



FIFTH REGULAR SESSION

Busan, Republic of Korea

8-12 December 2008

FFA PROPOSED AMENDMENTS TO WCPFC5-DP03 (Proposal by Chair of Working Group on Cooperating Non-Members to replace CMM 2004-02)

WCPFC5-2008/DP10

7th December 2008

REAFFIRMING the objective of the WCPFC Convention is to ensure through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the Western and Central Pacific Ocean in accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement on the Provisions of the United Nations 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;

RECALLING the 1999 MHLC Resolution on Future Participation in the Conference placed a limit on the number of participants in the Multilateral High Level Conference on the Conservation and Management of High Migratory Fish Stocks (MHLC), and confirmed the eligibility of MHLC participants to become members of the WCPFC;

RECALLING the Conservation and Management Measure 2004-02 on Cooperating Non-Members adopted at the inaugural session of the WCPFC December 9-10, 2004, was designed to provide a mechanism for MHLC participants that had not completed their domestic ratification processes when the Convention came into force;

RECOGNIZING the continuing need to encourage non-Parties with vessels fishing for WCPFC species in the Convention area to implement WCPFC conservation measures;

RECALLING Article 32(4) of the WCPFC Convention that provides for members of the Commission to request non-parties to this Convention whose vessels fish in the Convention Area to cooperate fully in the implementation of conservation and management measures;

~~RECOGNIZING the need for clear criteria to enable non-Contracting Parties, Entities or Fishing Entities whose vessels fish for WCPFC species in the WCPFC Convention area to attain the status of Cooperating non-members;~~

REAFFIRMING that the Commission shall give full recognition to the special requirements of developing States Parties to this Convention, in particular small island developing States, and of territories and possessions, in relation to conservation and management of highly migratory fish stocks in the Convention Area and development of fisheries for such stocks; and

GIVING EFFECT to Article 32 of the WCPFG Convention

1. A non-member of the Commission, with an active fishing presence or whose vessels intend to fish in the Convention Area, may request the Commission for the status of a Cooperating non-member. Any such request shall be in English and shall be received by the Executive Director at least 60 days in advance of the annual meeting of the Technical and Compliance Committee meeting at which the request will be considered. The Executive Director shall notify all members of the Commission of any such request and circulate the full application to all members.

2. A non-member seeking the status of Cooperating non-member shall include with its request, which shall be in English:

- (a) ~~an indication of its views on ratification of or accession to the Convention;~~
- (b) a commitment to cooperate fully in the implementation of conservation and management measures adopted by the Commission and to ensure that fishing vessels flying its flag and fishing in the Convention Area and, to the greatest extent possible, its nationals, comply with the provisions of the Convention and conservation and management measures adopted by the Commission;
- (c) full data on its historical fisheries in the Convention Area, including nominal catches, number/type of vessels, name of fishing vessels, fishing effort and fishing areas;
- (d) all the data members of the Commission are required to submit, in accordance with the recommendations adopted by the Commission;
- (e) details on its current fishing presence in the Convention Area, including the number of its vessels and their characteristics;
- (f) results from research programmes it has conducted in the Convention Area; and
- (g) any further relevant information as determined by the Commission.

3. The Technical and Compliance Committee (TCC) shall assess applications from Cooperating Non-Members and provide recommendations and technical advice to the Commission. The advice and recommendations to the Commission shall include, *inter alia*;

- a) whether the CNM application includes all information required under paragraph 2;
- b) the record of compliance of the applicant with the provisions of the Convention and the conservation and management measures adopted by the Commission;
- c) as appropriate, the record of compliance of the applicant with conservation and management measures of other Regional Fisheries Management Organisations (RFMOs); and
- d) in the case of applications for renewal of ~~CNM~~ Cooperating non-member status, whether the applicant is meeting all paragraph 11 requirements for ~~Cooperating non-member~~ CNM.

4. The Executive Director shall forward a copy of the relevant TCC recommendations and advice to the non-member applicant as soon as practicable.

5. The non-member applicant shall have the opportunity to consider the recommendations and advice of the TCC, and to submit additional information if necessary in advance of the Commission's decision on its application.

6. The Commission shall, in determining whether a non-party is accorded CNM status have regard to *inter alia* ~~the criteria outline in paragraph 3.~~

- *recommendations and advice from the TCC provided to the Commission pursuant to paragraph 3;*
- *the status of stocks and existing level of fishing effort in the fishery; and*
- *the special requirements of developing States in the Convention Area, in particular small island developing States, and of territories and possessions, in relation to conservation and management of highly migratory fish stocks in the Convention Area and development of fisheries for such stocks.*

7. The Commission shall also consider information available from other RFMOs relating to non-members seeking CNM status, as well as data submitted by such non-members to the Commission. Caution shall be used so as not to introduce into the Convention Area the excessive fishing capacity of other regions or IUU fishing activities in granting Cooperating non-member status to such non-members.

8. The Commission shall accord CNM status on an annual basis. It may renew the conferral of CNM status subject to a review of an updated application submitted and considered pursuant to this measure, and a review of the CNM's compliance with the Convention's objectives and requirements.

9. CNMs seeking to renew their status as a CNM shall comply with any reasonable other requirements the Commission may prescribe to ensure compliance with conservation and management measures adopted by the Commission.

10. ~~Cooperating non-members~~CNMs are entitled to participate at meetings of the Commission and its subsidiary bodies as Observers. CNMs, with the exception of MHLC participants, shall be seated in a designated area.

11. CNMs shall:

- (a) Comply with the provisions of the Convention and all conservation and management measures adopted by the Commission;
- (b) Provide all the data members of the Commission are required to submit in a timely manner, in accordance with the recommendations adopted by the Commission;
- (c) Inform the Commission annually of the measures it takes to ensure compliance by its vessels with the Commission's conservation and management measures;
- (d) Respond in a timely manner to alleged violations of conservation and management measures by its vessels, as requested by a member of the Commission or determined by the appropriate subsidiary bodies of the Commission and communicate to the member making the request and to the Commission, the actions it has taken against the vessels in accordance with the provisions of Article 25 of the Convention.

(ebis) Respond in a timely manner to alleged violations by its vessels of coastal States national laws, including as requested by a member of the Commission, including but not limited to actions such as prosecution and imposition of sanctions of adequate severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. All infractions occurring in waters under national jurisdiction shall be subject to all requirements under national laws.

12. Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing highly migratory fish stocks within areas under national jurisdiction, and following the granting of CNM status, the Commission shall, where necessary, determine the limits that apply nature and extent of participatory rights for CNMs in a fishery. In giving effect to this paragraph, the Commission shall take into account *inter alia*:

- (a) the status of the 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;
- (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.

13. The limits that apply for CNMs Participatory rights of CNMs may be reviewed by the Commission from time to time in accordance with this measure and other conservation and management measures adopted by the Commission.

14. A CNM shall ~~be invited to~~ make a financial contribution commensurate with the what its obligations would be as a of members under Article 18(2) of the Convention. The Commission may review the financial contributions of CNMs from time to time. taking into account its ability to pay fees. CNMs may provide voluntary contributions to the work of the Commission.

15. The Commission shall monitor the activities of nationals and fishing vessels of CNMs, including their record of compliance with the provisions of the Convention and conservation and management measures adopted by the Commission. ~~and the willingness of such Cooperating non-members to voluntarily contribute to the work of the Commission, including voluntary financial contributions.~~

16. ~~The Commission shall take measures, which may include revocation of the status of any such CNM whose nationals or fishing vessels have undermined the effectiveness of conservation and management measures adopted by the Commission. Failure to comply with any of the conservation and management measures adopted by the Commission shall be deemed to undermine the effectiveness of the Commission's conservation and management measures adopted by the Commission.~~

Cooperating non-members that fail to comply with any of the conservation and management measures adopted by the Commission shall be deemed to have undermined the effectiveness of the conservation and management measures adopted by the Commission. The Commission shall take appropriate action, which may include revocation of CNM status and/or sanctions and penalties, against such CNMs, whose nationals or fishing vessels, have undermined the effectiveness of conservation and management measures adopted pursuant to the Convention.

17. Where instructed by the Commission, the Executive Director shall contact each year all non-members whose vessels fish in the Convention Area for species under the Commission's competence to urge them to apply for the status of CNM. In doing so, the Executive Director shall provide a copy of all relevant conservation and management measures recommendations and resolutions adopted by the Commission.