



TECHNICAL AND COMPLIANCE COMMITTEE

Sixth Regular Session

30 September - 5 October 2010

Pohnpei, Federated States of Micronesia

**PROPOSAL FOR IMPLEMENTATION OF CMM 2007-03 PARAGRAPH 3(J),
DOCUMENTS AND COMMENTS**

WCPFC-TCC6-2010-DP/05

1 September 2010

Paper prepared by the United States of America

1. Further to WCPFC 6 summary report paragraph 128, the United States agreed to facilitate the development of specific procedures for applying CMM 2007-03, para.3(j).
2. The attached paper prepared by the USA includes comments on the original proposal from Members and a final revised proposal.
3. TCC6 is invited to consider the proposal for the procedures to apply CMM 2007-03, Para. 3(j).

On May 26, 2010, through Circular 2010/11, the United States provided for the consideration of CCMS a proposal for the implementation of sub-paragraph 3(j) of CMM 2007-03. CCMs were asked to provide comments on the proposal by 16 July 2010.

The United States received comments in writing (attached) from three CCMs (Australia, Chinese Taipei, and the Republic of Korea), and communications or questions from three other CCMs (Canada, the Cook Islands and the Federated States of Micronesia). We would like to thank those CCMs that provided comments on the proposed procedures.

The United States reviewed the written comments, and prepared a revised text that incorporates, to the extent possible, those comments. However, as two CCMs proposed deletion of sub-paragraph 3(j) or, in lieu of deletion, suggested another approach that was not fully developed, these comments could not be reflected in the current structure and scope of the revised proposal.

CCMs are invited to consider the revised proposal for the implementation of sub-paragraph 3(j) of CMM 2007-03, and to provide any further comments to the United States (Alexa Cole, Alexa.Cole@noaa.gov and Holly Koehler, koehlerhr@state.gov) in advance of TCC6. We look forward to discussing this proposal with CCMs during the TCC6 with a view to recommending a way forward to WCPFC7.

Specific Procedures for Applying Paragraph 3(j) of WCPFC CMM 2007-03

1. At the Sixth Annual Commission meeting in Tahiti in 2009, the United States agreed to coordinate an effort to develop specific procedures for applying paragraph 3(j) of CMM 2007-03 (the WCPFC IUU Vessel List measure) for discussion at TCC6.
2. As a result, the United States has developed the attached proposal for specific procedures to apply paragraph 3(j) for the consideration of CCMs. CCMs are requested to please provide written comments to the United States, through the Secretariat, by July 16.
3. The attached draft proposal is based on and guided by the following principles:
 - a. The procedures must be fair, transparent, practical and workable, and provide a clear structure and due process to the application of paragraph 3(j);
 - b. The procedures must work in concert and not conflict with the procedures outlined in CMM 2007-03, and the roles and responsibilities of the TCC and Commission;
 - c. In implementing paragraph 3(j), the Commission or TCC should not attempt to address or investigate the legal and commercial issues inherent in complex corporate or vessel ownership structures;
 - d. The purpose of paragraph 3(j) is to provide the means to address the failure of a vessel owner to behave responsibly with respect to the conservation and management of fisheries under the mandate of the WCPFC, not to address alleged violations of a particular vessel that is provided for elsewhere in CMM 2007-03; and
 - e. These procedures should not be used to undermine other policies, decisions, or measures adopted by the Commission, or the provisions of the WCPF Convention.

Procedures for Applying Paragraph 3(j) of WCPFC CMM 2007-03

These procedures are to be followed by the Commission in applying paragraph 3(j) of WCPFC CMM 2007-03.

Ownership and control

1. For the purposes of these procedures, the legal or natural person/s or entity/entities which own and control a vessel (the “owner/s of record”) are those indicated on the WCPFC Record of Fishing Vessels or the WCPFC Interim Register of non-Member Carrier and Bunker Vessels. If a vessel is not on either of those lists, then the owner of record is the owner or owners as indicated on the vessel’s national registration document.
2. For the purposes of these procedures, a vessel shall be considered to have the same owner of record where one or more of the legal or natural person/s or entity/entities indicated on the WCPFC Record of Fishing Vessels or the WCPFC Interim Register of non-Member Carrier and Bunker Vessels is the same. If a vessel is not on either of those lists, then the owner of record is the same where one or more of the legal or natural person/s or entity/entities indicated on the vessel’s national registration document is the same.
3. For the purpose of considering whether to add or remove a vessel or vessels from the WCPFC IUU Vessel List pursuant to paragraph 3j and paragraph 25(d) of CMM 2007-03, the owner of record will not be considered to have changed unless the new owner of record provides evidence demonstrating to the satisfaction of the Commission that the ownership of the vessel has changed, that the previous owner of record no longer has any legal, financial or real interests in it, and that the new owner of record has not participated in any IUU fishing activities.

Identification and nomination of vessels

1. For the purposes of these procedures, a vessel may be nominated by a CCM under paragraph 3(j) of CMM 2007-03 if it meets the condition in paragraph (a) below, and the conditions in either or both paragraphs (b) or (c) below:
 - a. The fishing vessel to be nominated:
 - i. is currently operating in the Convention Area; or
 - ii. has operated in the Convention Area at any time since the date of the infringement(s) that led to the listing of the underlying vessel(s) on the WCPFC IUU Vessel List; and
 - iii. is on the WCPFC Record of Fishing Vessels or the WCPFC Interim Register of non-Member Carrier and Bunker Vessels.
 - b. The owner of record is the owner of record of two or more vessels currently on the WCPFC IUU Vessel List (hereafter “the underlying vessel(s)”).

- c. The owner of record has one or more vessels that have been included on the WCPFC IUU Vessel List for the last two years or more (hereafter “the underlying vessels”).
2. For the purposes of these procedures, all additional vessels owned by the same owner of record as the underlying vessel(s) that meet condition 1(a) shall be considered together and either all or none will be placed on the WCPFC IUU Vessel List. Similarly, all additional vessels owned by the same owner of record as the underlying vessel(s) that meet condition 1(a) will be considered as one and either all or none will be removed from the WCPFC IUU Vessel List.

Information to be provided

3. CCMs shall submit suitably documented information demonstrating that the fishing vessels they wish to nominate under paragraph 3(j) of CMM 2007-03 meet the criteria set out in paragraph 1 of these procedures. CCMs shall submit this information to the Executive Director 120 days before the annual meeting of the TCC along with the list of fishing vessels being nominated (hereinafter “3j” vessels).
4. Before or at the same time as transmitting a list of 3j vessels to the Executive Director, the CCM shall notify, either directly or through the Executive Director, the relevant flag State of the vessels’ inclusion on this 3j list, and provide a copy of the pertinent suitably documented information. The flag State shall promptly acknowledge receipt of the notification. If no acknowledgment is received within 10 days of the date of transmittal, the CCM shall retransmit the notification through an alternative means of communication.

Draft IUU Vessel List

5. The Executive Director shall include on the Draft IUU Vessel List, which is drawn up and circulated in accordance with the provisions of CMM 2007-03, those 3j vessels that have been nominated by CCMs in accordance with these procedures.
6. The Executive Director shall notify the relevant flag states of the inclusion of their 3j vessels on the draft IUU Vessel List and of the consequences of these vessels being confirmed on the IUU Vessel List.
7. As appropriate, relevant flag states with 3j vessels on the Draft IUU Vessel List may transmit to the Executive Director, at least 30 days before the TCC’s annual meeting, suitably documented information showing the 3j vessels do not meet the criteria outlined in paragraph 1 of these procedures. The Executive Director shall circulate this information to all CCMs immediately upon receipt of such information.

Provisional and current WCPFC IUU Vessel List

8. At its annual meeting, with respect to 3j vessels that are on the Draft IUU Vessel List, the TCC shall:
 - a. consider suitably documented information, if any, provided by a CCM or a non-CCM, as well as any relevant information regarding the status of an investigation, judicial or administrative proceeding related to the underlying vessel(s) and the cooperation and responsiveness of the owner of record in such proceedings; and
 - b. following consideration of the suitably documented information, include the nominated 3j vessels on the Provisional IUU Vessel List developed in accordance with the provisions of CMM 2007-03.
9. As appropriate, relevant flag states with 3j vessels on the current WCPFC IUU Vessel List may transmit, at least 30 days before the TCC's annual meeting, but may submit at any time, to the Executive Director suitably documented information showing the 3j vessels do not meet the criteria outlined in paragraph 1 of these procedures, or any other relevant information, including suitably documented information as provided for in paragraph 14. The Executive Director shall circulate this information to all CCMs immediately upon receipt of such information.
10. The TCC shall not include 3j vessels on the Provisional IUU Vessel List if it is demonstrated that the vessels no longer have a common owner of record with the underlying vessel(s) that triggered the nomination under paragraph 1.
11. At its annual meeting, with respect to 3j vessels that are on the current WCPFC IUU Vessel List the TCC shall:
 - a. consider suitably documented information, if any, provided by a CCM or non-CCM, as well as any relevant information regarding the status of an investigation, judicial or administrative proceeding related to the underlying vessel(s) and the cooperation and responsiveness of the owner of record in such proceedings; and
 - b. following consideration of the suitably documented information, recommend to the Commission whether or not the 3j vessels should be removed from the WCPFC IUU Vessel List.
12. The TCC shall recommend removal of 3j vessels from the current WCPFC IUU Vessel List if it is demonstrated that the vessels no longer have a common owner of record with the underlying vessel(s) that triggered the nomination under paragraph 1.

WCPFC IUU Vessel List

13. Once 3j vessels are included on the Provisional IUU Vessel List, they shall be treated as part of that List and, where appropriate, the WCPFC IUU Vessel List, in accordance with paragraphs 20-24 of CMM 2007-03.

Modification of the WCPFC IUU Vessel List

14. Relevant flag states may request to remove 3j vessels from the WCPFC IUU Vessel List at any time during the intersessional period by submitting to the Executive Director suitably documented information that:
 - a. the vessels no longer have a common owner of record with the underlying vessel(s) that triggered the nomination under paragraph 1; or
 - b. significant progress has been made to resolve the matter related to the underlying vessel(s) that triggered the nomination of the 3j vessels, and the CCM that originally submitted the 3j vessels for listing is satisfied.
15. Removal requests for 3j vessels shall be treated in accordance with paragraphs 26-29 of CMM 2007-03.
16. If the underlying vessel is removed from the WCPFC IUU List, all additional vessels owned by the same owner of record as the underlying vessel(s) and listed pursuant to the 3j procedures contained herein will be automatically removed at the same time.



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July 13, 2010

Ms. Alexa Cole
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Re: USA Proposed Procedures for Implementation of para 3(j) of CMM 2007-03

Dear Ms. Alexa Cole

In the outset, we would like to appreciate the effort of the United States for providing this proposal to facilitate the discussion of CMM2007-03 3j.

As the purpose of the Convention is to ensure the long-term conservation and sustainable use of highly migratory fish stocks through effective management, it can be safely deduced that the objectives of the regulation of IUU fishing activities are the "IUU" behaviors that would endanger the effectiveness of conservation measures and the sustainability of the fish stock, not the "fishing activities" on their own. However, the US Proposed Procedures appears to ignore this significant distinction as stipulated in Article 2 of the WCPFC Convention and may transform the regulation objective to the fishing activities, because the other non-IUU vessels would also be prohibited from fishing under this Proposed Procedures.

Under the WCPFC Convention, member of the Commission has its obligation to take measures to ensure fishing vessels flying its flag comply with the conservation and management measures (Article 24 1 (a)), and through the allocation of quota, it has its right to enjoy the benefits from fishing. Nevertheless, the CMM2007-03 3j would make such obligation and right unbalanced. There might be a scenario that Member of the Commission would meet difficulties when enjoy such benefits, even though it has taken measures to ensure that its fishing vessels owned by its nationals comply with the conservation and management measures to the greatest extent possible but because of some spare and unexpected IUU incidents which led its other behaved vessels to be prohibited from fishing.



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According to WCPFC Article 33, the rights recognized in this Convention shall be exercised in a manner which would not constitute an abuse of right. The WCPFC Commission and its members do have right in taking conservation and management measures such as the present US Proposed Procedures, however because of the above mentioned reasons, we believe this Procedures is contrary to the fundamental spirits of the WCPFC Convention, and if such measure was taken it likely to lead to an abuse of right.

We think CMM2007-03 3j is not a fair and equitable measure for the innocent fishing vessels and also support Korea's idea to delete CMM2007-03 3j. However, we would like more clarifications on Korea's modification for CMM2007-03 3j in which it suggests that the part 'any vessel' should be changed to '(a certain) percentage', in case that paragraph 3j is impossible to be removed.

Kind regards,


Hong-Yen Huang
Director
Deep Sea Fisheries Division
Fisheries Agency

CC: Mr. Peter Flewwelling, Compliance Manager, Western and Central Pacific Fisheries Commission
Ms. Hyun-Wook Kwon, Assistant Director for Multilateral Cooperation on International Fisheries, Ministry for Food, Agriculture, Forestry and Fisheries, Republic of Korea.

Proposal for Removing and/or Modifying Paragraph 3(j) of WCPFC CMM 2007-03

Introduction

1. Paragraph 3(j) of CMM 2007-03 (“Paragraph 3(j)”) permits the inclusion on the WCPFC IUU Vessel List of vessels that have not themselves engaged in IUU fishing activities but are associated with such vessels by reason of ownership or control.
2. The objective of Paragraph 3(j) is to prevent vessels with a previous involvement in IUU fishing carrying on such fishing simply by changing registration, when the control or ownership of the vessel remains substantially unchanged.
3. The underlying motivation to get involved in IUU fishing is undoubtedly the economic gain. The Commission, along with other RFMOs, had probably intended to develop a system that deters financial beneficiaries of IUU fishing from IUU fishing activities by immobilizing the entire fleet, thereby causing economic loss bigger than the gain from IUU fishing.
4. With the understanding of the objective of Paragraph 3(j), the Republic of Korea discusses whether such provision adequately addresses the objective of the Commission, whether such provision is the only way to resolve the issues with vessels continuing IUU fishing under changed registration and; whether such provision with possible negative treatment against the genuinely innocent vessel owners is necessary to serve the ultimate objective of the Commission.
5. In some cases, Paragraph 3(j) might have undesirable results encouraging hitherto law-abiding innocent owners/controllers to set up paper companies to avoid possible punishment that might be imposed to them in the future.

Considering Paragraph 3(j)

6. From Paragraph 3(a) to Paragraph (h) of CMM 2007-03, it is said that vessels with no authority to fish, no permission to fish, failure to record or report catches, fishing undersized fish, fishing during the closed season, using prohibited fishing gears, transship with support or re-supply vessels included in the IUU Vessel List and fishing without nationality are presumed to have carried out IUU fishing activities. Those activities listed in Paragraph 3 are closely related to the actual IUU fishing activities except for Paragraph 3(j).

7. Paragraph 3(j) presumes vessel(s) that are under the control of the owner of any vessel on the WCPFC IUU Vessel List. That is, vessel(s) that are not actually involved in IUU fishing are also presumed to have been involved by way of remote connection of ownership or control.
8. Nevertheless, Paragraph 3 adopts the definition of IUU fishing “*as described in the IPOA on IUU fishing*” which limits IUU fishing within specific activities of the vessel(s). Therefore, Paragraph 3(j) exceeds the scope of definition adopted by Paragraph 3. Moreover, there is a huge room for speculation as most of other RFMOs are reluctant to adopt a measure similar to Paragraph 3(j).
9. In considering Paragraph 3(j), Technical and Compliance Committee (“TCC”) of the WCPFC reported¹ that Paragraph 3(j) is an effective tool to prevent and deter IUU fishing because it has the potential to encourage the owners/controllers of fishing vessels, who actually derive financial benefits from IUU fishing activities, to assume corporate responsibility for all their fishing vessels. However, including the whole fleet of vessels in the IUU Vessel List for IUU fishing activity of a vessel under the same ownership/control is harsh and cruel punishment and it will further put undue burden of practicality in compliance on the Commission and the Commission Members. Further, the context of ownership/control used in Paragraph 3(j) failed to consider the possibility of legal ownership/control of vessel(s) becoming complex (i.e. No true ownership/control or beneficiary identified by complex ownership and different flagging) and it had failed to specify the level of ownership/control required to indicate actual ownership/control. In addition, it had not considered procedures for vessel(s) to be added or removed in/from IUU Vessel List by Paragraph 3(j).
10. The principle of proportionality, one of the general principles of international law, provides that whenever there is a conflicting interest of a state and that of an individual, there has to be a balance between purpose and its means. International organizations such as the EU has adopted such principle in its IUU prevention directive (Art. 39 of EC No.1005/2008) and the constitutions of many Members of the Commission such as the US, Australia, Japan and the Republic of Korea have been founded upon this principle. The compelling interest for the state here is the regulating/preventing economic beneficiaries of IUU fishing. However, this compelling interest of the state will in turn risk innocent individuals (owners/controllers) who may not have gained from IUU fishing or entirely independent of IUU fishing to incur economic losses. It is simply not enough to assume that the entire fleet of vessels was involved in IUU

¹ Paragraph 8 of WCPFC TCC, CONSERVATION AND MANAGEMENT MEASURE 2007-03: OUTSTANDING ISSUES FROM WCPFC4

fishing based on the finding that one of the vessels in the fleet has committed IUU fishing. Although some Members who are in favor of Paragraph 3(j) may point out that the flag state of alleged IUU fishing is given the chance to present contradicting evidence to the Commission to prove innocence, even then, such procedure wrongly reverses burden of proof from the alleging party to the alleged wrongdoer.

11. Paragraph 3(j) is somewhat naive in a sense. IUU fishing is an organized international offence involving complex mechanisms. Many of organized economic beneficiaries of IUU fishing have utilized systemic veils to hide themselves. Joint venture companies and multiple paper companies allowed them to fish without exposing their true identity. As a consequence, it is becoming harder for the Commission to punish the actual economic beneficiaries behind the system while the risk of punishing the innocent owner/controller who has actual ownership and control may increase. Consequently, this might encourage innocent owners/controllers to set up paper companies to deal with future legal responsibilities regarding Paragraph 3(j). In general, owners/controllers with numerous vessels tend to comply with rules and regulations and manage their vessels in a well-organized and efficient manner. Therefore, if they split their ownership/controllership to avoid the legal responsibility regarding Paragraph 3(j), it will end up not only hindering their efficiency but also causing unnecessary economic loss.
12. The CMM provides that the Executive Director is to provide the IUU Vessel List to other cooperating RFMOs and the receiving RFMOs often treat the IUU Vessel List received as their own. However, most RFMOs do not have the provision equivalent to Paragraph 3(j) and its IUU Vessel List surely does not contain vessels applicable to Paragraph 3(j). Compared to members of other RFMOs, Members of WCPFC are disadvantaged and harshly treated.

Proposal for removing Paragraph 3(j)

13. As we have expressed in the preceding paragraphs, Paragraph 3(j) of CMM 2007-03 has ambiguity in its interpretation, while it is not suitably designed to meet its objectives of i) preventing or deterring IUU fishing in general, ii) punishing the economic beneficiaries of IUU fishing, and iii) establishing true ownership/control link with the vessel and the owner/controller. Moreover, Paragraph 3(j) would likely be determined unreasonable or unconstitutional based under the prevailing international laws and individual state laws for its undue burden on innocent parties. Therefore, the Republic of Korea proposes to remove Paragraph 3(j) from the CMM 2007-03 and invites other Members, Cooperating Non-Members and Participating Territories to develop a new measure to achieve underlying goal of the Commission.

Specific Procedures for Applying Paragraph 3(j) of WCPFC CMM 2007-03

1. At the Sixth Annual Commission meeting in Tahiti in 2009, the United States agreed to coordinate an effort to develop specific procedures for applying paragraph 3(j) of CMM 2007-03 (the WCPFC IUU Vessel List measure) for discussion at TCC6.

2. As a result, the United States has developed the attached proposal for specific procedures to apply paragraph 3(j) for the consideration of CCMs. CCMs are requested to please provide written comments to the United States, through the Secretariat, by July 16.

3. The attached draft proposal is based on and guided by the following principles:

a. The procedures must be fair, transparent, practical and workable, and provide a clear structure and due process to the application of paragraph 3(j);

b. The procedures must work in concert and not conflict with the procedures outlined in CMM 2007-03, and the roles and responsibilities of the TCC and Commission;

c. In implementing paragraph 3(j), the Commission or TCC should not attempt to address or investigate the legal and commercial issues inherent in complex corporate or vessel ownership structures;

d. The purpose of paragraph 3(j) is to provide the means to address the failure of a vessel owner to behave responsibly with respect to the conservation and management of fisheries under the mandate of the WCPFC, not to address alleged violations of a particular vessel (that is the purpose of CMM 2007-03); and

e. These procedures should not be used to undermine other policies, decisions, or measures adopted by the Commission, or the provisions of the WCPF Convention.

Comment [gc1]: This paragraph is a little confusing. I understand the rationale (ie paragraph 3(j) is specifically directed at vessel owners with an irresponsible track record), however, since paragraph 3(j) is part of CMM 2007-03, it seems odd that they would have different purposes.

Perhaps the idea would be better conveyed by saying something like 'which is provided for elsewhere in CMM 2007-03'.

This would preserve the idea that addressing irresponsible behaviour by vessel owners comes within the purpose of CMM 2007-03, while making clear the specific purpose of 3(j).

Procedures for Applying Paragraph 3(j) of WCPFC CMM 2007-03

These procedures are to be followed by the Commission in applying paragraph 3(j) of WCPFC CMM 2007-03.

Ownership and control

1. For the purposes of these procedures, the legal or natural person/s or entity/entities which own and control a vessel (the "owner/s of record") are those indicated on the WCPFC Record of Fishing Vessels or the WCPFC Interim Register of non-Member Carrier and Bunker Vessels. If a vessel is not on either of those lists, then the owner of record is the owner or owners as indicated on the vessel's national registration document.
2. For the purposes of these procedures, a vessel shall be considered to have the same owner of record where one or more of the legal or natural person/s or entity/entities indicated on the WCPFC Record of Fishing Vessels or the WCPFC Interim Register of non-Member Carrier and Bunker Vessels is the same. If a vessel is not on either of those lists, then the owner of record is the same where one or more of the legal or natural person/s or entity/entities indicated on the vessel's national registration document is the same.
3. For the purpose of considering whether to add or remove a vessel or vessels from the WCPFC IUU Vessel List pursuant to paragraph 3j and paragraph 25(d) of CMM 2007-03, the owner of record will not be considered to have changed unless the new owner of record provides evidence demonstrating to the satisfaction of the Commission that the beneficial ownership of the vessel has changed, that the previous owner of record no longer has any legal, financial or real interests in it, and that the new owner of record has not participated in any IUU fishing activities.

Comment [gc2]: There are a few questions associated with the concept of ownership that should be dealt with:
1. what is ownership and control?
2. when are the owners the 'same'?
3. how do you prove that an owner has changed?
Suggest dealing with them upfront in a separate section.

Comment [gc3]: Suggest expanding a little on the definition of 'owner of record' to make reference to 'own and control' from para 3(j), without making it too complicated.

Comment [gc4]: We need to specify what constitutes the 'same' owner of record. For example, if person A owns the underlying vessel, and person A and person B together own the 3j vessel, is this the 'same'? To give effect to the rationale for 3j (ie discouraging irresponsible vessel owners), we suggest if any person/company is associated with an IUU vessel, this should be sufficient (particularly given the time/number requirements for underlying vessels before a 3j vessel can be nominated).

Comment [gc5]: It might be useful to include a paragraph requiring proof of actual change of beneficial ownership to ensure that vessels which may be nominated or listed pursuant to these procedures are not able to avoid the consequences of irresponsible ownership by changing the name of the owner of record (but not changing the beneficial ownership). This reflects para 25(d).

Identification and nomination of vessels

1. For the purposes of these procedures, a vessel may be nominated by a CCM under paragraph 3(j) of CMM 2007-03 if it meets the condition in paragraph (a) below, and the conditions in either or both paragraphs (b) or (c) below:
 - a. The fishing vessel to be nominated:
 - i. is currently operating in the Convention Area; or
 - ii. has operated in the Convention Area at any time from the date of the first infringement(s) that led to the listing of the underlying vessel(s) on the WCPFC IUU Vessel List; and
 - iii. is on the WCPFC Record of Fishing Vessels or the WCPFC Interim Register of non-Member Carrier and Bunker Vessels.

Comment [gc6]: 'since' might be clearer here.

Comment [gc7]: The underlying vessel may have fished illegally for some time.

Comment [gc8]: The term 'underlying' might be a little complex. Perhaps 'principal' (and then 'associated') or 'primary' (and then 'secondary') would be easier for people to grasp?

b. The owner of record¹ is the owner of record of two or more vessels currently on the WCPFC IUU Vessel List (hereafter “the underlying vessel(s)”).

Comment [gc9]: If this information is included in a section on ownership, this could be omitted here.

c. The owner of record has one or more vessels that have been on the WCPFC IUU Vessel List for the last two years or more (hereafter “the underlying vessels”).

Comment [gc10]: It might be better to say ‘have been included on two or more WCPFC IUU Vessel Lists adopted in consecutive years’. This would avoid any interpretation that you have to wait until the underlying vessel has been on the list for a full two years before nominating other vessels under paragraph 3(j), which would put you outside the TCC nomination timeframe (ie you would not be able to nominate the 3j vessel until two years had passed and the underlying vessel had been listed for a third time).

2. For the purposes of these procedures, all additional vessels owned by the same owner of record as the underlying vessel(s) that meet condition 1(a) shall be considered together and either all or none will be placed on the WCPFC IUU Vessel List. Similarly, all additional vessels owned by the same owner of record as the underlying vessel(s) that meet condition 1(a) will be considered as one and either all or none will be removed from the WCPFC IUU Vessel List.

Rephrasing this would remove the implication that a two year time period must first expire, and would enable the nomination process for 3j vessels to be started during the second year in which the underlying vessel is on the list, in time for consideration at TCC.

Information to be provided

3. CCMs shall submit suitably documented information demonstrating that the fishing vessels they wish to nominate under paragraph 3(j) of CMM 2007-03 meet the criteria set out in paragraph 1 of these procedures. CCMs shall submit this information to the Executive Director 120 days before the annual meeting of the TCC along with the list of fishing vessels being nominated (hereinafter “3j” vessels).
4. Before or at the same time as transmitting a list of 3j vessels to the Executive Director, the CCM shall notify, either directly or through the Executive Director, the relevant flag State and the owner of record of the vessels’ inclusion on this 3j list, and provide a copy of the pertinent suitably documented information. The flag State and the owner of record shall promptly acknowledge receipt of the notification. If no acknowledgment is received within 10 days of the date of transmittal, the CCM shall retransmit the notification through an alternative means of communication.

Comment [gc11]: It may not be appropriate or efficient to require the Secretariat to correspond/liaise with the owner of record in all the instances currently suggested, both for practical and legal reasons:

- the Secretariat may not have the right contact details
- the flag State is responsible for controlling its vessels, so the onus should be on the flag State to notify the owners, as provided for in paragraph 7 of CMM 2007-03
- WCPFC (as an international organisation) should liaise with the flag State, which can transmit information to its vessels/owners
- if the Secretariat was unable to contact the owner as required by the procedures, this could affect the validity of the rest of the process (since vessels must be nominated ‘in accordance with these procedures’).

Draft IUU Vessel List

5. The Executive Director shall include on the Draft IUU Vessel List, which is drawn up and circulated in accordance with the provisions of CMM 2007-03, those 3j vessels that have been nominated by CCMs in accordance with these procedures.
6. The Executive Director shall notify the owners of record of the inclusion of their 3j vessels on the draft IUU Vessel List and of the consequences of these vessels being confirmed on the IUU Vessel List.

We suggest reconsidering the emphasis on direct liaison with the ‘owner of record’ in paragraphs 4, 6, 7, 9 and 14. It may be appropriate to simply refer to the flag State of the vessel in these paragraphs.

¹ For the purpose of these procedures, “owner of record” means the owner or owners of the vessel as indicated on the WCPFC Record of Fishing Vessels or the WCPFC Interim Register of non-Member Carrier and Bunker Vessels. If a vessel is not on either of those lists, then the owner of record is the owner or owners as indicated on the vessel’s national registration document.

7. As appropriate, owners of record with 3j vessels on the Draft IUU Vessel List may transmit to the Executive Director, at least 30 days before the TCC's annual meeting, suitably documented information showing the 3j vessels do not meet the criteria outlined in paragraph 1 of these procedures. The Executive Director shall circulate this information to all CCMs immediately upon receipt of such information.

Comment [gc12]: Should this be extended to cover flag States of the 3j vessels? For example, flag States may have relevant information about status of investigations, judicial proceedings, cooperativeness of the owner etc.

Provisional and current WCPFC IUU Vessel List

8. At its annual meeting, with respect to 3j vessels that are on the Draft IUU Vessel List, the TCC shall:

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- a. consider suitably documented information, if any, provided by a CCM, a non-CCM or the owner of record, as well as any relevant information regarding the status of an investigation, judicial or administrative proceeding related to the underlying vessel(s) and the cooperation and responsiveness of the owner of record in such proceedings; and
- b. following consideration of the suitably documented information, include the nominated 3j vessels on the Provisional IUU Vessel List developed in accordance with the provisions of CMM 2007-03.

Comment [gc13]: This could be included in paragraph 7 as well (since presumably this information would be submitted by either the owners of record or the flag State?).

Comment [gc14]: This is already implied by virtue of paragraph (a). It might be better to replace this with 'if appropriate' or a similar phrase indicating that the 3j vessels will only be placed on the List if appropriate in the circumstances of the case.

Comment [gc15]: Could be extended to CCMs and non-CCMs (to be consistent with 11(a)).

9. As appropriate, owners of record with 3j vessels on the current WCPFC IUU Vessel List may transmit, at least 30 days before the TCC's annual meeting, but may submit at any time, to the Executive Director suitably documented information showing the 3j vessels do not meet the criteria outlined in paragraph 1 of these procedures, or any other relevant information, including suitably documented information as provided for in paragraph 14. The Executive Director shall circulate this information to all CCMs immediately upon receipt of such information.

10. The TCC shall not include 3j vessels on the Provisional IUU Vessel List if it is demonstrated that the vessels no longer have a common owner of record with the underlying vessel(s) that triggered the nomination under paragraph 1.

11. At its annual meeting, with respect to 3j vessels that are on the current WCPFC IUU Vessel List the TCC shall:

- a. consider suitably documented information, if any, provided by a CCM, non-CCM or the owner of record, as well as any relevant information regarding the status of an investigation, judicial or administrative proceeding related to the underlying vessel(s) and the cooperation and responsiveness of the owner of record in such proceedings; and
- b. following consideration of the suitably documented information, recommend to the Commission whether or not the 3j vessels should be removed from the WCPFC IUU Vessel List.

Comment [gc16]: As with 8(b), this could be deleted. Unlike 8(b), no replacement phrase would be needed, since this sentence includes 'whether or not', which does the same job.

12. The TCC shall recommend removal of 3j vessels from the current WCPFC IUU Vessel List if it is demonstrated that the vessels no longer have a common owner of record with the underlying vessel(s) that triggered the nomination under paragraph 1.

WCPFC IUU Vessel List

13. Once 3j vessels are included on the Provisional IUU Vessel List, they shall be treated as part of that List and, where appropriate, the WCPFC IUU Vessel List, in accordance with paragraphs 20-24 of CMM 2007-03.

Modification of the WCPFC IUU Vessel List

14. Owners of record, CCMs, or non-CCMs may request to remove 3j vessels from the WCPFC IUU Vessel List at any time during the intersessional period by submitting to the Executive Director suitably documented information that:
 - a. the vessels no longer have a common owner of record with the underlying vessel(s) that triggered the nomination under paragraph 1; or
 - b. significant progress has been made to resolve the matter related to the underlying vessel(s) that triggered the nomination of the 3j vessels, and the CCM that originally submitted the 3j vessels for listing is satisfied.
15. Removal requests for 3j vessels shall be treated in accordance with paragraphs 26-29 of CMM 2007-03.
16. If the underlying vessel is removed from the WCPFC IUU List, all additional vessels owned by the same owner of record as the underlying vessel(s) and listed pursuant to the 3j procedures contained herein will be automatically removed at the same time.