



TECHNICAL AND COMPLIANCE COMMITTEE
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US – PROPOSAL FOR CMM ON VESSELS WITHOUT NATIONALITY

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Vessels without nationality, or stateless vessels, too often fall beyond the reach of domestic and international regulatory schemes. As a result, stateless fishing vessels operate without the governance and oversight of a flag state, and also often escape prosecution for their illegal acts. In many ways, stateless fishing vessels are the epitome of IUU fishing vessels. The Commission has already recognized this fact in CMM 2007-03 by identifying vessels that “are without nationality and harvest species covered by the WCPF Convention in the Convention Area” as among those vessels presumed to have carried out IUU fishing activities.

The Commission, however, should enhance its efforts to prevent stateless vessels from operating in the Convention Area. The United States proposes that the Commission adopt a conservation and management measure that explicitly states that vessels without nationality that fish on the high seas of the Convention Area are presumed to be fishing in contravention of the WCPF Convention and its conservation and management measures. Taking this additional step will close a loophole that would allow stateless vessels to fish with impunity in the Convention Area, and will open new avenues for prosecuting such vessels when they enter CCMs’ ports.

Although IUU lists are an effective tool for addressing vessels that have either eluded coastal state prosecution or are outside the scope of domestic regulations, measures that allow coastal and port states to take action against vessels in violation of domestic legislation or regulation often are preferable and more effective in eliminating IUU activities. Expressly stating that vessels without nationality are operating in contravention of the Convention and its conservation and management measures, will allow CCMs to use existing, or adopt new, legislation that can result in vessel seizure and forfeiture or in the imposition of civil or criminal penalties and sanctions to prosecute stateless vessels when they enter their ports or waters under their jurisdiction.

Therefore, we propose that TCC recommend to the Commission the adoption of the following draft conservation and management measure regarding vessels without nationality.

Proposed CMM language:

The Western and Central Pacific Fisheries Commission:

Recognizing that fishing vessels without nationality operate without governance and oversight;

Concerned that the operations of fishing vessels without nationality in the Convention Area undermine the objectives of the Convention and the work of the Commission;

Recalling that the FAO Council adopted an International Plan of Action to prevent, deter and eliminate IUU fishing and recommended that States take measures consistent with international law in relation to fishing vessels without nationality involved in IUU fishing on the high seas;

Understanding that the Commission can take actions to facilitate States' ability to address stateless IUU vessels domestically;

Determined to continue to deter all facets of IUU fishing activities in the Convention Area;

Adopts the following conservation and management measure in accordance with Article 10 of the Convention:

1. Declare that fishing vessels determined to be vessels without nationality under the relevant provisions of international law that are used to fish on the high seas of the Convention Area are presumed to be operating in contravention of the WCPF Convention and the conservation and management measures adopted thereunder.
2. Further declare that any fishing activities by a fishing vessel without nationality on the high seas of the Convention Area shall be deemed to undermine the WCPF Convention and Commission conservation and management measures and shall constitute a serious violation in accordance with Article 25 of the Convention.
3. For the purpose of this measure, vessels without nationality means vessels not flying the flag of any state, vessels not registered on the shipping registry of any state, or vessels flying the flag of two or more states in accordance with Article 92(2) of UNCLOS.
4. Encourages CCMs to take all necessary measures, including enacting domestic legislation if appropriate, to prevent vessels without nationality from undermining conservation and management measures adopted by the Commission.
5. In accordance with domestic and international law, where there are reasonable grounds for suspecting that a fishing vessel targeting species covered by the WCPF Convention on the high seas in the Convention Area is without nationality, CCMs are encouraged to board and inspect that vessel and when the evidence warrants, take such action as may be appropriate.
6. Any sightings of fishing vessels that appear to be without nationality that may be fishing in the high seas of the Convention Area for species covered by the WCPF Convention shall be reported to the Secretariat as soon as possible by the appropriate authorities of the CCM whose vessel or aircraft made the sighting.