



**FOURTH REGULAR SESSION**

**Tumon, Guam**

**3-7 December 2007**

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**PROPOSAL TO AMEND CMM-2006-09  
CONSERVATION MEASURE TO ESTABLISH A LIST OF VESSELS PRESUMED TO  
HAVE CARRIED OUT ILLEGAL, UNREPORTED AND UNREGULATED FISHING  
ACTIVITIES IN THE WESTERN AND CENTRAL PACIFIC OCEAN**

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**WCPFC4-2007-DP15  
22<sup>nd</sup> November 2007**

**Proposal by the United States of America**

Accompanying communication:

“At TCC3 the United States tabled a proposal (WCPFC-TCC3-2007/DP-17) in order to revise and clarify certain elements of CMM 2009-09. The TCC3 agreed: "That the issue would be best progressed through inter-sessional consultations among interested CCMs. The United States agreed to work electronically with CCMs to discuss the issues raised in the paper submitted by Chinese Taipei and other delegations at TCC3 and, to the extent possible, make amendments to the U.S proposal. The results of this work will be brought to the WCPFC4 as a revised proposal by the United States." (See paragraph 205 of the TCC3 summary report). The attached is the revised U.S. proposal that, to the extent possible, has been amended to take into account the comments received by CCMs.”



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**Revised U.S. Proposal to Amend CMM 2006-09**  
**11.21.07**

*The Western and Central Pacific fisheries Commission (WCPFC):*

*Recalling* that the FAO Council adopted on 23 June 2001 an International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing (IPOA-IUU). This plan stipulates that the identification of the vessels carrying out illegal, unreported and unregulated (IUU) fishing activities should follow agreed procedures and be applied in an equitable, transparent and non-discriminatory way.

*Concerned* that IUU fishing activities in the Convention area undermine the effectiveness of the conservation measures adopted by the WCPFC.

*Further concerned* that there is a possibility that vessel owners engaged in such fishing activities may have re-flagged their vessels to avoid compliance with WCPFC measures.

*Determined* to address the challenge of an increase in IUU fishing activities by way of measures to be applied in respect to vessels, without prejudice to further measures adopted in respect of CCMs and non CCMs under the relevant WCPFC instruments.

*Considering* the action undertaken in other regional tuna fisheries organizations to address this issue;

*Conscious* of the need to address, as a matter of priority, the issue of vessels conducting IUU fishing activities;

*Noting* that efforts to prevent, deter and eliminate IUU fishing must be addressed in the light of all relevant international fisheries instruments and in accordance with other international obligations, including the rights and obligations established under the World Trade Organization (WTO) Agreement; and

*Recalling* Articles 23 and 25 of the Convention regarding the obligations of members of the Commission and provisions for compliance and enforcement;

*Adopts the following conservation and management measures in accordance with Article 10 of the Convention:*

### **Identification of IUU activities**

1. At each Annual Meeting, the Commission will identify those vessels which have engaged in fishing activities for species covered by the Convention within the Convention Area in a manner which has undermined the effectiveness of the Convention and the WCPFC measures in force, and shall establish, and, as necessary, amend in subsequent years, a list of such vessels (the IUU vessel list), in accordance with the procedures and criteria set out in this Conservation Measure.
2. This identification shall be suitably documented, *inter alia*, on reports from Members, Cooperating Non-Members and Participating Territories (collectively CCMs) relating to WCPFC Conservation Measures in force, trade information obtained on the basis of relevant trade statistics such as Food and Agriculture Organization of the United Nations (FAO) data, Statistical documents and other national or international verifiable statistics, as well as any other information obtained from Port States and/or gathered from the fishing grounds which is suitably documented. Information from CCMs should be provided in the format approved by the Commission.
3. For the purposes of this Conservation Measure, vessels fishing for species covered by the Convention are presumed to have carried out IUU fishing activities, as described in the IPOA on IUU fishing, in the Convention Area when a CCM presents suitably documented information that such vessels, *inter alia*:
  - a. Harvest species covered by the Convention in the Convention Area and are neither on the WCPFC Record of authorized vessels nor a fishing vessel fishing exclusively in waters under the jurisdiction of its flag State, or
  - b. Conduct fishing activities in waters under the jurisdiction of a coastal State, without permission of that State, or in contravention of its law and regulations, or
  - c. Do not record or report their catches made in the Convention Area consistent with WCPFC measures, or make false reports, or
  - d. Take and land undersized fish in a way that undermines WCPFC Conservation Measures, or
  - e. Fish in a closed area or during a closed season in a way that undermines WCPFC Conservation Measures, or
  - f. Use prohibited fishing gear in a way that undermines WCPFC Conservation Measures, or
  - g. Transship with, participate in joint fishing operations with, support or re-supply vessels included in the IUU Vessel List, or
  - h. Are without nationality and harvest species covered by the Convention in the Convention Area, or
  - i. Engage in any other fishing activities that undermine the provisions of the Convention or any other WCPFC Conservation Measures, or
  - j. Are under the control of the owner of any vessel on the WCPFC IUU Vessel List.

### **Information on Alleged IUU fishing activities**

4. At least 120 days before the Annual Meeting of the Technical and Compliance committee (TCC), CCMs shall transmit to the Executive Director their list of vessels presumed to be

carrying out IUU activities in the Convention Area during the current or the previous calendar year, accompanied by suitably documented information, as provided in paragraph 2, concerning the presumption of this IUU activity.

5. Before or at the same time as transmitting a list of presumed IUU vessels to the Executive Director, the CCM shall advise the relevant flag State of a vessel's inclusion on this list and provide a copy of suitably documented information.

#### **Draft IUU Vessel List**

6. The Executive Director shall draw up a draft IUU vessel list incorporating the lists of vessels and suitably documented information received pursuant to paragraph 4, and any other suitably documented information at his disposal, and shall transmit it to all CCMs, as well as to non-CCMs with vessels on the List, at least 90 days before the Annual Meeting of the TCC.
7. The Executive Director shall request each CCM and non-CCM with vessels on the draft IUU Vessel List to notify the owner of the vessels of their inclusion in that List, and of the consequences of their inclusion being confirmed in the IUU Vessel List.
8. Upon receipt of the draft IUU Vessel List, CCMs shall closely monitor the vessels included in that List in order to follow their activities and possible changes of name, flag or registered owner.
9. As appropriate, CCMs and non-CCMs with vessels on the list should transmit, at least 30 days before the Annual Meeting of the TCC, their comments to the Executive Director, including suitably documented information, showing that the vessels have fished in a manner consistent with WCPFC Conservation Measures or the laws and regulations of a State when fishing in waters under the jurisdiction of that State, or have fished exclusively for species not covered by the Convention.
10. The Executive Director shall re-circulate the draft IUU Vessel List, two weeks in advance of the Annual Meeting of the TCC, to the CCMs and the non-CCMs concerned, together with all the suitably documented information provided pursuant to paragraphs 4 and 9 above.
11. CCMs and non-CCMs may at any time submit to the Executive Director any additional suitably documented information regarding any vessels on the draft IUU Vessel list. The Executive Director shall circulate this additional information to all CCMs and to the non-CCMs concerned immediately upon receipt of such information.

#### **Current and Provisional IUU Vessel List**

12. The WCPFC IUU Vessel List adopted during the previous year, as well as any new suitably documented information regarding this list, including inter-sessional amendments, shall be transmitted to CCMs and the non-CCMs concerned in conjunction with the draft IUU Vessel List and materials outlined in paragraph 6.
13. CCMs and non-CCMs with vessels on the current WCPFC IUU Vessel List should transmit at least 30 days before the annual meeting of the TCC, but may submit at any time, to the Executive Director suitably documented information regarding any of the vessels on the current WCPFC IUU Vessel List, including, where appropriate, suitably documented information as provided for in paragraph 24. The Executive Director shall re-circulate the current WCPFC IUU Vessel List two weeks in advance of the annual meeting of the TCC to the CCMs and non-CCMs concerned, together with all the information provided pursuant to paragraph 12 and this paragraph.
14. At its Annual meeting, the TCC shall:

- (i) Following consideration of the draft IUU Vessel List and the suitably documented information circulated under paragraphs 6, 10 and 11, adopt a Provisional IUU Vessel List;
  - (ii) Following consideration of the current WCPFC IUU Vessel List and the suitably documented information circulated under paragraphs 12 and 13, recommend to the Commission which, if any, vessels should be removed from the current WCPFC IUU Vessel List.
15. The TCC shall not include a vessel on the Provisional IUU Vessel List if the vessel's flag State demonstrates that:
- a. The vessel, during either the current or previous calendar year, fished in a manner consistent with WCPFC Conservation Measures or the laws and regulations of a State when fishing in waters under the jurisdiction of that State, or have fished exclusively for species not covered by the WCPFC Convention, or
  - b. Effective action has been taken in response to the IUU fishing activities in question, such as, *inter alia*, prosecution or the imposition of sanctions of adequate severity; or
  - c. That the case regarding the vessel or vessels that conducted IUU fishing activities has been settled to the satisfaction of the CCMs or non-CCMs involved.
16. The TCC shall recommend removal of a vessel from the current WCPFC IUU Vessel List only if the vessel's Flag State submits to the Executive Director, the information provided in paragraph 24 of this measure.
17. Following the examination referred to in paragraph 14, the TCC shall submit the Provisional IUU Vessel List to the Commission for its consideration, and as appropriate, recommend any proposed changes to the current WCPFC IUU Vessel List.
18. The draft IUU Vessel List, Provisional IUU Vessel List and the WCPFC IUU Vessel List shall contain the following details for each vessel:
- (i) name and previous names, if any;
  - (ii) flag and previous flags, if any;
  - (iii) owner and previous owners, including beneficial owners, if any;
  - (iv) operator and previous operators, if any;
  - (v) call sign and previous call signs, if any;
  - (vi) Lloyds/IMO number;
  - (vii) photographs, where available;
  - (viii) date first included on the IUU Vessel List;
  - (ix) summary of activities which justify inclusion of the vessel on the List, together with references to all relevant documents informing of and evidencing those activities.

#### **WCPFC IUU Vessel List**

19. At its annual meeting, taking into account any new suitably documented information, the Commission shall review the Provisional IUU Vessel List and any recommendations to amend the current WCPFC IUU Vessel List made pursuant to paragraph 17 above, and adopt a new WCPFC IUU Vessel List.
20. Upon adopting the new WCPFC IUU Vessel List, the Commission shall request CCMs and

non-CCMs with vessels on the WCPFC IUU Vessel List to:

- a. notify the owner of the vessels of its inclusion on the WCPFC IUU Vessel List and the consequences which result from being included in the List, and
  - b. take all the necessary measures to eliminate these IUU fishing activities, including, if necessary, the withdrawal of the registration or the fishing licenses of these vessels, and to inform the Commission of the measures taken in this respect.
21. Each CCM shall take all necessary non-discriminatory measures, consistent with its domestic law and international obligations, including obligations under the World Trade Organization agreements (WTO), and pursuant to paragraphs 56 and 66 of the IPOA-IUU to:
- a. ensure that fishing vessels, support vessels, mother ships or cargo vessels flying their flag do not participate in any transshipment or joint fishing operations with, support or re-supply vessels on the WCPFC IUU Vessel List;
  - b. ensure that vessels on the WCPFC IUU Vessel List that enter ports voluntarily are inspected as soon as practicable upon entry and not authorized to land or transship or, to the extent allowed under domestic law, refuel or re-supply therein;
  - c. prohibit the chartering of a vessel on the WCPFC IUU Vessel List;
  - d. refuse to grant their flag to vessels on the WCPFC IUU Vessel List in accordance with paragraph 1 f) of Section A in Conservation and Management Measure 2004-01;
  - e. prohibit commercial transactions, imports, landings and/or transshipment of species covered by the Convention from vessels on the WCPFC IUU Vessel List;
  - f. encourage traders, importers, transporters and others involved, to refrain from transactions in, and transshipment of, species covered by the Convention caught by vessels on the WCPFC IUU Vessel List;
  - g. collect, and exchange with other CCMs, any appropriate information with the aim of searching for, controlling and preventing false import/export certificates for species covered by the Convention from vessels on the WCPFC IUU Vessel List.
22. The Executive Director shall take any measure necessary to ensure publicity of the WCPFC IUU Vessel List, in a manner consistent with any applicable confidentiality requirements, including placing it on the WCPFC website. Furthermore, the Executive Director shall transmit the WCPFC IUU Vessel List to the FAO and to other regional fisheries organizations for the purposes of enhancing co-operation between the WCPFC and these organizations aimed at preventing, deterring and eliminating IUU fishing.
23. Without prejudice to the rights of CCMs and coastal states to take proper action, consistent with international law, including WTO obligations, the CCMs shall not take any unilateral trade measures or other sanctions against vessels on the draft or Provisional IUU Vessel Lists, pursuant to paragraphs 6 or 14, or that have been removed from the WCPFC IUU Vessel List, pursuant to paragraphs 16 and 19, on the grounds that such vessels are involved in IUU fishing activities.

#### **Modification of the WCPFC IUU Vessel List**

24. CCMs and non-CCMs with a vessel on the WCPFC IUU Vessel List may request the removal of the vessel from the List at any time during the inter-sessional period by submitting to the Executive Director suitably documented information demonstrating that:
- a) it has adopted measures that will seek to ensure that the vessel complies with all WCPFC measures; and

- b) it will be able to assume effectively flag state duties with regards to the monitoring and control of the vessel's fishing activities in the Convention Area; and
  - c) it has taken effective action in response to the IUU fishing activities that resulted in the vessel's inclusion in the WCPFC IUU Vessel List, including prosecution and imposition of sanctions of adequate severity; or
  - d) the vessel has changed ownership and that the new owner can establish that the previous owner no longer has any legal, financial or real interests in the vessel or exercises control over it, and that the new owner has not participated in IUU fishing activities, or
  - e) the case regarding the vessel or vessels that conducted IUU fishing activities has been settled to the satisfaction of the CCMs or non-CCMs involved.
25. The Executive Director will transmit the removal request, with all the supporting information, to the CCMs within 15 days following the receipt of the removal request. CCMs shall promptly acknowledge receipt of the removal request. If no acknowledgement is received within 10 days of the date of transmittal, the Executive Director shall retransmit the removal request and shall use additional means available to ensure the request has been received.
26. Each Commission Member shall examine the removal request and notify the Executive Director in writing of its decision, and the rationale therefore, regarding the removal of the vessel within 40 days following the notification by the Executive Director. Decisions on the request to remove the vessel shall be made in accordance with Rule 30 of the Rules of Procedure.
27. If the Commission members agree to the removal of the vessel from the WCPFC IUU Vessel List within the period stipulated in paragraph 26, the Executive Director will inform the CCMs, non-CCMs, FAO and other regional fisheries management organizations, and will remove the vessel from the WCPFC IUU Vessel List, as published on the WCPFC Website.
28. If Commission Members disagree with the request for the removal of the vessel from the IUU vessel list, the vessel will be maintained on the WCPFC IUU Vessel List and the Executive Director will inform the CCMs and/or non-CCMs which made the removal request.

**Review**

29. This Conservation and Management Measure shall be subject to review and, as appropriate, revision by the TCC.