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**DRAFT CONSERVATION AND MANAGEMENT MEASURE FOR BIGEYE
AND YELLOWFIN TUNA IN THE WESTERN AND CENTRAL PACIFIC
OCEAN**

**WCPFC5-2008/DP01 (Final)
12 December 2008**

Proposal by the Chairman

The Western and Central Pacific Fisheries Commission (WCPFC):

Recalling that since 1999, in the Multilateral High Level Conferences, the Preparatory Conferences, and in the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC), a number of resolutions and Conservation and Management Measures (CMMs) were developed to mitigate the overfishing of bigeye and yellowfin tuna and to limit the growth of fishing capacity in the Western and Central Pacific Ocean (WCPO) and that these measures have been unsuccessful in either restricting the apparent growth of fishing capacity or in reducing the fishing mortality of bigeye or juvenile yellowfin tuna;

Recalling the objective of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the Convention) is to ensure through effective management, the long-term conservation and sustainable use of the highly migratory fish stocks of the Western and Central Pacific Ocean in accordance with the 1982 Convention and the Agreement;

Further recalling the final statement of the Chairman of the MHLC in 2000 that: “it is important, in this regard, to clarify that the Convention applies to the waters of the Pacific Ocean. It is not intended to include waters of South East Asia which are not part of the Pacific Ocean.; nor is it intended to include the waters of the South China Sea”. (Convention Annex 8);

Recognising that the Scientific Committee has determined that there is a high probability that the bigeye stock is subject to overfishing, and that and yellowfin stocks are currently being fished at capacity, reductions in fishing mortality are required in order to reduce the risks that these stocks will become overfished;

Conscious that the WCPFC, at its regular sessions in December 2005 and 2006 adopted CMMs for bigeye and yellowfin tuna and agreed to review annually those measures;

Aware that the WCPFC committed itself, in 2006 and 2007, to adopt a measure at its next session to reduce juvenile bigeye and yellowfin tuna mortalities from fishing effort on Fish Aggregating Devices (FADs)¹;

Noting that Article 30(1) of the Convention requires the WCPFC to give full recognition to the special requirements of developing States that are Parties to the Convention, in particular small island developing States and territories and possessions, in relation to the conservation and management of highly migratory fish stocks in the Convention Area and development of fisheries on such stocks;

Noting further that Article 30(2)(c) of the Convention requires the WCPFC to ensure that conservation and management measures adopted by it do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States Parties, and territories and possessions;

Taking note of Article 8(1) of the Convention requiring compatibility of conservation and management measures established for the high seas and those adopted for areas under national jurisdiction;

Recalling Article 8 (4) of the Convention which requires the WCPFC to pay special attention to the high seas in the Convention Area that are surrounded by EEZs;

Noting the Parties to the Nauru Agreement have agreed to implement the Third Arrangement of the Nauru Agreement of May 2008 (Attachment A).

Also noting that FFA Members will be adopting a system of zone-based longline limits to replace the current system of flag-based bigeye catch limits within their Exclusive Economic Zones (EEZs).

Noting further paragraph 19 of CMM 2005-01 which states that: “Any future reduction in catch levels shall take into account increases in the levels of such catches by each CCM in recent years.”

Adopts, in accordance with Article 10 of the Convention, the following Measure to be implemented over a three-year period with respect to bigeye tuna and yellowfin tuna, in particular.

OBJECTIVES

1. The objectives of this Measure are to:

- Ensure through the implementation of compatible measures for the high seas and exclusive economic zones (EEZs) that bigeye and yellowfin tuna stocks are maintained at levels capable of producing their maximum sustainable yield; as qualified by relevant environmental and economic factors including the special requirements of developing States in the Convention area as expressed by Article 5 of the Convention.

¹ For the purposes of these measures, the term Fish Aggregation Device (FAD) means any man-made device, or natural floating object, whether anchored or not, that is capable of aggregating fish.

- Achieve, through the implementation of a package of measures, over a three-year period commencing in 2009, a minimum of 30% reduction in bigeye tuna fishing mortality from the annual average during the period 2001-2004 or 2004;
- Ensure that there is no increase in fishing mortality for yellowfin tuna beyond the annual average during the period 2001-2004 average or 2004; and
- Adopt a package of measures that shall be reviewed annually and adjusted as necessary by the Commission taking account of the scientific advice available at the time as well as the implementation of the measures. In addition, this review shall include any adjustments required by Commission decisions regarding management objectives and reference points.

GENERAL RULES OF APPLICATION

2. For the purposes of these measures, vessels operated under charter, lease or other similar mechanisms by developing islands States and participating territories, as an integral part of their domestic fleet, shall be considered to be vessels of the host island state or territory. Such charter, lease or other similar mechanism shall be conducted in a manner so as not to charter known IUU vessels. The Commission shall consider the implementation of a Charter Arrangements Scheme at its 6th Session in 2009.

3. In giving effect to CMM 2004-02, the WCPFC shall advise non-Parties to the Convention wishing to acquire Co-operating Non member (CNM) status that there is a high probability that overfishing is currently taking place in respect of bigeye and yellowfin and tuna in the WCPFC Convention Area. Therefore, where necessary, the limits that apply to CNMs, particularly on the high seas, will be determined by the Commission in accordance with CMM 2004-02 or its revision.

4. The Commission will not delay the adoption of precautionary measures while research to reduce the fishing mortality on juvenile bigeye and yellowfin tuna is being undertaken by CCMs.

5. The Commission encourages CCMs to ensure that the effectiveness of these measures is not undermined by a transfer of effort into archipelagic waters and territorial seas.

6. Unless otherwise stated, nothing in this measure shall prejudice the legitimate rights and obligations of those small island developing state Members and participating territories in the Convention Area seeking to develop their own domestic fisheries.

7. In the determination of levels of effort for the purpose of implementing this Measure current levels of fishing effort shall include, as applicable, fishing rights organized under existing regional or bilateral fisheries partnership arrangements or agreements previously registered with the Commission by December 2006 in accordance with CMM2005-01, provided that the number of licences authorized under such arrangements does not increase and noting that the registration of bilateral agreements or arrangements does not provide a basis for establishing effort levels on the high seas.

PURSE SEINE FISHERY

8. The purse seine fishery provisions of this Measure herein apply to the Convention Area bounded by 20°N and 20°S with the objective of achieving over a 3-year period commencing from the date this measure comes into effect in 2009, a 30% reduction in fishing mortality on bigeye tuna in the purse seine fishery in that area and a reduction in the risk of overfishing yellowfin tuna.

9. CCMs shall ensure that the effectiveness of these measures for the purse seine fishery are not undermined by a transfer of effort in days fished into areas within the Convention Area south of 20°S. In order to not undermine the effectiveness of these measures, CCMs shall not transfer fishing effort in days fished in the purse seine fishery to areas within the Convention Area north of 20°N.

10. CCMs shall take necessary measures to ensure that the level of purse seine fishing effort in days fished² by their vessels in areas of the high seas does not exceed 2004 levels or the average of 2001-2004. In accordance with paragraph 6 this Measure, this paragraph shall not apply to small developing state members and participating territories.

Measures for 2009

EEZ and High Seas

11. For the members of the FFA who are Parties to the Nauru Agreement (PNA), this measure will be implemented through their domestic processes and legislation, including the Vessel Day Scheme which limits total days fished in the EEZs of PNA members to no greater than 2004 levels (Attachment C). These purse seine fishery in EEZs in the area bounded by 20°N and 20°S shall be closed to fishing on FADs between 0000 hours on 1 August and 2400 hours on 30 September. During this period all purse seine vessels required to carry an observer from the Regional Observer Program on board, and without such an observer on board, will cease fishing and return directly to port. During this period, a vessel may only engage in fishing operations if the vessel carries on board an observer from the Regional Observer Program to monitor that at no time does the vessel deploy or service any FAD or associated electronic devices or fish on schools in association with FADs.

12. Other non-PNA CCMs shall implement compatible measures to reduce purse seine fishing mortality on bigeye tuna in their EEZs.

13. The purse seine fishery on the high seas in the area bounded by 20°N and 20°S shall be closed to fishing on FADs between 0000 hours on 1 August and 2400 hours on 30 September. During this period all purse seine vessels without an observer from the Regional Observer Program on board will cease fishing and return directly to port. During this period, a vessel may only engage in fishing operations if the vessel carries on board an observer from the Regional Observer Program to monitor that at no time does the vessel deploy or service any FAD or associated electronic devices or fish on schools in association with FADs.

² In the case of small developing fleets, of four vessels or less, that legitimately entered the fishery after 2000 but before 2004, the baseline level of effort shall be a year in the period 2001-2004 in which its full vessel complement was active in the fishery.

14. Vessels seeking an observer from the Regional Observer Program for the period of the closures identified in paragraphs 12 and 13 above shall notify the Regional Observer Program Coordinator 21 days in advance. If the lack of an available observer from the Regional Observer Program would prevent a vessel from being able to fish during the period in question, the flag State may place an observer from its national program on the vessel to monitor compliance with these measures with approval from the Regional Observer Program Coordinator and, in respect to fishing in EEZs, the approval of the relevant national authority.

High Seas Alternative to Paragraph 13 (Catch Limits)

15. As an alternative to the high seas FAD closure established pursuant to paragraph 13, Members may adopt measures to reduce their catch by weight of bigeye tuna in the purse seine fishery in the area between 20°N and 20°S by a minimum of 10 percent relative to 2001-2004 average levels through a Member-specific catch limit to achieve this goal. This alternative shall only be available to Members identified by the Commission in advance as having demonstrated a functioning capacity to implement such measures in an effective and transparent manner, including through: an established and functioning port monitoring program that allows monitoring of bigeye landings for each trip by each vessel; a commitment to carry on board observers from the Regional Observer Program, including upon return to port so that the observer can view the port monitoring program for each trip; a commitment to provide data for each trip by each vessel to the Commission within 30 days from the completion of the trip; having provided operational catch and effort data at least for the period 2001 to 2004 to substantiate the base level catch and effort; other such conditions as the Commission may determine. Any such program will be open to audit by the Commission to review the effectiveness of the program.

16. Once identified by the Commission as having met the requirements outlined above, the Members in question shall submit the full details of their intended measures and their port monitoring program to the Commission by 31 January 2009. The Commission will review these submissions and take them into account when assessing the effectiveness of the measures.

Measures for 2010-2011

EEZs

Waters under the jurisdiction of PNA members

17. For the members of the FFA who are Parties to the Nauru Agreement (PNA), this measure will be implemented through their domestic processes and legislation, including:

- a. the Vessel Day Scheme which limits total days fished in the EEZs of PNA members to no greater than 2004 levels (Attachment C); and
- b. the Third Arrangement Implementing the Nauru Agreement of May 2008 which comprises a 3 month FAD closure period in the EEZs of the PNA member countries from 0000 hours on 1 July each year until 2400 hours on 30 September each year; full catch retention and other conditions for the purse seine fleet in national waters.

Waters under the jurisdiction of non-PNA members

18. Other non-PNA CCMs shall implement compatible measures to reduce purse seine fishing mortality on bigeye tuna in their EEZs.

High Seas

19. The purse seine fishery on the high seas in the area bounded by 20°N and 20°S shall be closed to fishing on FADs between 0000 hours on 1 July and 2400 hours on 30 September. During this period all purse seine vessels without an observer from the Regional Observer Program on board will cease fishing and return directly to port. During this period, a vessel may only engage in fishing operations if the vessel carries on board an observer from the Regional Observer Program to monitor that at no time does the vessel deploy or service any FAD or associated electronic devices or fish on schools in association with FADs.

20. Alternative measures may be set to reduce bigeye catch by a further 20% as a result of the review by the Commission of the 2009 alternative measure.

21. The Commission shall consider the development of a high seas vessel day scheme (HS VDS) to be compatible with the PNA VDS to provide a common currency for managing purse seine effort. Based on the advice and recommendations of the SC and TCC, the Commission shall consider such a scheme at its annual session in 2009 with a view to adoption at its annual session in 2010 with a view to ensuring that reductions in fishing effort on the high seas and in adjacent EEZs are compatible.

22. The high seas pockets indicated in Attachment D [attachment to focus on two pocket areas] will be closed effective from 1 January 2010 unless the Commission decides otherwise at its 6th annual meeting in December 2009. At this meeting the Commission will also consider the closure of all high seas pockets in the Convention Area between 20 north and 20 south.

FAD Management Plans

23. By 1 July 2009, CCMs fishing on the high seas shall submit to the Commission Management Plans for the use of FADs by their vessels on the high seas. These Plans shall include strategies to limit the capture of small bigeye and yellowfin tuna associated with fishing on FADs, including implementation of the FAD closure pursuant to paragraphs 13 and 18 above. The Plans shall at a minimum meet the Suggested Guidelines for Preparation for FAD Management Plans for each CCM (Attachment E).

24. The WCPFC Secretariat will prepare a report on additional FAD management options for consideration by the Scientific Committee, the Technical & Compliance Committee and the Commission in 2009 including:

- a. Marking and identification of FADs;
- b. Electronic monitoring of FADs
- c. Registration and reporting of position information from FAD-associated buoys; and
- d. Limits to the number of FADs deployed or number of FAD sets made.

Juvenile Tuna Catch Mitigation Research

25. The Commission will work with CCMs, regional tuna commissions and industry to develop and implement a 3 year program to explore methods to reduce catches of juvenile bigeye and yellowfin tuna caught in association with FADs.

26. CCMs, working independently or collaboratively with industry, and reporting through the Scientific Committee and the Technical and Compliance Committee at each regular session, shall

explore and evaluate mitigation measures for juvenile bigeye and yellowfin taken around FADs and present the results annually to the Commission.

Catch Retention

27. In order to create a disincentive to the capture of small fish and to encourage the development of technologies and fishing strategies designed to avoid the capture of small bigeye and yellowfin tuna, CCMs shall require their purse seine vessels fishing in EEZs and on the high seas within the area bounded by 20°N and 20°S from 1 January 2010, subject to the Commission implementing the program in Paragraph 27 for 100 percent coverage on purse seine vessels by the observers from the Regional Observer Program, to retain on board and then land or transship at port all bigeye, skipjack and yellowfin tuna. The provisions of this paragraph, shall not prevent the PNA from implementing the catch retention requirement in their EEZs in accordance with the Third Implementing Agreement. The only exceptions shall be:

- a) when, in the final set of a trip, there is insufficient well space to accommodate all fish caught in that set noting that excess fish taken in the last set may be transferred to and retained on board another purse seine vessel provided this is not prohibited under applicable national law; or
- b) when the fish are unfit for human consumption for reasons other than size; or
- c) when serious malfunction of equipment occurs.

Monitoring

28. Purse seine vessels fishing within the area bounded by 20°N and 20°S exclusively on the high seas, on the high seas and in waters under the jurisdiction of one or more coastal States, or vessels fishing in waters under the jurisdiction of two or more coastal States, shall carry effective 1 January 2010, an observer from the Commission's Regional Observer Programme.

29. In 2009 vessels fishing in the area described above will carry observers compliant with licensing arrangements and on the high seas will have a minimum of 20% observer coverage drawn from the Regional Observer Program. The level of coverage achieved will be monitored and reported through TCC. The Secretariat, in conjunction with the IATTC, will develop a cross-endorsement arrangement in order to allow vessels operating within IATTC and WCPFC areas on the same fishing trip to use the same observer.

Other Considerations for Purse Seine Measures

30. Developing skipjack purse seine fisheries, between 20°N and 20°S that can provide verifiable evidence of minimal yellowfin and bigeye by-catch (cumulative <2%), with 100% observer coverage, and with a legitimate development plan, will be exempted. Any such plan shall restrict the use of FADs and implement other such management measures necessary to minimize impacts on bigeye and yellowfin tunas. These measures must be supported by adequate monitoring, control and surveillance to ensure their effective implementation. Existing plans shall be tabled at the Commission for information. The Commission is to be given the opportunity to comment on the plan before its approval. This measure does not apply to the domestic purse seine fisheries of small island developing states.

LOONGLINE FISHERY

31. The total catch of bigeye tuna by longline fishing gear will be subject to a phased reduction such that by 1 January 2012 the longline catch of bigeye tuna is 70% of the average annual catch in 2001-2004 or 2004 (Attachment F).³ The catch of yellowfin tuna is not to be increased in the longline fishery from the 2001-2004 levels.

32. Paragraph 30 does not apply to members and participating territories that caught less than 2,000 tonnes in 2004. Each member that caught less than 2,000 tonnes of bigeye in 2004 shall ensure that their catch does not exceed 2,000 tonnes in each of the next 3 years (2009, 2010 and 2011). Consistent with paragraph 3 opportunities for non members will be decided by the Commission on a case by case basis.

33. Each member or cooperating non-Member that caught an average of more than 2,000 tonnes of bigeye shall be subject to the following catch limits for bigeye tuna for the years 2009 to 2011 inclusive:

2009: 10% reduction of the catch specified in Attachment F;

2010: 20% reduction of the catch specified in Attachment F;

2011: 30% reduction of the catch specified in Attachment F.

34. In accordance with paragraph 6, the limits for bigeye tuna established in paragraphs 31 to 33 above, shall not apply to small island developing State members and participating territories in the Convention Area undertaking responsible development of their domestic fisheries.

35. Further to paragraph 34, the reductions specified in paragraph 33 for 2010 and 2011 shall not apply to fleets of members with a total longline bigeye tuna catch limit as stipulated in Attachment F of less than 5,000 tonnes and landing exclusively fresh fish, provided that the details of such fleets and their operational characteristics are registered with the Commission by 31 December 2008 and that the number of licenses authorized in such fisheries does not increase from current levels. In such cases, catch limits specified in Attachment F shall continue to be applied.

36. The catch limit for China for 2009 and 2010 will remain at 2004 levels pending agreement being reached to develop an arrangement for the attribution of Chinese catch taken as part of domestic fisheries in the EEZs of Pacific Island Countries.

37. The measures described above for the purse seine and longline fisheries shall be reviewed annually in conjunction with the scientific advice to measure the impact and compliance with the measure. The measure shall remain in place unless the Commission adopts alternative measures. This review shall consider, inter alia, whether the measures are having the intended effect and the extent to which all CCMs and fishing sectors are contributing to achieving the Commission's conservation goals.

38. If such reductions would result in a catch limit less than 2,000 tonnes for a Member, then a catch limit of 2,000 tonnes shall apply to that Member or cooperating non member.

³ The year 2004 shall apply only to China, the United States and Indonesia.

OTHER COMMERCIAL TUNA FISHING EFFORT RESTRICTIONS

39. Beginning in 2009, CCMs shall take necessary measures to ensure that the total capacity of their respective other commercial tuna fisheries for bigeye and yellowfin tuna, including purse seining that occurs north of 20°N-or south of 20°S, but excluding artisanal fisheries and those fisheries taking less than 2,000 tonnes of bigeye and yellowfin, shall not exceed the average level for the period 2001-2004 or 2004. CCMs shall provide the SC with estimates of fishing effort for these other fisheries or proposals for the provision of effort data for these fisheries for 2009 and future years.

DATA PROVISION

40. CCMs shall provide within the agreed timeframes each year, catch and effort data and size composition data for all fleets in the format required by the rules and requirements adopted by WCPFC as “Scientific Data to be Provided to the Commission”.

41. The WCPFC shall take into account the level of compliance by CCMs to the data reporting requirements in paragraph. 351 in implementing any additional reductions in fishing mortality that may be required to give effect to the precautionary approach.

PORT CONTROLS

42. Each CCM shall prohibit landings, transshipment and commercial transactions in tuna and tuna products that are positively identified as originating from fishing activities that contravene any element of the Commission’s Conservation and Management Measures.

43. Monitoring shall be conducted at landing and transshipping ports to assess the amount of catch by species. The outcomes shall be reported annually to the Commission.

CAPACITY

44. Drawing on work that has been completed by CCMs, the WCPFC Secretariat shall present a report on measuring and monitoring fishing capacity in the WCPO for consideration by TCC5.

REPORTING

45. All CCMs will report to each regular session of the Technical and Compliance Committee, through their Annual Report Part 2, on the implementation of this Measure for their fishing vessels operating on the high seas and/or in waters under national jurisdiction. The Technical and Compliance Committee will prepare a template for reporting this requirement for the consideration of WCPFC.

REVIEW OF MEASURES

46. The measures described above for the purse seine and longline fisheries shall be reviewed annually in conjunction with the scientific advice to measure the impact and compliance with the measure. The measure shall remain in place unless the Commission adopts alternative measures. This review shall consider, inter alia, whether the measures are having the intended effect and the

extent to which all CCMs and fishing sectors are contributing to achieving the Commission's conservation goals.

FINAL CLAUSE

47. This Measure replaces CMM 2005-01 and CMM 2006-01.

ATTACHMENTS

Attachment A: Third Arrangement of the Nauru Agreement of May 2008

Attachment B: Baseline Effort Levels for Purse Seine Fisheries

Attachment C: Vessel Day Scheme limits on Total Days Fished

Attachment D: Map showing EEZs and the High Seas Pockets

Attachment E: Suggested Guidelines for Preparation of FAD Management Plans (WCPFC Circular 2007/14 Attachment 2)

Attachment F: Baseline Catch Levels for Longline Fisheries