

# INTRODUCTION TO THE WESTERN & CENTRAL PACIFIC FISHERIES COMMISSION (WCPFC)

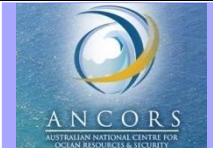
**Professor Dr. Martin Tsamenyi**  
**WCPFC Legal Advisor**

FAO/WCPFC INDONESIA WORKSHOP



# PRESENTATION SUMMARY

- To provide easy understanding of
  - The background to the WCPFC
  - The legal framework for the Commission
  - Commission obligations
  - Implementation challenges for Indonesia
  - Discussion of how to begin addressing the implementation challenges



# THE WCPFC



- Established in 2004 under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean
    - Headquarters in Pohnpei, Federated States of Micronesia
- ... ***to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific ocean...***”

# PRINCIPLES OF MANAGEMENT

- Long term sustainability of highly migratory stocks
- Use of best scientific evidence available, as qualified by relevant environmental and economic factors
- Precautionary approach
- Ecosystem approach
- Elimination of overfishing and excess fishing capacity
- Collection and sharing of timely, complete and accurate data
- Effective Monitoring, Control and Surveillance (MCS) measures

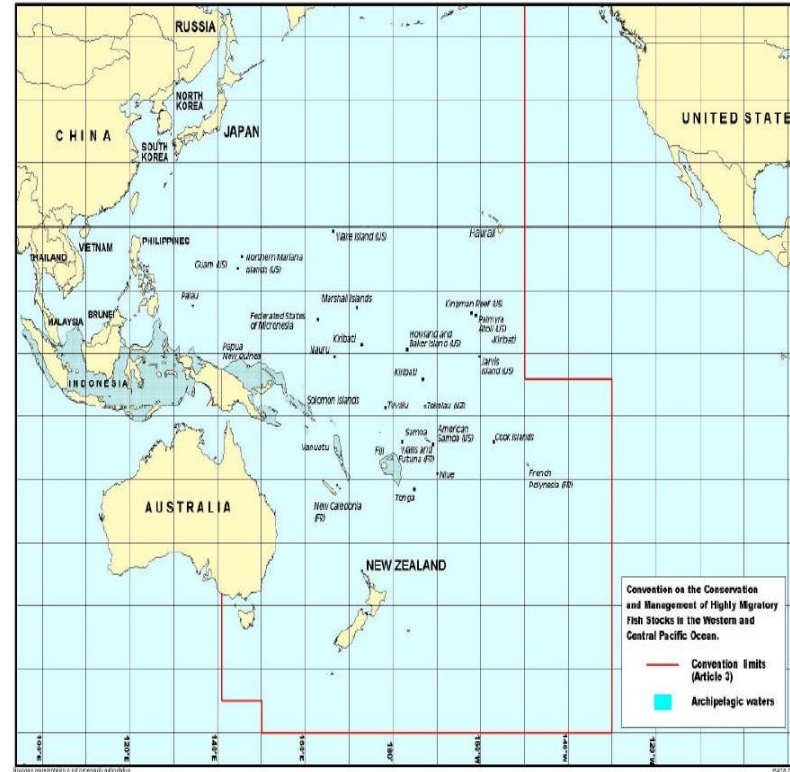


# CONSERVATION MEASURES

- Avoiding stock depletion
- Addressing overcapacity
- Compatibility of conservation and management measures
- Cooperation
- Flag State duties
- Compliance and enforcement
- Boarding and inspection
- Port State Measures
- Regional observer programme
- Transshipment regulation

# WCPFC - A UNIQUE RFMO

- Unlike other RFMO areas, WCPFC is unique
  - About 80% of the tuna caught in the Convention Area is taken from the EEZs of coastal States in the Convention Area
  - Large number of developing coastal States with substantial economic dependence on tuna fishing
  - All major distant water fishing nations



# Art. 63(2) Law of the Sea Convention

“Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area”.

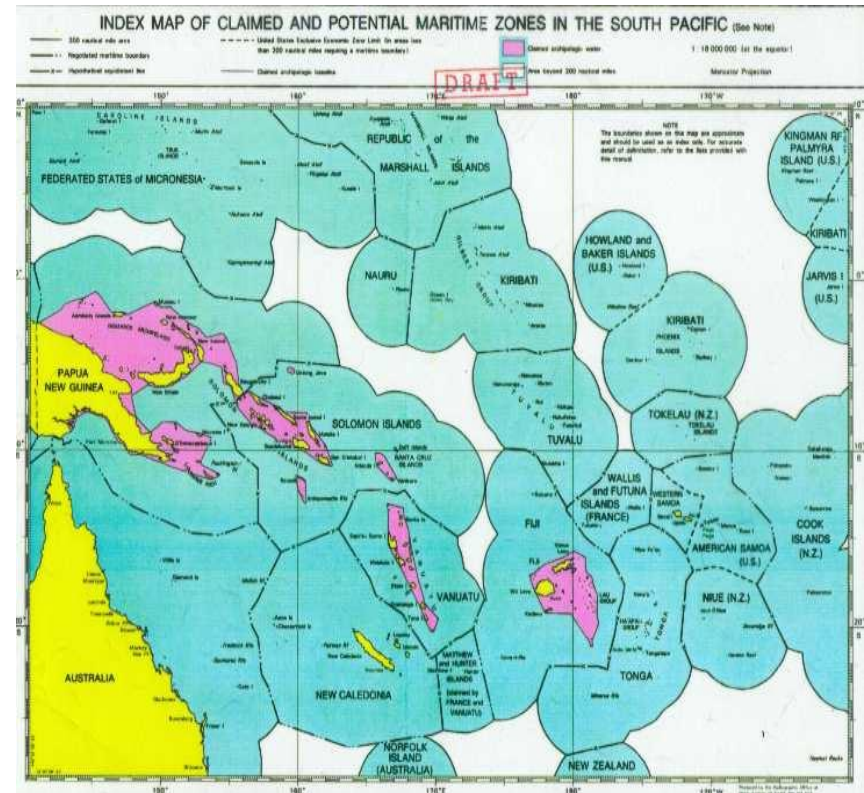
- *Negara pantai dan negara yang memanfaatkan sumberdaya di laut bebas harus bekerjasama – melalui organisasi subregional atau regional, untuk mengadopsi ketentuan yang menjamin konservasi cadangan di sekitar laut bebas sekitarnya*

# ARTICLE 64 LAW OF THE SEA CONVENTION

- Highly Migratory Species -
  - tunas and tuna-like species
- Requirement for cooperation
- *Spesies yang bermigrasi jauh*
  - *Tuna dan spesies mirip tuna*
- *Persyaratan kerjasama*

# EXCLUSION OF DISTANT WATER FISHING NATIONS FROM FFA

- FFA Convention, Article III:  
“the Parties recognise that effective co-operation for the conservation and optimum utilisation of the highly migratory species of the region will require the establishment of additional international machinery to provide for co-operation between all coastal states in the region and all states involved in the harvesting of such resources”.

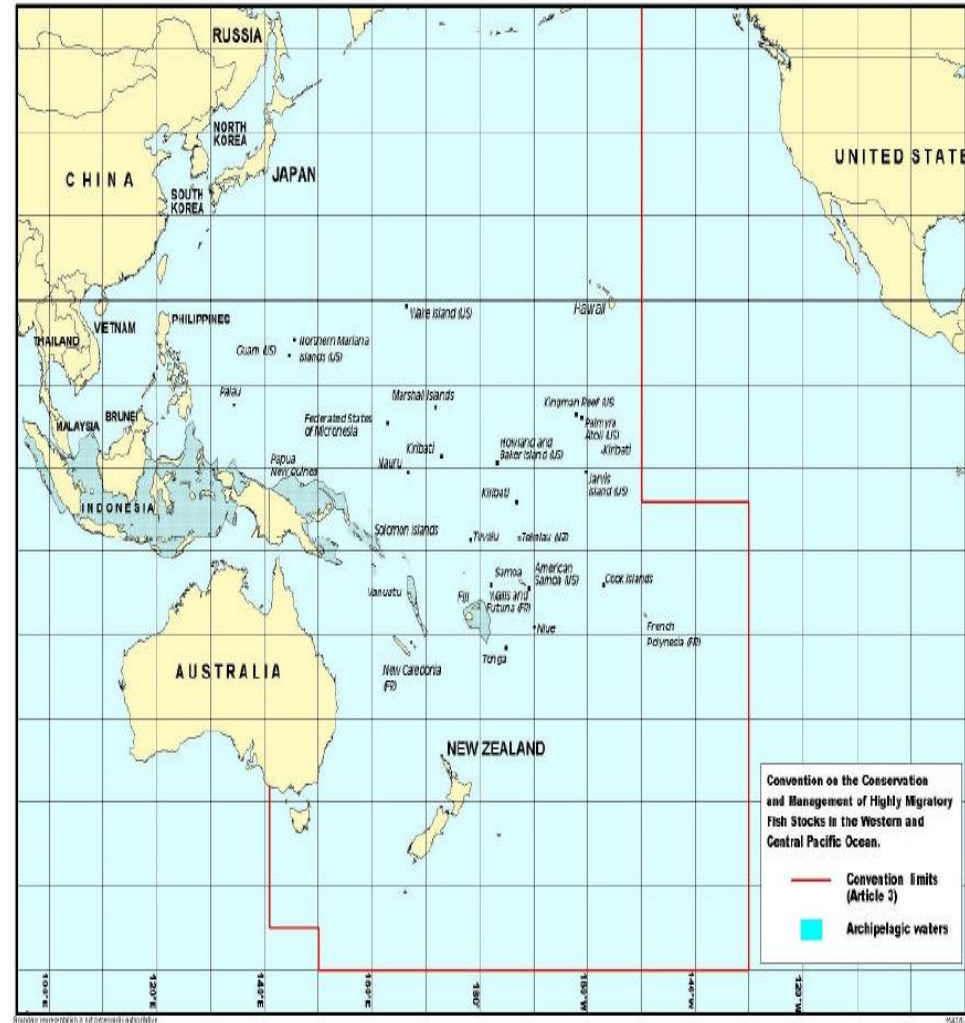


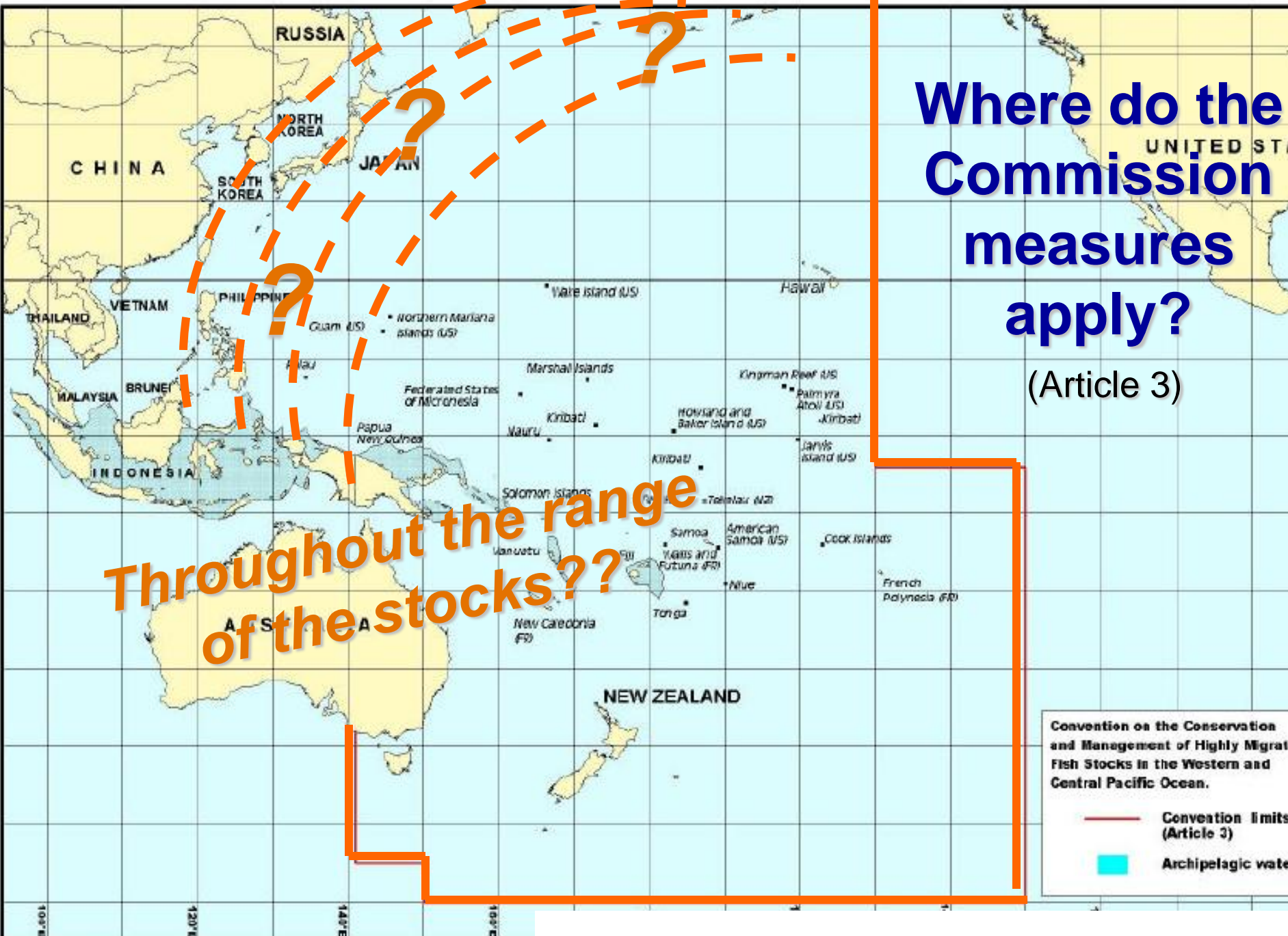
# NEGOTIATION HISTORY

- 1994: Multilateral High Level Conference (MHLC) 1- Solomon Islands
- 1997: MHLC 2- Marshall Islands
  - Majuro Declaration
    - 3 Year time frame to conclude agreement
- 1998: MHLC 3- Japan
- 1999-2000: MHLC 4-7: Hawaii
- Convention adopted at MHLC 7 on 4th September 2000
- 2001-2004: 7 Preparatory Conferences
- December 2004: WCPFC Establishment

# THE WCPF CONVENTION AREA: Art. 3

- The eastern end at 150 degrees east longitude
- The southern end at 55 degrees south latitude.
- The northern and western boundaries are defined by reference to the migratory range of the stocks.





**Where do the  
Commission  
measures  
apply?**

(Article 3)

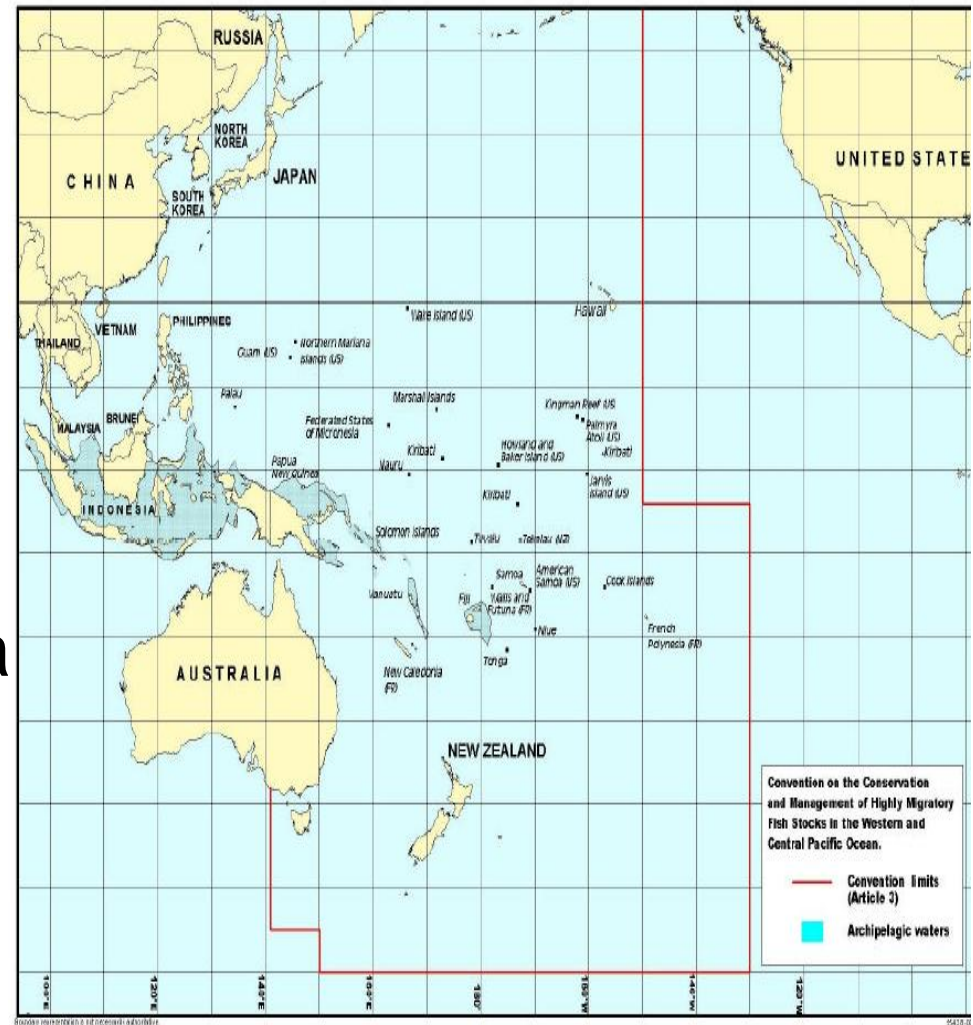
**Throughout the range  
of the stocks??**

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

- Convention limits (Article 3)
- Archipelagic waters

# THE ARCHIPELAGIC WATERS PROBLEM

- Large number of developing Island and archipelagic States with substantial economic dependence on tuna fishing within the defines Convention Area

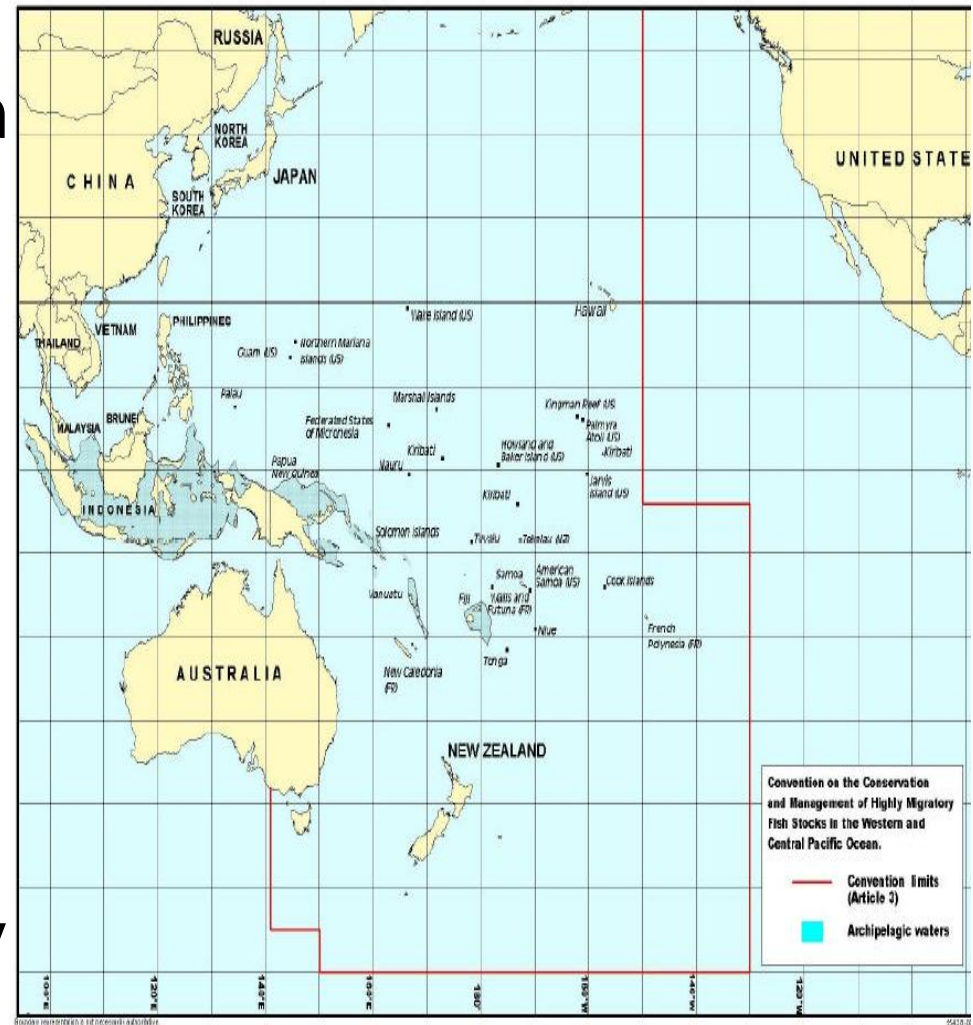


# WCPFC ARCHIPELAGIC STATES



# THE ARCHIPELAGIC WATERS PROBLEM

- Do the Conservation and Management Measures of the Commission apply to archipelagic waters, territorial seas and internal waters?
- Maritime zones under sovereignty



# INDONESIA'S STATEMENT

- “It is therefore our understanding and our view that the Convention only visualizes the need for cooperation in the conservation between exclusive economic zone and the high seas beyond. The Convention does not and cannot be implied to require or oblige cooperation between coastal State and other States in the conservation and management that will include resources within archipelagic waters that fall within the sovereignty of the archipelagic States in accordance with article 49 of the 1982 Convention. It is therefore our view that the most western boundary of the Convention area does not and cannot include Indonesian archipelagic waters”.



# INDONESIA'S RATIFICATION DECLARATION PRESIDENTIAL DECREE NO. 61 2013

“The Government of the Republic of Indonesia, wishes to recall that the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean shall exclusively apply to the area of application as defined in Article 3 of the Convention. In this regard, Indonesia declares its understanding that the application of the Convention shall only cover the Indonesia’s Exclusive Economic Zone adjacent to and within the Pacific Ocean as defined in the Article 3 of the Convention, and shall not be extended to the archipelagic, territorial and internal waters”

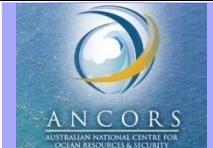
PRESIDEN REPUBLIK INDONESIA,

ttd.

DR. H. SUSILO BAMBANG YUDHOYONO.

# THE WCPFC FAMILY

- Five Different Groups
  - Contracting Parties
  - Members
  - Cooperating non-Members
  - Participating Territories
  - Observers



# CONTRACTING PARTIES

- The WCPFC Contracting parties are the States who are entitled to and have signed and ratified the Convention
  - All the current members except Chinese Taipei
- In future, it will also include States who have been invited by the Contracting Parties to join
  - They will not be able to RATIFY the Convention, but only ACCEDE to the Convention.

# NEW PARTIES?

- “After the entry into force of this Convention, the Contracting Parties may, by consensus, invite other States and regional economic integration organizations, whose nationals and fishing vessels wish to conduct fishing for highly migratory fish stocks in the Convention Area to accede to this Convention” **[Art. 35(2)]**
- Belize current request
  - But no procedure within the Commission to implement Article 35(2)
- Result is that WCPFC may become a closed Commission
  - May not be consistent with UN Fish Stocks Agreement

# MEMBERS OF THE COMMISSION

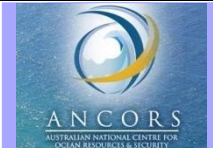
- All Contracting Parties + Chinese Taipei
- **ANNEX I. FISHING ENTITIES**

(2) Such fishing entity shall participate in the work of the Commission, including decision-making, and shall comply with the obligations under this Convention.

**References thereto by the Commission or members of the Commission include, for the purposes of this Convention, such fishing entity as well as Contracting Parties.**

# MEMBERS of the Commission

- Australia
- Canada
- People's Republic of China
- Cook Islands
- European Union
- France
- Fiji
- Federated States of Micronesia
- Japan
- Kiribati
- Republic of Korea
- Marshall Islands
- Nauru
- New Zealand
- Niue
- Palau
- Papua New Guinea
- Philippines
- Samoa
- Solomon Islands
- Chinese Taipei
- Tonga
- Tuvalu
- USA
- Vanuatu



# DIFFERENCE BETWEEN CONTRACTING PARTIES AND MEMBERS

- Specific powers reserved for Contracting Parties only
  - Chairman and a vice-chairman are to be elected only from among the Contracting Parties (Art. 9(4))
  - Determination the location of the headquarters of the Commission (Art.9(7))
  - Appoint the Executive Director (Art. 9(7))
  - Only Contracting Parties can invite others to become Contracting Parties (Art. 35(2))

# FISHING ENTITIES

- Article 9(2)
- Annex I
  - Member of the Commission but not a Contracting party
  - Political compromise for participation of Taiwan
- Official WCPFC name is: **CHINESE TAIPEI**
- But Note: Fishing Entity has limitations
  - Cannot be elected as a Chair of the Commission
- Art. 9(2): Chair & Vice-Chair of the Commission to be elected from among Contracting Parties only
- What about Chairs and Vice-Chairs of Subsidiary Bodies?
- What about Working Groups?

*Art 9(2): Such fishing entity shall participate in the work of the Commission, including decision-making, and shall comply with the obligations under this Convention.*

**References thereto by the Commission or members of the Commission include, for the purposes of this Convention, such fishing entity as well as Contracting Parties”.**

# PARTICIPATING TERRITORIES

- American Samoa
  - French Polynesia
  - Guam
  - New Caledonia
  - Northern Mariana Islands
  - Tokelau
  - Wallis & Futuna
- “... all such participants shall be entitled to participate fully in the work of the Commission, including the right to be present and to speak at the meetings of the Commission and its subsidiary bodies” *Art.43(2)*

# COOPERATING NON -MEMBERS

- Belize,
  - Democratic Peoples Republic of Korea,
  - Ecuador,
  - El Salvador,
  - Indonesia,
  - Mexico,
  - Senegal,
  - St Kitts and Nevis,
  - Panama,
  - Thailand,
  - Vietnam
- Not members of the Commission, but have agreed to be bound by the Convention and all Conservation and Management Measures adopted by the Commission
  - New development in international law
  - Assume all obligations, but not all the rights
    - Payment of annual contribution
    - Submission of all reports etc
  - But
    - Not members of Commission
    - Cannot vote
    - Be part of consensus
    - Undertake high seas boarding and inspection

# Cooperating Non-Members for 2013

## Able to participate in fishing

### Longline

- Belize
- Senegal
- Indonesia
- Ecuador
- El Salvador
- Mexico



### ***Purse seine***

## Able to provide carrier and bunker support vessels

- Belize
- Panama
- St Kitts and Nevis
- Thailand
- Vietnam

## Others – coastal States or adjacent to WCPO

- Democratic Peoples Republic of Korea (DPRK)  
*future fishing interest*
- Indonesia  
*Only coastal State that is eligible for membership*
- Thailand  
*Major processor of WCPO tuna*
- Vietnam  
*adjacent coastal State and recipient of assistance*

# WHAT IS THE COMMISSION

- “Commission” means the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean established in accordance with this Convention (Art.1 (c))
- “The Commission shall have international legal personality and such legal capacity as may be necessary to perform its functions and achieve its objectives. The privileges and immunities which the Commission and its officers shall enjoy in the territory of a Contracting Party shall be determined by agreement between the Commission and the member concerned” (Art. 19(6),
- The Commission is the legal entity comprising
  - Members, Participating Territories, Cooperating non-members, Observers, the institutions, acting together

# WHAT IS THE LANGUAGE OF THE COMMISSION

- **English... BUT HOW DO YOU TELL?**
- Look for the language/languages of authenticity of a Convention

**“IN WITNESS WHEREOF**, the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Convention.

**DONE** at Honolulu this fifth day of September, two thousand, in a single original”.

# SUBSIDIARY BODIES (Arts.11-14)

- **Scientific Committee (SC)**
  - Advise on science to underpin conservation and management measures
- **Technical and Compliance Committee (TCC)**
  - Advise on MCS issues
- **Northern Committee (NC)**
  - Advise on conservation and management measures north of 20 degrees parallel of north latitude

# OTHER SUBSIDIARY BODIES?

- Yes...
- Art. 11(6): “The Commission may establish such other subsidiary bodies as it deems necessary for the exercise of its functions, including working groups for the purpose of examining technical issues relating to particular species or stocks and reporting thereon to the Commission”
  - Ad-hoc Task Group (Data)
  - Finance & Administration

# DECISION-MAKING (Art. 20)

- Complex Decision-making procedures
- No “opt-out” provisions
- Generally, by consensus.
- If consensus fails, voting on matters of substance
- Unique Chamber Voting procedure
- FFA members Chamber
- Other Members Chamber
  - $\frac{3}{4}$  majority required for each Chamber
  - $\frac{3}{4}$  majority over-all
- Voting Never been used

# FRAMEWORK FOR MANAGEMENT

- Establishment of Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean
- Commission to determine conservation and management measures through out the range of the stocks
- All parties to the Convention are members of the Commission
- Commission to make decision on conservation and allocation measures
- Decisions are binding on all members [Art. 10]
- Commission decisions become effective 60 days after the decision is taken (**Article 20(5)**).

# MATTERS REQUIRING CONSENSUS

- Adoption and amendment of rules of procedure (Article 9(8))
- Decisions relating to the allocation of total allowable catch or the total level of fishing effort (Article 10(4))
- Adoption of financial regulations (article 17(2))
- Adoption of the budget and a scheme for assessment of contributions to the budget (Article 18(1) & (2))
- Amendments to the Convention (Article 40)

# WHEN CONSENSUS CANNOT BE ACHIEVED

“Where this Convention expressly provides that a decision on a proposal shall be taken by consensus and the Chairman determines that there would be an objection to such proposal, the Commission may appoint a conciliator for the purpose of reconciling the differences in order to achieve consensus on the matter.”

# REVIEW PROCEDURE (Art 20(5)-(9))

- A member which has voted against a decision or which was absent during the meeting at which the decision was made may, within 30 days of the adoption of the decision by the Commission, seek a review of the decision by a review panel constituted in accordance with the procedures set out in Annex II to this Convention on the grounds that....
  - (a) the decision is inconsistent with the provisions of this Convention, the Agreement or the 1982 Convention; or
  - (b) the decision unjustifiably discriminates in form or in fact against the member concerned

# TERMINOLOGY FOR COMMISSION DECISIONS

2005 Annual meeting  
agreed on two legal  
terminology:

- **Conservation and Management Measures [CMM]**

- Legally Binding

- “...a decision adopted by the Commission shall become binding 60 days after the date of adoption’. (Art. 20(5)).

- **Resolutions**

- Other RFMOs use Resolutions for binding Instruments

- **NOTE:** Resolutions not legally binding, but note Art, 23(1):
- Each member of the Commission shall promptly implement the provisions of this Convention and any conservation, management **and other measures or matters which may be agreed pursuant to this Convention”** [Art 23(1).
- Legal implications

# OBLIGATIONS OF MEMBERS OF THE COMMISSION

- **General Obligations**
  - Part IV [Art. 23]
  
- **Flag State Duties**
  - Part V [Art. 24]
  
- **Compliance & Enforcement**
  - Part VI Art. 25

# FINANINCIAL OBLIGATIONS

- Article 18(2) imposes obligation to make financial contribution to the budget of the Commission.
  - The amount of the contribution to the budget to be be determined in accordance with a scheme which the Commission shall adopt, and amend as required, by consensus.

# PRINCIPLES FOR CALCULATING FINANCIAL CONTRIBUTION- Art 18(2)

- An equal basic fee
- A fee based upon national wealth, reflecting the state of development of the member concerned and its ability to pay
- A variable fee based on the total catch taken within exclusive economic zones and in areas beyond national jurisdiction in the Convention Area
  - discount factor to be applied to the catch taken in the exclusive economic zone of a member of the Commission which is a developing State or territory by vessels flying the flag of that Member

# CONTRIBUTION FORMULAE

- Financial Regulations 5.2:
  - **10%** - base fee divided in equal shares between all members of the Commission;
  - **20%** - based on national wealth component based upon an equal weighting of proportional gross national income (calculated on a three-year average) per capita and proportional gross national income (calculated on a three-year average); and
  - **70%**- based on fish production component based upon a three-year average of the total catches taken within exclusive economic zones and in areas beyond national jurisdiction in the Convention Area of all the stocks covered by the Convention for which data are available (including the main target tuna species, as well as the four main billfish species (black marlin, blue marlin, striped marlin and swordfish)),
    - subject to a discount factor of 0.4 being applied to the catches taken within the EEZ of a member of the Commission which is a developing State or territory by vessels flying the flag of that member.

# INDONESIA'S ASSESSED CONTRIBUTION BASED ON 2013 BUDGET AND DATA

- Base (10%) : USD 25,077
- Wealth (20%) : USD 12,368
- Catch (70%): USD 67,558
- TOTAL for 2013: USD105,003
- 2014 assessment will depend on
  - The Commission's budget and catch composition of Indonesia

# CONSEQUENCES OF ARREARS

“If a contributor is in arrears in the payment of its financial contributions to the Commission it shall not participate in the taking of decisions by the Commission if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. Interest shall be payable on such unpaid contributions at such rate as may be determined by the Commission in its financial regulations. The Commission may, nevertheless, waive such interest payments and permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member”.

## **WCPF Convention Article 18 (3)**

# DOMESTIC LEGAL/POLICY IMPLICATIONS

- From the Convention text itself
- From the authority given to the Commission by the Convention to adopt certain measures and establish certain procedures
- Each member of the Commission shall
  - promptly implement the provisions of the Convention and decisions taken by the Commission
  - Inform the Commission annually of measures taken to implement the Convention [Art 23]

# IMPLEMENTATION CHALLENGES

- Several implementation challenges
  - Understanding the Convention and Conservation and Management Measures by Government officials and fishing industry
  - Translating Convention obligations and Conservation and Management Measures into domestic law and management
  - Reporting obligations

# CONSEQUENCES OF NON-COMPLIANCE

- Compliance Monitoring
  - IUU listing of vessels
  - Bans on import of tuna products
  - Diplomatic embarrassment
- Need to identify and implement capacity building measures

# INDONESIA'S RATIFICATION ISSUES

## *Article 36*

1. This Convention shall enter into force 30 days after the deposit of instruments of ratification, acceptance, approval or accession by:

(a) three States situated north of the 20° parallel of north latitude; and

(b) seven States situated south of the 20° parallel of north latitude.

(3) For each State.... which is situated in the Convention Area, or regional economic integration organization which ratifies, formally confirms, accepts or approves the Convention or accedes thereto after the entry into force of this Convention, this Convention shall enter into force on the ***thirtieth day following the deposit of its instrument of***

- ***ratification, formal confirmation, acceptance, approval or accession.***

# Any question?



# Ada pertanyaan?