INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE (REQUEST FOR AN ADVISORY OPINION)

WRITTEN STATEMENT OF THE PARTIES TO THE NAURU AGREEMENT OFFICE

Contents

PART A

I. QUESTION POSED TO THE COURT BY THE UN GENERAL ASSEMBLY

1. The United Nations General Assembly, at its sixty-fourth plenary meeting, adopted resolution 77/276 entitled "Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change". In its resolution, the General Assembly decided, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice to render an advisory opinion pursuant to Article 65 of the Statute of the Court, on the following question:

   Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

   (a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?

   (b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

   (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

   (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?

2. This written statement is presented by the Parties to the Nauru Agreement Office (PNAO) under Article 66 of the Court's Statute, pursuant to the Court's decision that the PNAO is likely to be able to furnish information on these question[1]. The question posed by the General Assembly is clear and specific, so the statement presented here will seek to respond to the question, specifically in the context of the Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Stocks, as well as related instruments. This written statement by the PNAO is provided without prejudice to the positions of individual Parties.

[1] International Court of Justice Press Release 2024/20

PART B

II. THE INTERESTS OF THE PARTIES TO THE NAURU AGREEMENT OFFICE IN THE ADVISORY PROCEEDINGS BEFORE THE COURT

3. The Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Stocks[2] (Nauru Agreement) was adopted in 1982. The Parties to the Nauru Agreement seek in a cooperative manner, without any derogation of their respective sovereign rights, coordinate and harmonise the management of fisheries with regard to common stocks within their exclusive economic zones[3] (EEZ), for the benefit of their peoples. The Parties to the Nauru Agreement have agreed to establish, as a minimum, uniform terms and conditions under which the Parties may licence fishing vessels to fish within their EEZs. The Nauru Agreement established the Parties to the Nauru Agreement Office (PNAO), tasked with coordinating the implementation of the provision of the Nauru Agreement as an umbrella agreement, and other arrangements concerning the Parties. There are two arrangements that operate under the Nauru Agreement: the Palau Arrangement for the Management of the Western Pacific Fishery[4] and the Federated States of Micronesia Arrangement for Regional Fisheries Access adopted in 1995[5]. This written statement is submitted by the PNAO, without prejudice to the positions of individual Parties.

4. The Parties to the Nauru Agreement (PNA) include the Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, and Tuvalu. The New Zealand territory of Tokelau participates in the fisheries management arrangements, including decision making, established under the Palau Arrangement for the Management of the Western Pacific Fishery, through a memorandum of understanding with the Parties to the Palau Arrangement. Tokelau participates as an observer at the meetings of the PNA.

5. As an entity established by the Nauru Agreement to assist with the management of the key marine living resources of Small Island Developing States that are Parties to the Nauru Agreement, the PNAO has a close and vital interest in the Court's advisory proceedings on this matter.

6. Indeed, the question before the Court specifically highlight the implications for "*in particular, small Island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change.*" All the Parties to the Nauru Agreement fall within this category, and, indeed, for all Parties to the Nauru Agreement, the impacts of climate change to their cooperative fisheries management and fisheries development arrangements are projected to be substantial.

[2] As amended in 2010.
[3] UNCLOS Article 55.
[4] As amended in 2010.
[5] As amended in 2022.

III. PNA VESSEL DAY SCHEME

7. The PNA Vessel Day Scheme (PNA-VDS), is the fisheries management framework used by the PNA to manage their tuna fisheries, collectively, in their EEZs. The PNA-VDS has at its core, a collective approach to the application of sovereign rights[6] relating to the conservation[7] and utilization of living resources[8], throughout the breadth of the EEZs[9] of the 8 PNA countries and Tokelau, through joint management arrangements[10].

8. The PNA, together with Tokelau, manage the largest tuna fishery in the world[11]. The PNA-VDS limits fishing effort, defined in terms of fishing days, to an annual Total Allowable Effort (TAE). The TAE is allocated, among the eight sovereign PNA countries, as a set of Party Allowable Effort limits (PAEs), based largely on recent effort history. Tokelau has a separate TAE/PAE that is adjusted in relation to changes to the PNA TAE. Parties can trade PAE days and use a range of other PNA-VDS provisions; however total effort is maintained within the overall TAE.

IV. THE SUCCESS OF THE PNA-VDS

9. The PNA-VDS collectively covers an area of 13,336,380 km^2. This area is some of the most productive tuna grounds in the Pacific, producing annually, on average, between 2020-2022, about 1,450,000 metric tonnes. Taking a collective approach to fisheries management in their EEZs, the PNA manage these valuable tuna species, in their EEZs, but also influence their management throughout the Western and Central Pacific Ocean through the Western and Central Pacific Fisheries Commission, the relevant regional fisheries management organisation. The WCPFC has, currently, the most productive tuna stocks in the world that are managed sustainably, as illustrated in Figure 1, that indicates the level of production and is traffic light coded to indicate the current status of the stocks for the main tuna species.

10. The PNA have been able to leverage that success to support their domestic development aspirations. The PNA-VDS was introduced in 2006 and the expansion of access fees for foreign fishing has been substantial between 2007 and 2021. This growth can be attributed, in large part, to the PNA-VDS for the management of purse-seine fisheries in the region[12]. Figure 2 illustrates the change in time of vessel nationality in the Western and Central Pacific Ocean. The PNA has leveraged that to entice fishing companies to register as domestic companies, and secure additional benefits in terms of infrastructure development, processing facilities, employment, taxes and increased participation in the value chain for tuna. For the PNA, fisheries related revenue from the VDS, contributes a large portion of the total government revenue annually, and constitutes a large percentage of gross domestic product in 2021[13]. This important sector of the economy is most at risk from the effects of climate change.

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[6] UNCLOS Article 56(1)(a).
[7] UNCLOS Article 61.
[8] UNCLOS Article 62.
[9] UNCLOS Article 57.
[10] UNCLOS Article 63.
[11] Chapter 12 (FAO Fisheries and Aquaculture Technical Paper No. 667): The Parties to the Nauru Agreement (PNA) 'Vessel Day Scheme': A cooperative fishery management
[12] Fisheries in the Economies of Pacific Island Countries and Territories. 2023, Benefish Study 4 Report. SPC.
[13] See footnote 12.

V. POTENTIAL IMPACTS OF CLIMATE CHANGE TO THE PNA-VDS

11. The most recent Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Report (AR6 Report) indicates that current nationally determined contributions (NDCs), under the Paris Agreement, are not sufficient to achieve the objectives of holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels. To achieve these targets will require substantial increases in efforts under NDCs. This will involve rapid, deep and, in most cases, immediate greenhouse gas emission reductions as indicated in Figure 3.

12. The PNA works closely with other Pacific regional bodies and agencies. A key partner is the Pacific Community (SPC), which is the region's primary scientific and technical organisation, whose mandate and work programme have addressed issues relating to climate change, fisheries, marine ecosystems, and coastal geoscience, for decades. SPC has worked, together with Pacific Island countries and territories, to create a better understanding of the impacts of climate change and tropical Pacific fisheries and aquaculture[14]. In support of the PNA, the PNAO has contributed to work related to improving the understanding of fisheries, climate change and the potential impacts to the tuna fisheries of the PNA through the VDS[15].

13. The PNA VDS was designed from the start to take into account climate variability in the form of the variations in the distribution and abundance of skipjack tuna across the equatorial Pacific Ocean associated with El Nino Southern Oscillation (ENSO) events, which tuna distribution and fishing effort is sensitive to in the Pacific. Historically, ENSO events occurred, on-average, every 7 years, but, more recently, ENSO events are becoming more frequent and varying in intensity. Historically, during La Nina events, most fleets prefer to fish in the west of the region, and PNA countries located there can buy days from those in the east. The converse generally occurs during El Nino episodes. The PNA-VDS ensures that the benefits of this fishery, which underpin the economies of many of the Parties to the Nauru Agreement, can be distributed equitably, regardless of where the fish are caught within their EEZs. However, adaptations to climate change-driven redistribution of tuna from the EEZs of the PNA, into high-seas areas, are also needed.

14. Table 1 provides information on the average projected changes in purse-seine catch from the EEZs of tuna dependent Pacific Small Island Developing States (SIDS) and territory, inclusive of the PNA. These are presented as the percentage difference between a ten-year average purse-seine tuna catches in tonnes (t) from the EEZs of ten Pacific SIDS and high-seas areas together with average projected changes to these catches by 2050 in tonnes and percentage terms under the RCP 8.5 and RCP 4.5 emissions scenarios.

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[14] Vulnerability of Tropical Pacific Fisheries and Aquaculture to Climate Change, 2011, SPC

[15] Pathways to sustaining tuna-dependent Pacific Island economies during climate change, 2021, Nature Sustainability.

15. Table 2 provides information on average government revenue (excluding grants), tuna-fishing access fees and the percentage of government revenue derived from access fees for ten tuna-dependent Pacific SIDS between 2015 and 2018, together with estimated changes in purse-seine tuna catch, access fees and government revenue, by 2050 under the RCP 8.5 and RCP 4.5 emissions scenarios.

16. The SPC provides relevant scientific and technical advice to the PNA and its Members. The following information summarises information previously included in a written statement presented by the SPC in advisory proceedings before the International Tribunal for the Law of the Sea (ITLOS).

VI. PELAGIC FISHERIES

17. Around 55 % of the world's tuna landings come from Western and Central Pacific waters, while 47 % of Pacific households list fishing as either a primary or secondary source of income, with national fish consumption in the Pacific islands being three to four times the global average. Pacific Ocean-based shipping and tourism provides USD 3.3 billion each year to the national economies of Pacific Island Countries and Territories.

18. Recent science in a published study called Pathways to sustaining tuna-dependent Pacific Island economies during climate change[16] highlights the impacts of climate change on tuna in the region under different scenarios. Climate change is driving tuna further to the east and into the high seas, threatening the economic and food security of Pacific Small Island Developing States:

    a. Climate-driven redistribution of tuna threatens, not only to disrupt Pacific Small Island Developing States' economies, but the sustainable management of the world's largest tuna fishery.

    b. By 2050, under a high greenhouse gas emissions scenario (RCP 8.5), the total biomass of three tuna species in the waters of ten Pacific Small Island Developing States could decline by an average of 13 % (range = −5 % to −20 %), due to a greater proportion of fish occurring in the high seas.

    c. The potential implications for Pacific Island economies in 2050 include an average decline in purse-seine catch of 20 % (range = −10 % to −30 %), an average annual loss in regional tuna-fishing access fees of USD 90 million (range = −USD 40 million to −USD 140 million) and reductions in government revenue of up to 13 % (range = −8 % to −17 %) for individual Pacific Small Island Developing States.

[16] See footnote 15.

d. There is also the likelihood that a rise in ocean temperatures may cause the displacement of tuna stocks from waters in which they have traditionally been located. There is significant uncertainty as to what impact changes in ocean temperatures might cause tuna and small pelagic stocks upon which tuna feed. A displacement would have a significant impact upon the economies of Pacific Small Island Developing States.

e. Redistribution of tuna under a lower-emissions scenario (RCP 4.5) is projected to reduce the purse-seine catch from the waters of Pacific Small Island Developing States by an average of only 3 % (range = −12 % to +9 %), indicating that even greater reductions in greenhouse gas emissions, in line with the Paris Agreement, would provide a pathway to sustainability for tuna-dependent Pacific Island economies.

VII. SEA LEVEL RISE

19. Global mean sea level is rising and accelerating. Global mean sea level will rise between 0.43 m and 0.84 m (depending on emission scenarios) by 2100 relative to 1986-2005. There is a 17 % chance that Global mean sea level will exceed 1.10 m under the highest emission scenario in 2100.

20. Under the highest emission scenario, the rate of sea level rise will be 15 mm per year (10 – 20 mm per year, likely range) in 2100, and could exceed several cm per year in the 22nd century. For Pacific Islands, Global mean sea level is compounded by the vertical movement of the islands themselves, due to tectonic or human activities, which can increase the impact of Global mean sea level rise.

21. Due to projected Global mean sea level rise, extreme sea level events that are historically rare (for example, today's hundred-year event) will become common by 2100 under all emission scenarios. More recent science presented at the United Nations Framework Convention on Climate Change (UNFCCC) meetings in June 2023 noted a growing body of research that confirms 2°C warming above pre-industrial is insufficient to slow rates of global sea level rise. Only SSP1- 1.9, with temperatures peaking around 1.6° C and levelling off below 1.5° C, avoids long-term acceleration of sea level rise. Sea level continues to accelerate even after rate of warming slows.

22. PNA Leaders, at their 2nd Summit in 2018, committed to pursue legal recognition of the defined baselines under the United Nations Convention on the Law of the Sea (UNCLOS) to remain in perpetuity irrespective of the impacts of sea level rise[17]. This objective is also reflected in the

[17] 2018 Delap Commitment on Securing our common wealth of oceans – reshaping the future to take control of fisheries.

Pacific Islands Forum Leaders Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise[18] in 2021.

PART C

VIII. LEGAL OBLIGATIONS

Charter of the United Nations

23. The United Nations Charter recognises that "conditions of stability and well-being" are "necessary for peaceful and friendly relations among nations, based on respect for the principle of equal rights and self-determination of peoples"[19].

24. Although the United Nations Charter does not specifically address environmental matters, the General Assembly, in furtherance of its responsibilities under the Charter, has taken significant action in this respect. The General Assembly has adopted many important resolutions regarding the environment, has established standing bodies and programmes to deal with particular environmental issues, and has held major international conferences and meetings to address the subject. The impacts of climate change will have a bearing on the pursuit of the United Nations Sustainable Development Goals (SDG) by the PNA, specifically in relation to SDG 13 "Take urgent action to combat climate change and its impacts", and SDG 14 "Conserve and sustainably use the oceans, seas and marine resources for sustainable development".

25. Consistent with this, there has been a developing awareness, in the international community, of the threats posed by anthropogenic emissions of greenhouse gases, including the significant adverse impacts – in some cases, existential impacts on lives, livelihoods, and natural ecosystems[20] - that these present for some vulnerable States, such as the PNA.

United Nations Convention on the Law of the Sea

26. UNCLOS stipulates that States have the obligation to protect and preserve the marine environment[21]. The Convention, as a product of its time, does not directly address GHG emissions or climate change. The question put to the Court raises the issue of whether anthropogenic greenhouse gas ("GHG") emissions fall within the definition of "pollution of the marine environment" under Article 1(1)(4) of UNCLOS. UNCLOS broadly defines the term "pollution of the marine environment" as,

    the introduction by man, directly or indirectly, of substances or energy into the marine environment... which results or is likely to result in such deleterious effects as harm to living resources and marine life....

[18] PIF Leaders Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise, 2021

[19] Article 55

[20] Tuvalu National Statement for the World Leaders Summit at UNFCCC COP26, 2021.

[21] Article 192

27. This is relevant to Part XII of UNCLOS, that imposes specific obligations on States Parties to prevent, reduce and control pollution of the marine environment. Article 194 of UNCLOS outlines the obligations of States Parties to take measures necessary to prevent, reduce and control pollution of the marine environment. Article 194 (1), (2), (3) deal with three areas of obligations, take measures to prevent, reduce and control pollution of the marine environment from any source, prevention of transboundary harm and measure to be taken according to sources of pollution.

28. The word "anthropogenic", is taken to mean 'as a result of human activities. The term "greenhouse gases" is not used or defined in UNCLOS, although it is defined in other international agreements, including the UNFCCC[22]. The most recent Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Report (AR6 Report) provides a more readily understood definition, as referring to gases in the atmosphere, such as carbon dioxide ("CO2"), methane and nitrous oxide, which can absorb infrared radiation, trapping heat in the atmosphere[23].

29. Taken together, these meet the definition of substances which may have harmful or deleterious effects on the marine environment, either directly or indirectly, within the meaning of Article 1(1)(4) of UNCLOS. It then follows that those provisions of UNCLOS that concern measures to prevent, reduce and control pollution of the marine environment, may be relevant in ascertaining States Parties' obligations in respect of anthropogenic GHG emissions.

30. These obligations should be read in conjunction with Article 237, that sets out the obligations, under other conventions, on the protection and preservation of the marine environment, which says,

    The provisions of this Part are without prejudice to the specific obligations assumed by States under special conventions and agreements concluded previously which relate to the protection and preservation of the marine environment and to agreements which may be concluded in furtherance of the general principles set forth in this Convention.

31. The UNFCCC and the Paris Agreement reflect the internationally accepted standard of conduct agreed by States Parties to prevent, reduce and control GHG emissions in order to protect and preserve the environment, including the marine environment. It is important that the obligations under UNCLOS be considered together with the spirit of the agreements and the obligations under the UNFCCC and the Paris Agreement.

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[22] 3 UNFCCC (n 6) Article 1(5) defines "Greenhouse gases" as "those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation".

[23] Intergovernmental Panel on Climate Change (IPCC), Synthesis Report of the IPCC Sixth Assessment Report (AR6) (2023) Annex I Glossary, 9

United Nations Framework Convention on Climate Change and the Paris Agreement

32. Article 2 of the UNFCCC, sets out the objective of the Convention, which is the "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system".[24] The "climate system" is defined in Article 1(3) of the UNFCCC as meaning "the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions." The specific reference to the hydrosphere, includes the marine environment within the "climate system" referenced by the UNFCCC.

33. Article 2 of the UNFCCC goes further to set a timeframe for such a level should be achieved, to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

34. The targets for stabilizing GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference are set out in Article 2(a) of the Paris Agreement, which says,

    This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by... Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change..

35. Article 4 of the Paris Agreement further underscores the second element of Article 2 of the UNFCCC, in relation to a timeframe for such a level should be achieved, to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner. Article 4 of the Paris Agreement says,

    In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible,... to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century,...

36. Despite 'best efforts' and 'good faith' in the development and implementation of NDCs, the projections of the IPCC AR6 Report indicate the implemented policies result in projected emissions that lead to a warming to 3.2°C, with a range of 2.2°C to 3.5°C (medium confidence) by 2100. This is clearly not consistent with the spirit of Article 2 and Article 4 of the Paris Agreement. We submit this adds urgency to the development of more ambitious NDCs and that their implementation embodies the spirit of Article 2 and Article 4. This is consistent with the application of the duty of due diligence.

[24] Article 2

Duty of Due Diligence

37. In accordance with its obligations not to cause injury to other States, and the principle of prevention of significant harm to the environment, a State is obliged to exert its best possible efforts to avert the risk of significant transboundary harm. It is the failure of a State to comply with its duty of due diligence, which constitutes the breach of its international obligations.

38. In the Advisory Opinion of the Seabed Disputes Chamber of the International Tribunal of the Law of the Sea (ITLOS) of 1 February 2011[25], the Chamber, in its Advisory Opinion, also pointed out that,

    The content of "due diligence" obligations may not easily be described in precise terms. Among the factors that make such a description difficult is the fact that "due diligence" is a variable concept. It may change over time as measures considered sufficiently diligent at a certain moment may become not diligent enough in light, for instance, of new scientific or technological knowledge. ...The standard of due diligence has to be more severe for the riskier activities.

39. It follows that the consideration of due diligence obligations is considered alongside the action that is appropriate and proportional to the degree of risk of transboundary harm in the particular case.

Principle of prevention of significant harm to the environment

40. The basic duty on States is not to act in a manner that injures the rights of other States, and this has evolved further to preclude damage to areas beyond the jurisdiction of other States, including the environment. This is supported in UNCLOS Article 194(2) that says,

    States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.

41. The UN Committee on the Rights of the Child has made it clear that,

    the collective nature of the causation of climate change does not absolve the State party of its individual responsibility that may derive from the harm that the emissions originating within its territory may cause to children, whatever their location.

[25] Responsibilities and obligations of States with respect to Activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p.10, emphasis added.

42. In 2001, the International Law Commission adopted its Draft Articles on Prevention of Transboundary Harm from Hazardous Activities. The Draft Articles go on to define "risk of causing significant transboundary harm" as including,

risks taking the form of a high probability of causing significant transboundary harm and a low probability of causing disastrous transboundary harm.

43. The International Law Commission has taken the view that the term "significant" is something more than "detectable" but need not be at the level of "serious" or "substantial"[26].

44. As regards the impact of climate change and global warming on the PNA and the PNA-VDS, this threshold is clearly achieved: by satisfying the high probability of causing significant transboundary harm, and also the (lower) probability of causing even disastrous transboundary harm.

45. Article 9(2) of the Draft Articles says that if the assessment of risk indicates a risk of causing significant transboundary harm,

The States concerned shall seek solutions based on an equitable balance of interests...

46. In the case of the PNA and PNA-VDS, consideration of measures to counter the deleterious effects of climate change need to commence as an imperative. Pathways for negotiating equitable outcomes and the possible mechanisms to do so have been put forward in terms of the PNA and the PNA-VDS[27].

PART D

IX. LEGAL CONSEQUENCES

47. A similar question posed to ITLOS is limited in scope to UNCLOS[28], in relation to the legal obligations with respect to climate change under UNCLOS. The court, in these proceedings, is able to cast a wider view, in line with the prescribed international law instruments.

48. The PNAO, which provides support to Parties to the Nauru Agreement that are themselves comprised of small island developing States, which, , are injured specially affected by, and particularly vulnerable to the adverse effects of climate change due to their geographical circumstances and level of development, has a specific interest in these proceedings with respect to the impacts of climate change on the PNA-VDS.

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[26] Commentary to Article 2, paragraph (4).

[27] See footnote 15.

[28] Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the International Tribunal for the Law of the Sea).

49. The causality between anthropogenic greenhouse gas emissions and climate change is clearly established, and is undisputed by governments, as are the impacts on the environment, including the marine environment. Significant harm has already been caused and will continue into the future as a result of previous and continuing actions.

50. Reference has been made above to the UNFCCC and the Paris Agreement. The measures adopted under this process, even if fully implemented, have not however been sufficient to prevent significant harm to the climate system and other parts of the environment. The General Assembly has thus posed the present question to the Court.

51. Draft Articles on Prevention of Transboundary Harm from Hazardous Activities provide for the determination of acceptable solutions regarding measures to be adopted in order to prevent significant transboundary harm or at any event to minimize the risk thereof.

Cause harm to the value of the PNA-VDS

52. Failures by States to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases, and for present and future generations, undermines the PNA-VDS, in terms of the rights-based management system it has built, builds on the collective application of sovereign rights to the EEZs. Ocean acidification and Ocean warming, among other adverse impacts of such emissions, directly impact the distribution, movement and health of fish stocks managed by the PNA and harm the ability of the PNA to fully implement and benefit from the PNA-VDS.

53. The PNA have successfully developed a fisheries management system that is successful in managing the tuna fisheries in their collective EEZs in a sustainable manner, but also used the PNA-VDS to attract economic development.

54. The discussion on the relationship under international law between climate change-related sea-level rise and maritime baselines and the outer limits of maritime zones, including for EEZs, is currently progressing through a Study Group constituted by the International Law Commission. In their observations, the Study Group noted the principle of stability of and respect for existing boundaries. The same principle of stability of and respect for existing boundaries would apply to maritime boundaries, which share the same function of demarcating the extent of the sovereignty and the sovereign rights of a State.

55. In relation to sea-level rise and maritime boundaries, their main preliminary observation is the importance accorded to ensuring continuity of pre-existing boundaries in the interests of stability and preventing conflict.

56. The International Law Association has also considered the issue and adopted proposals that *"baselines and limits should not be required to be readjusted should sea level change affect the geographic reality of the coastline"*[29].

57. The PNAO, therefore, strongly urges the Court to affirm that the maritime zones of Parties to the Nauru Agreement, as established and notified to the Secretary-General of the United Nations in accordance with UNCLOS, and the rights and entitlements that flow from them, shall continue to apply, without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise. This would be in line with the work of the International Law Commission and as considered by the International Law Association in 2018, *"on the grounds of legal certainty and stability, provided that the baselines and the outer limits of maritime zones of a coastal or an archipelagic State have been properly determined in accordance with the 1982 Law of the Sea Convention, these baselines and limits should not be required to be recalculated should sea level change affect the geographical reality of the coastline*[30]*"* and in line with PNA Leaders' decision to pursue legal recognition of the defined baselines established under the United Nations Convention on the Law of the Sea to remain in perpetuity, irrespective of the impacts of sea level rise[31] and the 2021 Pacific Islands Forum Leaders Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise.

Displacement of tuna from PNA EEZs

58. The PNA control a large portion of the Western and Central Pacific Ocean tuna fishery through their collective EEZs and have put in place measures that are largely responsible for the healthy status of the tropical tuna stocks in the Western and Central Pacific Ocean. Changes to ocean conditions, from warming and acidification of the ocean, may cause the displacement of tuna stocks from waters in which they have traditionally been located.

59. The information provided in this statement indicates the level of impact the displacement of tuna from PNA EEZs would have, in terms of revenue, but also economic development.

60. This raises the issue of the benefit or loss that would accrue to the international community with the displacement of tuna from PNA EEZs, that was once under the prescriptive and

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[29] See the Draft Report of the ILA Committee on International Law and Sea Level Rise (2018), Sydney Conference, p. 19, available at http://www.ilahq.org/images/ILA/DraftReports/DraftReport_SeaLevelRise.pdf. The committee recommended that the ILA adopt a resolution containing two "de lege ferenda" proposals: (1) "proposing that States should accept that, once the baselines and the outer limits of the maritime zones of a coastal or an archipelagic State have been properly determined in accordance with the detailed requirements of the 1982 Law of the Sea Convention, these baselines and limits should not be required to be recalculated should sea level change affect the geographical reality of the coastline"; and (2) proposing "that, on the grounds of legal certainty and stability, the impacts of sea level rise on maritime boundaries, whether contemplated or not by the parties at the time of the negotiation of the maritime boundary, should not be regarded as a fundamental change of circumstances."

[30] Resolution 5/2018, 78th Conference of the International Law Association, Committee on International Law and Sea Level Rise,

[31] See footnote 17.

enforcement competence of the coastal States, and the control of which will, in future, be fragmented into the multiplicity of flag States with significant differences in relation to the conservation and management of marine living resources.

61. In a scenario where a lower proportion of tuna resources is under the jurisdiction of the PNA-VDS, the sustainability of tuna catches could be at greater risk because the monitoring, control and surveillance required to combat illegal, unreported and unregulated fishing, and impose penalties for non-compliance, are more difficult in high-seas areas[32].

62. This concern of fragmentation and the governance gap in the high seas are reasons why States have seen value in the inclusion of area-based management tools as a main part of the recently adopted Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction. The use of closed areas in the high seas mitigates the effect of displacement of tunas from PNA EEZs and for the protection of biodiversity from rising ocean temperature effects and ocean acidification effects on fisheries. ITLOS has thus characterised the management of fish stocks, as an integral element in the protection and preservation of the marine environment[33].

63. Consideration of measures to counter the deleterious effects of climate change need to commence as an imperative. The PNAO, therefore, seeks the affirmation, by the Court, that the threshold for transboundary harm, under the Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, is clearly achieved for the tuna fisheries in the EEZs of the PNA: by satisfying the high probability of causing significant transboundary harm, and also the (lower) probability of causing even disastrous transboundary harm. This will provide a definitive statement on the risk of causing significant transboundary harm and provide an emphasis for the consideration of equitable measures that can be put in place in order to prevent significant transboundary harm or, at any event, to minimize the risk thereof.

X. CONCLUDING REMARKS

64. In closing, the General Assembly would benefit from an advisory opinion, by the Court, on the legal obligations of States with respect to the issue of climate change, and to interpret the obligations in the UNFCCC and the Paris Agreement.

65. The advisory opinion will provide an authoritative determination of the validity of the science confirming the need to reduce GHG emissions to stay below the Paris Agreement temperature

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[32] Towards the Quantification of Illegal, Unreported and Unregulated (IUU) Fishing in the Pacific Islands Region (MRAG Asia Pacific, 2016)

[33] Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan), Provisional Measures, Order of 27 August 35, 1999, ITLOS Reports 1999, 280, at 295, para. 70. See also M/V "Virginia G" (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014, and Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, para.120.

objective in the timeframe prescribed and foster increased ambition to meet the objectives of the Paris Agreement.

66. Lastly, by affirming the preservation of baselines and the outer limits of maritime zones in the face of climate change-related sea-level rise and affirming that the threshold for transboundary harm has been achieved, the Advisory Opinion will provide an emphasis for the negotiation of equitable counter measures to abate the deleterious effects of climate change.

XI. FIGURES AND TABLES

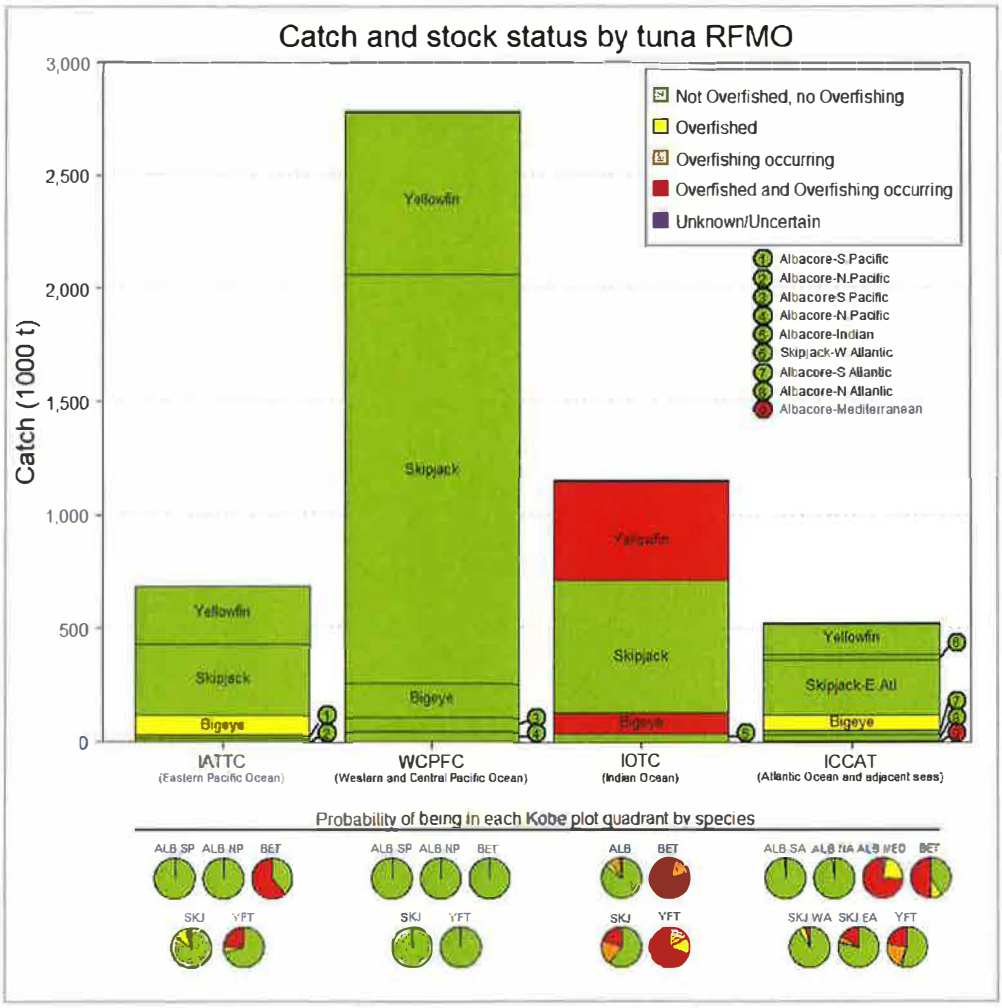

Figure 1: The level of catch and sustainability of WCPO tuna fisheries compared to other RFMOs.

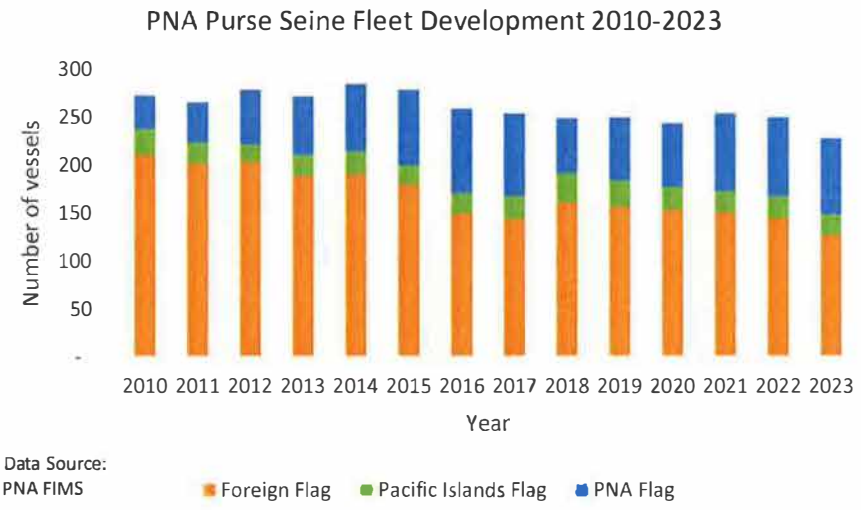

Figure 2: The development of the PNA purse seine fleet over time capitalising on the PNA-VDS.

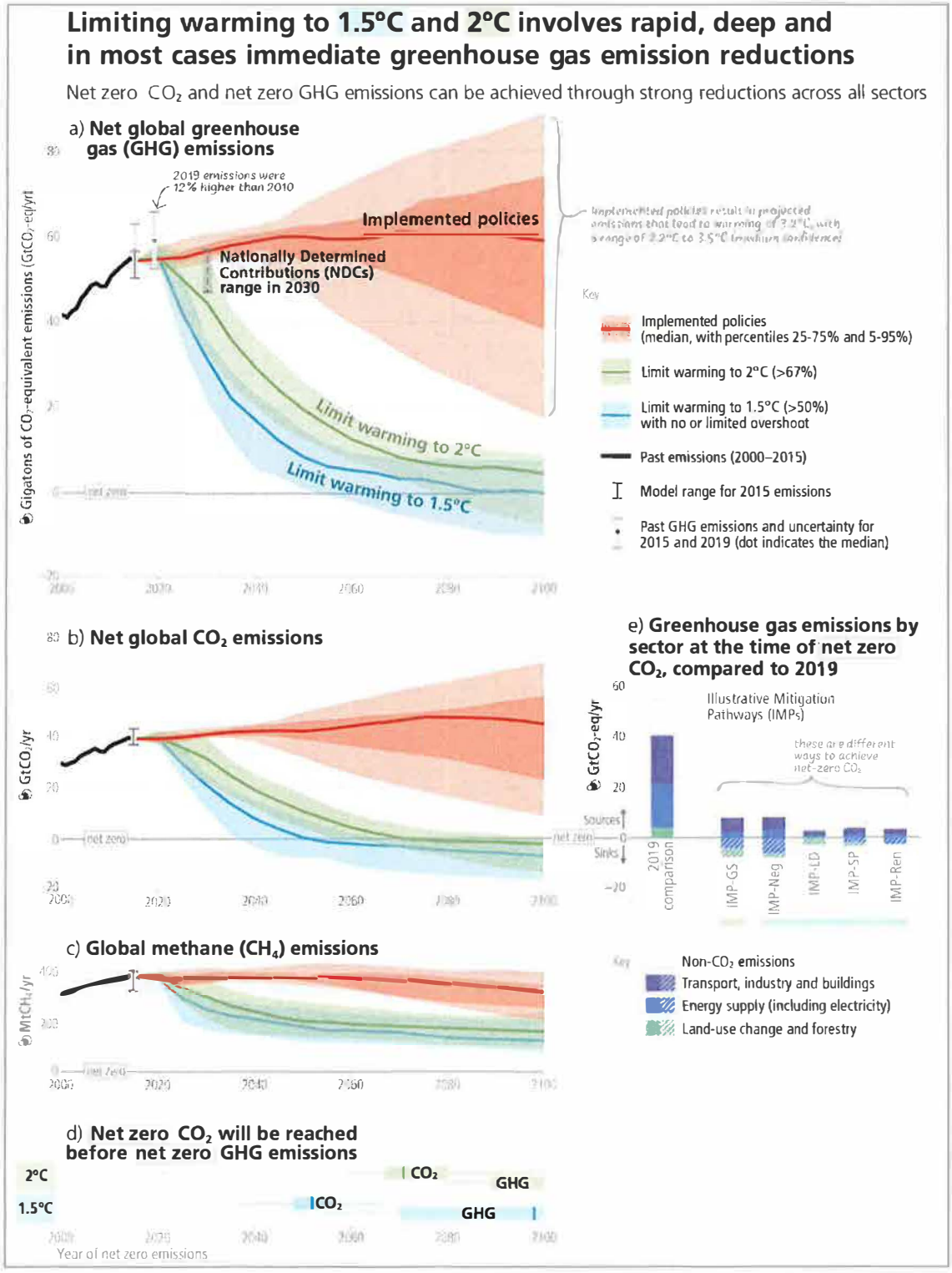

Figure 3. Figure SPM.5 from the IPCC AR6 Report.

Table 1. Table 1 of the Pathways to sustaining tuna-dependent Pacific Island economies during climate change paper indicating the projected impacts tuna catches in Pacific purse seine fisheries from climate change.

Table 1 | Average projected changes in purse-seine catch from the EEZs of tuna-dependent Pacific SIDS and high-seas areas

Area	Average catch (t)	RCP 8.5 2050			RCP 4.5 2050		
		Catch (t)	Change (t)	Change (%)	Catch (t)	Change (t)	Change (%)
EEZs of Pacific SIDS							
Cook Islands	11,080	10,640	−440	−4.0	12,065	+985	+8.9
FSM	178,587	155,407	−23,180	−13.0	173,773	−4,815	−2.7
Kiribati	396,048	363,520	−32,528	−8.2	423,251	+27,202	+6.9
Gilbert Islands[a]	(260,073)	(225,177)	(−34,896)	(−13.4)	(278,023)	(+17,950)	(+6.9)
Phoenix Islands[a]	(94,696)	(92,140)	(−2,557)	(−2.7)	(101,132)	(+6,435)	(+6.8)
Line Islands[a]	(41,279)	(46,203)	(+4,924)	(+11.9)	(44,096)	(+2,817)	(+6.8)
Marshall Islands	37,003	36,728	−275	−0.7	37,778	+775	+2.1
Nauru	110,794	86,886	−23,908	−21.6	117,059	+6,266	+5.7
Palau	2,655	2,646	−9	−0.3	2,738	+82	+3.1
Papua New Guinea	461,032	308,404	−152,628	−33.1	389,654	−71,378	−15.5
Solomon Islands	116,877	86,399	−30,477	−26.1	106,740	−10,137	−8.7
Tokelau	21,392	17,954	−3,438	−16.1	22,610	+1,218	+5.7
Tuvalu	73,080	55,992	−17,088	−23.4	75,589	+2,509	+3.4
Total EEZs	1,408,548	1,124,577	−283,971	−20.2	1,361,257	−47,291	−3.4
High-seas areas							
I1	15,330	11,396	−3,934	−25.7	13,541	−1,790	−11.7
I2	23,083	16,413	−6,670	−28.9	20,738	−2,345	−10.2
I3	47	60	+13	+278	61	+14	+29.8
I4	21,443	21,773	+330	+1.5	22,727	+1,284	+6.0
I5	23,231	28,021	+4,790	+20.6	26,194	+2,963	+12.8
I6	16,211	16,868	+657	+4.1	17,800	+1,589	+9.8
I7	16.7	18	+1.3	+9.0	17	+0.2	+1.3
I8	2.2	3	+0.8	+15.5	3	+0.4	+20.2
I9	33.2	41	+7.8	+24.7	36	+3	+8.9
H4	20,893	17,796	−3,097	−14.8	23,308	+2,415	+11.6
H5	46,517	49,502	+2,985	+6.4	48,360	+1,842	+4.0
EPO-N	84,175	100,443	+16,268	+19.3	98,130	+13,955	+16.6
EPO-C	457,664	583,082	+125,418	+27.4	541,194	+83,530	+18.3
EPO-S	3,293	4,339	+1,046	+31.8	3,747	+454	+13.8
Total high seas	711,939	849,755	+137,816	+19.4	815,856	+103,917	+14.6

Ten-year (2009–2018) average purse seine tuna catches in tonnes (t) from the EEZs of ten Pacific SIDS and high-seas areas together with average projected changes to these catches by 2050 in tonnes and percentage terms under the RCP 8.5 and RCP 4.5 emissions scenarios (see Supplementary Fig. 6 and Supplementary Tables 11–14 for ranges of projected changes in catch). [a]The three EEZ areas of Kiribati, which have been integrated to produce the total for Kiribati. FSM, Federated States of Micronesia; see Supplementary Fig. 1 for locations and definitions of all high-seas areas.

Table 2. Table 2 of the Pathways to sustaining tuna-dependent Pacific Island economies during climate change paper indicating the projected impacts to fisheries revenue in Pacific purse seine fisheries from climate change.

Table 2 | Projected changes in tuna-fishing access fees and government revenue for the ten tuna-dependent Pacific SIDS

Pacific SIDS	Average 2015–2018			Change by 2050 (RCP 8.5)			Change by 2050 (RCP 4.5)		
	Government revenue (million US$)	Access fees (million US$)	Access fees as % of government revenue	Purse-seine tuna catch (%)[a]	Access fees (million US$)	Government revenue (%)	Purse-seine tuna catch (%)[a]	Access fees (million US$)	Government revenue (%)
Cook Islands	126.1	13.5	10.6	−4.0	−0.5	−0.4	+8.9	+1.2	+1.0
FSM	150.6	68.4	47.6	−13.0	−8.9	−5.9	−2.7	−1.8	−1.2
Kiribati	181.7	128.3	70.6	−8.2	−10.5	−5.8	+6.9	+8.9	+4.9
Marshall Islands	66.1	31.0	47.8	−0.7	−0.2	−0.3	+2.1	+0.7	+1.0
Nauru	98.6	29.5	31.1	−21.6	−6.4	−6.5	+5.7	+1.7	+1.7
Palau	75.2	7.1	9.4	−0.3	−0.02	−0.03	+3.1	+0.2	+0.3
PNG	3,360.8	134.3	4.0	−33.1	−44.4	−1.3	−15.5	−20.8	−0.6
Solomon Islands	429.0	41.3	9.6	−26.1	−10.8	−2.5	−8.7	−3.6	−0.8
Tokelau	16.0	13.4	84.2	−16.1	−2.1	−13.4	+5.7	+0.8	+4.8
Tuvalu	47.4	25.6	53.9	−23.4	−6.0	−12.6	+3.4	+0.9	+1.9
Total		492.4			−89.9			−12.0	

Average government revenue (excluding grants), tuna-fishing access fees and the percentage of government revenue derived from access fees for ten tuna-dependent Pacific SIDS between 2015 and 2018, together with estimated changes in purse-seine tuna catch, access fees and government revenue, by 2050 under the RCP 8.5 and RCP 4.5 emissions scenarios. See Supplementary Tables 15 and 16 for ranges of estimated percentage changes in access fees and government revenue by 2050, and details of the calculations summarized here. PNG, Papua New Guinea. [a]Projected change in average total purse-seine catch due to climate-driven redistribution of total tuna biomass (Supplementary Tables 17 and 18).

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