



FISHERIES TRADE

Fishing overcapacity discussed at the World Trade Organisation

The WTO has been given a political push via Sustainable Development Goal 14.6 to implement disciplines on the provision of certain subsidies to the fisheries sector by 2020 – as reported in recent issues of *FFA Trade and Industry News*.¹ Three principal disciplines are on the table: eliminate subsidies to IUU fishing, ban certain subsidised that contribute to overfishing, and prohibit certain types of subsidies that contribute to overcapacity.² The question of overcapacity was a key area of focus when the WTO met in September.

WTO members ran into immediate difficulty because capacity and overcapacity do not have internationally agreed definitions, which means that this aspect of SDG 14.6 will be hard to operationalise. Further, in fisheries management ‘capacity’ generally refers to a *fishery as a whole* – i.e. the *total* number of boats participating in a specific fishery – and thus has little bearing on the commercial question of subsidies allocated to ‘vessel’ or ‘fleet’, at least until a stock has been apportioned, for example, in an RFMO via total allowable catch shares or other forms of allocation.

The current negotiating text on overcapacity alternates between ‘vessel’ and ‘fleet’, but if proponents of the disciplines are seeking to target subsidising *Members* this could include boats of several operators using different flags, or one beneficial owner using several legal entities across different jurisdictions to run a fleet of vessels (see the story below on flags of convenience and tax havens). It is also common practice for some distant water fleet boat owners to flag with a foreign registry so as to bypass their national capacity limits, and these boats may be receiving subsidies from *both* their home and host states.

In this context, it is unclear as to how WTO Members will be able to reach consensus on a ‘global’ definition of capacity and overcapacity based on the vast diversity of individual Members fishing activities and capacity management regimes. If the mandate of SDG 14.6 is to address the *unsustainability* of fishing in so far as it is encouraged by subsidises, it may be the *resource*, not the economic actor, that should be the focus of the SDG mandate. In which case, any approach to overcapacity must take account of varied fisheries management systems and very different species of fish.

It follows that overcapacity should be defined by the jurisdiction where the fishing is taking place or by a relevant Regional Fisheries Management Organisation. The case of high seas fisheries where capacity is not regulated by an authority will need special consideration, and this aspect is already under consideration in the draft text.

Assuming that there *is* agreement at the WTO on a discipline that has a bearing on subsidies to overcapacity in a given fishery by the relevant jurisdiction, it is worth reflecting critically on the application of the discipline in the form of four scenarios:

1. A ‘hard’ international economic law that took almost 20 years to negotiate (and thus is unlikely to be revisited quickly), might run the risk of impeding necessary change in fisheries management approaches to reflect shifting industry dynamics and advances in fisheries science. How would a WTO definition of overcapacity stand up in relation to future RFMO ones? Could such a scenario produce conflict in the sustainable management of stocks?

CONTENTS

Fisheries Trade

Fishing overcapacity discussed at the World Trade Organisation

Flags of convenience and fisheries-related tax evasion increasingly in the spotlight

Fisheries Management

Update from WCPFC 14th Technical and Compliance Committee

Summary of WCPFC 3rd FAD Management Options Inter-Sessional Working Group

RMI President calls for abolishment of IUU fishing; South Korea signs EU-joint statement

Tuna Industry

US announces new tariffs on Chinese tuna imports; US brand reactions split

Papua New Guinea seeks Marine Stewardship Council certification

StarKist admits price-fixing; civil lawsuits continue

Famous Tokyo Tsukiji Wholesale Fish Market Closes and Moves to Different Venue

Tuna Price Trends

**WTO Members
encounter
difficulties in
defining fishing
‘overcapacity’**

2. Where a fishery is managed by an RFMO, what happens when two Members subsidise their nationally-flagged fleets simultaneously, and only in combination the fishery reaches a state of overcapacity? Which subsidy is at fault?
3. The construction of a new vessel can take up to two years and as such it is hard to determine whether it will cause overcapacity given shifts in stock levels and the role of competing firms that may also be building boats.
4. Where one WTO Member's distant water fleet historically dominates the total capacity of a fishery in a coastal state's waters, and a coastal state subsidises the construction of a small number of boats to enter the fishery, are the historical subsidies provided by the distant water fishing nation discounted? And is only the new subsidiser the cause of overcapacity in having tipped the balance?

The concerns raised in the last two scenarios reflect the SDG 14.6 commitment that 'appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the WTO fisheries subsidies negotiation'. These scenarios also make clear that the determination of overcapacity should be made on a fishery-by-fishery basis, depending on the specificity of stocks, species and industry dynamics.

In anticipation of the difficulties in reaching consensus, the Chair of the Negotiating Group on Rules established a series of 'Incubator Groups' where representative groups of Members meet to discuss specific technical questions (Vanuatu acts as a representative of PICs) in the hope of harnessing new ideas to break the long-lasting impasse. Incubator Group reports were useful in identifying the strengths and weaknesses of different options. But as soon as Members started to discuss text on overcapacity, the same, long-held negotiating lines became apparent.

A seemingly intractable tension is apparent between those focused primarily on trying to develop proposed disciplines as a tool of environmental conservation and those who are also (or solely) seeking to promote commercial interests either to maintain government supports or to 'level the playing field' against competing fleets that are subsidised. Given the deep levels of complexity involved, WTO members seem unlikely to achieve both, not least given that the commercial interests at stake are contradictory. In this respect, the negotiations appear to be cobbled by the much-feted 'triple win' for trade, development and the environment. It is very clear that not all Members' commercial interests can 'win', and negotiators need to be clear on what the proposed rules are *for*.

The next negotiation clusters are in November on subsidies and overfishing, and in December on IUU fishing. *TIN* will report on these in the next issue.

Flags of convenience and fisheries-related tax evasion increasingly in the spotlight

A new academic paper has made linkages between private vessel registries and tax avoidance in the global fishing industry. The study focuses on those jurisdictions that are both known as 'tax havens' (i.e. with low to zero tax combined with financial secrecy) *and* that have flags of convenience (FOC).³ Among the 17 jurisdictions to which this applies are several small island developing states (SIDS), including Marshall Islands, Tonga and Vanuatu, and a number of UK overseas territories.

The paper points out that when fishing companies register in jurisdictions that are

A deep tension is apparent between emphasis on WTO disciplines to conserve stocks and to promote contradictory commercial interests

WTO Members may benefit from thinking through real-world applications of proposed rules on overcapacity



both FOCs and tax havens they are able to hide profits and the beneficial ownership of vessels. Further, it found a close correlation with IUU fishing: Only 4% of all registered fishing vessels are flagged in tax havens, while 70% of boats found to have engaged in or supported IUU fishing are registered in a combined FOC and tax haven jurisdiction, with Belize and Panama as the main jurisdictions. The paper was presented at FishCRIME 2018 in Copenhagen on 15-16 October,⁴ where Ministers from Kiribati and Palau and a representative of Fiji also spoke at the launch of the Large Ocean Nations Forum on Transnational Organised Fisheries Crime.

This follows on from a recent collaboration between the International Criminal Police Organization (INTERPOL) and the North Atlantic Fisheries Intelligence Group (an organisation of North Atlantic states) on the problem of 'strategic flagging' and law enforcement in international fisheries. Their report focuses on FOC jurisdictions whose vessel registries are contracted out to private companies – the so-called 'private flags'.⁵ Private flags are commercial entities normally run by companies from developed countries on behalf of developing country governments, and they account for almost 23% of the world fisheries vessel gross tonnage (GT) – as registered with the International Maritime Organisation. Of the total of 17 private flags, the report found that the overwhelming majority of fishing tonnage is registered with three West African states and seven Pacific SIDS.

For some years, the OECD has been emphasising the dual role that FOCs and tax havens play in tax crime in the fisheries sector, including fraud on taxes on profit, customs duties and VAT.⁶ While it is not known how much tax revenue is lost to activity in this sector, it is likely to be significant and a disproportionate loss for developing countries. As such, the OECD recommends the creation of regional intelligence working groups, similar to the North Sea Fisheries Intelligence Group.

This situation has led fisheries campaigners such as the Environmental Justice Foundation to argue that any vessel using a FOC should be denied access to fishing grounds and markets.⁷ In the context of growing international pressure to curb illegal tax evasion and to reform loopholes benefitting legal tax avoidance,⁸ it is likely that pressure on strategic flagging and the use of tax havens in fisheries will continue to mount.

FISHERIES MANAGEMENT

Update from WCPFC 14th Technical and Compliance Committee⁹

The 14th Regular Session of the Western and Central Pacific Fisheries Commission's Technical and Compliance Committee (TCC14) was held in Majuro, Republic of Marshall Islands from 26 September – 2 October 2018.

In line with CMM 2017-07, the Compliance Monitoring Scheme (CMS), TCC reviewed the Draft Compliance Monitoring Report (dCMR), based on all available information including Commission Members, Cooperating-Non Members' and Participating Territories' (CCMs) annual reports to the Commission, catch and effort data, high seas transshipment reports, regional observer program data and information, vessel monitoring system information, high seas boarding and inspection scheme reports, and charter notifications.

70% of boats engaged in IUU are registered in combined FOC and tax haven jurisdictions

An INTERPOL study singles out 'private flags' in the masking of potential fisheries tax crime; some NGOs are calling for FOC vessels to be denied access to fishing

Assessments were made of CCMs' compliance in 2017 against an agreed list of obligations, set out in selected Conservation and Management Measures (CMMs) and the WCPF Convention. The Provisional Compliance Monitoring Report (pCMR), containing TCC14's provisional compliance assessment, was submitted by TCC14 for consideration by the Commission at the upcoming 15th Regular Session (WCPFC15) to be held in Honolulu in December; final assessments will be published in the WCPFC15 summary report. In line with past practice, the CMS review was conducted in closed session, with observers not permitted to be present. Whilst several CCMs and NGOs continue to advocate allowing observer participation in the CMS to improve transparency in the process, some CCMs continue to hold the view that more work is needed to enhance the current scheme and ensure that any additional participation is in line with Commission policies and procedures.

An inter-sessional working group was established by WCPFC14 to review the Compliance Monitoring Scheme (CMS-IWG), including consideration of the report from the independent CMS review (released in March 2018) and to develop a revised CMM for the CMS for consideration at WCPFC15, given the current measure (CMM 2017-07) applies only for 2018 and is under review. The CMS-IWG Chair reported to TCC14 that an FFA proposal has been used as a starting point for developing revised text for the CMS CMM, which is being progressed inter-sessionally prior to WCPFC15. The FFA proposal seeks to take into account recommendations from the independent review and to streamline the CMS to address "unintended scope creep and consequences such as a burdensome workload on the Secretariat and CCMs, procedural unfairness and inefficiency in its operation".

The Secretariat reported to TCC14 that 55% of vessels registered on the WCPFC Record of Fishing Vessels are authorised to tranship in the high seas (2,193 out of 3,997 vessels from 10 CCMs, as of 30 August 2018; around 80% of which are longliners). High seas transhipment occurs more often in the tropical eastern Pacific, particularly within and around the WCPFC/IATTC overlap area and also in high seas pockets. Reporting by CMMs of high seas transhipment events has continued to improve, although some gaps still remain. Under CMM 2009-06, high seas transhipment from fishing vessels other than purse seiners is not permitted, except where a CCM has determined that it is impracticable for a vessel to tranship in port due to significant economic hardship or if significant and substantial changes are required to its historical mode of operation. This exemption is intended to be applied on a vessel-by-vessel basis, however CCMs are notifying impracticability for their entire fleet and have failed to advise the WCPFC of their monitoring and verification procedures and plans to encourage transhipment in port, as required in CMM 2009-06.

Marshall Islands (RMI) introduced a delegation paper at TCC14 regarding the impracticability exemption, noting that while CMM 2009-06 prohibits high seas transhipment and the international community is moving to restrict high seas transhipment due to IUU fishing risks, that this activity is increasing in the WCPF Convention Area. RMI's paper calls for the replacement of the current 'impracticability' provision with a requirement that only specific time-limited exemptions (up to three years) are permissible for fresh and ultra-low temperature (ULT) operations which must be approved by the Commission. While the majority of FFA members support a total ban on high seas transhipment, China, Japan, Korea and Chinese-Taipei reject this in support for well-regulated high seas transhipment. Pew Charitable Trusts recommends that transhipment at sea be banned unless best practices are in place to ensure it is verifiable and legal. TCC14 noted that while there are divergent opinions on high seas transhipment amongst CCMs, this is an issue of great interest and there is some agreement that improvements could be made. Hence, TCC14 recommended to WCPFC15 that review of the existing transhipment measure (CMM 2009-06) should be a priority item in 2019.

*Divergent
opinions exist
concerning
prohibition
of high seas
transhipment by
non-purse seine
vessels*

Observer reports are an important compliance tool and assist CCMs in conducting flag State investigations for vessel infringements. To improve the timeliness of the flow of observer reports from observer providers to CCMs, TCC14 recommended to WCPFC15 that CMM 2007-01 is revised to highlight the importance of observer reports for CCM investigations and the need for CCMs to cooperate in the exchange of observer information, and ensure that appropriate points of contact are identified and kept up to date. It was also recommended that TCC conducts further work to determine if any additional data fields need to be added to the Regional Observer Program minimum required data fields to support CCM investigations and flagging of possible violations of Commission decisions; to consider capacity gaps of the Regional Observer Program providers to respond promptly and fully to requests for observer reports and ways to address these gaps; and, identify ways to improve debriefing and pre-notification processes.

In 2013, the International Maritime Organisation (IMO) extended its Ship Identification Number Scheme for merchant vessels to include steel-hulled fishing vessels above 100GT. An IMO number is a unique vessel identifier which remains unchanged regardless of changes in name, ownership or country of registration throughout the life of the vessel until it is scrapped. In recognition that IMO numbers are an important monitoring, control and surveillance tool, tuna RFMOs, including WCPFC have mandated their use.¹⁰ CMM 2017-05 requires flag CCMs to ensure all of their fishing vessels above 100GT or 100GRT which are authorized to fish in the WCPF Convention Area beyond national waters have an IMO number. Recently, IMO has extended its scheme to include smaller-scale and non-steel hulled vessels that are 12 metres and above in overall length and authorised to fish outside national waters. To align WCPFC's IMO number requirements with this change, TCC14 recommended that the Commission amends CMM 2017-05 to reflect this.

The TCC14 Draft Summary Report, TCC14 Outcomes Document and various reports to TCC14 from Inter-Sessional Working Groups are available at: <http://www.wcpfc.int>

Summary of 3rd FAD Management Options Inter-Sessional Working Group of WCPFC¹¹

The 3rd Meeting of the FAD Management Options Intersessional Working Group of the WCPFC was held on 3 October. Discussions focussed on biodegradable and non-entangling designs for FAD construction, FAD numbers and the marking and monitoring of FADs. The Intersessional Working Group (IWG) recommends to WCPFC15 a phased approach to implementing best practice for biodegradable and non-entangling FAD designs. While guidelines for non-entangling designs exist, research into biodegradable materials is ongoing. In particular, petroleum-based products should be avoided to the extent possible, in the construction of FADs. Guidelines needs to be prescriptive enough to facilitate better compliance, but not so prescriptive that they restrict innovation in FAD design. ISSF's Guide for Non-Entangling FADs is recommended as minimum guidelines.

On FAD numbers, the IWG recommends that the Commission considers adopting management objectives to define appropriate limits on FAD numbers (e.g. reducing marine debris, limiting economic impact of reduced CPUE due to high FAD density, reducing the impact of FAD fishing on juvenile tunas). The IWG reiterated the 14th Regular Session of the Scientific Committee's recommendation that WCPFC15 notes the importance of FAD marking and monitoring programs to better identify and follow individual FADs.

**TCC14
recommends
that WCPFC
amends its
IMO number
requirement to
apply to vessels
12 metres and
above in overall
length fishing
outside national
waters**

PNA's FAD tracking program has provided information which is adding substantial value to the scientific understanding of WCPO fisheries. Based on available data, it is estimated that few or no vessels deploy more than 350 active FADs at any one time (which is the current limit on active FADs established in CMM 2017-01); an estimated 5% of tracked FADs became beached and up to 27% of FADs were lost between 1 January 2016 and 18 March 2018.

RMI President calls for abolishment of IUU fishing; South Korea signs EU-joint statement

In a keynote address during the closing event to participants of WCPFC's 14th Technical and Compliance Committee Meeting, the Republic of Marshall Islands' President, Her Excellency Dr Hilda Heine, called on Pacific nations to commit to abolishing IUU fishing by 2023. President Heine urged the adoption of five strategies over five years to combat IUU fishing:

- Communication – increasing public understanding of IUU issues and combative strategies
- Cooperation – improving information sharing among PICs and other stakeholders
- Innovation – innovation in processes and technology to accelerate the decline in IUU activities
- Engagement – disincentivizing countries susceptible to IUU activities by assisting fishing industry improvements
- Diplomacy – applying stronger political pressure on governments that tolerate IUU fishing

She acknowledged that the five-year target for an 'IUU-Free Pacific' is bold, but necessary given the high stakes and that a "tougher mindset" is required to combat IUU fishing.¹²

On October 18, South Korea signed a pledge to work more closely with the EU to tackle IUU fishing, during a bilateral EU-South Korea summit. The EU and South Korea have committed to exchange information about suspected IUU activities; enhance global traceability of fishery products through a risk-based electronic catch documentation and certification system; join forces in supporting developing states in the fight against IUU fishing; and, strengthening international cooperation. South Korea is the fourth country to sign a joint statement on IUU fishing with the EU, following USA, Japan and Canada and has been working closely with the EU to address IUU fishing, since receiving a 'yellow card' warning from the EU in 2013.¹³

FAD design guidelines need to be prescriptive to facilitate better compliance, but not so much as to limit innovation

TUNA INDUSTRY

USA announces new tariffs on Chinese tuna imports; US brand reactions split

The seafood industry continues to fall into the crosshairs of the escalating trade war between the USA and China. In September 2018, the United States Trade Representative (USTR) announced a final list of approximately US\$200 billion worth of Chinese imports that will be subject to additional tariffs. The tariffs went into effect on 24 September 2018 at the initial rate of 10%. Starting 1 January 2019, the level of the additional tariffs will increase to 25%.¹⁴

The US food and seafood industries have largely been opposed to the imposition of the tariffs, arguing that increased costs will be passed on to US business and US consumers.¹⁵ There are multi-directional outcomes across markets for a variety of seafood products, including the potential for tariffs to create new trade relationships and new winners and losers. For instance, in the pollock sector, the US industry has developed processing capacity in China to reduce costs. Re-imports back to the US would be hit heavily by the new tariffs. The pollock industry has argued that the tariffs would not only harm the competitiveness of US industry, but ultimately buoy Russian producers who can offer lower cost pollock supply.¹⁶ This offers a simple example of how a two-country trade war can have ripple effects across globalized seafood sectors.

The tuna sector is embroiled in the trade war. The new round of tariffs will have an impact on Chinese exports of 20 different tuna product types under the USA's Harmonized Tariff Schedule at the 8-digit in either Chapter 3 (fresh, chilled, and frozen fish) or Chapter 16 (prepared fish, including loined and canned tuna).¹⁷ China is not a major supplier of fresh and chilled tuna to the US, but it does supply about 5% of the US market for frozen tuna fillets.¹⁸ Canned tuna from China is a minor market segment, representing only about 2% of the total imports of canned and pouched tuna into the US.¹⁹ However, the big impact will be with loins: China supplies over 30% of the value of tuna loin imports to the US and is the leading supplier of that product to the US.²⁰

The 'big three' US brands are responding to the tariffs based on competitive strengths in their global procurement and production strategies. Chicken of the Sea International (COSI) and Bumble Bee both operate large, high volume processing plants in the US mainland that import loins and use highly efficient and mechanized processes to transform them into canned products. These facilities have historically been protected by existing tariffs on canned tuna imports, and low tariffs on loin imports.

China is an important source of light meat loins for these plants. Chicken of the Sea commented publicly that the tariffs would uniquely impact its practices. Stating that developing alternative supply arrangements is costly and impracticable, COSI suggested that it might move its production outside of the US. As it is owned by Thai Union, the largest canned tuna processing firm in the world, COSI is able to strategically diversify or alter its production practices. It is not clear what the impact of shifting production elsewhere might be on revenues. COSI also noted that the new tariffs have an extra sting since input costs were already boosted by the Administration's steel and aluminium tariffs in an earlier phase of the trade war.²¹ COSI suggested that the new tariffs would increase its operating costs by US\$5.8 million per year, and that given the low margin on its products, it would have no choice but to pass those costs on to consumers.²²

The US introduced 10% tariffs on several important tuna products from China; tariffs will increase to 25% in 2019

COSI and Bumble Bee depend on loins from China and thus have opposed the tariffs

Bumble Bee's arguments against the tariffs echo those of COSI, emphasizing the likelihood of increased costs to consumers, and suggesting the cost hikes will "have a devastating effect on Bumble Bee given that our business model to it import tuna loins for further processing and canning in the US by American workers".²³ The firm has threatened that the tariffs could result in a factory closure, or at the very least, curtail plans to expand the US mainland plant to incorporate value-added production lines and amount to an advantage for non-US canners who are able to procure loins without the tariff. Bumble Bee also emphasised the difficulty of finding alternative suppliers.²⁴

In contrast, StarKist, owned by Dongwon Industries, has backed the tariffs, bucking the trend of the other two brands and the National Fisheries Institute industry association.²⁵ Suggesting that there is plentiful supply of tuna products from other countries, the StarKist argued that the tariffs were unlikely to lead to job losses or increased consumer costs.²⁶ Notably, StarKist's large processing plant in American Samoa uses primarily whole round fish, including supply from US flagged vessels that offload at Pago Pago, and does not rely extensively on loins specifically or Chinese originating supply, more generally. StarKist would however, certainly gain a boost from a tariff that would increase raw material input costs for its competitors by 25%.

Papua New Guinea seeks Marine Stewardship Council certification

The Fishing Industry Association of Papua New Guinea (FIA) – representing 24 domestically-based tuna fleets and processors – announced in August that it intends to pursue MSC certification at the national level. The initiative apparently has the backing of the Papua New Guinea government and FIA entered into a memorandum of understanding with the National Fisheries Authority.²⁷ PNG-based tuna fishing and processing firms met to discuss the certification process with an MSC representative on 18 September.²⁸

Currently, PNG vessels' sole option is to participate in PNA's MSC-certified Western and Central Pacific skipjack and yellowfin free-school tuna purse seine fishery.²⁹ This product is exclusively marketed under the Pacifical tuna marketing company, which is 50% owned by Henk Brus under the entity Sustainable and 50% by the eight Parties to the Nauru Agreement.³⁰

A war of words has since broken out in the seafood industry media over whether this move by PNG undermines the commercial interests of Pacifical. FIA President, Sylvester Pokajam has reportedly taken umbrage at PNG bearing the brunt of Pacifical costs and not receiving adequate returns, while Pacifical's exclusive marketing requirement has slowed down potential sales as many buyers are not willing to co-brand (i.e. include the Pacifical logo on their products). Instead Pokajam wants to promote a 'PNG Brand'.³¹

In an interview with *Undercurrent News* Pokajam alleged that Pacifical was 'not transparent with its accounts and financial operations', claiming that PNG canneries were planning to stop contributing to Pacifical 'as soon as possible'.^{32 33}

Pacifical's response to *Undercurrent News* includes a line-by-line objection to the various claims made by Pokajam, including a rejection of any lack of transparency. It also alleged that Pokajam has a relationship with the Philippine firm Frabelle, and suggests that this firm has not performed well in terms of its production volumes in PNG³⁴ - a point that Frabelle went on record to reject.³⁵

Starkist does not rely heavily on Chinese supply and would not be hit as hard as its competitors by the tariffs

The war of words between PNG-based industry and Pacifical indicates serious commercial turmoil

In a separate press release, Pacifical insists that there is no split within the PNA on this issue, as PNG is represented by the government, not domestically-based industry. Further, it emphasises that Pacifical supply of MSC-certified tuna is split among the various PNA parties and that 220 of the 245 vessels fishing in PNA waters are currently signed up with Pacifical.³⁶ The response also notes that no purse seine FAD fishery has yet achieved MSC certification, casting doubt on FIA's project. (Note that since the response was written, Echebatar, an Indian Ocean tuna fishing company, looks set to be the first purse seine fishery globally to receive MSC-certification for FAD-caught skipjack tuna)³⁷. Pokajam has since published an open letter detailing a long list of allegations, which Pacifical – through *Atuna* (part-owned by Brus) – has responded to.³⁸

It seems unlikely that this commercial conflict will end soon. The dividing lines between FIA and Pacifical are sharp. What is clear is the risk that this sort of public division poses both for essential regional cooperation and for the international reputation of the Pacific Island Countries. It also demonstrates complexities relating to government involvement in commercial activities.

StarKist admits price-fixing; civil lawsuits continue

In a new development in the ongoing set of price fixing allegations against the 'big three' US tuna brands, in October 2018, Starkist pleaded guilty to charges of price-fixing as part of a conspiracy. Starkist is facing a fine of up to US\$100 million. In the same deal, one former Starkist executive and two former Bumble Bee executives pleaded guilty to price fixing to keep prices artificially high.³⁹ Throughout the multi-year criminal probe, Chicken of the Sea was revealed as the whistle blower, cooperating with officials in exchange for immunity from criminal prosecution. Starkist's plea followed from Bumble Bee's 2017 guilty plea of conspiracy to fix US prices between 2011 and 2013; Bumble Bee paid a US\$25 million fine (this figure was reduced from the original fine to avoid the company going into bankruptcy). Former Bumble Bee chief executive Chris Lischewski remains in the public eye over the case. He has been charged by the US government with one criminal count of price fixing, but has pleaded not guilty to the charge. In May, he stepped down from his position as CEO of the firm.⁴⁰

As the criminal investigation begins to wind down, civil lawsuits continue to mount as companies join the class action and file new lawsuits. In the civil cases, retailers and food wholesalers are alleging price fixing between 2004 and 2015, as well as collusion among key personnel to mutually reduce product quality and the can size from 6oz to 5oz. Several plaintiffs are urging that Bumble Bee's parent company, private equity firm Lion Capital and its US entity Lion Americas be included among the defendants. Del Monte Corporation, owners of Starkist between 2002 and 2008, has also been included in some of the civil lawsuits.⁴¹ A recent allegation targets Lischewski and other executives directly.⁴²

In addition to the hefty fines that Bumble Bee and StarKist are facing, all three firms will be looking ahead to the financial consequences of the pending civil lawsuits, as well as work that will be required to rebuild their reputations with consumers. Chicken of the Sea, for example, has been able to reach a settlement with major retailer Walmart, in which it has paid a cash settlement and also partnered with the firm in a series of joint programmes and new product promotions, as reported in prior issues of TIN.⁴³ It is not clear if other retailers will seek similar deals that settle the civil complaints *and* enable the big three to relaunch their brands. For its part,

Starkist pleads guilty to price fixing, receives US\$100 million fine; civil lawsuits continue



now that it has entered a guilty plea in criminal investigations, in a public statement Starkist accepted responsibility and pledged to conduct its business with 'the utmost transparency and integrity'.⁴⁴

Famous Tokyo Tsukiji Wholesale Fish Market closes and moves to different venue

In the late 1970s and early 1980s, delegations and individuals from several Pacific Island countries began visiting Tokyo for fishery negotiations, participation in training programs and for other fishery-related purposes. Word spread among islanders and their advisors that a 'must-see' early morning destination in Tokyo was the wholesale fish market and auction located in Tsukiji district between Ginza and the Sumida river. In those days there were few foreign tourists who woke at 4 or 5 AM to catch a taxi or the subway to arrive in time for the tuna auction and to tour various stalls displaying many other marine products and fish species from alfonsino to yellowtail being sold, processed and packed.

A visit to the market required navigating around huge piles of styrofoam boxes, refrigerated trucks, and people moving in what appeared to be chaos, but which were actually well-organized selling, buying and transporting activities totalling about 1,500mt of marine products per day worth about ¥1.6 billion yen (US\$14.2 million).⁴⁵

Once inside the market area, the intrepid tourist was rewarded with an aggregation of sights, smells and sounds not to be found anywhere else. Hundreds of middlemen and other wholesalers operated small stalls and processing areas where fish were readied for distribution to the Tokyo area's thousands of restaurants, sushi bars, specialty fish shops and other outlets.

After viewing the tuna auction and various stalls of middlemen preparing and packaging shipments, visitors often browsed the many small retail shops outside the market that sold all manner of prepared and packaged fresh and dried seafood. Several shops also sold restaurant and household supplies such as *teishoku* trays, covered faux-lacquered miso soup bowls, and ceramic Japanese sashimi "boats" that are often seen in Japanese restaurants. At least one specialty shop displayed and sold an amazing array of specialty knives and cleavers, including the long and extremely sharp sword-like knives used to cut and portion prized fresh bluefin and other species inside the market. Many of these businesses say they are going to stay near the site as a tourist-friendly outdoor shopping mall is developed. An early morning tour of the market and environs was not complete without stopping at one of the many stand-up food stalls lining the sidewalk where the patrons included workers from inside the market, many still wearing their rubber boots, who were catching a quick breakfast as work wound down in the later morning hours.

The market first opened at the Tsukiji site in 1935. In recent times it has gained worldwide publicity as the location where outrageous prices have been paid for the first bluefin tuna auctioned at the start of the New Year. Recognized primarily as an annual publicity stunt by some restaurant owners or traders, the final such post-New Year auction at Tsukiji in January 2018 resulted in a winning bid for one fish of ¥36.5 million (US\$324,000), or ¥90,000 (US\$800) per kilogram.

The market and auction are operated by the Tokyo Metropolitan Government which decided in 2001 to build a new market and chose a site at Toyosu, about 2 km

*Tsukiji Market
handled about
1,500 mt of
marine products
per day*

*The wholesale
market first
opened at the
Tsukiji location
in 1935*

southeast of the Tsukiji site.⁴⁶ In spite of its famous reputation, Tsukiji had become outdated and critics claimed it was unsanitary and dilapidated, with its refrigeration system unable to cope with the hot summer months.⁴⁷

The original opening date for the new market at the Toyosu site was August 2016. Controversy surrounded choice of the location which was the site of a former gas plant. Three months before the scheduled opening the newly-elected Governor of Tokyo cited questions over environmental safety of the site that had yet to be resolved. It was found that the ground beneath the new market's main building was not covered with layers of new soil as had been planned, and there were reportedly toxic substances in the groundwater at the site. After additional remedial work was undertaken, a government expert panel convened by the Tokyo Metropolitan government declared the site safe and plans were made for the opening a few months later.

After a one-week hiatus in market transactions to move everything from Tsukiji to Toyosu, the new facility opened for business on 10 October 2018 at an estimated cost of ¥5 billion (US\$44.5 million). Visitors and tourists are no longer able to access the auction floor and must view the tuna auction from behind a glass partition. According to one report the new market will have its own financial problems. In 2017, the Tokyo metropolitan government estimated that the new market will incur a loss of up to ¥10 billion (nearly US\$90 million) from the higher cost of running the facility, including the new refrigeration and air conditioning systems that will control the temperatures inside the facility. The government noted that steps must be taken to lessen these losses by making further efforts to streamline market operations and increase the number of transactions.⁴⁸

Some traders from the old Tsukiji market who moved to Toyosu feel that the new market will provide added opportunities to take advantage of Japan's export markets instead of reliance on the domestic market only. A spokesman for the Wholesalers Cooperative of the Tokyo Fish Market that represents about 680 middlemen said that with domestic consumption of fish shrinking, it is time for the coop members to begin acquiring export skills.⁴⁹ As a result, the Japanese government has stepped in with some relevant training programs but one wonders how effective these market-based traders will be in breaking into the export market already dominated by larger corporations and existing trade relationships.

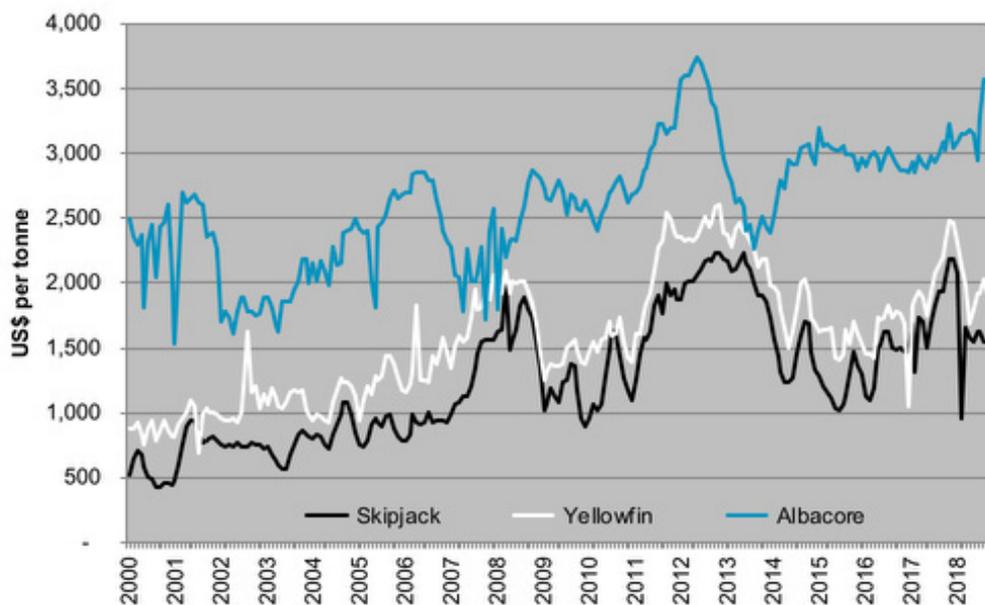
Although Tsukiji and now Toyosu are names synonymous with "the Tokyo fish market", there are about a dozen other wholesale markets in Tokyo. For example, in Ota ward, Ota Ichiba opened its doors in 1989 and covers 400,000 square meters. In addition to marine products, the market contains flower, fruit, and vegetable sections. The market is attempting capitalize on the past popularity of Tsukiji to attract tourists to its early morning auctions and has a walkway that can be utilized by visitors to view the warehouse floor.⁵⁰

The Tokyo Metropolitan Government has already begun dismantling of the Tsukiji venue and continues to work towards future development. It is anticipated that demolition work and clean-up will be completed by February 2020 when the site will be temporarily converted into a parking lot for vehicles in support of the 2020 Tokyo Olympics and Paralympics.

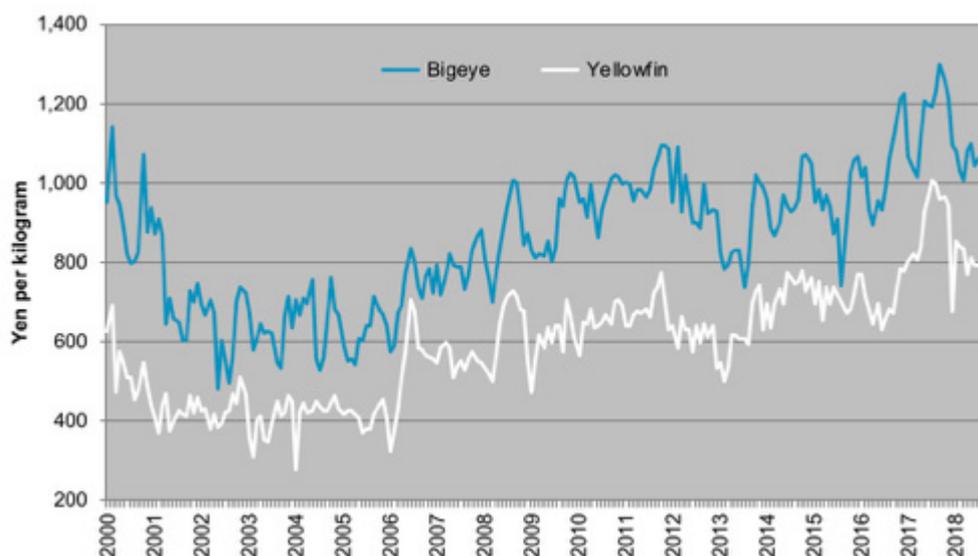
*Tokyo's new
fish market
facility opened
for business at
Toyosu site on
10 October
2018*

TUNA PRICE TRENDS⁵¹

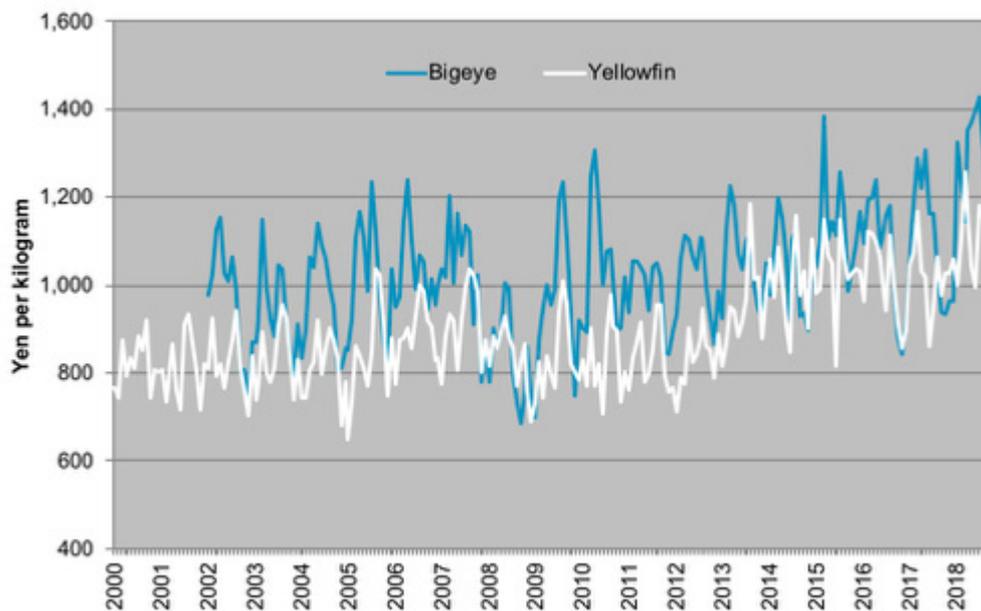
Bangkok canning-grade prices to September 2018⁵²



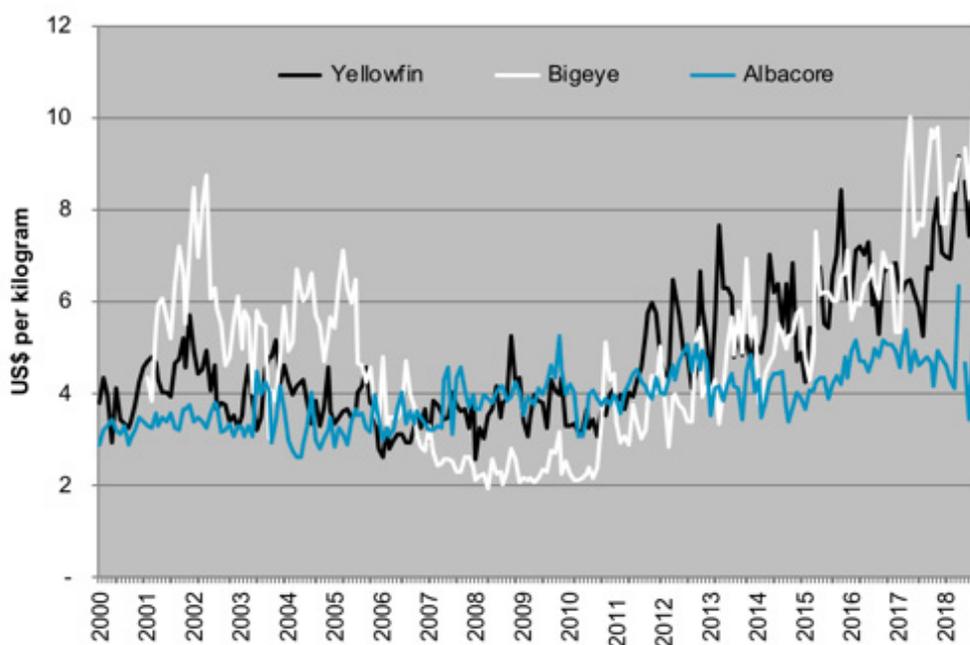
Japan frozen sashimi prices (ex-vessel, Japanese ports) to August 2018⁵³



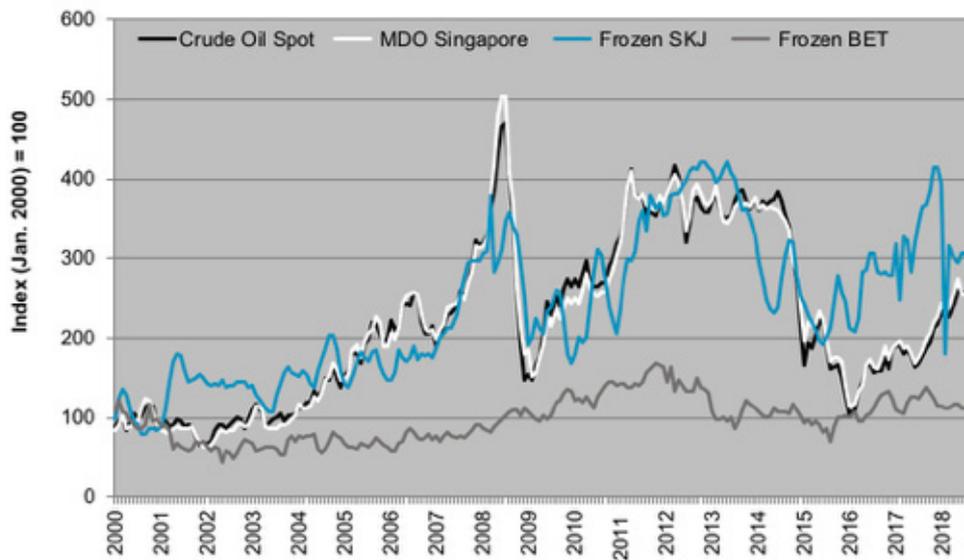
Japan fresh sashimi prices (origin Oceania) to August 2018⁵⁴



US imported fresh sashimi prices to September 2018⁵⁵



Crude oil, canning-grade frozen skipjack (SKJ) and frozen bigeye (BET) price index to September 2018⁵⁶



⁰ Prepared for the FFA Fisheries Development Division by Dr Liam Campling, School of Business and Management, Queen Mary University of London, Dr Elizabeth Havice, University of North Carolina at Chapel Hill and Mike McCoy, independent consultant, all Consultant Fisheries Trade and Market Intelligence Analysts, Fisheries Development Division, FFA. Desktop publishing by Antony Price. The authors would like to thank Len Rodwell for his input on an earlier draft of this briefing. The contents of this briefing (including all analysis and opinions) are the responsibility of the authors and do not necessarily reflect the positions or thinking of the FFA Secretariat or its Members.

¹ Liam Campling, Elizabeth Havice and Mike McCoy 2017, 'Update on fisheries subsidies debates in the lead up to the 11th WTO Ministerial', *FFA Trade and Industry News*, 10(4): July-August; and Elizabeth Havice, Liam Campling and Mike McCoy 2017, 'WTO Members fail to agree to minimal, low ambition rules on fisheries subsidies', *FFA Trade and Industry News*, 10(6): November-December. Available at: https://www.ffa.int/trade_news

² See: http://stats.unctad.org/Dgff2016/planet/goal14/target_14_6.html

³ Victor Galaz, Beatrice Crona, Alice Dauriach, Jean-Baptiste Jouffray, Henrik Österblom and Jan Fichtner 2018, 'Tax havens and global environmental degradation', *Nature Ecology & Evolution*, <https://doi.org/10.1038/s41559-018-0497-3>

⁴ <https://fishcrime.com/2018-presentations/>

⁵ North Atlantic Fisheries Intelligence Group and INTERPOL 2017, *Chasing Red Herrings: Flags of Convenience and the Impact on Fisheries Crime Law Enforcement*. Oslo: NA-FIG. Available at: <https://nafig.org/publication/chasing-red-herrings/>

⁶ See: OECD 2013, *Evading the Net: Tax Crime in the Fisheries Sector*, Paris: OECD. Available at: <http://www.oecd.org/ctp/evading-the-net-tax-crime-in-the-fisheries-sector.htm>

⁷ Mark Godfrey 2018, 'Ban fishing vessels from using flags of convenience for quick IUU impact, says campaigner', *seafoodsource*, 11 July. Available at: <https://www.seafoodsource.com/news/environment-sustainability/ban-fishing-vessels-from-using-flags-of-convenience-for-quick-iuu-impact-says-campaigner>

⁸ Such as the over 120-country strong Base Erosion and Profit Shifting (BEPS) reforms led by the OECD. See <http://www.oecd.org/tax/beps/>

⁹ This article is based on the TCC14 Draft Summary Report and numerous other TCC14 meeting and WCPFC documents available at: <http://www.wcpfc.int>

¹⁰ TMT & IHS Maritime & Trade 2017, *The IMO Number for Fishing Vessels – Application Guidelines for Companies and Flag States*.

¹¹ This article is based on the TCC14 Draft Summary Report and numerous other TCC14 meeting and WCPFC documents available at: <http://www.wcpfc.int>

¹² 'RMI President Calls for 2023 Target on Abolition of IUU Fishing', Press Statement – Office of the President of the Marshall Islands, 5 October 2018. Available at: <http://pacifictuna.org/rmi-president-calls-for-2023-target-on-abolition-of-iuu-fishing/>

¹³ European Commission, 'EU and the Republic of Korea join forces in fight against Illegal, Unreported and Unregulated Fishing', Brussels, 18 October 2018. Available at: http://europa.eu/rapid/press-release_IP-18-6142_en.htm

¹⁴ 'USTR finalizes tariffs on \$200 billion of Chinese imports in response to China's unfair trade practices', *Office of the United State Trade Representative Press Release*, September. Available at: <http://ustr.gov>

¹⁵ Jason Huffman, 2018. 'Seafood industry makes last-ditch try to stop Trump's 10-25% tariffs on Chinese goods', *Undercurrent News*, 10 September. Available at: <http://www.undercurrentnews.com>

¹⁶ Tom Seaman, 2018. 'US, China trade war a driver for Russian Pollock price hike', *Undercurrent News*, September 14. Available at: <http://www.undercurrentnews.com>

¹⁷ The complete list of products subject to the action is available at: <https://ustr.gov/sites/default/files/enforcement/301Investigations/Tariff%20List-09.17.18.pdf>

¹⁸ NOAA data, queried 29 October 2018. US import data available at: <https://www.st.nmfs.noaa.gov/commercial-fisheries/foreign-trade/applications/trade-by-product>

¹⁹ US import data available at: <https://www.st.nmfs.noaa.gov/commercial-fisheries/foreign-trade/applications/trade-by-product>

²⁰ US import data available at: <https://www.st.nmfs.noaa.gov/commercial-fisheries/foreign-trade/applications/trade-by-product>

²¹ See: Liam Campling, Elizabeth Havice and Mike McCoy, 2018. 'US steel and aluminium tariffs: potential impacts on seafood', *FFA Trade and Industry News*, 11(2): March-April. Available at: <http://www.ffa.int>

²² Neil Ramsden, 2018. 'Tariffs on Chinese tuna may force Chicken of the Sea to process overseas', *Undercurrent News*, 20 September. Available at: <http://www.undercurrentnews.com>

²³ Jan Tharp, 2018. 'RE: Comments of Bumble Bee Foods, LLC Concerning Proposed Modification of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation – Opposing Duties on HTS 1604.14.40', *Electronic Filing on Docket No. USTR-2018-0026*, 5 September. Available at: <http://www.intrafish.com>

²⁴ Neil Ramsden, 2018. 'Bumbe Bee: Trump's tuna tariffs "devastating" for firm', *Undercurrent News*, 20 September. Available at: <http://www.undercurrentnews.com>

²⁵ 'China tariffs: Starkist backs it even as trade body opposes', *Atuna*, 28 September 2018. Available at: <http://www.atuna.com>

²⁶ Andrew Choe, 2018. 'Re: Comments of Starkist Co. concerning proposed modification of action pursuant to Section 301', *Electronic Filing on Docket No. USTR-2018-0026*, 6 September. Available at: <http://www.intrafish.com>

²⁷ *The National* (PNG), 'Government seeking better deal for PNG tuna', 14 August 2018. <https://www.thenational.com.pg/government-seeking-better-deal-for-png-tuna/>; Cliff White 2018, 'Papua New Guinea pursues MSC certification for tuna fishery', *Seafoodsource*, 10 August. Available at: <https://www.seafoodsource.com/news/environment-sustainability/papua-new-guinea-pursues-msc-certification-for-tuna-fishery>

²⁸ Matilde Mereghetti 2018, 'PNG tuna firms forge ahead with break from Pacific, gain gov't backing for MSC drive', *Undercurrent News*, 19 September. Available at: <https://www.undercurrentnews.com/2018/09/19/png-tuna-firms-forge-ahead-with-break-from-pacific-gain-govt-backing-for-msc-drive/>

²⁹ See: <https://fisheries.msc.org/en/fisheries/pna-western-and-central-pacific-skipjack-and-yellowfin-unassociated-non-fad-set-tuna-purse-seine/about/>

³⁰ Pacific Legal Structure: http://www.pacifical.com/legal_structure.html

³¹ Cliff White 2018, 'Rift between Papua New Guinea and Pacific threatens future of regional tuna MSC certification', *Seafoodsource*, 16 October. Available at: <https://www.seafoodsource.com/news/environment-sustainability/rift-between-papua-new-guinea-and-pacific-threatens-future-of-regional-tuna-msc-certification>

³² Matilde Mereghetti and Tom Seaman 2018, 'Trouble in MSC tuna 'paradise' as PNG seeks to break from Pacific', *Undercurrent News*, 14 September. Available at: <https://www.undercurrentnews.com/2018/09/14/trouble-in-msc-tuna-paradise-as-png-seeks-to-break-from-pacific/>

³³ *Undercurrent News*, 'PNG defends its independent MSC certification, says other countries will follow suit', 18 October 2018. Available at: <https://www.undercurrentnews.com/2018/10/18/png-defends-its-independent-msc-certification-says-other-countries-will-follow-suit/>

³⁴ Email press release, 'Undercurrent Publishes Fake News on Pacific and MSC', 14 September. Reproduced verbatim on *Atuna*: <http://atuna.com/index.php/en/8331>

³⁵ Matilde Mereghetti 2018, 'PNG group rejects Pacific's Filipino bias claim over MSC break-up plan', *Undercurrent News*, 25 September. Available at: <https://www.undercurrentnews.com/2018/09/25/png-group-rejects-pacificals-filipino-bias-claim-over-msc-break-up-plan/>

- ³⁶ Press release, 'Pacifical Gives Feedback On Seafoodsource.com Article', 17 October 2018. Available at: <http://www.pacifical.com/articles/00121.html>
- ³⁷ Jason Smith, 'Adjudicator paves way for Echebastar skipjack tuna MSC certification', *Undercurrent News*, 24 October 2018. Available at: www.undercurrentnews.com
- ³⁸ *Atuna*, 'Sustainable: Not a Frabelle idea', 19 October 2019. Available at : <https://www.atuna.com/index.php/en/2-news/8478-sustainable-not-a-frabelle-idea?highlight=WyJtc2Mil-CJtc2Mncylslidtc2MilCJtc2Mnl0=>
- ³⁹ Paul Elias, 2018. 'StarKist admits fixing tuna prices, faces \$100 million fine', *The Associated Press*. 19 October. Available at: <http://www.apnews.com>
- ⁴⁰ Cliff White, 2018. 'Chris Lischewski out as Bumble Bee CEO following price-fixing indictment', *Seafood Source*, 25 May. Available at: <http://www.seafoodsource.com>
- ⁴¹ 'Another major US retail giant goes after tuna's "Big Three" for price-fixing', *IntraFish Media*, 18 October 2018. Available at <http://www.intrafish.com>
- ⁴² Cliff White, 2018. 'Lischewski target of new lawsuit filed over canned tuna price-fixing', *Seafood Source*, 21 August. Available at: <http://www.seafoodsource.com>
- ⁴³ Liam Campling, Elizabeth Havice and Mike McCoy, 2018. 'Walmart and Chicken of the Sea settle on price fixing, opens opportunity for Pacifical product in USA', *FFA Trade and Industry News*, 11(3): May-June. Available at: <http://www.ffa.int>; Madelyn Kearns, 2018. 'Walmart resolves anti-trust lawsuit against Chicken of the Sea', *Seafood Source*, 23 May. Available at: <http://www.seafoodsource.com>
- ⁴⁴ Paul Elias, 2018. 'StarKist admits fixing tuna prices, faces \$100 million fine', *The Associated Press*. 19 October. Available at: <http://www.apnews.com>
- ⁴⁵ 'Last auction held at Tsukiji market as 83-year history of 'kitchen of Japan' ends', *Mainichi*, 6 October 2018. Available at: <http://www.mainichi.jp/english/articles>.
- ⁴⁶ 'Tokyo's new Toyosu fish market opens and public tours will begin Saturday', *Japan Times*, 11 October 2014. Available at: <http://www.japantimes.com>
- ⁴⁷ 'Japan fish market opening', *Reuters*, 10 October 2018. Available at <http://www.Reuters.com>
- ⁴⁸ 'Japan fish market opening', *Reuters*, 10 October 2018. Available at <http://www.Reuters.com>
- ⁴⁹ Nagata, K. 'Tsukiji traders fish for new export markets. *Japan Times*, May 30, 2018.
- ⁵⁰ <https://blog.gaijinpot.com>.
- ⁵¹ All databases are provided by the Fisheries Development Division at FFA.
- ⁵² Customs Department, Thailand. <http://www.customs.go.th/Statistic/StatisticIndex.jsp>
- ⁵³ FFA database
- ⁵⁴ Japan Customs. http://www.customs.go.jp/toukei/info/index_e.htm
- ⁵⁵ US National Marine Fisheries Service. <http://www.st.nmfs.gov/st1/trade/index.html>
- ⁵⁶ US Energy Information Administration. http://tonto.eia.doe.gov/dnav/pet/pet_pri_spt_s1_m.htm