



TECHNICAL AND COMPLIANCE COMMITTEE

Fifth Regular Session

1-6 October 2009

Pohnpei, Federated States of Micronesia

DRAFT FLOWCHART TO ILLUSTRATE THE PROCESS FOR GRANTING CNM ACCESS

WCPFC-TCC5-2009/25

1 September 2009

Introduction

1. The Fifth Regular Session of the Commission (WCPFC5) held at Busan, Korea in December 2008 adopted CMM 2008-02 governing the process of considering Cooperating Non-Member (CNM) applications from 2009 onward, agreed that incorporating a flowchart illustrating the process to evaluate applications for Cooperating Non-Member (CNM) status into the new measure on CNM applications (CMM 2008-02) would be useful, and referred the matter to the Fifth Regular Session of the Technical and Compliance Committee (TCC5) for action. In early May 2009 the Secretariat circulated to all WCPFC Official Contacts a draft flowchart illustrating the process to evaluate applications for CNM status (**Attachment 1**), with a request for comments on this draft by 26 June 2009.

Responses by CCMs

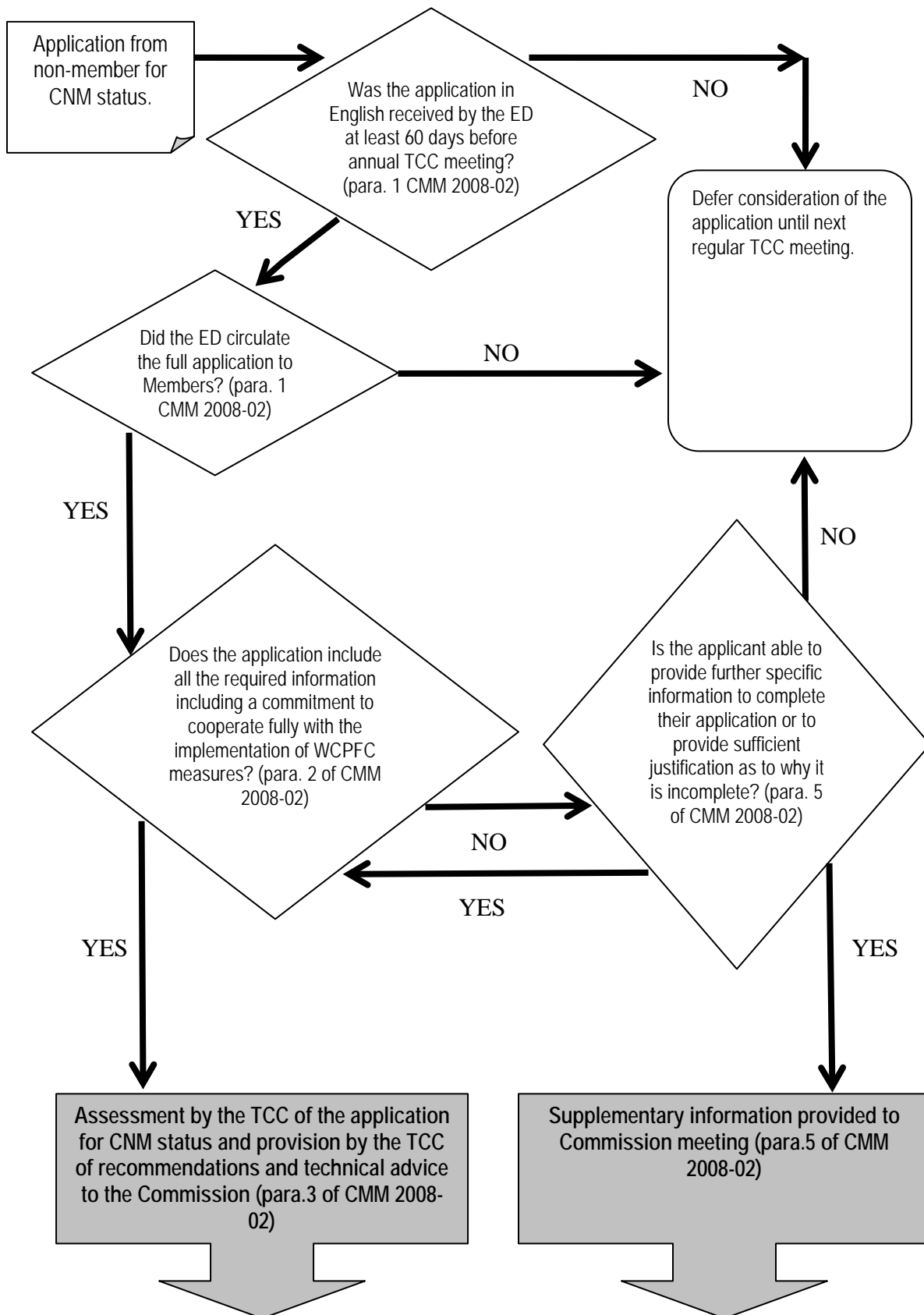
2. The Secretariat received substantive comments on the draft flowchart from three CCMs (Chinese Taipei (**Attachment 2**), USA (**Attachment 3**) and New Zealand (**Attachment 4**)).

Conclusion

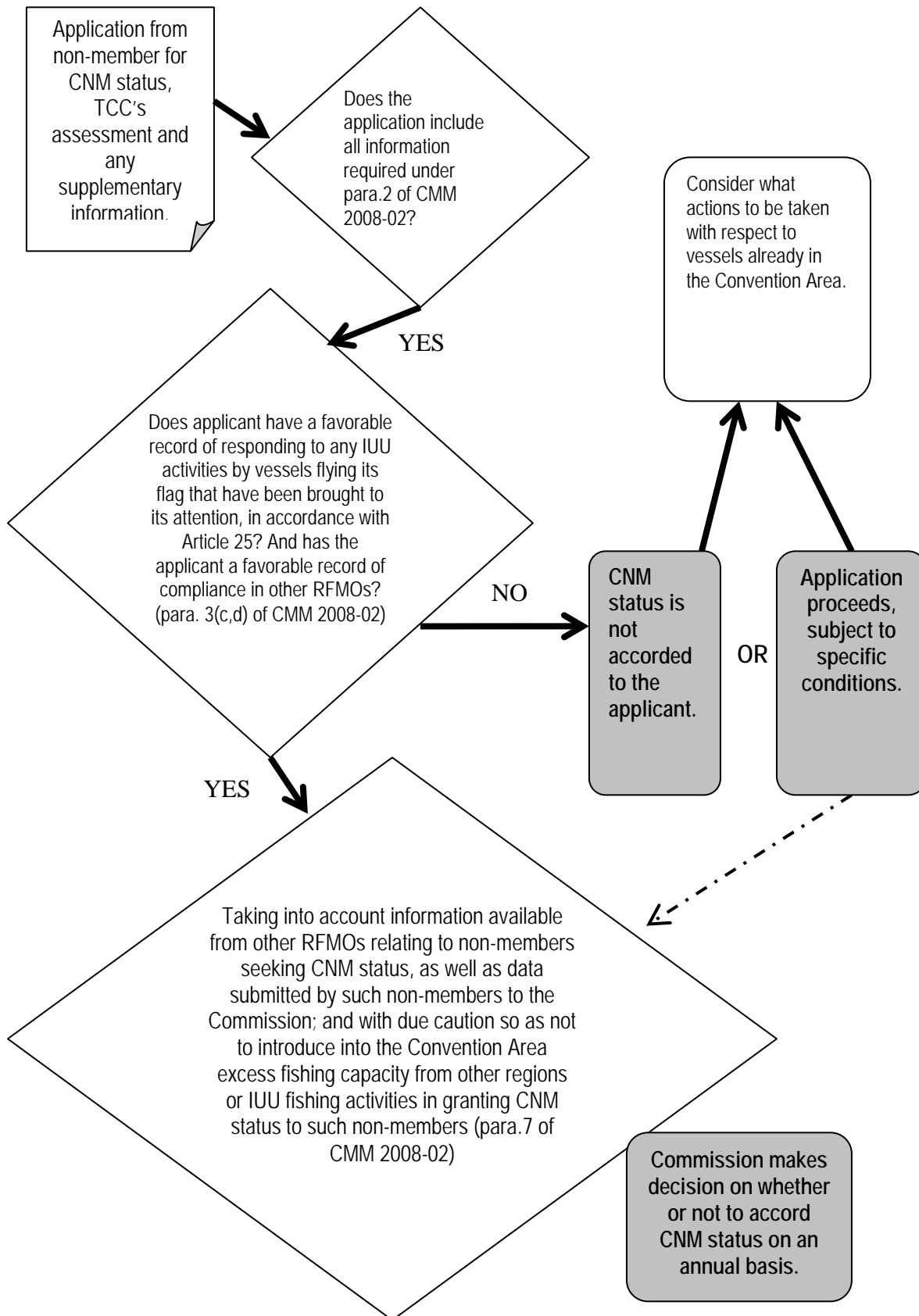
3. TCC5 is invited to consider the draft flowchart prepared by the Secretariat and comments on this draft submitted by CCMs.

PROPOSED FLOWCHART TO ILLUSTRATE CMM 2008-02 [CNM APPLICATIONS]

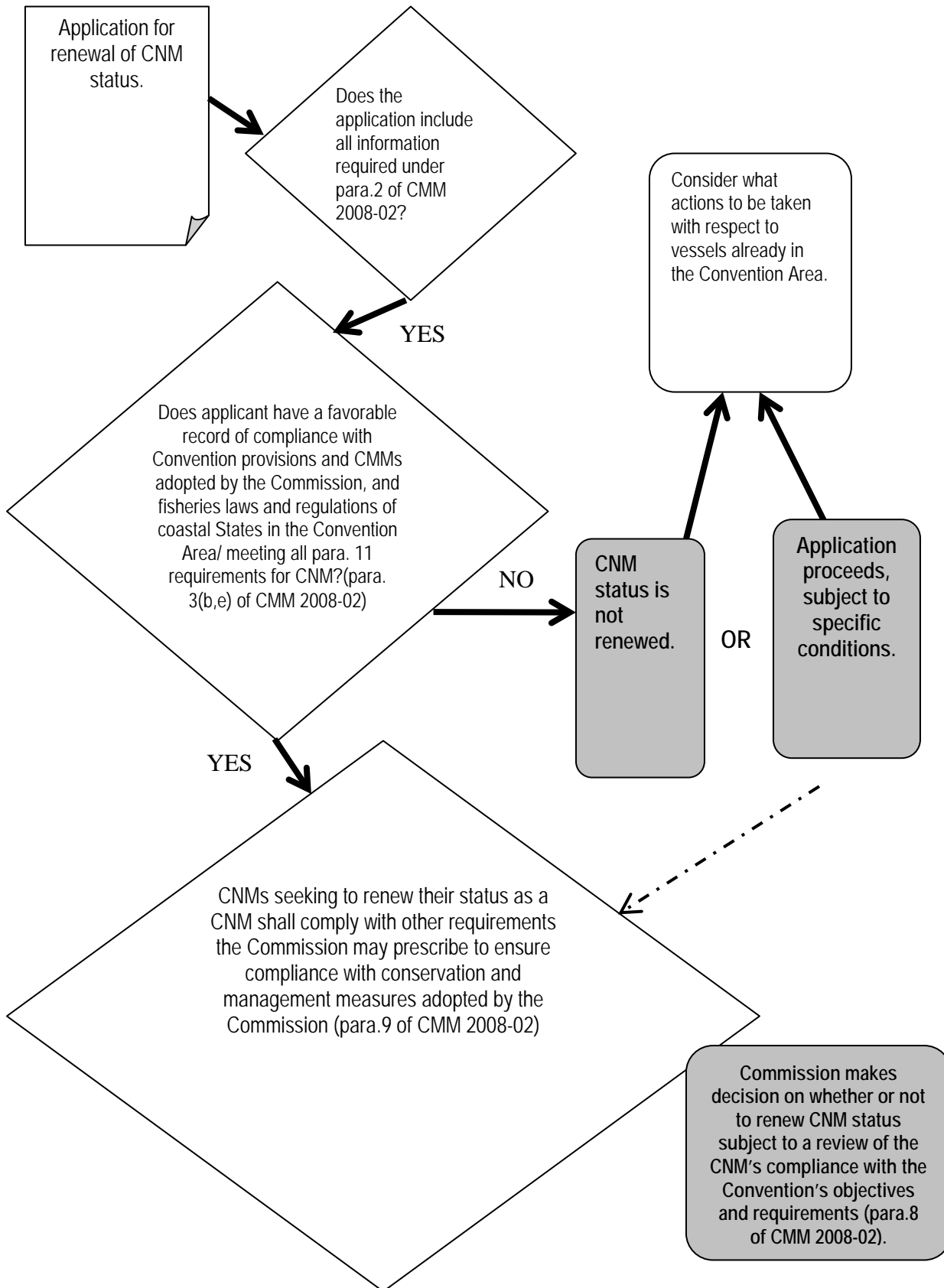
PART 1 – Have the requirements of the application been met?



PART 2 (a) – Process for Commission to consider whether or not CNM status should be accorded to a new applicant.



PART 2 (b) – Process for Commission to consider whether or not CNM status should be renewed.



Attachment 2

Mr. Andrew Wright
Executive Director
Western and Central Pacific Fisheries Commission
P.O. Box 2356, Kolonia,
Pohnpei
Federated States of Micronesia

FISHERIES AGENCY
Council of Agriculture, Executive Yuan
NO.2, Chao-chow St. TAIPEI, TAIWAN
TEL: 886-7-823-9827
FAX: 886-7-815-8278

June 26, 2009

Dear Mr. Wright,

Your letter dated May 5 2009 regarding the draft flowchart for incorporating into CMM 2008-02 was forwarded to me for action. Our two preliminary comments on the draft flowchart are as follows. Firstly, in part I, it would be useful to put some wording to illustrate who is going to assess whether the application has met the requirements or not.

Secondly, the chart "did the ED circulate the full application to Members" could be deleted as this is the default process. We understand this matter is crucial to dealing with the CNM applications; hence we are willing to hear other CCMs' comments on this regard and discuss this matter in TCC5 meeting.

Sincerely yours,

Hong-YenHu
Director
Deep Sea Fisheries Division

From: Holly Koehler
To: Andrew Wright
Sent: Saturday, June 27, 2009
Subject: CNM flowchart: US comments

Dear Drew,

Thank you for the opportunity to review the draft flowcharts that illustrates the process for considering Cooperating Non Member applications, in accordance with the revised CMM 2008-02. We found the previous version of the flow chart helpful in considering the issue at the last annual meeting in Busan in December 2008, and so are supportive of a similar such document to support the implementation of CMM 2008-02.

With respect to the draft flowcharts, we have the following general comments and observations:

(1) Firstly, in our view, the draft flowcharts contain more details than are needed to reflect the revised CMM on CNMs, which has clarified and rationalized the application process and requirements. Further, there appears to be repetition in the 3 flowcharts that is not necessary (for example, see that parts 2 (a and (b both present that the Commission should review the CNM application to see that it includes all the required information; however, that is an explicit task for the TCC);

(2) Secondly, the drafts seem to add steps/considerations that are not explicitly in the revised CMM, and leaves out other steps (such as paragraphs 12-13);

(3) Thirdly, some aspects of the draft flowcharts could result in curtailing the flexibility of both the TCC and Commission by being too prescriptive in some places; and

(4) And finally, it is our view, that a flow chart that is crafted to serve as a reference guide for the steps in CMM 2008-02, and the specific actors at each step, will be the most useful to CCMs, the TCC, CNMs, CNM applicants, and the Commission.

To be as helpful as possible to the Secretariat's efforts to further refine the draft flowchart we have attached a document to better illustrate our thoughts for how the flowchart could be structured to reflect the revised CMM. In particular, we thought that one flowchart, that could fit on one page and captured all the elements in the CMM, would be advantageous. We offer this as a straw person for your consideration. Please contact us if you should have any questions.

With best regards,
Holly

Office of Marine Conservation
U.S. Department of State
2201 C Street, NW, Room 2758
Washington, DC 20520
202-647-3010 (telephone)
202-736-7350 (fax)
koehlerhr@state.gov

Was the application (new or renewal) submitted in English at least 60 days before the TCC? (Para. 1)

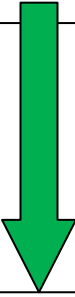


Yes



No

The **TCC considers** all applications that met the deadline. It may consider those that did not, as appropriate.
The **TCC assesses** whether the applications meet all the information required (Para. 2).



Yes



No

Can the applicant provide supplemental information?

TCC defers consideration until its next meeting.



Yes

If the application is a renewal, then **the TCC** also considers paragraphs 3(b) and (e).
The **TCC provides recommendations and technical advice** to the Commission (Para. 3).



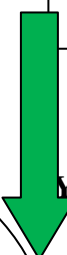
The ED provides TCC's advice and recommendations to the applicants (Para. 4)



Applicants consider TCC's advice and recommendations and submit additional information, as necessary, to the Commission (Para. 5).



The Commission:
(1) Considers the TCC's advice and recommendations;
(2) Considers any additional information provided by the applicant(s);
(3) Considers other information and data (Para. 7); and
(4) Accords/renews CNM status with regard to the criteria in paragraph 3 (Para. 6) and on an annual basis (Para. 8).
In renewing CNM status, **the Commission** also reviews the CNM's compliance with the Convention's objective and requirements (Para. 8).
Is there consensus to renew or accord CNM status?



Yes

After CNM status is accorded or renewed, **the Commission** shall determine how their participatory rights will be limited by CMMs adopted by the Commission (Para. 12 and 13).
The Commission shall also monitor the activities and compliance of CNMs (Paras. 15 and 16).



CNMs are entitled to participate in Commission and subsidiary body meetings as an observer (Para. 10).

CNMs shall comply with the requirements of Paras. 9 and 11 and be invited by the Commission to make financial contributions (Para. 14).

NO

CNM status is not renewed or accorded by the Commission.



From: Jacqui Caine
To: Andrew Wright
Sent: Friday, June 26, 2009
Subject: WCPFC: Proposed flowchart to illustrate CMM 2008-02

Dear Drew

Thank you for the opportunity to comment on the draft flowchart illustrating the process to evaluate applications for CNM status into CMM 2008-02. Outlined below are New Zealand's initial comments although we would note that we will have a further opportunity to discuss the flowchart with fellow FFA members at the forthcoming FFA Subregional Workshop in Nadi 13-17 July and may provide additional comments to you subsequent to those discussions if that would be helpful.

We have placed letters into each of the boxes in the flow chart attached and will use page numbers and box letters to reference our comments.

We read the decisions on Page 1 to be a mixture of ED and TCC obligations/determinations. It would be helpful to separate out the respective ED and TCC roles on page 1.

It is not clear in the flowchart who would make the determination in Box 1E. While, for practical purposes, it would be useful for the ED to check that the CNM application included all the required information (and seek additional information if necessary), the actual determination as outlined in the measure is one for the TCC to make.

It would be helpful for the TCC's role as outlined in para 3 of CMM 2008-02 to be elaborated further (in your current box 1G).

Box 1F is one that would need to come after the TCC's initial consideration of the CNM application (as supported by the language of para 5 of CMM 2008-02).

Pages 2 and 3 of the flowchart would then outline the role of the Commission for new applications and CNM status renewal applications. We agree with how the flowchart has illustrated the process for the Commission's consideration of the various elements of CMM 2008-02. However we would note that any additional information provided as per Box 1H would only be available to the Commission and might usefully appear on page 2. Box 3D could also include a reference to para 8 of CMM 2008-02 which refers to renewal of CNM status "subject to a review of the CNM's compliance with the Convention's objectives and requirements" which differs slightly from the language contained in paras 3 and 11 of CMM 2008-02.

The process chart should also illustrate the obligations in CMM 2008-02 paras 12 (participatory rights) and 14 (financial contributions). While these are activities that are subsequent to the Commission decision in boxes 2G and 3G, given those elements are in the CMM it would be helpful to have them included in the flowchart, too, for completeness.

We may come back to you again following the FFA Subregional Workshop in Nadi with any additional comments.

Warm regards

Jacqui Caine

Deputy Director, Legal Division, Ministry of Foreign Affairs and Trade Private Bag 18901, Wellington
Tel + 64 4 439 8595

From: Jacqui Caine
To: Andrew Wright
Sent: Friday, July 23, 2009
Subject: WCPFC: Proposed flowchart to illustrate CMM 2008-02

Dear Drew,

As foreshadowed in my email of 26 June, we had the opportunity to discuss the flowchart with fellow FFA members at the FFA Subregional Workshop in Nadi 13-17 July. The workshop asked New Zealand to pass you the comments outlined below as the outcome of informal discussions between some FFA members during the Subregional Workshop.

- We propose deleting Box 1D, because we don't think that whether the Executive Director has circulated the application is a separate decision box that is relevant to the consideration of the application.
- Some of the expansion we suggest to Box 1G might be a reference to paragraph 3, and a suggestion that the TCC structure their advice and recommendations to the Commission in a form that is consistent with the steps outlined on page 2 and 3.
- Box 1F and 1H should be removed from Page 1, so as to remove references on page 1 to processes that occur after the consideration by TCC of the application. Although we would note that as a matter of practice, the applicants could provide additional information to support their application, during TCC or after TCC. However we don't think that at this point the TCC could decide to defer the further consideration of application. Instead the TCC is directed in paragraph 3 to provide advice to the Commission on matters that include whether the application is complete.
- On page 2, a reference to paragraph 8 should be included in box 2H. Box 2H should have an arrow linking 2H to, 2F and 2E.
- In terms of incorporating references to paragraphs 12, 13 and 14 of CMM 2008-02 into the flow chart we would propose:
 - On page 2, a reference to paragraph 12 should be included in Box H. This reference might be a second sentence that states something like "as appropriate and in accordance with paragraph 12, when CNM status is granted the Commission shall determine how the participatory rights of the CNM will be limited by CMMs adopted by the Commission". A new Box "2I bis" should be included which sits below and separate from 2H, indicating that in accordance with paragraph 14, the Commission is to invite a financial contribution from the applicant if CNM status is conferred successfully to the applicant (note there is no subsequent decision required here).
 - On page 3, a new Box "3I bis" should be included which sits below and separate from 3H. This box should refer to two features, first that in accordance with paragraph 14, the Commission is to invite a financial contribution from the applicant, if CNM status is conferred successfully to the applicant (note there is no subsequent decision required here). Second, that in accordance with paragraph 13, the Commission may review the limits determined in accordance with paragraph 12 from time to time, in accordance with CMM 2008-02 and other CMMs adopted by the Commission.
- On page 3, in box 3A there should be a reference to TCC's assessment and any supplementary information that the applicant may provide (particularly in regard to matters set out in CMM 2008-02 paragraphs 3 b), d) and e))
- On page 3, the ordering of 3G and 3H might need to be reversed. Box 3H should have an arrow linking 3H to, 3F and 3E. We also note that 3G is about the specific conditions, alluded to in 3F, that might be prescribed in accordance with paragraph 9 of CMM 2008-02.

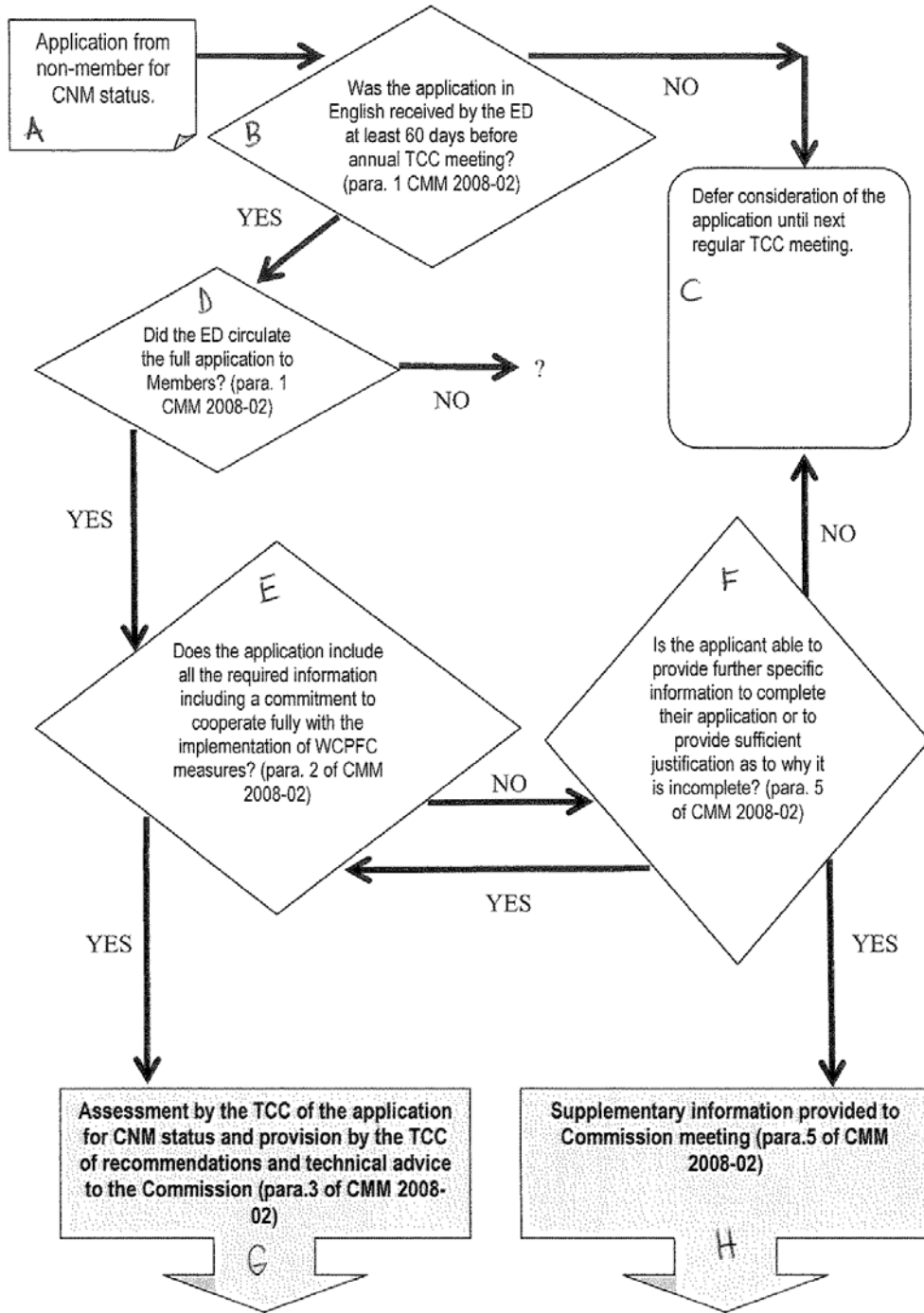
Warm regards

Jacqui

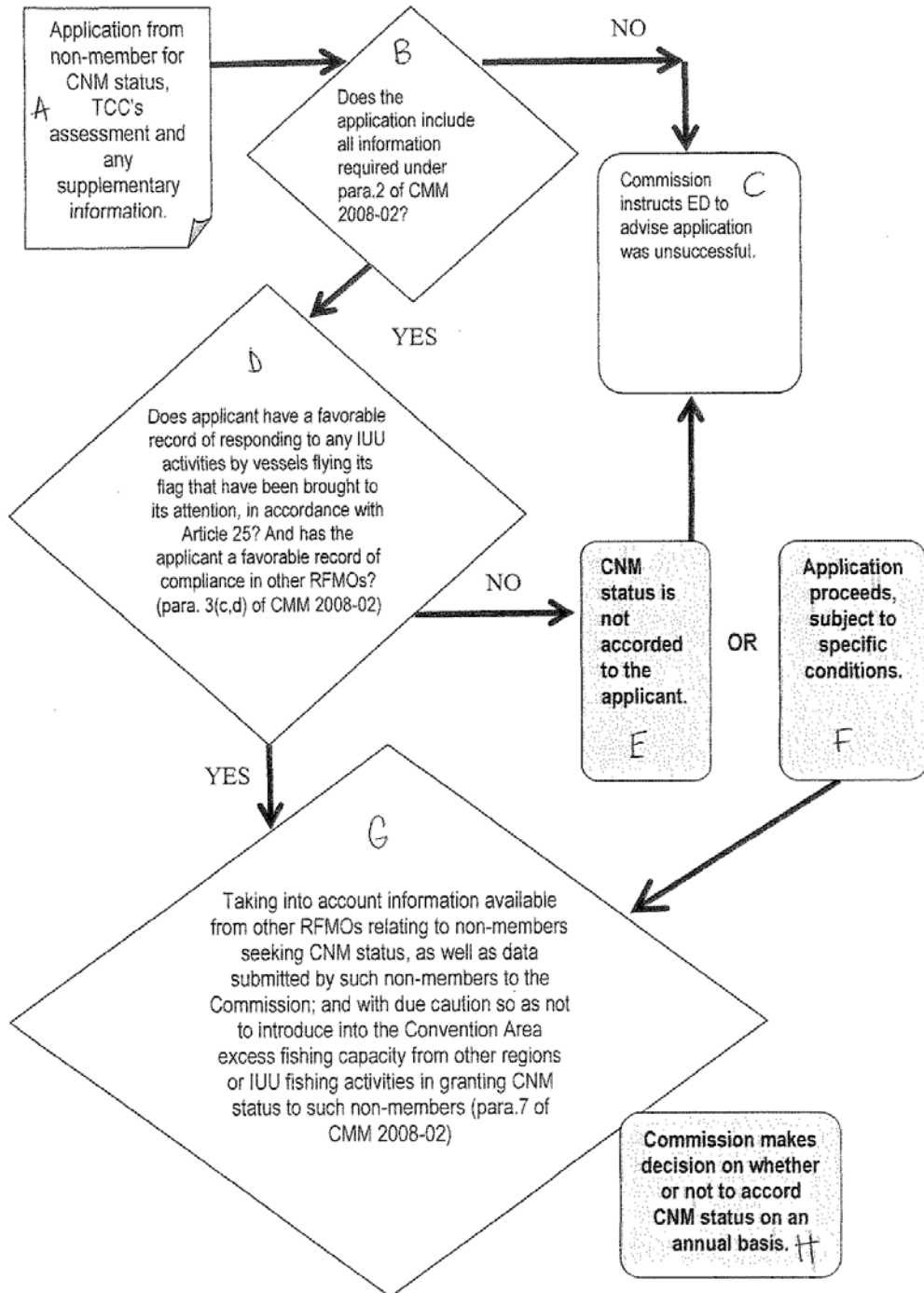
PROPOSED FLOWCHART TO ILLUSTRATE CMM 2008-02 [CNM APPLICATIONS]

PART 1 – Have the requirements of the application been met?

Page 1



PART 2 (a) – Process for Commission to consider whether or not CNM status should be accorded to a new applicant.



PART 2 (b) – Process for Commission to consider whether or not CNM status should be renewed.

