



**TECHNICAL AND COMPLIANCE COMMITTEE  
Third Regular Session**

27 September – 02 October 2007  
Pohnpei, Federated States of Micronesia

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**COMMUNICATION FROM THE EUROPEAN COMMISSION**

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**WCPFC-TCC3-2007/DP 07  
24 September 2007**



**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL FOR FISHERIES AND MARITIME AFFAIRS  
External Policy and markets  
**International and regional arrangements**

Brussels, 21.09.2007  
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**Subject: TCC3 – Pohnpei, 27 September to 2 October 2007**

Dear Mr Wright,

I regret to inform you that the European Community, due to other international engagements, will not be able to participate in the up-coming meeting of the Technical and Compliance Committee.

This is most unfortunate since the TCC Meeting coincides with the Annual Meeting of the Northwest Atlantic Fisheries Organisation (NAFO) in Lisbon. Such clashes with Annual Meetings of RFMOs must be avoided in the future.

We would however like, on the basis of the documentation available on the WCPFC website, to offer some comments on the various issues to be discussed at TCC3.

## **1. Compliance**

In relation to WP 2007/10 rev 1 (review of compliance with CMM's) we note that only 6 CMM's have notified existing bilateral regional partnership agreements in accordance with CMM 2005/1. This comes as a surprise to us since we had certainly understood that more agreements than that were in force at bilateral and regional level in the WCPO. We had also understood that the notification within the prescribed deadline was a prerequisite in order to claim the fishing possibilities under that regime.

We would therefore strongly encourage Parties to make such agreements known to the Commission.

## **2. Chartering Arrangements**

In relation to WP 2007/23 (charter arrangements), we believe that the two proposals on the table, from FFA States and Japan, could usefully be put together as one since both papers contain interesting ideas.

We are however somewhat sceptical of the idea in the FFA proposal that chartered vessels, under certain conditions, shall be an integral part of the Chartering Party's domestic fleet. In our view, this is not in conformity with international law since such status can only be achieved through a change of flag. We believe, on the contrary, that it is perfectly sensible that catches taken under the charter arrangement should be allocated to the chartering Party.

We are supportive of the suggestions by Japan provided in paragraphs 10 and 13 of their proposal. We believe that these provisions are essential to ensure that charter arrangements are not misused and provoke control problems. For example, inspection and control authorities will need to know under which regime a vessel is fishing in order to be able to carry out a meaningful and effective control.

## **3. Observer scheme**

In relation to WP 2007/07 rev 1, (observer scheme) we believe that the draft CMM provided by the Secretariat constitutes a good basis for further work. Some of the provisions in this draft will however need some redrafting to become operational. This is for example the case for paragraph 7(iv), which in our view will need to specify a certain minimum coverage, as well as paragraph 7(iii), which need to specify who will be responsible for the cost of the observers. On this last point, it is our view that costs should be paid by Members/operators in proportion to the fishing activities conducted by their fleet.

Finally, when it comes to the requirement for independent and impartial observers, paragraph 7(v) give the impression that observers, as a general rule, has to have a different nationality than the vessel in order to fulfil this criteria. We don't believe that this is the right approach since nationality in itself does not guarantee independence and impartiality. We believe therefore that the criteria rather should be that the observer does not have any links, economic or other, with the operator of the vessel.

I would be grateful if these comments could be circulated to Members and to participants of the TCC meeting.

I take also the opportunity to enclose some comments (annex 1) on the draft transshipment regime which I commented on in my previous letter of 3 September 2007 but which by accident was not enclosed.

Yours sincerely,

*"signed"*

John Spencer,

Head of the EC Delegation to WCPFC

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CC.

Mr Glenn Hurry, Chairperson

**EC Comments on the draft CM on Transshipment verification****General:**

One should avoid, as a point of principle for legal reasons, that the operative text of this Conservation Measure repeat obligations which already are provided for in the Convention. That could only cause confusion and might be counterproductive. Obligations that follows from primary legislation (the Convention) and secondary legislation (CM:s) should therefore be kept separate since they are of a different legal ranking. Obligations that follow from the Convention are therefore much better suited in the preamble than in the operative text.

**Detail**

Paragraph 2: This paragraph should be slightly reformulated to ensure that the obligation refers to transshipments of fish originating from the Convention Area, rather than transshipments taking place in Convention Area. As the text currently stands, one can quite easily circumvent the obligation by conducting the transshipment outside the Convention Area.

Paragraph 4: this obligation follows already from the Convention and is already referred to in the preamble. It is therefore redundant and should be deleted.

Paragraph 5: We are not opposed to the idea of including carrier vessels in the record of fishing vessels, but we wonder if this is going to be feasible since we understand that international standards for vessel data are different between traditional fishing vessels and carrier vessels. It might therefore be that all the data required in CM 2004:1 will not be available for carrier vessels and that we therefore have to create a separate register for carrier vessels.

Paragraph 6: We recommend an explicit prohibition to receive transshipments from IUU listed vessels (CP or non CP vessels). Since this already follows from paragraph 17 of CM 2006:9, a cross reference to that paragraph should suffice.

Paragraph 7: This paragraph only repeats what is already in the Convention and is already covered in the preamble. The paragraph is therefore redundant should be deleted and replaced by implementing rules for those wishing to apply for an exemption. The paragraph could for example state that Parties wishing to apply for an exemption need to make such an application a certain time in advance of the TCC/Commission meeting and under which conditions and exemption can be granted.

Paragraph 9: The obligation should be slightly redrafted in accordance with the same rationale as under paragraph 2 (fish originating from the Convention Area).

Paragraphs 10, 11, 13, 14, 19, 21 and 22: we support the same deadlines as in the other tuna organisations.

Paragraph 12: We are not at all opposed to the placement of observers on fishing vessels, but this paragraph seems redundant since the same obligation will follow from the relevant rules on the observer programme. In any case, we assume that the obligation would have to be in line with the yet to be decided observer coverage. It can, for example, not apply to all vessels if a 20% observer coverage is decided upon.

Paragraph 16 and 17 are redundant should be deleted since this already follows from the Convention.

Paragraph 18 could be slightly redrafted to say that designated ports notified by parties pursuant to Article 29.1 shall be submitted annually by 1 January. One can also add an instruction to the Secretariat what they should do with the data received, for example place it on the WCPFC website.

Paragraph 25: same reasoning as under paragraph 12 applies also here. It can't be an obligation for all vessels if a lower coverage is decided upon in the framework of the ROP.