tuna stocks both in terms of the collection of data for scientific purposes, and also with respect to the management of the stocks throughout their migratory range.

The WCPFC is to be applied and implemented in accordance with and consistent with the 1982 United Nations Convention on the Law of the Sea (LOSC) and the UNFSA.

3.1 Principles and measures for conservation and management

The WCPFC imposes an obligation on members of the Commission and Parties to the Convention to apply conservation and management principles in the management of the tuna stocks. The broad approach to management under the new arrangement reflect a desire to take a more holistic approach towards fisheries management in the region. These principles include, *inter alia*, the application of the precautionary approach, the adoption of measures to ensure the long-term sustainability of stocks in the Convention Area, assessment of the impacts of fishing, other human activities and environmental factors on target stocks, non-target stocks and species belonging to the same ecosystem, and adoption of measures to minimise waste, discards, catch by lost or abandoned gear, pollution originating from fishing vessels, and catch of non-target species.

3.2 Institutional and Administrative Arrangements

Part II of the WCPFC provides for the institutional structure of the organisation. It contains provision for the establishment of the Commission, provision of scientific information and advice and the institutional arrangements

such as the Secretariat, budget, transparency and cooperation with other organisations and the important issue of decision making.

The functions of the Commission include, *inter alia*, determining the allowable catch or total level of fishing effort within the Convention Area and adopting standards for the collection and timely exchange of data on fisheries in the in accordance with Annex I of the UNFSA. Two subsidiary bodies are established. These are the Scientific Committee and Technical and Compliance Committee. A special Committee is provided for the area north of the 20⁰ parallel of north latitude. The purpose of the Northern Committee is to make recommendations on the implementation of conservation and management measures adopted by the Commission for stocks that occur mostly in the area.

The Convention establishes a Secretariat with staff to be appointed on the basis of their scientific and technical qualifications. Funds are to be drawn from assessed contributions, voluntary contributions and such other funds as the Commission may establish. The Commission is to promote transparency in its decision-making and cooperate with other organisations.

3.3 Decision-Making

One of the most innovative clauses agreed to by the MHCL was the provision on decision-making. This was to ensure that the decisions regarding conservation and management are not unduly obstructed by technicalities of the process in reaching decisions. As a general rule decisions made by the Commission shall be made by consensus. Unless otherwise provided for in the Convention, the Commission can vote to reach decisions if all attempts to reach a consensus have failed.

Where a question is procedural, a simple majority vote will carry the decision through, however, where the question is one of substance the Convention establishes a two chambered voting system consisting of members of the South Pacific Forum Fisheries Agency (FFA) and non-FFA member countries to decide. The system ensures a fair balance and avoid the situation where one group could dominate the other because of its numerical superiority. The WCPFC provides that decisions on questions of substance is to be taken by three-fourth of the parties present and voting, provided that such majority include three-fourth majority of the members of the FFA present and voting and three-fourth of the majority of the non-members of FFA present and voting. A proposal cannot be defeated by two or fewer votes in either chamber.

3.4 Obligations of members of the Commission and Enforcement

To ensure the effectiveness of the Convention and measures adopted by the Commission, Part IV stipulates the obligations of members of the Commission. Each Commission member is obliged to promptly implement the provisions of the Convention including any conservation and management measures agreed pursuant to the Convention. Members of the Commission are required to provide statistical and other biological data and information relating to the implementation of the Convention.

A number of enforcement and compliance mechanisms can be found in the Convention. It provides for flag States to exercise effective control over their vessels. In particular, each member of the Commission has a duty to ensure vessels flying its flag comply with the provisions of the Convention and conservation and management measures agreed by the Commission. Further, flag States are to ensure its vessels do not engage in unauthorised fishing in areas under national jurisdiction. The use of satellite fixing devices is a Flag State responsibility. The WCPFC provides that each member of the Commission must require its fishing vessels to use near real-time satellite position fixing transmitters. As to who receive the reports, the provision states that the Commission, directly, and simultaneously with the flag State shall receive information from the vessel monitoring system.

Specific procedures for dealing with vessels that have fished illegally in the Convention Area are also stipulated in the Convention. One new provision is the use of trade based measures to deal with illegal fishing. The Commission is empowered to develop procedures for non-discriminatory trade measures to be taken, consistent with the international obligations of members of the Commission. The WCPFC provides for boarding and inspection of

vessels on the high seas. It departs, however, from the UNFSA by reversing the obligation to apply the procedures stipulated in articles 21 and 22 of the Agreement within two years of the entry into force of the WCPFC.

The Convention establishes a regional observer programme and regulates transshipment. Generally transshipment is to be conducted in port. The exception is where the Commission authorises high seas transshipment, which is to happen only in accordance with procedures developed by the Commission.

The enforcement provisions of the WCPFC builds on the UNFSA which fundamentally transforms the customary rule of international fisheries law that only the flag State can enforce conservation and management regulations on the high seas. The WCPFC enables the Parties to board fishing vessels other than their own in the Convention Area. This paradigm shift in international fisheries law reflect the lack of confidence in flag States as the sole enforcement authority on the high seas.

4. IMPLEMENTING THE WCPFC: ISSUES AND CHALLENGES

The WCPFC represent the third generation in the common gene pool of international fisheries agreements. It builds on the LOSC and the UNFSA. However, it leaves many practical but important areas for the interpretation of the Parties or the determination of the Commission. This will obviously give rise to interpretational problems in the future. The effectiveness of the WCFPC will depend on the extent to which the Parties are prepared to reach compromises on conservation and management measures for stocks over which the Commission will be charged with managing. The record of other international fisheries organisations has not been very encouraging. However, the WCPFC has been constructed in a way that avoids the problems of traditional international fisheries management organisations. It remains to be seen though whether these carefully crafted provisions which build on new principles of international environmental law will be given practical effect in a way that ensures the effectiveness of the Commission.

Already there are indications that two of the principal tuna stocks taken in the region (bigeye and yellowfin) are showing signs of overexploitation. This underscores the importance of getting the Commission established as soon as possible. The concerns with respect to the biological state of bigeye and yellowfin is reflected in Resolution I of the Seventh and ultimate session of the MHLC which called on the Preparatory Conference to seek provisional scientific advice on the status of skipjack, yellowfin and bigeye tuna stocks and the South Pacific albacore stock and if necessary, recommend such conservation and management measures, including provisional harvest level, pending the entry into force of the Convention to ensure the long-term sustainability of stocks within the Convention Area. The implementation of the WCPFC is being undertaken pursuant to Resolution I of the Seventh Session of the MHLC which establishes the Preparatory Conference for the Establishment of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

4.1 The Preparatory Conference

The broad parameters of the work of the Preparatory Conference is to: -

- prepare draft rules of procedure of the Commission;
- prepare draft rules, regulations and procedures, as necessary, to enable the Commission to commence its functions, including draft regulations concerning the financial management and internal administration of the Commission;
- prepare the provisional agenda for the first meeting of the Commission and, as appropriate, make recommendations relating to items thereon;
- make recommendations concerning the Secretariat of the Commission in accordance with the relevant provisions of the Convention;
- make recommendations concerning the establishment of the headquarters of the Commission; and

- make recommendations concerning the budget for the first financial period of the Commission, including recommendations for a scheme for contributions to the budget in accordance with article 18, paragraph 2, of the Convention.

The Preparatory Conference is also charged with providing operational and technical input into a number of practical areas. These include: -

- the implementation of articles 11, 12, 13 and 14 of the Convention;
- the collection of data and information in accordance with article 23, paragraph 2 (a) and (b), of the Convention;
- the establishment of a record of fishing vessels in accordance with article 24, paragraph 7, of the Convention;
- the implementation of article 24, paragraphs 8, 9 and 10, of the Convention;
- the implementation of article 30, paragraph 3, of the Convention;
- make recommendations concerning the relationship between the Commission and existing regional institutions concerned with conservation and management of highly migratory fish stocks; and

The Preparatory Conference has met twice over the past eighteen months to address issues identified by the MHLC. Three working groups have been established to look at the institutional and organisational arrangements for the Commission, data and scientific needs of the Commission and how these can be facilitated and monitoring, control and surveillance (MCS). The working groups will report to the Preparatory Conference, which will eventually make specific recommendations to the Commission once it is established.

4.2 Issues and Challenges

The WCPFC seeks to ensure the conservation of the stocks and in particular to ensure that stocks are not overexploited by uncontrolled high seas fishing. No where is the tuna resource more important than for the Pacific Island countries both in terms of food security and economic development. Arguably, abundant stocks add value to the resource in the region.

The WCPFC will impose limits on the amount of fish that can be taken, and limits on who can have access to the tuna resource. Because of these limits, it may be argued that access to the resource will become scarce resulting in substantial increase to the value of the resource. In respect of defining rights, it is noted that -

Currently, Island States exercise sovereign rights over the exploitation of tuna in their EEZs from the point of view of international law, but the exercise of those rights in economic terms to secure benefits is weakened by the lack of definition of those rights. At present, the rights are not unique, but are to a large degree overlapping and substitutable in the sense that tuna not caught in one zone can be caught elsewhere. For this reason, there are limits to the extent to which rights can be exercised at the national level, and so over time FFA States have built up a regional framework for strengthening the exercise of those rights. When the Commission moves to national allocations of fishing, whether in the form of catch quotas or effort limits, the extra definition that the allocation process will give will add additional strength and value to the exercise of those rights at the national level, because whatever process of allocation is used, an FFA State should end up with a right to a measured volume of fish that it will be able to exercise in much more powerful way – whether it passes those rights on to its nationals or whether it enters into arrangements with foreign fishing interests.⁶

The WCPFC is, however, also threatening because as a result of the negotiations process, the text includes ambiguities and conflicts over key issues about how the tuna resource will be managed especially with regards to the

⁶ Les Clark, “The Convention and National Fisheries Management”, (Paper presented at the FFA/ADB Workshop on the Implementation of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, Apia, Samoa, 23-27 October 2000, Forum Fisheries Agency Report No. 00/21, Honiara, FFA, 2000)

relative jurisdictions of the new Commission and the Pacific Island countries. Furthermore, the WCPFC is also threatening because it puts the Pacific Island countries into a cooperative relationship with stronger and much wealthier parties, some of whom will want to take away some of the control held by the Pacific Island countries over the tuna resource.

One of the key challenges will be to ensure the effective participation of Small Island developing States (SIDS) in the work of the Commission and its subsidiary bodies. While provision is made for assistance to Small Island developing States in the WCPFC, practical effect must be given to these provisions by way of technical and financial assistance to allow SIDS to actively engage in the work of the Commission.

5. CONCLUSION

The crisis in international fisheries has been brought about because of the failure of States to comply with their international legal obligations. Generally, the status of the tuna stocks in the WCPO has been healthy largely due to the robustness of the resource rather than sound management. Because of the relative health of the stocks, there has been little pressure on the Pacific Island countries to impose limits on the amount of tuna that can be taken in any given year. The experience worldwide, however, has shown that uncontrolled fishing inevitably results in overfishing. The stakes for the Pacific Island countries if this were to occur would be very high because of their overwhelming dependence on tuna.

The WCPFC represents a new chapter in the conservation and management of tuna resource in the region. While the WCPFC provides new economic opportunities by strengthening the way in which the tuna resource is managed and harnessed, it is also threatening because some fishing States might want to use it to take away the control Pacific Island countries have over the tuna resource.

The conclusion of the WCPFC is only the beginning of new challenges for Pacific Island countries. Its implementation however should augur well for the health of the tuna resource in the region.

6. REFERENCE

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