



POSITION PAPER

30 November 2023

WCPFC Secrecy and the Problem of Illegal FAD use in the Western Pacific

OVERVIEW

There is increasing concern among market stakeholders and NGOs about the practice of transport vessels for the catch of purse seine fisheries deploying and retrieving Fish Aggregating Devices (FADs) used to catch tuna in the Western and Central Pacific Ocean – and about the opacity of the WCPFC’s compliance process - even after a sanction was applied in one major case.

In this way, various interests around sustainability are seriously at stake, as well as the stability of the supply of sustainable certified tuna of purse seine fisheries in the market supply chain. Consequently, the next regular session of the Western and Central Pacific Fisheries Commission (WCPFC), must urgently clarify the current situation of unclear regulations and finally commit to the transparency of its compliance processes.

Currently, due to the lack of independent observers on board vessels that transport the catch of purse seine tuna fisheries, there is very little control possible over the specific use of FADs on these vessels.

This even though demand for control over the use of FADs is increasing. Indeed, the Environmental Justice Foundation called this spring for ‘decisive action to thoroughly investigate’ the fleet in the Western and Central Pacific, and ‘improve transparency and ensure compliance with international regulations’.

This call came after the EJF’s investigation efforts brought the issue of illegal FAD use to light.

WHY CHANGE IS NEEDED

The issue of FADs deployed by reefers for purse seine catch is a substantial concern for the market..

Large tuna traders and retailers are afraid of the risk that the tuna that they offer to their customers under a Marine Stewardship Council sustainability certificate could need to be withdrawn from the market on a large scale if it turns out that the tuna should be classified as an illegal catch. "Such a 'Total Recall', which we are obliged to do if illegally caught tuna is in the supply chain, could cause enormous damage," says one advisor to an important tuna trader in the global market. 'Not only because of the costs of such an operation, but also because of the reputational damage. We cannot afford such risk.'

The concerns of the various stakeholders in the chain are further amplified because it is not about an isolated case, but a structural practice of reefer vessels deploying FADs in the Western and Central Pacific.

There is a particular issue here with South Korean based vessels.

Based on research of vessel tracking data for hundreds of Korean-owned and Korean-affiliated carrier vessels the EJP detected behaviours with ten carriers that could indicate the illegal deployment of FADs. All ten are either flagged to South Korea, or have beneficial ownership connections or affiliations with South Korean companies. The detection of one of them, the Korean reefer Sun Flower 7, resulted in a fine to the owner of the vessel by the South Korean authorities this summer.

But after this sanction, the illegal deployment of FADs continued. As a matter of fact, the fine to the Sun Flower 7 did not end its practice of illegally deploying FADs.

According to tracking data published in Atuna.com, the Sunflower 7 itself was again active in a suspicious manner in Kiribati's territorial waters on 4 and 5 June at the same moment that Korean authorities mailed a letter to the WCPFC secretariat confirming that WCPFC had fined the owner of the vessel for the previous violation.

Several tracking maps show other "reefers" that were detected making similar movements related to deployment of FADs, namely the Korean flagged vessels Lake Dream and Like Win, both managed by the Ji Sung Shipping company in the period between June and August.

In the case of the carrier Badaro, its owner, the Korean tuna fisheries and trade giant Dongwon, acknowledged two occasions of FAD deployment between September and October. When asked for comment, the company said in a detailed explanation that they consulted the Korean authorities. According to Dongwon, the Korean officials then confirmed that, in this case, the FAD deployment by the reefers was totally compliant with the rules.

Unlike the case of the Sunflower 7, the Badaro's FAD deployment took place in High Sea after the conclusion of the FAD closure. The South Korean government verified to the WCPFC that there are no legal violations associated with the deployment of FADs in High Seas, according to Dongwon.

When it comes to compliance of FAD management, there are still many questions left unanswered about the possibilities of legal wiggle room in the WCPFC's rulings, which are exacerbated by the lack of independent observers aboard the reefer ships that operate for the purse seiner fleet.

There is also the continuing lack of transparency and openness in the WCPFC's compliance processes themselves, the downsides of which this case brings to light.

Since NGO and market stakeholder organizations are blocked from joining the closed sessions of WCPFC's Technical and Compliance Committee meetings, the relevant details of these cases fall under the 'secured content' that is not publicly available - even with their substantial environmental, economic, and sustainability implications.

Indeed, the response of member countries to our statement challenging the continuing secrecy of these sessions met with vocal scorn from some member countries in attendance. Consequently, important questions in this matter remain unsolved.

It is true that the WCPFC sent a circular to its member states with the letter by the Korean authorities informing that the owner of the Sun Flower 7 had paid a fine. And well-informed sources do not doubt that the case of Sun Flower 7 was on the agenda of one of the closed sessions of the Technical and Compliance Committee of the WCPFC held last September in Pohnpei. But a "lack of doubt" is no substitute for genuine clarity and transparency in matters of sustainability.

And, when it comes to sustainable FAD management and demarcation of permitted fisheries there is a clear argument that the general interest of openness for all stakeholders, including fisheries and Island states, outweigh the objections made by specific individual parties.

IN CLOSING

This is the situation on the eve of the regular yearly session of the WCPFC in the first week of December 2023 in Rarotonga, the Cook Islands.

We urge members to urgently adopt decisions and approaches that improve the transparency and accountability of the management of the regional fishery under WCPFC mandate and to facilitate transparency and openness of the compliance processes.

This includes the use of FADs crossing marine protected areas, an issue that only will gain importance under the new BBNJ treaty for establishing marine protected areas on High Seas.

Also, there is the need for monitoring of FADs as well as transport vessels by technical devices and independent observers. This is not only a matter for the WCPFC in isolation, but also in relation with other RFMOs, including an urgent synchronisation of the management rulings.

Appendix: The case of the Sunflower 7

It is not publicly known who exactly gave the orders between last year November 14 and 22 on board the Sun Flower 7, a 'reefer' for the transport of purse seine caught tuna employed by the Korean tuna company Sajo Industries. Not that this matters much when it comes to whomever is accountable for the activities on the vessel. Clearly, those on board didn't care much that their VHS transmitter of the Automatic Identification System (AIS) was sending a regular GPS signal tracking their movements. They were being watched, but obviously did not really care.

It was only early March 2023 when the transport ship carrying a large cargo of 4,000 tons of tuna, worth an estimated \$7 million, from the port of Pohnpei in Micronesia was denied access by Thai customs authorities to unload at Bangkok's central tuna port. The Environmental Justice Foundation (EJF) was involved to alert the Thai authorities that there was a good chance that the cargo of fish was 'contaminated' with tuna caught with illegally deployed FADs. On request of the port authorities, no evidence was provided by the Sun Flower 7 of the contrary. So according to the international rules of the Port State Measures Agreement, the reefer was denied access on suspicion of having a huge cargo of illegally caught tuna aboard.

It is not often that such a large shipment of tuna is refused entry, and the matter did not go unnoticed by the WCPFC that published the notification of the denial of port entry. The website Atuna.com (www.atuna.com) got wind of the matter and managed to get its hands on the AIS tracking maps through Global Fishing Watch, the organization joined by Google, Oceana and SkyTruth, which launched the first global system to monitor commercial fishing fleets via their AIS signals. Actually, the case of the Sun Flower 7 was already noticed in November by the independent fishery advisor Francisco Blaha who wrote about it in his blog.

All were looking at the same map, where the AIS tracking signal of the Sun Flower 7 left a strange zigzag movement in the ocean just outside the EEZ-waters of the small Island state of Kiribati. The movement of the reefer could not be explained by any transshipment activities on sea. This was out of the question anyway, since the Sun Flower 7 is a carrier that collects its cargo of purse seine fisheries. That happens at port. Only reefers that collect the catch of longliners do transshipments at the high seas, and they usually have independent observers checking their activities. Reefers for purse seiners don't, because they collect their catch in port.

The zigzag was not less than the typical pattern of the deploying of FADs. And that was an illegal activity. It was the season of the so-called 'FAD-ban' in the area. Retrieving and deploying FADs is illegal during a FAD-ban according to the rulings of the WCPFC. All the fish caught with FADs during a FAD ban is illegal. But there was more room for legal doubts: according to the close reading of the in

the Western and Central Fisheries Convention all 'placing, searching for or recovering' of FADs is defined as a fishing activity (chapter 88, paragraph 6901, (6)). But are reefers licensed for these fishing activities? And if so, would that not open the door to fishing that is not part of the compliance activities under surveillance of the independent observer program of the WCPFC?

With the help of Google Earth, the website Atuna.com discovered more disturbing elements in the case. According to Google Earth, the ocean currents should have drifted the FADs of the Sun Flower 7 straight through nearby Phoenix Islands Protected Area (PIPA), a 408.250 square kilometre oceanic wilderness that according to UNESCO is of 'outstanding value' for its biodiversity. It was the first site in Kiribati that is part of UNESCO world heritage list. Kiribati is committed 'to ensure a management system that is sustainable' for the capture and fining of illegal fishing vessels. It also should strengthen the management framework for fisheries, 'including the extension of no-take areas, measures to prevent degradation of seamounts and concrete timelines for the phasing out of tuna fishing'. Not an easy thing for a small developing state with limited resources, as the UNESCO website rightly notes.

Tuna fisheries and FADs have a long history. Floating objects in the seas have been used in all oceans for many fisheries. Originally the objects were composed of ocean debris, seaweed, or wooden trunks. Later FADs became man made rafts of bamboo, wood or plastic drums and fishing gear. More recently FADs developed into sophisticated high-tech objects that can have a satellite connection and underwater detection aboard, to send the data of the fish below it to the fishing fleets.

Why exactly FADs attract fish is still a matter of dispute between marine biologists. Maybe because it gives them shelter to enemies like birds in the vast openness of the ocean. Maybe because it provides shade. After a while weed and barnacles grow, small fish gather, followed by triggerfish, juvenile tuna, dolphins, skipjack, yellowfin, and bigeye tuna and even sharks. It starts to form a drifting ecosystem of its own. This is of course of great advantage for fisheries. Fishing around floating objects, anchored or drifting, is associated with a better haul, or 'set', rate than targeting free swimming schools. So, FADs, floating and anchored, turned into an increasingly popular extension of the existing fishing gear, like purse seine nets and pole and line.

In the case of the Sun Flower 7, according to the data of the currents of Google Earth, the FADs deployed by the reefer must have drifted right through the protected world heritage during an estimated month, while collecting tuna. Then, driven by the same current, the FADs crossed again the boundaries of the PIPA protected area, back into the free High Seas. There, the purse seiner vessels of the Sajo Industries company, all fishing under a MSC certification for skipjack and yellowfin held by the Japanese trader Itochu Corporation, were waiting to capture

the collected tuna, transport it to the port of Pohnpei, were the Sun Flower 7 could tranship the cargo in its hold and set course to Bangkok.

After being denied access to the port of Bangkok, the Sun Flower 7 set sail for South Korea and switched its AIS signal off. It finally was detected again in April 2023 in the Busan port area, where Sajo has a canning factory. In May, after initially declaring to EJF that the Sun Flower 7 had not violated any law, because South-Korea laws didn't regard the cargo as being IUU, the Korean Ministry of Oceans and Fisheries fined the Korean owner of the Sun Flower 7 for just \$150,000 USD. What had happened with its \$7 million cargo of tuna remained unclear.

In its letter to the WCPFC, the Korean authorities did not wholeheartedly accept the fact that deploying FADs by the Sun Flower was an illegal activity. They noted that WCPFC regulation had no explicit provision for retrieving FADs by a reefer during a FAD-ban. They were considering a proposal for an amendment to clarify this point. So, it was not surprising that the fining of the Sun Flower 7 was not the end of the Korean story of reefers deploying FADs. [MK3]

Source material

This paper includes content from these public sources

<https://ejfoundation.org/news-media/new-data-reveal-links-between-korean-vessels-and-illegal-fishing-in-the-pacific>

<https://cmm.wcpfc.int/measure/cmm-2009-02>

WCPFC 19-2022-op04, towards responsible transparency: understanding why fishers are cautious about sharing

Atuna.com, various articles among which

<https://www.atuna.com/news/sun-flower-7-strikes-again-feels-unseen?highlight=WyzdW4iLCJzdW4ncyIsIidzdW4iLCJmbG93ZXIiLCJzdW4gZmxvd2VyIl0=>

([http://www.franciscoblaha.info/blog/2023/3/11/thailand-denies-port-use-to-a-carrier-dropping-fads-in-the-wcpo-this-is-good-news?rq=Sun Flower](http://www.franciscoblaha.info/blog/2023/3/11/thailand-denies-port-use-to-a-carrier-dropping-fads-in-the-wcpo-this-is-good-news?rq=Sun+Flower)).

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