



TECHNICAL AND COMPLIANCE COMMITTEE

Third Regular Session

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Pohnpei, Federated States of Micronesia

U.S. COMMENTS ON IUU CONSERVATION AND MANAGEMENT MEASURE

WCPFC-TCC3-2007/DP-17
1 October 2007

Prepared by the U.S.



THIRD REGULAR SESSION

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11-15 December 2006

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

Conservation and Management Measure 2006-09

U.S. Comments

October 1, 2007

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.

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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; and

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 the rights and obligations established in the World Trade Organization (WTO) Agreement;

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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 diminished the effectiveness of WCPFC measures in force, and shall establish, and 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.

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3. For the purposes of this Conservation Measure, vessels fishing for species covered by the WCPFC 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 evidence that such vessels, *inter alia*:

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a. Harvest species covered by the WCPFC Convention in the Convention Area and are not either on the WCPFC Record of Authorized Vessels or a fishing vessel fishing exclusively in waters under their jurisdiction, or

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b. Conduct fishing activities in waters under the jurisdiction of a 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

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d. Take and land undersized fish in a way that undermines WCPFC Conservation Measures, or

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e. Fish during closures in a way that undermines WCPFC Conservation Measures, or

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f. Use prohibited fishing gear in a way that undermines WCPFC Conservation Measures, or

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g. Transship with, participate in joint fishing operations with, support or re-supply vessels included in the IUU Vessel List, or

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h. Are without nationality and harvest species covered by the WCPFC Convention in the Convention Area, or

i. Engage in any other fishing activities that undermine WCPFC Conservation Measures, or

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j. Are under the control of the owner of any vessel on the WCPFC IUU Vessel List.

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Information on Alleged IUU fishing activities

4. CCMs shall every year, and at least 120 days before the Annual Meeting of the Technical and Compliance committee (TCC), transmit to the Executive Director a list of vessels presumed to be carrying out IUU activities in the Convention Area during the current or the previous year, accompanied by suitably documented evidence, as provided in paragraph 2, concerning the presumption of this IUU activity.

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Draft IUU Vessel List

5. On the basis of the information received pursuant to paragraph 4 and any other suitably

documented information at his disposal, the Executive Director shall draw up a draft WCPFC IUU Vessel List and shall transmit it, together with all the supporting evidence provided, 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.

6. 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 evidence and other supporting information, showing that the vessels have fished 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.

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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.

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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. On the basis of the information received pursuant to paragraph 6, the Executive Director shall re-circulate the draft WCPFC 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 evidence provided.

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10. CCMs and non-CCMs may at any time submit to the Executive Director any additional suitably documented information which might be relevant for the establishment of the IUU Vessel List. The Executive Director shall circulate the additional information, together with the entirety of evidence provided, to all CCMs and to the non-CCMs concerned, at least two weeks before the Annual Meeting of the TCC.

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Provisional and Current IUU Vessel List

11. The WCPFC IUU vessel list adopted during the previous year, as well as any new 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 5.

12. At its Annual meeting, the TCC shall:

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(i) Following consideration of the draft IUU Vessel List and information and suitably documented evidence circulated under paragraphs 5, 9 and 10, adopt a Provisional IUU Vessel List and submit it to the Commission for consideration and approval;

(ii) Following consideration of the current IUU Vessel List and the information and suitably documented evidence circulated under paragraph 11, recommend to the Commission which, if any, vessels should be removed from the current WCPFC IUU Vessel List.

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13. A vessel shall be included in the provisional IUU Vessel List only if it has carried out IUU activities as set out in paragraph 3 during either the current or previous year.

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14. The Technical and Compliance Committee shall remove a vessel from the provisional WCPFC IUU Vessel List if the vessel's Flag State demonstrates that:

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a. The vessel did not engage in any of the IUU fishing activities described in paragraph 3, during either the current or previous year, or

b. Effective action has been taken in response to the IUU fishing activities in question, including, *inter alia*, prosecution, and imposition of sanctions of adequate severity.

15. ~~The TCC shall remove a vessel from the current WCPFC IUU vessel list only if the vessel's Flag State submits to the Executive Director, the information required in paragraph 20 of this measure.~~

16. ~~Following the examination referred to in paragraph 12, the Technical and Compliance Committee shall recommend that the Commission approve the provisional IUU Vessel List and as appropriate, any changes to the current WCPFC IUU vessel list proposed, by the Technical and Compliance Committee.~~

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17. ~~The Draft IUU Vessel List, Provisional IUU Vessel List and the IUU Vessel List shall contain the following details for each vessel:~~

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(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.

IUU Vessel List

18. ~~The Commission shall evaluate and amend as necessary, the Provisional List and the current WCPFC IUU Vessel List, as recommended by the TCC pursuant to paragraph 16 above. Pursuant to this evaluation, the Commission shall adopt a new WCPFC IUU Vessel List.~~

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19. ~~Upon adopting the new IUU vessel list, the Commission shall request CCMs and non-CCMs with vessels on the WCPFC IUU Vessel List to:~~

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a. ~~notify the owner of the vessels of its inclusion on the 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.~~

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20. ~~Each CCM shall take all necessary non-discriminatory measures, consistent with its domestic law, international obligations including obligations under the World Trade Organization agreements (WTO) and pursuant to paragraphs 56 and 66 of the IPOA-IUU, to:~~

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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 IUU Vessel List;~~

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b. . ensure that vessels on the IUU Vessel List that enter ports voluntarily are not authorized to land, transship, refuel or re-supply therein but are inspected upon entry;

b. ~~prohibit the chartering of a vessel on the IUU Vessel List;~~

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c. ~~refuse to grant their flag to vessels on the IUU Vessel List in accordance with paragraph~~

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1 f) of Section A in Conservation and Management Measure 2004-01;

~~d.~~ prohibit commercial transactions, imports, landings and/or transshipment of species covered by the WCPFC Convention from vessels on the IUU Vessel List;

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~~e.~~ 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 WCPFC Convention from vessels on the IUU Vessel List.

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Deleted: f. . encourage traders, importers, transporters and others involved, to refrain from transactions in, and transshipment of, species covered by the WCPFC Convention caught by vessels on the IUU Vessel List;¶
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20bis. Each CCM shall take all necessary non-discriminatory measures, subject to its domestic law, international obligations including obligations under the World Trade Organization agreements (WTO) and pursuant to paragraphs 56 and 66 of the IPOA-IUU, to ensure that vessels on the IUU Vessel List that enter ports voluntarily are not authorized to land, transship, refuel or re-supply therein but are inspected upon entry.

21. The Executive Director shall take any measure necessary to ensure publicity of the 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 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.

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22. 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 5 or ~~12~~, or that have been removed from the IUU Vessel List, pursuant to paragraph ~~15~~, on the grounds that such vessels are involved in IUU fishing activities.

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Modification of the IUU Vessel List

23. CCMs and non-CCMs with a vessel on the 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 information demonstrating that:

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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

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c) it has taken effective action in response to the IUU fishing activities that resulted in the vessel's inclusion in the IUU Vessel List, including prosecution and imposition of sanctions of adequate severity; or

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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.

24. 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.

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21. . The CCMs and non CCMs shall send its request for the removal of a vessel from the IUU list to the Executive Director, accompanied by the supporting information referred to in paragraph 20.¶

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25. 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

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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.

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~~26.~~ If the Commission members agree to the removal of the vessel from the IUU Vessel List within the period stipulated in paragraph ~~25~~, the Executive Director will inform the CCMs, ~~non-CCMs~~, FAO and other regional fisheries management organizations, and ~~will~~ remove the vessel from the IUU vessel List, as published on the WCPFC Website.

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~~27.~~ 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 IUU list and the Executive Director will inform the CCMs and ~~or~~ ~~non-CCMs~~ which made the removal request.

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Review

~~28.~~ This Conservation and Management Measure shall be subject to review and, as appropriate, revision by the TCC ~~[in 2007]~~.