

# Indonesia pole-and-line and handline, skipjack and yellowfin tuna of Western and Central Pacific archipelagic waters

## MSC Notice of Objection

### 1 Introduction

The MSC Objection Procedure provides an orderly, structured, transparent and independent process by which stakeholder or client objections to the Final Draft Report and determination of a certifier (or Conformity Assessment Body) can be resolved.

The Objection Procedure is not intended to review the fishery against the MSC Fisheries Standard, but to determine whether the certifier (CAB) made an error of procedure, scoring, or condition setting that is material to the determination or the fairness of the assessment.

[Learn more about MSC objections >](#)

Please complete all unshaded fields. All grey boxes containing instructions may be deleted, e.g., the 'Introduction' section. All notes and guidance indicated in *italics*, please delete and replace with your specific information.

The MSC Notice of Objection Template should be completed and sent to [objections@msc.org](mailto:objections@msc.org). Please ensure you will complete Sections 2.1 and 2.2 from this template. Depending on the selected objection category in Section 2.3, complete Section(s) 2.4-2.7 accordingly.

Information on objection costs and the MSC Objection Fee Cost Waiver Form can be found in the appendices.

## 2 Marine Stewardship Council Notice of Objection

### 2.1 Your details


**Table 2.1.1 – Contact details**

1	Contact name	
	First*	Last*
	Maurice	Brownjohn
2	Title	
	Mr	

**Table 2.1.2 – Organisation details**

1	Organisation*
	- Please enter the legal or registered name of your organisation or company.
	Parties to the Nauru Agreement (PNA)
2	Department
3	Job title*
	Commercial Manager
4	Description
	- Please provide a short description of your organisation.
	Parties to the Nauru Agreement is the management organisation responsible for coordinating management policy in the Economic Exclusive Zones of 9 Pacific Island countries/Territories . This includes the monitoring and administration of the PNA Vessel Day Scheme
5	Phone
	+ 61 478 874 959
6	Email*
	<a href="mailto:Maurice@pnatuna.com">Maurice@pnatuna.com</a>

**Table 2.1.3 – Assessment details**

1	Fishery name*
	Indonesia pole-and-line and handline, skipjack and yellowfin tuna of Western and Central Pacific Archipelagic Waters
2	CAB*
	SAI Global
3	The following objection is being lodged on behalf of the above-named organisation(s) and I am authorised to make this submission on their behalf*
	- Signature*
	

## 2.2 Objecting party's involvement

**Table 2.2.1 – Prior involvement**

Please indicate your prior involvement with this assessment	
Fishery client – FCP v2.1 Annex PD2.3.1.a	<b>No</b>
Written stakeholder submissions - FCP v2.1 Annex PD2.3.1.b	<b>Yes</b>
Meetings attended - FCP v2.1 Annex PD2.3.1.b	<b>Yes</b>
Participation prevented or impaired - FCP v2.1 Annex PD2.3.1.c	<b>No</b>

**Table 2.2.2 – Evidence**

1 Supporting evidence of prior involvement in the assessment	
<p>- Provide evidence and/or outline details to support this classification.</p>	
<p>PNA made a submission using the MSC Announcement Comment Draft Report (Stakeholder Input) template <a href="https://fisheries.msc.org/en/fisheries/indonesia-pole-and-line-and-handline-skipjack-and-yellowfin-tuna-of-western-and-central-pacific-archipelagic-waters/@_assessments">https://fisheries.msc.org/en/fisheries/indonesia-pole-and-line-and-handline-skipjack-and-yellowfin-tuna-of-western-and-central-pacific-archipelagic-waters/@_assessments</a>. The submission, also contained in the CABs Final Report and Determination pp 304-313, was made on 7 February 2020. The submission was made in response to the ACDR report published on 15 January 2020.</p> <p>A site meeting between PNA and the Assessment Team was held on 30 March 2020.</p> <p>Comments were submitted in respect to Legal and Customary Framework 3.1.1a, and Harvest Strategy 1.2.1. The submission also included a Word file (attached), with the same contents.</p> <p>Jo Gascoigne, SAI Global, sought further clarification on data received on Indonesian Catch data and clarification was sent on 10 June 2020 (attachment).</p> <p>Public Comment draft Report was published on 29 September and PNA's Stakeholder response, submitted 28 October 2020 (See pp 314-316).</p> <p>PNA raised its concerns in respect to the scoring of 3.1.1, with the submission stating that SG 60a (<i>There is an <u>effective</u> national legal system</i>) had not been met.</p>	
2 Background	
<p>- State here your interest in the fishery and it's certification.</p>	
<p>PNA made a submission using the MSC Announcement Comment Draft Report (Stakeholder Input) template <a href="https://fisheries.msc.org/en/fisheries/indonesia-pole-and-line-and-handline-skipjack-and-yellowfin-tuna-of-western-and-central-pacific-archipelagic-waters/@_assessments">https://fisheries.msc.org/en/fisheries/indonesia-pole-and-line-and-handline-skipjack-and-yellowfin-tuna-of-western-and-central-pacific-archipelagic-waters/@_assessments</a>. The submission, also contained in the CABs Final Report and Determination pp 304-313, was made on 7 February 2020. The submission was made in response to the ACDR report published on 15 January 2020.</p> <p>A site meeting between PNA and the Assessment Team was held on 30 March 2020.</p> <p>Comments were submitted in respect to Legal and Customary Framework 3.1.1a, and Harvest Strategy 1.2.1. The submission also included a Word file (attached), with the same contents.</p> <p>Jo Gascoigne, SAI Global sought further clarification on data received on Indonesian Catch data and clarification was sent on 10 June 2020 (attachment).</p>	

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PNA raised its concerns in respect to the scoring of 3.1.1, with the submission stating that SG 60a (*There is an effective national legal system*) had not been met.

## Background

- State here your interest in the fishery and its certification.

PNA is a major stakeholder in the Western and Central Pacific Ocean tuna fishery. It operates the Vessel Day Scheme which is an input control that restricts the effort of around 250 purse seiners targeting skipjack, yellowfin and bigeye tuna in the EEZs of the Western and Central Pacific Ocean. A description of the PNA VDS can be found on Page 71 of the Assessment report. The Limits are set out in Para 25 of WCOFC CMM 2018-01, and Attachment 1 Table 1 (EEZ purse seine effort limits).

PNA's involvement in this assessment is that it seeks to ensure that the tuna fisheries for which its vessels depend are sustainable. Management measures are laid down in the WCPFC Tropical Tuna measure, the last version being CMM 2018-01, which require all WCPFC Cooperating Members to implement effective management measures in conformity with the limits set. PNA is challenging the pole-and-line and handline assessment because there is no evidence of effective measures having been implemented by Indonesia, the result of which is against the requirements of the measure and which if not implemented, places a disproportionate burden on PNA to implement controls. It is also a concern that whilst PNA has ensured that vessel effort on the target species is sustained through the VDS, Indonesia's fisheries catch has continually increased, which is against the requirement that total catches by specified fisheries should not increase.

Two assessments of Indonesian fisheries have preceded this assessment:

1. PT Citraraja Ampat, Sorong pole and line Skipjack and Yellowfin Tuna, November 2018. Available at <https://fisheries.msc.org/en/fisheries/pt-citaraja-ampat-sorong-pole-and-line-skipjack-and-yellowfin-tuna/@@assessments>.

At the PCDR stage, WWF made the comment in respect of 3.1.1 that; *We do not believe that (national legal system) is demonstrably effective.*

The following Condition raised was:

By the fourth annual surveillance, the client must be in a position to demonstrate that the SG80 requirements have been met: a) There is an effective national legal system and organised and effective cooperation with other parties to deliver management outcomes consistent with MSC Principles 1 and 2. Refer MSC CRv2.0 SA4.3.3 and SA4.3.3.2

The associated Milestone 1 was:

By the first annual surveillance i) a summary of current mechanisms and options for harvest controls in AW (including, but not limited to, how the number of vessel licenses issued annually relates to scientific advice on catching opportunity in Indonesian waters) and ii) a plan setting out the approach and timescale to be used in developing and implementing a HS and HCR for Indonesian AW.

This has been determined by the CAB to be behind target (<https://fisheries.msc.org/en/fisheries/pt-citaraja-ampat-sorong-pole-and-line-skipjack-and-yellowfin-tuna/@@assessments>)

2. North Buru and Maluku Fair Trade Fishing Associations, Indonesian Handline Yellowfin Tuna, 11 May 2020, Available at <https://fisheries.msc.org/en/fisheries/north-buru-and-maluku-fair-trade-fishing-associations-indonesian-handline-yellowfin-tuna/@@assessments>.

PNA made the submission, this time at both the ACDR and PCDR stage, citing once again that no such compatible and/or effective measures are being applied in these Indonesia UoAs.

The following Condition was raised:

By year four the client shall present evidence that **there is an effective** (underlining ours) national legal [and/or customary framework] system and organised and effective cooperation with other parties, where necessary, to deliver management outcomes consistent with MSC Principles 1 and 2.

We are acutely aware that 2 other CABs have already reached the same scoring decision and that as part of the Review processes, neither the Peer Review college nor the MSC Technical Oversight Review raised concerns on the scoring of 3.1.1a. While the CAB in this assessment may point to these earlier decisions, we would note the scoring in these prior assessment has gone unchallenged at the objection stage. We would argue that to consider the scoring as that which another CAB could reasonably be expected arrive at has not been tested and a decision as to the 'reasonableness' presumption is warranted.

PNA has consistently challenged the scoring in all three assessments at ACDR and PCDR stage and maintains the decisions taken by all three assessments were unreasonable. PNA now proposes to seek a determination that the scoring by SAI Global, like the other CABs, was unreasonable. It's decision to proceed with the objection is to seek a determination on the scoring because:

- (1) PNA believes that the standard requirements for 3.1.1a (Fisheries Certification Standard V2-01) has not been interpreted correctly
- (2) The CAB, SAIGlobal, did not adequately address PNA's concerns at PCDR stage
- (3) The P3 assessor for both the Maluku handline and AP2HI pole and line and handline assessments was the same, and we maintain has is both assessments scored unreasonably
- (4) The PT Citraraja Ampat annual surveillance has determined that Milestone 1 to the Condition is behind time, raising the concern that the Indonesian Government poor progress in implementing effective measures demonstrates a lack of commitment to responding to the Condition requirements. It should be noted that these conditions, which are the same in all three assessments, were used as leverage to stave off objections to earlier assessments.
- (5) The MSC Technical Oversight processes were inadequate

## 2.3 Your objection

**Table 2.3.1 – Objection category**

Are you objecting on the basis that, in your opinion... (please select any that apply)	
There was a serious <b>procedural</b> or other irregularity in the fishery assessment <b>process</b> that was material to the fairness of the assessment (FCP v2.1 Annex PD2.8.2.a). <a href="#">Complete Section 2.4.</a>	<b>No</b>
The setting of <b>conditions</b> by the certifier (CAB) in relation to one or more Performance Indicators cannot be justified because the conditions fundamentally cannot be fulfilled, or the <b>condition-setting decision</b> was arbitrary or unreasonable in the sense that no reasonable certifier (CAB) could have reached such a decision on the evidence available to it (FCP v2.1 Annex PD2.8.2.b). <a href="#">Complete Section 2.5.</a>	<b>No</b>
The <b>score</b> given by the certifier (CAB) in relation to one or more of the Performance Indicators cannot be justified, and the effect of the <b>score</b> in relation to one or more of the particular Performance Indicators in question was material to the determination (FCP v2.1 Annex PD2.8.2.c). <a href="#">Complete Section 2.6.</a>	<b>Yes</b>
<b>Additional information</b> not forming part of the record (FCP v2.1 Annex PD2.7.5.a) that is relevant to the circumstances at the date of determination has not been considered (FCP v2.1 Annex PD2.8.3). <a href="#">Complete Section 2.7.</a>	<b>No</b>



## 2.4 Process

Objection in line with FCP v2.1 Annex PD 2.8.2.a.

Please ensure you have filled in your [contact details \(Section 2.1\)](#) and [objections category \(Section 2.3\)](#) before filling in this section.

**Table 2.4.1 – Content**

1	Procedural issues
	<ul style="list-style-type: none"><li>- State here the procedure(s) that you or your organisation believes were omitted or incorrectly followed by the certifier in the conduct of this assessment, in relation to the version of the FCP used.</li></ul>
2	Other
	<ul style="list-style-type: none"><li>- State here any other irregularity in the fishery assessment process that you or your organisation believes was material to the fairness of the assessment.</li></ul>
3	Effect on the determination
	<ul style="list-style-type: none"><li>- Please state why you or your organisation believes that the failure of the CAB to follow procedures has significantly affected the result of the determination such that the determination should be altered.</li></ul>

## 2.5 Conditions

Objection in line with FCP v2.1 Annex PD2.8.2.b.

Please ensure you have filled in your [contact details \(Section 2.1\)](#) and [objections category \(Section 2.3\)](#) before filling in this section.

Listing the conditions placed on the relevant Performance Indicator(s) and, using the template below, please clearly identify –

- a. The reason(s) why you or your organisation believes that the condition assigned to the Performance Indicator(s) and CAB review of the Client Action Plan within the Final Draft Report cannot be justified because it cannot fundamentally be fulfilled within the allocated time frame; or,
- b. The reason(s) why you or your organisation believes the condition setting decision was arbitrary or unreasonable in the sense that no reasonable certifier (CAB) could have reached such a decision on the evidence available.

Please repeat the table below as needed for each Performance Indicator and condition to be included in the objection.

**Table 2.5.1 – Conditions**

1	Performance Indicator
	- Please enter the Performance Indicator. E.g.: PI 1.1.2, Stock Rebuilding
2	Condition
	- Enter the condition, as stated in the Final Draft Report.
3	Reason
	- Enter reason in line with (a) and (b) above.
4	Supporting justification
	- Please enter supporting justification for the reason(s) above.

## 2.6 Scoring

Objection in line with FCP v2.1 Annex PD2.8.2.c.

Please ensure you have filled in your [contact details \(Section 2.1\)](#) and [objections category \(Section 2.3\)](#) before filling in this section.

Listing the conditions placed on the relevant Performance Indicator(s) and, using the template below, please clearly identify –

- The reason(s) you or your organisation believes that the score(s) presented within the Final Draft Report cannot be justified; and,
- Your rationale and/or evidence in support of a different conclusion, making reference to the particular Performance Indicator in question.

Please repeat the table below as needed for each Performance Indicator and condition to be included in the objection.

**Table 2.6.1 – Scoring**

1	Performance Indicator
	- Please enter the Performance Indicator. E.g.: PI 1.1.2, Stock Rebuilding
	<u>Error in scoring</u> 3.1.1 Legal and Costmary Framework 3.1.1a
2	Reason
	- Enter reason in line with (a) and (b) above.
	<p>The CAB has not demonstrated that there is an effective national legal system in place.</p> <p>We refer to:</p> <p>(1) A basic understanding of the word 'effective'</p> <ul style="list-style-type: none"> <li><b>Cambridge Dictionary</b>, internet version, definition of 'effective': <u>"successful or achieving the results that you want"</u></li> <li><b>Merriam Webster Dictionary</b>, internet version, definition of 'effective': <u>producing a decided, decisive, or desired effect</u></li> <li><b>Collins dictionary</b> Something that is '<b>effective</b>' <u>works well and produces the results</u></li> </ul> <p>(2) SA 4.3.3 (pp 67 MSC FS v2.01); <i>The team shall interpret across SGs 60, 80 and 100 that "effective national legal system" means that the client can provide objective evidence that most of the essential features and elements needed to deliver sustainable fisheries are present in: A coherent, logical set of practices or procedures, or Within a coherent, logical supporting 'rule-making' structure</i></p> <p>(3) GSA4.3 pp 103, <i>assessment teams should focus on the existence of a national and/or international framework itself and if it is capable of delivering sustainable fisheries, including through management cooperation where required. This may be determined by examining:</i></p> <p><i>The presence or absence of the <u>essential features</u> of an appropriate and effective structure within which management takes place. The essential features needed to deliver sustainable fisheries are defined by their relevance to achieving sustainable fisheries in accordance with P1 and P2 appropriate to the size and scale of the UoA and may include establishing when and where people can fish, Who can fish, How much they can catch, What they can catch.</i></p>

	<p>(4) MSC Scoring guidance that requires: <i>There is an effective national legal system... <u>to deliver management outcomes consistent with MSC Principles 1 and 2</u></i></p> <p>(5) Article 8 of the WCPFC Convention requires that “<i>Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of highly migratory fish stocks in their entirety, and the coastal State shall ensure that the measures adopted and applied by it to highly migratory fish stocks within <u>areas under its national jurisdiction do not undermine the effectiveness of measures adopted by the Commission under this Convention in respect of the same stocks</u>”.</i></p> <p>(6) CMM 2018-01, and preceding Tropical Tuna Measures from 2013 onwards. This CMM states that:</p> <ul style="list-style-type: none"> <li>– “<i>Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of bigeye, skipjack, and yellowfin tuna stocks in their entirety.</i></li> <li>– <i>Measures shall ensure, at a minimum that stocks are maintained at levels capable of producing maximum sustainable yield, pending agreement on target reference points as part of the harvest strategy approach, as qualified by relevant environmental and economic factors including the special requirements of developing States in the Convention Area as expressed by Article 5 of the Convention.</i></li> <li>– <i>Coastal states are encouraged to take measures in archipelagic waters and territorial seas which are consistent with the objectives of this Measure and to inform the Commission Secretariat of the relevant measures that they will apply in these waters”.-</i></li> <li>– <i>CCMs shall take necessary measures to ensure that the total catch of their respective other commercial tuna fisheries for bigeye, yellowfin or skipjack tuna, but excluding those fisheries taking less than 2,000 tonnes of bigeye, yellowfin and skipjack, shall not exceed either the average level for the period 2001-2004 or the level of 2004 (Para 51).</i></li> </ul> <p>(7) FAO’s definition of Measures – To a well qualified P3 assessor how much they can catch is defined by a combination of measures (<a href="http://www.fao.org/3/w4230e07.htm">http://www.fao.org/3/w4230e07.htm</a>). These include technical measures, which are restrictions or constraints to regulate the output which can be obtained from a specified amount of effort, for example gear restrictions, closed seasons and closed areas. Input controls directly regulate the amount of effort which can be put into a fishery. In general, inputs are more easily monitored than outputs; and Output controls directly regulate the catch</p> <p>We argue the assessors do not demonstrate that most of the essential features and elements needed to deliver sustainable fisheries are present on the following grounds:</p> <ol style="list-style-type: none"> <li>(1) The description of actions taken are more aspirational than actual in the elements that would contribute directly to the realization of P1 and P2 outcomes.</li> <li>(2) The Assessment does not provide evidence of compatibility or compliance - demonstrable compliance with CMMs of the WCPFC as required by Article 8 of the WCPFC Convention</li> <li>(3) Several elements (e.g., options listed under the interim harvest strategy document) at the national level are still in the planning stage and are not able to demonstrate effectiveness in delivering sustainable outcomes consistent with P1 and P2</li> <li>(4) Key features of effectiveness (GSA4.3) are not in place (due to poor data quality, How much they can catch i.e absence of any measures such as input and output control measures), the management exemption of the &lt;5GT vessels ).</li> <li>(5) Rather than controlling effort and catch on key tuna species skipjack, yellowfin and bigeye), a specific requirement the WCPFC Tropical Tuna measure (WCPFC CMM 2018-01), Indonesian fisheries have continued to increase their catches.</li> </ol>
3	Supporting rationale and or evidence
	- Please enter here the supporting rationale for the reason(s) above.
	The text below represent extracts from the Final Report and Determination for the Indonesia pole-and-line and handline, skipjack and yellowfin tuna of Western and Central Pacific archipelagic waters and each of these are followed by comment by the PNA

## 1. Aspirational Management Actions

*"An interim harvest strategy for tropical tuna in Indonesian archipelagic waters compatible with CMM 2018-01 on the Conservation and Management Measures for bigeye, yellowfin and skipjack tuna in the WCPO was recently developed but has not yet been fully implemented." (pp 237)*

*"In the interim harvest strategy framework document, it was also identified several possible options for tuna and skipjack tuna fisheries management measures (pp 237) which are:*

- 1. Limit on use of Fish Aggregating Device (FAD).*
- 2. Spatial closure (of important spawning or nursery grounds) and temporal closure (during important events such as spawning).*
- 3. Number of fishing days (per gear, for semi industrial and industrial vessels).*
- 4. Number of vessels– limited entry (per gear; for semi industrial and industrial vessels through licensing, permits, taxing, and royalties).*
- 5. Total Allowable Catch (TAC) limits per Fishery Management Area."*

### **PNA Comments:**

The interim Indonesian harvest strategy was completed in 2018. It contains a list of the possible management options or aspirations, none of these are currently being implemented, and therefore attainment of Principle 1 outcomes (Harvest Control Rules) by Indonesia cannot be demonstrated; and in their absence the requirement of 'effectiveness' is not being demonstrated. We maintain that the fishery cannot demonstrate the following:

- A limited entry licensing scheme, which allows Provinces to allocate licenses but without specified limits to the number of vessels. There are no limits applied to vessels < 5 GT, which make up a significant part of the UoA.
- Specific input (number of fishing days) or output controls (TACs per Fishery Management Area) have not been set for vessels < 30 GT (for the Provinces to manage), or for vessels > 30 GT, for MMAF to manage
- The Limit on FAD, may exist in the form of a regulation but is not applied by the fleets, nor monitored or controlled.
- The spatial closure though defined, is not implemented and has no control mechanism applied to demonstrate its implementation.

## 2. Essential Features required to demonstrate effectiveness

- *"Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of highly migratory fish stocks in their entirety; and*
- *The coastal State shall ensure that the measures adopted and applied by it to highly migratory fish stocks within areas under its national jurisdiction do not undermine the effectiveness of measures adopted by the Commission under this Convention in respect of the same stocks" (pp 210)*

*The fishery takes place in Indonesian Archipelagic Waters where certain elements of the fleet are exempted from large parts of the fisheries management regime (Table 2: Main Strengths and Weaknesses. pp 21). Smaller vessels making up 52% of the total fishing fleets (Halim et al, 2019). Although the compositions of Indonesian tuna fishing fleets are difficult to obtain, it is fair to speculate that the proportion of small-scale fishing boats –especially in eastern Indonesia- are significant. This in long-term could affect the effective management of the tuna fishery in Indonesian and the regions if they are not soon to be properly 'regulated' (pp 227-228).*

Peer Reviewer B States". If the rationale assumes that there is a tool (in the form of limits applied in other fisheries and jurisdictions) and that therefore there is no requirement for limits in Indonesia, then this should be stated clearly".

*Uncertainties in the available catch data remain an issue in this fishery (Table 2: Main Strengths and Weaknesses. pp 21) and Recommendation 2: Several stakeholders expressed concerns about the quality of catch data from some gear types (including handline) from Indonesia in general (as opposed to from these UoAs)*

*Indonesia has also addressed serious and important issue to protect the breeding and spawning grounds for tuna in Banda sea, portion of FMA 714. As informed by the results of years of researches, Indonesian government, through MMAF Minister Regulation No. 4/2015 concerning fishing moratorium in FMA 714 has placed tuna fishing moratorium at the breeding and spawning grounds of tuna fishery (pp 274)*

**PNA Comment:**

There is no evidence of compatible measures having been applied in areas under national jurisdiction. As a Member of WCPFC Indonesia is required to implement compatible management measures in their entirety.

A large proportion of the fleet is under 5 GT and exempt from measures. This handline fleet caught 18,290 MT in 2013, and 85,438 MT in 2018 (WCPFC Statistical Yearbook). Catches (of these <5GT vessels?) are now five times what they were in 2013, when Indonesia joined WCPFC.

In the last 10 years, the overall absence of measures has resulted in the Indonesian tuna catch increasing to 526,438 MT, when the reference point referred to in 2018-01 provides for 406,483 MT (The year 2004). An increase of 119,955 MT.

Evidence of an effective closed area for the Banda Sea was requested as part of the PCDR response from PNA (pp 321), but not produced by the CAB. The CAB has sought to highlight the application the Banda Sea closed area measures as an example, however there is little demonstrable evidence that this measure (1) is being applied effectively (e.g., VMS tracks of all vessels fishing in relevant AW; and (2) is compatible with the measures applied by other WCPFC CCMs. Coincidentally, 201 vessels fishing in the Banda Sea closed area are listed as part of the UoC (pp 44). Aside from an apparent lack of enforcement of the measure, the assessors have not produced any evidence, let alone reliable evidence, of the measure's compatibility or effectiveness.

Actions within the Client Action Plan response to the Condition (5, Milestones 1 and 2) demonstrate that the essential features are not in place and that delivery and implementation of management actions have yet to be considered. Management actions, or essential features of these are specified in GSA4.3 pp 103 - : *establishing when and where people can fish, Who can fish, How much they can catch, What they can catch.* To a management expert, these constitute management measures, namely technical measures, input or output controls – These are specified in a number of FAO documents - <http://www.fao.org/3/w4230e07.htm>. Without these measures in place, the fishery constitutes an open access fishery, with no specified limits in place. Licenses are an entitlement to fish. PNA is not aware of any other specified limits on tuna effort being applied within the FMAs.

3. Coherent, logical supporting 'rule-making' structure, without a coherent, logical set of practices or procedures

Indonesian government manages (controls) fishing activities through fisheries licensing system as stated in Article 27 of Law No. 45/2009 concerning Amendment of Law No. 31/2004 concerning Fisheries. (pp 206)

**PNA Comments:**

Indonesian Law No. 31/2004 and Law No. 45/2009 have been in place for 16 and 11 years respectively, without having been applied. It is not logical to create rule making procedures and then not apply it. Practices and procedures follow the laws set, and the extent of the timeline demonstrates an unwillingness to proceed. It is akin for example to using old data, e.g., more than five years to justify a P1 or P2 scoring outcome. Evidence suggests that the required measures are not being implemented. Note also that despite a binding commitment, since 2013, for the Government of Indonesia to implement measures, the Government of Indonesia is 'behind time' (DNV GL 2020) demonstrating a continued lack of commitment to implement measures.

4. Evidence of compatibility or compliance and Non conformity with required management measures

*As a signatory to WCPF Convention, Indonesian government is bound to WCPFC fisheries CMMs and policies, including that for YFT and SKJ fisheries within the Indonesian EEZ. The Indonesian government should also ensure that YFT and SKJ fisheries measures within its archipelagic waters are compatible with those of WCPFC (pp 210 ). Presidential Regulation No.61/2013 ratified the Convention (pp 212)*

*The Technical and Compliance Committee (TCC) is the “enforcement” committee of the Commission that reviews members’ adherence to Commission decisions and monitors individual countries’ implementation of the conservation and management measures (pp 212)*

*During the recent 16th Regular Session of WCPF Commission in December 2019, the Indonesian delegation has requested for it not to be assessed against these articles as the baseline references used to determine the limit of the total catches are those of 2001-2004 where Indonesia has long before becoming a full member of the WCPF convention, which was in December 2013.” Indonesia requests that CMM not be applied to Indonesian waters, because the dates of determination of these measures have been set at a time when Indonesia was not member of WCPFC (pp 239)*

#### **PNA Comments:**

The Assessment Report fails to mention Indonesia’s WCPFC non-compliance issued with para 51 ‘other commercial fisheries’ issues. The Annual summary reports submitted to the Technical Compliance Committee by Indonesia has consistently demonstrated non-compliance with the requirements to apply *measures to ensure that the total catch of their respective other commercial tuna fisheries for bigeye, yellowfin or skipjack tuna, shall not exceed either the average level, i.e. shall not increase.* Irrespective of the dialogue at the General Session, the application of the management measure is a binding legal requirement. Irrespective of the dialogue at the General Session, the application of the Management measure is a binding requirement, and Indonesia has been shown to be acting in contravention of the requirements of the Convention and the CMM. Failure to apply measures under its national jurisdiction are undermining the overall effectiveness of measures adopted wholly by the Commission.

#### **PNA Concluding comments**

The assessors appear content to certify an open-access fishery operating without the necessary substantive evidence provided for a logical set of practices and procedures (SA 4.3.3) that would support an effective management system. The evidence presented by PNA to the assessors in response to the PCDR clearly indicates that not only does Indonesia fail to comply with the WCPF Convention requirement of compatible measures for its waters under national jurisdiction (Archipelagic Waters) (Article 10), but also the fact that Indonesia has not delivered on the required measures of WCPFC CMM 2018-01 for its ‘other commercial fisheries’ nor additional measures required of participating CCMs.

If this assessment, as the first in Indonesia to be subjected to a formal objections procedure, is passed it will serve to demonstrate that an open-access fishery along with the absence of any control measures can be certified. The fishery management system is also in direct contravention of WCPFC Convention requirements requiring the application of compatible measures. The open-access regime that prevails in this fishery has seen the total Indonesian tuna catch increase over the prescribed limits set, which specifically includes a the handline sector, along with other fishing methods e.g purse seine. This is against the background of the basic requirement of WCPFC to prevent or mitigate the overfishing of bigeye and yellowfin tuna and for members to limit the growth of fishing capacity in the Western and Central Pacific Ocean.

Management Decrees may have been introduced at national level, Law No. 31/2004 and Law No. 45/2009 (A Rule Making Structure (SA 4.3.3)) but in the 11 years since Law 45/2009, there has been no demonstration of ‘essential features’ (SA 4.3.34) applied or if applied, are not sufficiently robust (e.g data collection). Essential features are required in order to deliver sustainable fisheries’ aconsistent with the requirements of Principle 1 and 2. It is our interpretation that essential features means that the CAB would need to demonstrate, using clear evidence, that management control rules and tools and monitoring systems are in place in Indonesia, and are effective. These would need to include due reference measures including a comprehensive restrictive entry licensing scheme for all Indonesian fishing groups, without exemptions (e.g., vessels under 5 GT, which make up a significant proportion of the UoA); and either input controls in the form of effort limits, or output controls in the form of quotas. These measures are the bedrock of any effective best practice management system applied across fisheries globally. One would expect that good monitoring systems, such as robust catch recording, would need to be demonstrated as part of delivering that effectiveness, but in attempting to do so, the CAB actually draws attention to weaknesses in catch

monitoring. Notwithstanding this, the CAB has deemed it appropriate that the fishery achieves a score of SG 60 or above, when it is clear that there is not an effective management system in place.

We conclude that the evidence provided in the scoring of 3.1.1.a does not demonstrate that measures are applied, or indeed can be effective. In order to warrant “effective” status, Laws 31 and 45 would have to have been acted upon, and supporting measures have not applied. Under SA 4.3.4.3, the system in place must be able to demonstrate a coherent set of practices and to be coherent, these practices would also have to have demonstrated management outcomes consistent with MSC Principles 1 and 2. Which they do not do. Moreover, we have demonstrated that Indonesia would have to demonstrate that it adheres to WCPFC Convention requirements, which includes applying supporting Commission Conservation Measures, or measures within Archipelagic waters that are deemed to be compatible.



## 2.7 Additional information

Objection in line with FCP v2.1 Annex PD2.8.3.

Please ensure you have filled in your [contact details \(Section 2.1\)](#) and [objections category \(Section 2.3\)](#) before filling in this section.

Using the template below, please list all additional information not forming part of the record (FCP v2.1 Annex PD2.7.5.a) that is relevant to the circumstances at the date of the determination that you feel has not been considered. Be sure to provide the reasons why you or your organisation believes that the information in question:

- a. Was known or should reasonably have been known to any party to the assessment process.
- b. Should reasonably have been made available to the CAB; or,
- c. If considered, could have been material to the determination or the fairness of the assessment.

**Table 2.7.1 – Additional information**

1	Information
	- Please state here the additional information.
2	Reason why information was known or should reasonably have been known.
	- Enter here the reasons why information was known or should reasonably have been known and should have been made available.
3	Reason why information could have been material to the determination or the fairness of the assessment.
	- State here the reasons why information could have been material to the determination or the fairness of assessment.

### 3 Appendix 1 – Costs of the adjudication process (the Fee)

Objectors should note MSC Fisheries Certification Process v2.1 Annex PD2.10 in relation to the costs of the adjudication process.

#### **Fee amount and payment details**

The cost of the adjudication process is £5,000 or such lesser amount fixed by the independent adjudicator under FCP v2.1 Annex PD2.10.4 and PD2.10.5.

The cost of the adjudication process shall be calculated and paid in Great British Pounds.

The MSC will email remittance details for the costs of the adjudication process within five days of the date on which the independent adjudicator notifies the parties that the adjudication phase will commence.

Please ensure the bank charges imposed by your own bank are not deducted from the Fee.

All sums, prices, costs, expenses and revenues referred to under the cost of the adjudication process are inclusive of VAT and any other taxes.

As per FCP v2.1 Annex PD2.10.3, an objection will not proceed to adjudication unless, within 15 days of the date on which the independent adjudicator notifies the parties that the adjudication phase will commence, the objector(s) has either:

- Paid the costs of the adjudication process to the MSC, or
- Obtained a waiver from the independent adjudicator in accordance with FCP v2.1 Annex PD2.10.4 and PD2.10.5.

## 4 Appendix 2 - MSC Objection Fee Cost Waiver Form

### 4.1 Introduction

This form should be completed in accordance with the MSC Objections Procedure (FCP v2.1 Annex PD).

This form may be completed and emailed to the MSC at [objections@msc.org](mailto:objections@msc.org), where it will be forwarded to the Independent Adjudicator.

All information included here in will be kept strictly confidential between the MSC and the appointed Independent Adjudicator.

Objectors should note the following excerpts from the MSC Fisheries Certification Process (FCP) v2.1 on submission of a cost waiver request:

- PD2.10.4 Objectors may apply to the independent adjudicator for the Fee to be waived (in whole or in part) using the application form in the 'MSC Notice of Objection Template'.
- PD2.10.4.1 The objector shall submit the Fee waiver application to the independent adjudicator within 15 days after the date of publication.
- PD2.10.4.2 Such an application shall provide the justification as to why a waiver is sought and shall be accompanied by appropriate evidence to demonstrate exceptional circumstances, including, where available, the objector's most recent audited financial report.
- PD2.10.5 The independent adjudicator shall decide within 5 days of receiving any waiver application whether to refuse the application or to waive the whole or part of the costs that would otherwise be attributed to the objector.
- PD2.10.5.1 A waiver shall only be granted if the independent adjudicator is satisfied that there are exceptional circumstances justifying such a waiver. The onus is on the objector to demonstrate that there are such exceptional circumstances. In determining whether there are exceptional circumstances, the independent adjudicator shall consider:
- Any evidence relating to the financial ability of the objector to meet the costs of the adjudication process.
  - The impact on the objector's other activities of paying the costs of the adjudication process.
  - The ability of the objector to raise funds from external sources, including support from other participants in the assessment process, for the purposes of meeting the costs of the adjudication process.
- PD2.10.5.2 If the independent adjudicator fails to decide on the waiver application within the time frame specified in PD2.10.5, and such failure is attributable solely to the independent adjudicator, the independent adjudicator shall extend the time frame and inform relevant parties of the extension.

Please note that in case of discrepancies between the text above and the Fisheries Certification Process v2.1 on the MSC website, individuals should refer to the Fisheries Certification Process v2.1 on the website.

Please complete all unshaded fields. All notes and guidance indicated in *italics*, please delete and replace with your specific information. All grey boxes containing instructions may be deleted, e.g., the 'Introduction' section.

### 4.2 MSC Objection Fee Cost Waiver Form

#### 4.2.1 Identification detail

**Table 4.2.1.1 – Identification details**

1	Fishery assessment to which this objection applies
	Indonesia pole-and-line and handline, skjack and yellowfin tuna of Western and Central Pacific and Archipelagic Waters.
<b>Contact details for objecting party</b>	
2	Organisation(s)

	PNA
3	Contact person
	Maurice Brownjohn
4	Address
	PNA Secretariat Office, Delap-Uliga-Djarrit, Majuro Atoll 96960, Marshall Islands
5	Phone number
	- Include country code
	+61 478874959
6	Email address
	<a href="mailto:Maurice@pnatuna.com">Maurice@pnatuna.com</a>

The following the following cost waiver is requested on behalf of the above-named organisation(s).

I am authorised to make this submission on the above-named organisations' behalf.

Name: \_\_\_\_\_Maurice Brownjohn\_\_\_\_\_

Position: \_\_\_\_\_Commercial Manager\_\_\_\_\_



Signed: \_\_\_\_\_

Dated: \_\_\_\_\_14 December 2020\_\_\_\_\_

## 4.2.2 Evidence of exceptional circumstances

**Table 4.2.2.1 – Evidence of exceptional circumstances**

1	Any evidence relating to the financial ability of the objector to meet the costs of the adjudication process (FCP v2.1 Annex PD2.10.5.1.a). (FCR v2.0 Annex PD2.9.6.1)
	PNA is financially able to cover the costs of the Adjudication.
2	The impact on the objector's other activities of paying the costs of the adjudication process (FCP v2.1 Annex PD2.10.5.1.b). (FCR v2.0 Annex PD2.6.9.2)
	PNA's issues are that three CABs have made a determination on the scoring of 3.1.1 despite the arguments raised above. The comments and concerns made, first by WWF and thereafter by PNA, to the three Indonesian tuna assessments have been expressed consistently. The peer review and technical oversight process demonstrates that these comments have not been considered or addressed, demonstrating a failure of the oversight processes to identify non conformity in these assessments. Since both the Peer Review College and MSC have failed in their due diligence, PNA has had no alternative to raise these issues and to seek a determination.
3	The ability of the objector to raise funds from external sources, including support from other participants in the assessment process, for the purposes of meeting the costs of the adjudication process (FCP v2.1 Annex PD2.10.5.1.c). (FCR v2.0 Annex PD2.9.6.3)
	NA

## 4.2.3 Appendices

*Please include your organisations most recent audited financial report, and any other relevant supporting documentation.*

## 5 Template information and copyright

This document was drafted using the 'MSC Notice of Objection Template v3.0'.

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Template version control		
Version	Date of publication	Description of amendment
1.0	March 2009	Issued with TAB Directive-023 Revised Fisheries Certification Methodology Objections Procedure
1.1	February 2010	Updated in line with release of TAB Directive-023 Objections Procedure v2
1.2	26 October 2012	Updated in line with release Certification Requirements v1.2
2.0	08 October 2014	Updated in line with release of Fisheries Certification Requirements v2.0
3.0	17 December 2018	Release alongside Fisheries Certification Process v2.1

A controlled document list of MSC program documents is available on the [MSC website](http://msc.org) (msc.org)

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