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USHERING IN AN ERA OF CHANGE IN KOREA: YES WE CAN! Western & Central Pacific Fisheries Commission (WCPFC)

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INTRODUCTION

A record catch of tuna was reported in the Western and Central Pacific Fisheries Commission (WCPFC) Convention Area in 2007¹. Alarming, this increase in tuna catch comes against a backdrop of equally alarming global trends, such as 76% of the world's commercially harvested fish stocks already being fully exploited, over exploited or recovering from depletion. ² The Pacific tuna stocks are showing signs of following these overexploitation trends, with overfishing occurring on both bigeye and yellowfin stocks. Despite repeated warnings from the Scientific Committee on the status of these stocks, the 2007 catches of yellowfin tuna were higher than the average level for the past 10 years, ³ and the provisional bigeye tuna catch was the second highest on record. ⁴ Distant water fishing vessels are also increasingly migrating to the region and unsustainably exploiting the ocean resources, undermining, avoiding and evading the management and conservation measures that have been managed to put into place.

This year's Commission meeting is critical. The WCPFC must turn itself around this year and agree strong and effective measures to maintain a sustainable and profitable fishery by adopting

¹ Overview of Tuna Fisheries in the Western and Central Pacific Ocean, including Economic Conditions – 2007 (Wcpfc-Sc4-2008/Gn Wp-1), Paper Prepared By Peter Williams and Peter Terawasi. At http://www.wcpfc.int/sc4/pdf/SC4-GN-WP1%20final_.pdf.

² FAO 2007

³ Williams and Terawasi.

⁴ Ibid.

a precautionary and ecosystem based approach to preserve the vast marine diversity of the Pacific Ocean. In particular, the agreement on effective bigeye and yellowfin tuna conservation and management measures will be a key test to showing whether WCPFC members are serious in fulfilling the objective “to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean.”⁵ Failure to do so will mean that the WCPFC has yet again followed the footsteps of other failed or failing Regional Fisheries Management Organisations (RFMOs) such as the International Commission for the Conservation of Atlantic Tunas (ICCAT), now seen as “an international disgrace” to fisheries management⁶. The WCPFC shares many member States with ICCAT, and clearly has a lot of work to do to avoid a similar fate and reputation in the Pacific region.

Stalling tactics by certain distant water fishing nations (DWFNs), and other difficulties in reaching consensus within the WCPFC, have led to a very non-productive and damaging process and lack of progress, where key conservation and management measures are not agreed. As a result, this has led to dissatisfaction by a number of members, in particular Pacific Island countries (PICs), who believe that the interests of the majority of the members including the resource owners have not been reflected in meeting outcomes. Whilst consensus-based decision-making is the first aim under the Convention, which is only until ‘all efforts to reach a decision by consensus have been exhausted’⁷ and there are provisions in the WCPFC Convention text, which enable votes to be taken. Greenpeace strongly urges that members use these provisions in a strategic way to ensure that the WCPFC’s decisions are not again hijacked by a small minority of nations that are not acting in the best interest of the valuable tuna resources, the health of the Western and Central Pacific Ocean (WCPO) ecosystems and the future of the people that live in the region.

There have been, however, some optimistic developments in the region, outside of the WCPFC framework, namely through the Third Implementing Arrangement which was agreed by the Parties to the Nauru Agreement (PNA)⁸ parties in Palau in May 2008. The Commission must build on this agreement and ensure that compatible measures are put in place for the wider WCPO through their final adoption at the 5th annual meeting.

This briefing sets out an overview of some of the key issues related to ensuring the long-term conservation of Pacific tuna, and proposes the measures that Greenpeace believes are necessary to protect this valuable resource for future generations.

50% EFFORT REDUCTION: A WIN-WIN FOR SUSTAINABILITY AND PROFITABILITY

The fluctuating fuel costs that are borne by industry are additional validation for conservation that ensures a future for all fishing industries and subsidiary agencies. The many unknowns of climate change impacts on the oceans and the tuna stocks are further impetus.

To that end, Greenpeace welcomes that conservation and management measures for bigeye and yellowfin tuna will be a priority at this year’s meeting. However, Greenpeace believes that even stronger measures are necessary to ensure that overfishing will not continue on these tuna stocks and that the fishery is put on a stronger economically profitable footing.

⁵ WCPFC Convention, Article 2. <http://www.wcpfc.int/pdf/text.pdf>

⁶ See Greenpeace, Mediterranean tuna management an “international disgrace”, 11 September 2008. At <http://www.greenpeace.org/international/press/releases/iccat-international-disgrace-11092008>.

⁷ WCPFC Convention Article 20.

⁸ Parties to the Nauru Agreement: Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands and Tuvalu.,

In particular, Greenpeace is concerned that the 30% reduction recommended by the Secretariat (based on the recent Science Committee (SC4)⁹ for bigeye tuna) and measures that reduce the risk of overfishing on yellowfin tuna are not precautionary enough to reverse the decline in stock levels and to improve the long-term economic viability of the fishery. SC4 found that overfishing of bigeye is now definitely occurring¹⁰ and also acknowledged that additional reductions may be necessary. It is important to remember that figures are often unreliable for management purposes: catch data collected during fishing trips were not consistent, were under-reported, misreported or unavailable. Illegal, unreported and unregulated (IUU) fishing, under-reporting and the increasing and intensive use of fish aggregating devices (FADs) and accompanying by-catch and mortality all mean that the data available to WCPFC is very unreliable and probably understates the level of fishing effort. A recent report on the global extent of illegal fishing estimated the amount of IUU fishing in the West and Central Pacific Ocean to be approximately 34% of the reported catches (between 21-46%):¹¹ an amount that seriously undermines the accuracy of scientific assessments and calls for a much more precautionary level of effort limits in the legal fisheries. This highlights the importance of being guided by the precautionary approach in the face of many unknowns, which is why Greenpeace is calling for a 50% effort reduction in the Pacific tuna fisheries.

Such an effort reduction would not only help put the fishery onto a long-term sustainable footing but also goes a long way towards making the fishery more economically profitable. Economic studies continue to show that the world's fishing fleets are not economically efficient, and are often operating at a loss depending on whether or not they receive government subsidies. A recent report in October 2008 by the World Bank and the United Nations Food and Agriculture Organisation (FAO) showed that the difference between the potential and actual net economic benefits from marine fisheries is in the order of \$50 billion per year.¹²

Many studies show that significantly reducing fishing effort for tuna would both increase productivity, profitability, and net economic benefits. Detailed studies in the Pacific tuna fisheries have shown that by reducing fishing effort, including the number of vessels (and now FADs), resource rents could increase by between 10% and 40% of gross revenues. In a modeling exercise conducted in 2000, a theoretical reduction of Pacific purse seine fleet effort to less than 50% of 1996 levels showed fleet revenues would fall by only 15% but that costs would fall by 30%. Most significantly, resource rent could have more than doubled and returns to coastal States from tuna access fees could have also risen by 39% under the existing fee structure¹³.

A study by Kompas et al¹⁴ shows that a 36% reduction in purse seine effort (from 2004 effort levels) over the next 5 years and a 32% reduction thereafter, as well as a smaller reduction in the frozen and fresh long-line fisheries in the short term. This would analysis suggests such reductions, would increase the profitability of the fishery by 30% over a 50-year planning horizon. To do so, however, requires that DWF nations collectively agree on large effort reductions in

⁸ Tim Dempster and Marc Taquet, 'Fadbase and Future Directions for Ecological Studies of Fad-Associated Fish', *SPC Fisheries Newsletter*, No. 112, January/March 2005, 18-19 at https://www.spc.int/coastfish/news/Fish_News/112/Dempster_112.pdf.

⁹ See Summary Report at [http://www.wcpfc.int/sc4/pdf/0_SC4%20Summary%20Report%20\[Preliminary%20version\]_rev1.pdf](http://www.wcpfc.int/sc4/pdf/0_SC4%20Summary%20Report%20[Preliminary%20version]_rev1.pdf), para. 143. No stock assessment for yellowfin tuna was conducted for 2008 so SC3 recommendations stand. Para. 148..

¹⁰ 'Very high probability' of 100%. Para. 139.

¹¹ MRAG and Fisheries Ecosystems Restoration Centre, British Columbia University (2008). *The Global Estimate of Illegal Fishing*.

¹² *Sunken Billions, Economic Justification for Fisheries Reform* (2008). FAO and World Bank.

¹³ Bertignac, M., Campbell, H.F., Hampton, J. and Hand, A.J. Maximizing resource rent from the Western and Central Pacific tuna fisheries, *Marine Resource Economics*, Vol 15, No. 3, 2000.

¹⁴ Tom Kompas and Tuong Nhu Che "Economic profit and optimal effort in the Western and Central Pacific tuna fisheries", 2006 *Pacific Economic Bulletin*, at http://www.crawford.anu.edu.au/pdf/staff/tom_kompas/Kompas_PEB.pdf, and see Grafton, Q., Kompas, T. and Hilborn, R. W. "Economics of Overexploitation Revisited". *Science*. Washington: Dec 07, 2007. Vol. 318, Iss. 5856; p. 1601.

fishing capacity and comply with scientific recommendations and the wishes of coastal States to enter into the fisheries. An across-the-board precautionary effort reduction of 50% would not only put the fishery on a long-term sustainable footing but also help increase the economic returns and viability of the industry: a win-win situation for both financial returns and sustainability.

The draft yellowfin/bigeye measure needs to be amended to take account of these considerations, particularly the 50% cut, a ban on FADs and to ensure the closure of the high seas pockets.

HIGH SEAS ENCLAVES: PIRATES' PLAYGROUND

Greenpeace has conducted three ship tours in the WCPO region.¹⁵ Our most recent tour was from early April to June 2008. During these expeditions, we have found evidence that IUU fishing and unreported transshipments are pervasive in the high seas areas, in particular, the high seas pockets known as the donut holes¹⁶.

In particular, Greenpeace found:

- Vessels in international waters either fishing, transiting or waiting for transhipment, refuelling, and supplies. Pirate vessels operating in the region use the donut holes to avoid monitoring and enforcement and to transfer their catches without reporting.
- Some vessels did not have valid fishing licenses or were not authorised to be in the region.
- Several longline vessels encountered by Greenpeace did not possess valid fishing licenses in any of the Pacific Island Country (PICs), using the high seas exclusively for their fishing operations. Large amounts of shark fin and tails were recorded on board these vessels.
- A Panamanian reefer that was not legally authorised to be in the region during the time of sighting was able to get on to the temporary vessel register almost immediately after our sighting, showing that vessels have no incentive for compliance, given the weak vessel registration processes and procedures.
- Discrepancies between vessel registration details retained by the two regulatory bodies FFA and WCPFC.

These findings show the vulnerable and unregulated nature of the high seas, with evidence of IUU activity commonly occurring alongside legally licensed vessels in the donut holes. The findings also clearly show, yet again, that allowing at-sea transshipments continues to be a major loophole that facilitates the unknown and unreported plundering of tuna resources from the region.

Greenpeace also found vessels only authorised to fish in the high seas pockets by the Commission but were not authorised to fish in any of the exclusive economic zones (EEZs) of the coastal states. This leaves these areas wide open to abuse, far from the scrutiny of the coastal states as next to no enforcement capacity exists in the high seas. A detailed summary of findings from our recent expedition is available online.¹⁷

MARINE RESERVES: CONSERVATION AND FISHERIES BENEFITS

A critical element of the sustainability equation is the protection and conservation of the rich biodiversity of the ocean ecosystem, which extends beyond the target species themselves.

¹⁵ Summaries of findings from our past ship tour can be obtained at <http://www.greenpeace.org/australia/resources/reports/overfishing>.

¹⁶ The first international water bounded by Papua New Guinea with Federated States of Micronesia, Indonesia and Palau. The second larger boundary is bordered by Papua New Guinea, Nauru, Marshall Islands, Federated States of Micronesia, Kiribati, Tuvalu and the Solomon Islands. Including the southern area bounded by Fiji, Solomon Islands and Vanuatu.

¹⁷ The report is at <http://www.greenpeace.org/australia/resources/reports/overfishing/defending-our-pacific-2008-su>.

There is a growing body of evidence that the establishment of a network of marine reserves can lead to enhanced yields in adjacent fishing grounds. Marine reserves enable the development of more natural, extended population age structures that promote resilience to overfishing and are important in maintaining the integrity of marine ecosystems in the face of climate change. In addition, marine reserves can also help provide a more predictable catch from year to year, enhancing fisheries' stability. They also serve as a form of insurance against management failure resulting in degradation of the ecosystem in non-designated areas.

Marine reserves also enhance catches beyond their boundaries as a result of either the spillover of adults and juveniles across reserve boundaries or from the export of larvae or eggs from reserves to fished areas. However, this benefit is most marked when the non-designated areas are subject to failing management and overfishing. While the benefits of protection are more apparent for species spending much or all of their time within a marine reserve, reserves can also offer protection to migratory species, particularly if reserves are created in places where these species are especially vulnerable, such as spawning and nursery ground, as well as aggregation sites, such as seamounts. For highly mobile species like tuna, it is also important to encompass an adequate and significant proportion of their critical habitat.

The need to establish a representative network of MPAs by 2012,¹⁸ the recent agreement at the CBD in May to adopt scientific criteria for MPAs,¹⁹ and current efforts to establish a high seas MPA by OSPAR, all show that there is real impetus to take action on the high seas..

NEED FOR GREATER COORDINATION- THE IMPORTANCE OF UPDATED FISHING RECORD VESSELS AND IUU LISTS

The threat of IUU fishing spans all corners of the globe and the pirate catch is estimated to be worth up to \$11 billion annually. In the Pacific alone, the IUU catch is estimated to be around \$US 134- \$400 million per year, or 4 times greater than the money the PICs receive in access fees from their tuna resources.²⁰ Unless there is much greater cooperation and coordination, it will be a near-impossible task to ensure unscrupulous operators are no longer out at sea. Information sharing will be a vital element of this coordination. Therefore Greenpeace strongly supports the development by the WCPFC of a web-based, up to date record of fishing vessels that are active in the Convention area.

The procedures dictated under the current Conservation and Management measures (CMMs) to establish a list of vessels presumed to have carried out IUU fishing activities in the WCPO (CMM2007-03) need to be strengthened to ensure that vessels that have carried out IUU activities are scrutinised and listed subsequently on the Commission's IUU list. Greenpeace was extremely disappointed at the precedents set at TCC4 where eleven vessels were nominated for listing, but only two succeeded to make the provisional listing. Greenpeace therefore suggests the strengthening of CMM 2007-03, as outlined in the annex below.

TRANSLATING REGIONAL PROGRESS INTO ACTION AT THE WCPFC

As a result of the failure of the 4th annual meeting of the WCPFC in December 2007 to agree to

¹⁸ World Summit on Sustainable Development, Johannesburg Plan of Implementation, A/Conf.199/20, (JPOI), para. 32.

¹⁹ CBD COP 9 Decision IX/20, Marine and coastal biodiversity, Bonn, 19 - 30 May 2008, at <http://www.cbd.int/decisions/?m=COP-09&id=11663&lg=0>. para. 14 and Annex I.

²⁰ Greenpeace, "Pirates of the Pacific: Loopholes and solutions in the fight against illegal, unreported and unregulated fishing in the Pacific"(2004) and Richards, A. Fisheries Monitoring, Control and Surveillance in the Western and Central Pacific Ocean Region. Forum Fisheries Report #03/25. Solomon Islands. See also UK, Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries: FINAL REPORT, (July 2005) at <http://www.dfid.gov.uk/pubs/files/illegal-fishing-mrag-report.pdf>.

urgently needed conservation measures for bigeye and yellowfin tuna, a number of Pacific Island coastal States decided to consider an alternative approach to ensuring key measures were taken to protect their important tuna resources. Coastal States agreed that they should adopt and implement measures for their EEZs, with the WCPFC focusing on its main task of addressing overall stock status and standards and applying compatible measures on the high seas. This led to the Parties to the Nauru Agreement (PNA) agreeing in May 2008, the Third Implementing Arrangement to address the current level of overfishing and to stop the further decline of two commercial tuna stocks bigeye and yellowfin tuna.

This agreement ensures:

- Prevention of operators from fishing in the high seas pockets bounded by their waters, enforced by conditions attached to fishing licenses;
- a ban on the use of Fish Aggregation Devices (FADs) in their EEZs for three months per year; and
- catch retention, and no discarding of catch, whether the harvested catch is undersized, matured, target or non targeted catch or by-catch.

The 3rd Implementing Arrangement was seen as a necessary response to the general crisis in the bigeye and yellowfin tuna stocks, and to enhance the PICs' longer-term benefits from the tuna fisheries. In particular, the closure of the high seas pockets is an important contribution to tuna conservation, as it will stop the use of these high seas areas as havens for IUU fishing, as well as contributing to the long-overdue regional network of marine reserves.

This agreement was welcomed by Leaders at the Pacific Island Forum²¹ in Niue. Leaders also reaffirmed the central importance of regional solidarity through effective fisheries management of their tuna resources and encouraged members to adopt a coordinated approach in their negotiations in the WCPFC²². Pacific Island countries are now urging members of the WCPFC to adopt similar measures for the high seas by WCPFC5 in Busan.

BAN THE FAD – STOP THE WASTE

Greenpeace believes that the use of fish aggregations devices (FADs) should be totally banned rather than limited to a 3 month prohibition as currently proposed, because of their negative impacts on wider marine life. The increase in purse seining in the Pacific has seen a huge increase in the catch of tuna using FADS in the skipjack and yellowfin fisheries. Unfortunately, mounting evidence shows that the use of FADs not only increases the efficiency of purse seine operations, causing a large increase in fishing effort, but also lays waste to other marine life.

Every time a FAD is used, an average of 10% of the catch by weight will not be the type of tuna that is targeted, but juveniles of other tuna species, turtles, sharks, and a wide variety of other fish species.²³ Scientific research from 2005 concludes that the global by-catch on floating FADs in tuna fisheries amounts to 100,000 tonnes every year, with catches around moored FADs resulting in further by-catch.²⁴

According to the University of Hawaii's pelagic fishing program, FADs fished by purse seine are considered a major contributor toward yellowfin and bigeye stocks being pushed towards an

²¹ This is the annual meeting of the 16 Pacific Islands Forum countries: Federated States of Micronesia, Kiribati, Republic of Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, Tuvalu, Tonga, Samoa, Vanuatu, Niue, Cook Islands, Fiji, New Zealand and Australia.

²² Forum Communiqué 39 Pacific Islands Forum Alofi, Niue 19-20 August 2008 Annex A.

²³ D. Bromhead, J. Foster, R. Attard, J. Findlay and J. Kalish *Review of the impact of fish aggregating devices (FADs) on tuna fisheries*. Australian Department of Agriculture, Fisheries and Forestry, 2003.

²⁴ Tim Dempster and Marc Taquet, 'Fadbase and Future Directions for Ecological Studies of Fad-Associated Fish', *SPC Fisheries Newsletter*, No. 112, January/March 2005, 18-19 at https://www.spc.int/coastfish/news/Fish_News/112/Dempster_112.pdf.

over-fished condition with high numbers of juveniles being caught as bycatch.²⁵ Given that yellowfin and bigeye are of high commercial value, it is both environmentally destructive and uneconomical to accidentally kill these young, especially in the pursuit of the less valuable skipjack.

There is also growing evidence that FADs seriously disrupt the life-cycles of tuna that have not been caught. In May 2008, scientists reported that FADs appear to act like magnets that attract the tuna, and other fish, towards ecologically inappropriate waters with scarcer food supplies, distorting their migratory routes and possibly causing them to become undernourished. This has potentially serious broader ecological consequences.²⁶

It should also be noted that during their soak times, FADs are in effect actively fishing by attracting and gathering fish. This phenomenon is currently not adequately incorporated into the effort calculations of the purse seine fisheries, distorting the scientific basis of the CPUE calculations of Pacific fisheries and management measures such as the Vessel Day Scheme.

VOTING

Pacific Island countries must be prepared to invoke the voting provisions of Article 20 of the Convention, strategically, which provide that for decisions on questions of substance to be taken by a three-fourths majority of those present and voting, including a three-fourths majority of the members of the FFA present and voting, and a three-fourths majority of non-members of the FFA present and voting. A proposal cannot be defeated by two or fewer votes in either chamber.

It must be noted that under Article 20.3, any representative (which should be taken to mean member), the Commission may, by a majority of those present and voting, defer the taking of a decision until such time during the same session as the Commission may decide. At that time, the Commission shall take a vote on the deferred question. This rule may be applied only once to any question. Being a question of procedure, this would mean a simple majority. In practical terms, this means that a DWFN could attempt to delay and derail the vote. PICs should be prepared for this. We also note that CNMs may want to opt-out of a decision taken by majority. Any such decision must be taken as an indicator of the commitment of CNMs to sustainability and to the Pacific.

CNMs: APPLICATION FOR COOPERATING NON-MEMBER STATUS

Under Agenda item 2, a number of applications are expected to be made for cooperating non-member (CNM) status.

The Commission must take a cautious approach to applications for CNM status. Crucial issues to consider are the status of the stocks and the existing level of fishing effort in the fishery; and the applicant's record of compliance with the Convention, and its measures. The Secretariat should be asked to conduct a full assessment of CMMs to assess which are applicable to CNMs and what the implications are. A further probationary step of compliance with CMMs and any specific requirements could be instituted prior to the according of CNM status. WCPFC should note that there is no uniform practice among RFMOs regarding non-members, so it is important for the Commission not to rush into hasty action.

²⁵ The Associative Dynamics of Tropical Tuna to a Large-Scale Anchored FAD Array, at http://www.soest.hawaii.edu/biolog/holland_itano.png.

²⁶ J. Hallier and D. Gaertner, Drifting fish aggregation devices could act as an ecological trap for tropical tuna species, *Marine Ecology Progress Series*, Vol 353, 255–264, 17 Jan 2008: http://hal.ird.fr/docs/00/26/91/72/PDF/Hallier_GaertnerMEPS7180_Prev2.pdf

The Chair's Proposal²⁷ needs to be amended to take these considerations into account, and also to take into account the matters listed in paragraph 12 of the Proposal *before* the application is accepted, including especially the status of fish stocks, fishing practices of the applicant, and the needs of coastal fishing communities and coastal States. Some of these matters were included in paragraph 5 of CMM 2004-02; it is unclear why in the new proposal these are no longer included as criteria for CNM status.

A further analysis is attached as an Annex.

SUMMARY OF RECOMMENDATIONS

Greenpeace believes that bold measures need to be taken in order to avoid the collapse of the world's major fishery and the loss of livelihood and food supply for the coastal states of the Pacific. In particular we urge the WCPFC to prioritize the following recommendations at the WCPFC 5.

- 1. The cessation of fishing in the high seas areas bounded by Pacific Island states as a first step towards becoming no-take marine reserves, as part of a holistic ecosystem approach, to both conserve their rich biodiversity and as a key fisheries management measure. These reserves would be the start of a network of reserves throughout the region and globally.**
- 2. That the Commission be firmly guided by the precautionary approach and account for the high levels of unknown and uncertainties in fishing data due to the high level of IUU fishing in the region by supporting and adopting a 50% reduction in tuna fishing effort across the entire WCPO sector based on the average 2001-2004.**
- 3. The banning of all at-sea transshipments with no exemptions granted to any country.**
- 4. The permanent ban on the use of FADs in purse seine fishing in order to protect juveniles and other marine life.**
- 5. That the Commission takes a cautious approach to applications for co-operating non-member status**
- 6. That CMM 2007-3 on IUU Fishing be amended to eliminate loopholes and exemptions**

²⁷ Draft WCPFC Proposal Cooperating Non-Members Amendments To CMM 2004-02, WCPFC5-2008/Dp03, 8th November 2008 [http://www.wcpfc.int/wcpfc5/pdf/WCPFC5-2008-DP03%20\[Proposal%20by%20the%20Chair%20of%20the%20WG%20-%20Cooperating%20Non-Members\].pdf](http://www.wcpfc.int/wcpfc5/pdf/WCPFC5-2008-DP03%20[Proposal%20by%20the%20Chair%20of%20the%20WG%20-%20Cooperating%20Non-Members].pdf).

ANNEX

APPLICATIONS FOR CNM STATUS

Greenpeace notes the need for caution. Crucial issues to consider are the status of the stocks and the existing level of fishing effort in the fishery; and the applicant's record of compliance with the Convention, and its measures.²⁸ As outlined in the IOTC,²⁹ caution shall be used to ensure against the introduction of excessive fishing capacity of other regions into the Convention Area, or IUU fishing activities, through the granting of CNM status to non-members.³⁰ Non-members should not be admitted on the basis of their IUU fishing record. There is also the risk that new members will not help the Commission adopt meaningful measures, particularly as stocks and existing level of effort in the fishery is a major concern, as well as some of these non-members' poor record of compliance.³¹ CNM status shall be revoked if the nationals or fishing vessels of the CNM have undermined the effectiveness of CMMs.³² All this points to the crucial nature of the fishing record of would-be CNMs.

The Chair's Proposal³³ needs to be amended to take into account the matters listed in paragraph 12 of the Proposal *before* the application is accepted, including especially the status of fish stocks, fishing practices of the applicant, and the needs of coastal fishing communities and coastal States. Some of these matters were included in paragraph 5 of CMM 2004-02; it is unclear why in the new Proposal they are not included as criteria for CNM status.

Some members may consider that it is better for fishing States to be included in the Commission. However until the Commission starts adopting meaningful measures that effectively address overfishing, this approach must be questioned. Since CNMs participate as observers, they do not participate in a vote, but they can still delay and obstruct discussions.³⁴ Also, CNMs are often included as CCMs in measures,³⁵ thus in some ways assimilating them to membership.

Chatham House has recently published a comprehensive analysis of the practice of various RFMOs with respect to non-members.³⁶ That analysis shows that there is a wide variation in

²⁸ WCPFC Article 32.5 and see Article 35.2 for membership. CMM 2004-02 (Conservation and Management Measure on Cooperating Non-Member; see Articles 4 and 5) which implements Article 32 and governs CNM status, subjects approval of CNM status to a review of the State's compliance with the Convention's (and other RFMOs') provisions and measures requires the Commission to consider the status of the stocks and the existing level of fishing effort in the fishery; and its record of compliance with the Convention, and its measures. See Secretariat paper, Consideration of Applications for Cooperating Non-Member Status and Membership, WCPFC-TCC2-2006/22, 19 September 2006, at <http://www.wcpfc.int/tcc2/pdf/WCPFC-TCC2-2006-22%20%5BConsideration%20of%20Applications%20for%20Cooperating%20Non-Member%20Status%20and%20Membership%5D.pdf>.

²⁹ Report of the Eighth Session of the Indian Ocean Tuna Commission, Victoria, Seychelles, 7-12 December 2003, at [http://www.iotc.org/files/proceedings/2003/s/IOTC-2003-S08-RIEN\].pdf](http://www.iotc.org/files/proceedings/2003/s/IOTC-2003-S08-RIEN].pdf) Para. 5, page 44.

³⁰ CMM 2004-02, Para. 9

³¹ The Convention provides that "such cooperating non-parties to this Convention shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with, and their record of compliance with, conservation and management measures in respect of the relevant stocks." WCPFC Article 32.4.

³² 2004-02 para. 11.

³³ Draft WCPFC Proposal Cooperating Non-Members Amendments To CMM 2004-02, WCPFC5-2008/Dp03, 8th November 2008 [http://www.wcpfc.int/wcpfc5/pdf/WCPFC5-2008-DP03%20\[Proposal%20by%20the%20Chair%20of%20the%20WG%20-%20Cooperating%20Non-Members\].pdf](http://www.wcpfc.int/wcpfc5/pdf/WCPFC5-2008-DP03%20[Proposal%20by%20the%20Chair%20of%20the%20WG%20-%20Cooperating%20Non-Members].pdf)

³⁴ WCPFC Article 32.5.

³⁵ In CMM 2004-01, the provisions are expressly said to apply to CNMs (paragraph 19) and it is clearly stated in paragraph 1(c) that fishing may only be conducted by vessels flagged by members. But CMM 2005-01 applies to CCMs.

³⁶ Daniel Owen, "Recommended Best Practices for Regional Fisheries Management Organizations: Technical Study No. 2: Practice of RFMOs Regarding Non-members.," October 2007, At <http://www.chathamhouse.org.uk/publications/papers/view/-/id/554/>.

*Greenpeace Briefing to WCPFC5
Appendix*

practice amongst RFMOs. For instance, NAFO has not adopted any framework provisions on cooperating non-contracting parties, and there are currently no States³⁷ or fishing entities with cooperating status,³⁸ and the ICCAT has only granted cooperating status to Guyana and Chinese Taipei.³⁹ These examples show that there is no uniform practice requiring that CNM status be granted urgently.

New Zealand's useful paper on CNMs for TCC4⁴⁰ needs to be understood in light of the fact that firstly, the world has changed since UNCLOS was signed in 1982; secondly, the 'right' to fish is subject to a lot of obligations, including, but in addition to, the obligation to co-operate. Within UNCLOS itself, the right to fish is subject to treaty obligations, the rights, duties and interests of coastal States and Section 2 of UNCLOS on Conservation and Management of the Living Resources of the High Seas.⁴¹ All States have the duty to take, or to co-operate with other States in taking, measures for their respective nationals necessary for the conservation of the living resources of the high seas⁴² and States have the obligation to protect and preserve the marine environment.⁴³ There are now many other obligations, including under the Fish Stocks Agreement,⁴⁴ the CBD,⁴⁵ CITES,⁴⁶ CMS⁴⁷ and regional and subregional agreements as well as RFMOs. Parties to the Fish Stocks Agreement, in particular, must co-operate with WCPFC⁴⁸ and apply its measures. This all means that the right to fish is far from an unrestricted right. In effect, the freedom of the seas is better understood as freedom *for* the seas.⁴⁹ It is also worth bearing in mind that some of the applicants are not party to the Fish Stocks Agreement or UNCLOS.

New Zealand's proposed way forward suggests building on Secretariat paper DP-11 to WCPFC3.⁵⁰ However, the list of factors to take into account⁵¹ should not be just to determine

³⁷ Regional Economic Integration Organization

³⁸ Owen, page 101.

³⁹ Owen, page 38.

⁴⁰ Cooperating Non-Members At WCPFC5, WCPFC-TCC4-2008/DP-02 (Rev.1) (12 September 2009) at [http://www.wcpfc.int/tcc4/pdf/WCPFC-TCC4-2008-DP-02%20\(Rev.1\)%20CNMs%20at%20WCPFC51.pdf](http://www.wcpfc.int/tcc4/pdf/WCPFC-TCC4-2008-DP-02%20(Rev.1)%20CNMs%20at%20WCPFC51.pdf).

⁴¹ Law of the Sea Convention Article 116.

⁴² Law of the Sea Convention Article 117.

⁴³ Law of the Sea Convention Article 192.

⁴⁴ Agreement for the Implementation of the Provisions of the United National Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. The agreement was ratified by the requisite 30 countries and came into force on 11 December 2001. See text and list of ratifications at

http://www.un.org/Depts/los/convention_agreements/convention_overview_fish_stocks.htm

⁴⁵ Convention on Biological Diversity, concluded at Rio de Janeiro on 5 June 1992, entered into force 29 December 1993, at 31 ILM 818, ("CBD") at <http://www.biodiv.org/convention/default.shtml>.

⁴⁶ The Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed at Washington, D.C., 3 March 1973, entered into force 1 July 1975, amended at Bonn, 22 June 1979. 993 UNTS 243, copy as amended at <http://www.cites.org/eng/disc/text.shtml>.

⁴⁷ Convention on Migratory Species

⁴⁸ FSA Article 17

⁴⁹ See at Greenpeace, Freedom for the Seas: Now and for the Future, at <http://www.greenpeace.org/raw/content/usa/press-center/reports4/Freedom-for-the-Seas.pdf>.

⁵⁰ Proposed Revisions To CMM-2004-02, WCPFC4-2007/DP11, 6th November 2007.

⁵¹ The suggested 5 bis read: "The Commission shall determine the nature and extent of participatory rights, including specification of rights applicable under existing Conservation and Management Measures, of a Cooperating non-member in a fishery taking into account inter alia:

- (a) the status of the straddling fish stocks and highly migratory fish stocks and the existing level of fishing effort in the fishery;
- (b) the respective interests, fishing patterns and fishing practices of new and existing members or participants;
- (c) the respective contributions of new and existing members or participants to conservation and management of the stocks, to the collection and provision of accurate data and to the conduct of scientific research on the stocks;
- (d) the needs of coastal fishing communities which are dependent mainly on fishing for the stocks;

the nature and extent of participatory rights, but to determine whether the application is approved at all. We appreciate that the language is taken from FSA Article 11, but that Article is applicable to new members, not non-members. The scheme for non-members is provided in Article 17, and in essence is an agreement to apply the conservation and management measures established by such organization. In short, New Zealand is proposing a 'yes, but' approach, whereas we suggest more of a 'no, unless or until' - approach. It is obvious, for instance, that new CNMs should not be entitled to catch 2000 tonnes of bigeye tuna,⁵² but it is equally clear that an analysis needs to be carried out on all CMMs to assess which are applicable to CNMs and what the implications are. It is therefore too early to consider applications until this is carried out. This would also have the advantage of allowing the WCPFC time to assess and analyse its measures and for further consultation.

REVIEW OF CMM 2007-3 ON IUU FISHING

CMM 2007-3⁵³ is an important measure addressing IUU fishing, however Greenpeace believes that it should be amended. Paragraph 15 provides that the Technical Compliance Committee **shall** not include a vessel on the Provisional IUU Vessel List if the vessel's flag State demonstrates three factors. This should be a discretionary rather than a mandatory prohibition.

Currently the measure reads as:

a. The vessel fished in a manner consistent with WCPFC Conservation Measures or the laws and regulations of a State when fishing in waters under the jurisdiction of that State, or have fished exclusively for species not covered by the WCPFC Convention.

This paragraph could exempt a boat which fished consistently with national regulations, but inconsistently with WCPFC Conservation Measures. It also provides for an exemption where the vessel has fished exclusively for non-WCPFC species, even though the vessel may have contributed to IUU activities involving WCPFC.

It should thus read:

a. The vessel fished in a manner consistent with WCPFC Conservation Measures and the laws and regulations of a State when fishing in waters under the jurisdiction of that State.

b. Effective action has been taken in response to the IUU fishing activities in question, such as, inter alia, prosecution or the imposition of sanctions of adequate severity; or

Such an action is required in any case. In no way should it provide exemption from the IUU list. It is a case of 'and', not 'or'.

The following provision is open-ended and vague, and is open to abuse. Greenpeace therefore recommends it be deleted.

c. That the case regarding the vessel or vessels that conducted IUU fishing activities has been settled to the satisfaction of the CCM that originally submitted the vessel for listing and the flag State involved.

There are also some dangerous exemptions contained in paragraph 25, which allows removal from the list. These include that States can request the removal of a vessel from the register on the following grounds:

(e) the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources;

(f) the interests of developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur; and

(g) the development and implementation of an effective MCS framework for the Commission."

⁵² CMM 2005-01 para. 18. Belize voluntarily agreed to limit its catch to about 800 tonnes. See NZ paper, para. 29.

⁵³ CMM 2007-3 Conservation and Management Measure to Establish a List of Vessels Presumed to have Carried out Illegal, Unreported and Unregulated Fishing Activities in the WCPO

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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 WCPFC IUU Vessel List, including prosecution or the imposition of sanctions of adequate severity.

As noted for paragraph 15, this is something that should be done in any case, but in no way should justify the removal of a vessel from an IUU list. This should be deleted.

d) the vessel has changed ownership and that the new owner can establish that the previous owner no longer has any legal, financial or real interests in the vessel or exercises control over it, and that the new owner has not participated in IUU fishing activities, or

This should include beneficial interest and should read:

d) the vessel has changed ownership and that the new owner can establish that the previous owner no longer has any legal, financial, beneficial or real interests in the vessel or its catch, and exercises no control over it, and that neither the new owner nor anyone associated with the new owner, including any director, employee or person with a beneficial interest has ever participated in IUU fishing activities, or

e) the case regarding the vessel or vessels that conducted IUU fishing activities has been settled to the satisfaction of the CCM that originally submitted the vessel for listing and the flag State involved.

This is open-ended, vague and open to abuse, and should therefore be deleted.