



**Commission for the Conservation and Management of
Highly Migratory Fish Stocks in the Western and Central Pacific Ocean**

**Technical and Compliance Committee
Fifth Regular Session**

**1–6 October 2009
Pohnpei, Federated States of Micronesia**

SUMMARY REPORT

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SUMMARY REPORT¹

AGENDA ITEM 1 — OPENING OF MEETING

1.1 Welcome

1. The Chair of the Technical and Compliance Committee (TCC), Ambassador Wendell Sanford (Canada), opened the Fifth Regular Session of the TCC at 8:30 am on 1 October 2009. He expressed his appreciation to the Federated States of Micronesia (FSM) Government and to the College of Micronesia for their support of the meeting. A prayer of condolence was offered for the victims of the recent tsunamis and earthquakes in Samoa, American Samoa, Tonga, Indonesia and elsewhere.

2. Ambassador Satya Nandan (Fiji), Chair of the Western and Central Pacific Fisheries Commission (WCPFC), delivered an opening address noting the impressive progress of the Commission in the short time since its establishment. He stressed that the ultimate effectiveness of the management measures adopted would depend on the commitment with which they are implemented by Commission Members, Cooperating Non-members and participating Territories (CCMs).

3. The following CCMs attended TCC5: Australia, Canada, China, Cook Islands, European Community (EC), Federated States of Micronesia (FSM), Fiji, France, Japan, Kiribati, the Republic of Korea, Republic of the Marshall Islands (RMI), Nauru, New Caledonia, New Zealand, Republic of Palau, Papua New Guinea (PNG), Philippines, Samoa, Solomon Islands, Chinese Taipei, Tokelau, Tonga, Tuvalu, United States of America (USA) and Vanuatu. El Salvador attended TCC5 as a cooperating non-member.

4. Observers representing Ecuador, the Pacific Islands Forum Fisheries Agency (FFA), Greenpeace and Pacific International Maritime Law Association (PIMLA) also participated. A list of participants is provided in Attachment A.

1.2 Adoption of agenda

5. The provisional agenda (WCPFC-TCC5-2009/03, Rev.3) was adopted, as amended, by TCC5 (Attachment B).

1.3 Meeting arrangements

6. Meeting support was provided by the WCPFC's Executive Director Andrew Wright; Ken Smithson, Financial and Administrative Manager; Andrew Richards, Compliance Manager; Dr SungKwon Soh, Science Manager; Sam Taufao, ICT Manager; Karl Staisch, Observer Programme Coordinator; Albert Carlot, VMS Manager; Milo Abello and Julio Mendez, VMS Operations Officers;

¹ This Summary Report contains agreed upon decision points, **in bold**, which are the decisions of TCC5. The narrative text is the responsibility of the Chair.

Glenn Jano, Administrative Assistant Data Entry; Herolyn Movick, Office Manager; and Lucille Martinez, Executive Assistant. In addition to Secretariat staff, two meeting participants provided support services: Dr Martin Tsamenyi, legal advisor; and Dr Shelley Clarke, rapporteur.

1.4 Opening statements

7. Korea made a statement expressing its concern regarding activities by Greenpeace on the high seas involving interference with fishing activities (Attachment C).
8. Some CCMs voiced their support for Korea's statement.

AGENDA ITEM 2 — PRIORITY MONITORING, CONTROL AND SURVEILLANCE ISSUES BEFORE THE COMMISSION

2.1 Regional Observer Programme

a) Report of the Third Meeting of the Intersessional Working Group

9. The Chair of the Regional Observer Programme (ROP) Interim Working Group (IWG), Dr Charles Karnella (USA) presented the report of the Third ROP-IWG (WCPFC-TCC5-2009/IP-03).
10. Dr Karnella described the recent accomplishments of the ROP-IWG3, which focused on agreements on additional five interim minimum standards (including a vessel safety checklist, observer training qualifications, liability and insurance, standardized procedures for deployment of ROP observers, and authorisation of debriefers and requirements of debriefing), other agreements (including ROP observer placement costs, fisheries to be monitored, coverage levels, cadre of observers, and ROP workbooks); recommendations for CCM Annual Report Part 2 ROP reporting requirements, and implementing the ROP to monitor the August–September 2009 FAD closure.
11. The ROP IWG3 was, however unable to reach consensus on the definitions of some key terms (e.g. “occasional”, “principally”, “adjacent”, “independent”, “impartial”, “observer trip for longliners”) and whether some vessels could be exempted from requirements to carry observers due to their vessel size limitations. Dr Karnella reminded TCC5 that Article 28, para 1 of the Convention requires that the ROP be used to collect “verified catch data”; therefore, if there are vessels that cannot accommodate an observer, these vessels must consider how they can meet the requirements of the Convention.
12. Some CCMs again voiced concerns about their ability to accommodate observers on small vessels but a portion of these accepted the fact that an alternative means of providing verified data should be sought. The possibility of using video technology was raised by Canada. Increased coverage on some fleet sectors if other fleet sectors could not take observers was another suggestion.
13. Other CCMs emphasized the importance of collecting verified data across a representative sample of the fishing fleet (including small vessels). The majority among this group supported ongoing and expanding implementation of the ROP despite the fact that not all elements of the ROP have yet been agreed on.
- 14. TCC5 agreed to accept the recommendations of the ROP-IWG3 Summary Report and attachments (WCPFC-TCC5-2009/IP-03).**
- 15. TCC5 agreed to recommend to the Commission that CCMs implement the ROP (CMM 2007-01) and report on their progress in Part 2 of their 2010 Annual Reports, including how they will achieve 5% coverage by June 2012 (CMM 2007-01, Annex C, para 6).**

b) Consideration of outstanding issues

16. Dr Karnella explained that consensus had not been reached on the definition of the “hybrid model/approach”, particularly in regard to when observers should not be nationals of the vessel’s flag State.

17. In response to the IWG-ROP Chair’s report on IWG-ROP meetings not being able to reach consensus on definitions, some CCMs felt that the original agreement on the hybrid model/approach was quite clear in its intended definitions and stressed the importance of implementing it. Some CCMs indicated that they are implementing it.

18. CCMs stated that the hybrid model/approach allowed for the use of national observers on their own longline vessels, including on the high seas. These CCMs stated that this is a practical option given that the demand for observers will increase rapidly in the near future. These CCMs did not accept that there is necessarily any conflict of interest in using observers from the vessel’s flag State, and some stated that language and living conditions on longliners favored the use of compatriot observers.

19. After summarizing a number of items of ongoing work, Dr Karnella presented a recommendation that the ROP-IWG disband, and that a Technical and Operational Advisory Group (TOAG) be formed to undertake additional technical and operational work in support of the ROP and the Secretariat’s Observer Programme Coordinator. He highlighted the amount of technical work likely to be involved in harmonizing interim minimum standards from many different national and subregional programmes.

20. In response to this proposal, CCMs spoke in favor of forming a TOAG, but several noted the importance of establishing terms of reference for the group, and to ensure the group included appropriate expertise and was of a manageable size.

21. In order to move forward on this issue, a working paper was prepared during TCC5. After taking comments on a first draft, WCPFC-TCC5-2009/38 (Rev. 1) presented a simplified draft terms of reference for the proposed TOAG.

22. Several further amendments were offered and accepted by CCMs, but FFA members declined to support the proposal citing concerns about required credentials, a lack of clarity about the scope of the proposed TOAG, and its relationship to development and implementation standards for the ROP within coastal States’ national waters, and how membership would be chosen.

23. There was general consensus that the intention was not to establish a new subsidiary body such as an IWG, rather the group should be informal and its main goal would be to provide support to the Secretariat’s Observer Programme Coordinator.

24. TCC5 reviewed the paper “ROP Technical and Operational Advisory Group-Draft Terms of Reference” (WCPFC-TCC5-2009/38, Rev. 1). TCC5 recommends that the Observer Programme Coordinator work on the recommendation from the IWG and make that available to WCPFC6 for its consideration.

25. Dr Karnella explained that it was necessary to develop a definition of a FAD set in order to implement the ROP for the recent FAD closure period, during which 100% observer coverage was required. ROP-IWG3 discussed two definitions, one based on the Inter-American Tropical Tuna Commission (IATTC) and the other on a definition being proposed for use by the Parties to the Nauru Agreement (PNA) (WCPFC-TCC5-2009/DP-01). For the purposes of the ROP, during the FAD closure for 2009, the definition to be used is patterned after the PNA definition so that a FAD set is one in which the purse seine vessel is less than or equal to 1 nautical mile (nm) from the FAD when the skiff enters the water.

26. TCC5 discussed “Implementing robust and compatible rules for WCPFC FAD closures and catch retention” (WCPFC-TCC5-2009/DP-01) and a proposal for TCC5 to adopt these rules for the high seas (WCPFC-TCC5-2009/DP-23).

27. There was consensus that standardized definitions and rules for FAD fishing operations are needed for effective implementation of CMM 2008-01, and that CCMs should work toward agreeing on such definitions and rules.

28. Some CCMs, noting that the significant majority of purse seine fishing occurs within national waters, advocated adopting the PNA rules for the high seas, if necessary, on an interim basis in order to promote computability between the high seas and EEZs. These CCMs stressed the importance of having agreement on definitions and rules in place prior to the 2010 closure.

29. Other CCMs stated that it might not be wise to adopt the EEZ FAD definitions and rules for the high seas without further consideration. Some of these CCMs suggested that more time is required to assess the outcomes of the August–September 2009 FAD closure both in terms of observer debriefing and national measures developed to implement it.

30. TCC5 discussed the paper “Implementing Robust and Compatible Rules for WCPFC FAD Closures and Catch Retention” (WCPFC-TCC5-2009/DP-01). CCMs agreed, with the Secretariat to coordinate, discuss this paper electronically on an intersessional basis (comments to the Secretariat no later than 31 October), and develop a recommendation for a definition of FAD and FAD sets for consideration by WCPFC6. TCC noted that the definitions should be agreed on before the next FAD closure.

31. Some CCMs commented that some of their vessels reported FAD sets during the closure period conducted by other flag States. These CCMs believe this situation is of great concern and points to the need for stricter specifications of FAD sets and their monitoring, as well as debriefing observers and following up on known incidents.

32. Some CCMs requested more detail about alleged incidents, stating that data on flag States and the number of incidents would be necessary for determining patterns.

33. Other CCMs felt it would be premature to provide further details at TCC5, especially because incidents have not yet been confirmed through observer debriefings.

34. Some CCMs suggested that the Secretariat prepare a report on compliance with the FAD closure provisions of CMM 2008-01 for discussion at WCPFC6.

35. One CCM suggested that in parallel with reporting on incidents involving vessel non-compliances, that incidents involving observer non-compliances should also be reported.

36. TCC5 recommended the development of a report by the Secretariat on FAD closures as soon as possible and in advance of WCPFC6, if possible.

37. Dr Karnella also noted that ROP-IWG had developed minimum standard data fields for FAD monitoring (WCPFC-TCC5-2009/IP-03, Attachment D) and that these fields had been augmented through discussion at SC5 to include an additional four data fields. TCC5 was asked to endorse the form for eventual consideration for approval by the Commission.

38. TCC recommended to the Commission the adoption of “Minimum Standard Data Fields for Purse Seine FAD monitoring” as contained in WCPFC-TCC5-2009/28, Attachment 1.

c) Annual report by the Secretariat

39. Karl Staisch, Observer Programme Coordinator, presented the first annual report prepared by the Secretariat on the ROP as required under CMM 2007-01, para 3 (WCPFC-TCC5-2009/07). The format

of the report was based on CMM 2007-01, para 13, which outlines the role of the Secretariat and the activities to be carried out. The presentation highlighted the following key points:

- i. Observer manual updates have been received from the Philippines, Nauru, Japan, Australia and New Zealand.
- ii. There has, as yet, been no longline coverage under the ROP although there is some coverage under national programmes. Purse seine coverage by subregional multilateral programmes has been about 20% plus additional national coverage. During the two-month FAD closure, purse seine coverage was 100%.
- iii. There is currently no shortage of observers but more observers will be required for 100% observer coverage commencing January 2010.
- iv. The efforts of FFA and the Secretariat of the Pacific Community (SPC) to prepare observers for the FAD closure period were gratefully acknowledged. Thanks were also given to the USA for supplemental funding, which has supported aspects of ROP's work.
- v. A number of incidents and misunderstandings were reported during the FAD closure period. Once these have been verified through observer debriefing, the issues involved can be clarified.
- vi. Most of the deployed observers were from the FFA Pacific Island observer programmes.
- vii. Efforts to agree cross-endorsement of observers with IATTC and guidance for when compatriot observers can be used are ongoing between the secretariats of WCPFC and IATTC.
- viii. The Observer Programme Coordinator assisted and attended observer training courses held in the Philippines, PNG and FSM.
- ix. Data handling procedures are under development and will require greater attention as the ROP expands its implementation. This is likely to include the need to fund the position of a data quality officer. The position was approved previously by the Commission, and was budgeted to begin in 2010.
- x. In order to achieve full accreditation of national and subregional programmes by June 2012, a large number of programme audits will need to be started in 2010. These accreditation activities will require adequate funding.

40. FFA members thanked the Secretariat for its efforts to implement and advance the ROP, noting that data were sparse in this first year but will improve as the ROP develops.

41. The EC highlighted the importance of referring to vessels registered to EC member countries as EC vessels.

42. Some CCMs expressed frustration with logistical problems encountered when trying to embark observers during the 2009 FAD closure period.

43. One CCM also pointed out that the list of fisheries to be monitored (WCPFC-TCC5-2009/IP-03, Attachment F) should be examined carefully because some fisheries appear to be missing. This CCM also suggested that the monitoring should not focus only on coverage rate but should be expanded to include what data are being collected (e.g. on bycatch).

44. This same CCM noted that a large number of accreditation audits will need to be carefully scheduled to ensure that the June 2012 deadline can be met. Concern was expressed that if too much reliance is placed on audit information collected by the cadre of observers (who are also tasked with

assisting with spill sampling trials), this might skew the auditing information toward purse seines when a balance between purse seines and other gear types is needed.

45. Another CCM emphasized the importance of using observers from the State where the fishing was being conducted unless no such observers are available. It was also requested that all incident reports be sent to coastal States immediately upon receipt, and that the ROP take account of ongoing improvements in subregional and national observer programmes.

46. In response to the request for ROP data to be immediately provided to the coastal State where the trip occurred, the Observer Programme Coordinator noted that this could certainly be done but would require a procedure to be drafted since the Commission's current data handling procedures do not cover this situation.

47. In addition to providing ROP data to the coastal State where the trip occurred, one CCM suggested that the flag State may also wish to obtain a copy of the data.

48. TCC accepted the first annual report of the ROP (WCPFC-TCC5-2009/07); and looks forward to the development of the ROP and clarification of the incidents that appear in this report.

d) Estimated costs of observer data management options

49. The Observer Programme Coordinator presented an update on ROP data administration and management options (WCPFC-TCC5-2009/08). Initially, three data hosting options were examined: SPC in Noumea, New Caledonia; SPC in Suva, Fiji; and the Secretariat in Pohnpei, FSM. These options were then augmented by a request from SC5 to include other options. It was estimated that the amount of data flowing into a single data provider would require 16 full-time data entry personnel. Other costs include equipment, digital reproduction, data communication, freight and travel costs. Estimated costs per observer trip for each of the 10 options are presented in the paper.

50. It was noted that PNG is currently testing the use of electronic forms filled out by the observer while onboard the vessel and transmitted using VMS capabilities. This system reduces the amount of labor input but is still being evaluated in terms of overall effectiveness.

51. Some CCMs noted that many national observer programmes, particularly those in national waters, will already be entering data and could provide that data in a digital format. It was noted, however, that this situation would be different on the high seas where less assistance is likely to be provided by national programmes. It was further noted that providing electronic data may not be sufficient if the electronic formats required by the national programmes and the ROP are different or incompatible.

52. WCPFC's Executive Director clarified that the Secretariat's current capability to process raw data is limited. Depending on how much longline observer coverage is provided by the existing national and subregional observer service providers, the Secretariat may be able to process a small amount of data in Pohnpei.

53. Some CCMs, including FFA members, expressed support for Option 5.1, which involves data management centre hosting by FFA, observer providers, and SPC, noting that FFA members are gradually expanding their data management capabilities. Some of these CCMs pointed to the fact that a number of CCMs already channel their data through SPC and, thus, if SPC is relieved of its responsibility additional costs will be incurred.

54. Other CCMs supported Option 5.3 based on their position that the Commission should have a role in observer data management even if the cost was slightly higher. These CCMs stated that the Commission should start developing a WCPFC observer database as soon as possible.

55. Several CCMs noted that costs may differ depending on whether near-term versus long-term scenarios are considered. It was suggested that these scenarios be considered alongside cost figures by formulating and discussing a draft transition plan, including both near-term and long-term arrangements.

56. TCC5 reviewed estimated costs of managing observer data “Regional Observer Programme Data Administration and Management” (WCPFC-TCC5-2009/08, Table 6.1). Having narrowed the options to 5.1 and 5.3, the Secretariat is directed to draft budget proposals for both options to be provided to CCMs at WCPFC6. A draft transitional plan for consideration of financial aspects will be prepared for the WCPFC7 Finance and Administration Committee.

e) **Cross-endorsement of IATTC observers**

57. The Observer Programme Coordinator presented WCPFC-TCC5-2009/09 on a proposed agreement between IATTC and WCPFC on cross-endorsement of observers. This initiative derives from a requirement in CMM 2008-01, para 29 for the Secretariat to work with IATTC to develop procedures to allow observers from each regional fisheries management organization (RFMO) to work in one another’s Convention Area. This would allow vessels crossing the boundary between the two convention areas to continue with the same observers and avoid having to return to port to swap observer. Existing arrangements involving FFA and the USA Treaty are being examined as a potential model. The Secretariat hopes to continue discussions with IATTC in a few weeks’ time.

58. FFA members noted their support for the cross-endorsement proposal, and indicated they would be conducting training to facilitate crossover assignments.

59. Some PNA members noted that any cross-endorsement arrangement would not override the requirements of domestic laws of PNA members, which require 100% coverage by PNA observers on purse seiners in PNA waters.

60. The USA noted that existing arrangements must be accommodated in any agreed upon cross endorsement.

61. Several other CCMs spoke in favor of the proposed cross-endorsement arrangements, however, concerns expressed included the questions of whether data collected by an IATTC observer inside the WCPF Convention Area could be used for compliance purposes, and whether cross-endorsement might result in lower WCPFC observer standards.

62. One CCM noted that in their experience, IATTC would not release any data without the permission of the flag State, and that this could be a problem for full access to and use of cross-endorsement data.

63. The Observer Programme Coordinator responded that these issues would be clarified through discussions with IATTC, and that legal advice on aspects of the agreement would be sought from the WCPFC Legal Advisor.

64. New Zealand stated that if the cross-endorsement arrangements would not provide for the data to be used in legal proceedings, then the arrangements should not be entered into and this was supported by other CCMs.

65. TCC noted the Secretariat’s paper WCPFC-TCC5-2009/09 on “Cross endorsement of observers between WCPFC and IATTC”, and encouraged the Secretariat to continue work to develop this proposal, noting concerns regarding protection of the quality of the WCPFC programme and the investigative, judicial, and administrative use of data obtained. This work will take into account national requirements in PNA waters and existing arrangements.

2.2 Transshipment verification procedures

66. RMI presented its draft of a CMM on regulation of transshipment (WCPFC-TCC5-2009/DP-08). RMI explained that this version was heavily based on discussions at WCPFC5 and on a discussion paper circulated subsequent to WCPFC5.

67. In the opening discussion of the proposed text, several CCMs stated their opposition to allowing transshipment on the high seas either due to a lack of control potentially leading to opportunities for illegal, unreported and unregulated (IUU) fishing, and/or the presumption under Article 29 of the Convention that transshipment is conducted in port. Some of these CCMs pointed out that the WCPFC differs from other RFMOs in that it has a high proportion of fish in the EEZs of small island developing States (SIDS).

68. Other CCMs noted that transshipment is widely practiced and is allowed under other RFMOs. These CCMs felt that consistency among RFMOs is desirable and that transshipment on the high seas would not necessarily facilitate IUU fishing activities if it is appropriately controlled.

69. Because much of the text had been agreed on through previous rounds of discussion, discussions at TCC5 were able to focus on the remaining key issues. As discussions of these issues progressed, proposed amendments to the draft CMM text were incorporated, eventually resulting in WCPFC-TCC5-2009/DP-08 (Rev. 3) (Attachment D). The key issues arising during these discussions can be categorized as either cross-cutting issues or issues specific to transshipment.

70. The cross-cutting issues involved crafting text that reflected agreements on issues discussed under other topics at TCC5, many of which were ongoing simultaneously with transshipment discussions. These topics included:

- i. Observer cross-endorsement (para 15 of DP-08, Rev. 3) and Agenda Item 2.1e of this report);
- ii. the Register of non-CMM fish carriers and bunkers (para 18 of DP-08, Rev. 3 and Agenda Item 2.3 of this report);
- iii. Charter State responsibilities (para 20 of DP-08, Rev. 3 and Agenda Item 2.4 of this report); and
- iv. Data handling for transshipment declaration and prior notice information (para 34 of DP-08, Rev. 3 and Agenda Item 2.5 of this report).

71. Four key issues specific to transshipment were discussed, including the area of applicability, additional exemptions for certain fleets, a practicality test, and precision of the location specification for the prior notification of transshipment. These issues are discussed below.

72. The first issue concerned the area of applicability of the draft measure as specified in para 1. Some CCMs questioned whether the measure could be used to control transshipment outside the Convention Area.

73. The Legal Advisor explained that if the fish is caught in the Convention Area, the Commission has the power to regulate it regardless of the location of transshipment. One of the mechanisms for this may be calling on CCMs with jurisdictions outside the Convention Area to apply the Commission's rules on transshipment to extra-Convention Areas. Cooperation with other RFMOs is also a possibility. The Commission is clearly able to regulate any transshipment of fish inside the Convention Area.

74. The question of applicability of the measure to transshipment in high seas pockets, archipelagic waters and EEZs was also discussed with some CCMs in favor of such an application and some opposed.

75. Cook Islands, on behalf of FFA members, explained that the high seas pocket closure in CMM 2008-01 applies only to purse seine vessels; however, it does imply that longline vessels should be affected as well. This is because there is i) little longlining effort in the high seas pockets, ii) these areas are known as havens for IUU transshipment activities, and iii) there is little reason why vessels could not practically move from the pockets to port for transshipment.

76. The second issue centred on observer coverage requirements, including discussion of the needs arrangements for vessels less than or equal to 33 metres other than purse seine or frozen longline vessels,

and for troll and pole-and-line vessels (para 12alt.). The USA stated that 100% observer coverage is not necessary for these types of vessels, which pose little threat of IUU fishing. In the case of the USA fresh fish longline fishery, at-sea transshipment of bigeye tuna is occasionally done from vessels targeting swordfish, which make relatively long trips. Because bigeye tuna are bound for sushi markets they need to be moved quickly to avoid spoilage, so they are sometimes transhipped, but only to other catcher vessels in the fleet, not to carrier vessels. The USA added that because the USA swordfish-directed longline fleet is already subject to 100% observer coverage, the USA would be supportive of the 100% coverage requirement for that fleet, as long as the observer is allowed to be either on the offloading or receiving vessel, as the current 100% coverage rate applies to the former. Under the USA proposal, troll, and pole-and-line vessels would be subject to 100% coverage as of 1 July 2013.

77. One CCM questioned the practicality of identifying which small longline vessels might be exempt from high seas transshipment.

78. The USA responded that all vessels engaged in transshipments, regardless of whether they have observer coverage or not, would be required to submit a prior notification of transshipment to the WCPFC Executive Director, so that all CCMs would have advance knowledge of all authorized at-sea transshipments, including details about the vessels involved.

79. An alternative proposal (para 12) is that all transshipment activities would immediately be subject to observer monitoring on the receiving vessel.

80. The third issue concerned a practicality test whereby vessels that can demonstrate either a financial hardship or an historical reliance on high seas transshipment would be allowed to tranship on the high seas (para 36). While efforts to make the definitions specific were welcomed, the economic test specified in para 36a was not supported by one CCM, which suggested that the term “significant economic hardship” be left undefined for the moment.

81. The fourth issue related to the addition of a margin of error when specifying transshipment locations to allow for vessel drift and/or positioning errors (footnotes to Annexes I and III). Text was proposed that would provide for transshipment location notices in decimal latitude and longitude to the nearest 0.1 degrees with a margin of error of 15 nm.

82. Despite extensive debate, only some of the cross-cutting issues and none of the four transshipment-specific issues were resolved during TCC5 and, thus, they remain as bracketed text in the draft measure.

83. TCC5 reviewed “RMI draft Conservation and Management Measure on Regulation of Transshipment” (WCPFC-TCC5-2009/DP-08, Rev. 2). After extensive discussion it was decided by TCC5 to carry on discussions electronically of bracketed text (in Attachment D) on this important matter in advance of WCPFC6 with a view to bringing a draft before WCPFC6 for its consideration. RMI and Nauru will coordinate, with comments to be received by 26 October 2009.

2.3 Non-CCM flag carriers and bunkers

84. The TCC Chair noted that both the USA and RMI had brought proposals to revise CMM 2004-01 (Record of Fishing Vessels and Authorization to Fish) to TCC5 with the objective of addressing the recurring issue of non-CCM flag carriers and bunkers. Both CCMs expressed appreciation for the other’s efforts and agreed to work together to produce a consolidated proposal.

85. The USA introduced its proposal (WCPFC-TCC5-2009/DP-02), which would require the owner/operator of the carrier or bunker to provide a written statement agreeing to comply with all of WCPFC’s CMMs.

86. In contrast, the RMI proposal (WCPFC-TCC5-2009/DP-09) requires, in an initial phase, for a CCM to enter into an agreement with the vessel and/or its flag State and vouch for its compliance with

WCPFC's CMMs. Under a second phase, beginning in January 2012, the RMI proposal expects that the majority of carrier and bunker vessels will be flagged to States participating in the WCPFC, perhaps under a special category of CNM, which would allow them to provide only carriers and bunkers.

87. Some SIDS expressed concern that the USA's proposal would allow non-CCM flagged carriers and bunkers into the WCPFC Convention Area even though certain SIDS have, in the past, been limited from inviting non-CCM fishing vessels (e.g. longline and purse seine vessels), into their waters.

88. Some CCMs noted that the most long-standing and straightforward means of controlling vessels is by the flag State. Therefore, these CCMs suggested the best solution would be for the flag States of carrier and bunker vessels to become CNMs, perhaps through a streamlined process.

89. Several CCMs saw merit in elements of both proposals and emphasized the importance of closing out opportunities for IUU fishing in the Convention Area presented by unregulated transshipment activities.

90. One CCM suggested that for ease of administration, any register of vessels, such as a register of carriers and bunkers, should not need to be renewed every year, rather it should only be adjusted for changes as necessary.

91. The WCPFC Executive Director offered the Secretariat's assistance in preparing a combined draft of a revision to CMM 2004-01. Due to the many connections between this issue and others, CCMs were referred to several related documents including a list of non-CCM fish carriers and bunkers in WCPFC-TCC5-2009/11 and other materials associated with the WCPFC Record of Fishing Vessels.

92. RMI subsequently tabled a combined proposal for discussion (WCPFC-TCC5-2009/DP-09, Rev. 2).

93. Key remaining issues included:

- i. The time period for the interim register, including whether that period should be specified and if so how long it should extend (paras 25, 35bis and 35ter). Some CCMs supported a firm expiry date for the interim register on the basis that continued extensions could act as a disincentive for States to become CNMs. Other CCMs expressed concern that requiring all carrier and bunker flag States to become CNMs is too onerous and may unduly limit the number of vessels able to provide these services in the Convention Area. This issue was resolved.
- ii. The respective roles of the owner/operator and the nominating CCM in committing to fully comply with all applicable decisions of the Commission (paras 29, 29bis and 30). Some CCMs suggested an amendment to the USA's original wording on the written undertaking to be provided by the owner/operator, which would require the nominating CCM to require the owner/operator to provide this statement.
- iii. Procedures for de-authorizing the vessel if it should be placed on the WCPFC IUU Vessel List (para 22). Some CCMs debated the need to acknowledge national procedures for de-listing versus the role of the Secretariat in removing IUU vessels from authorized vessel lists. Other CCMs asked for the paragraph to be deleted.
- iv. Whether and how to specify the history of operation of the vessel in the WCPFC Convention Area (para 11). Some CCMs questioned the need for this provision.
- v. How details of the vessels should be provided for the register (para 5). Some CCMs stated that terminology in the Convention text should take precedence, whereas other CCMs suggested that other terms and units which may be more common or more appropriate can also be used (para 5).

94. A revision reflecting these discussions (WCPFC-TCC5-2009/DP-09, Rev. 3) is contained in Attachment E.

95. TCC5 reviewed RMI's proposal to revise CMM 2004-01 [Consolidated USA-RMI, 2 October Version 1](WCPFC-TCC5-2009/DP-09, Rev. 2). After extensive discussions it was decided by TCC5 to carry on discussions electronically of bracketed text (in Attachment E) on this

important matter in advance of WCPFC6 with a view to bringing a draft measure before WCPFC6 for its consideration. RMI and Nauru will take this forward with comments to be received by 26 October 2009.

96. The TCC recognized that because CNM status confers certain rights and responsibilities, the existing CNM application process may not be well-suited for States that operate or wish to operate only carrier and/or bunker vessels in the Convention Area. The TCC recommended that the Commission charge the TCC with assessing the suitability of the CNM application process and CNM status for States with only carriers and/or bunkers and providing recommendations to the Commission as to whether a modified or separate process and/or status should be developed for such States and what the process and status should be, and to complete this work by 2011.

2.4 Charter arrangements

97. WCPFC's Executive Director presented a paper on charter arrangement options (WCPFC-TCC5-2009/10), which contained a comparison of charter arrangement proposals presented at previous TCC meetings, a table of the relevant provisions of existing CMMs, and a summary of existing charter arrangements. Three options were presented: i) no action; ii) development of guidelines for charter arrangements; and iii) adoption of a notification process under which CCMs acknowledge responsibility for charter vessels in all matters concerning the Commission.

98. Several CCMs voiced their support for the third option and suggested that it might be possible to bring forward a proposal to WCPFC6 on the basis of this option.

99. Other CCMs, while not necessarily opposed to moving forward on the basis of the third option, raised the following individual concerns:

- i. The proposed notification procedures should be binding;
- ii. The notification procedures do not substitute for a long-term strategy for clarifying the provisions for and use of chartering;
- iii. If the vessel is chartered but does not change its flag there needs to be a joint system of responsibility between the flag State and the chartering State.

100. Several developing coastal States stressed the importance of chartering to their fisheries. Some of these rejected any need to obtain the cooperation or permission of the flag State for commercial partnerships in national waters. A minority acknowledged the importance of flag State control of vessel activities but still rejected the need for flag State permission.

101. The EC noted that under their new regulation to prevent IUU fishing by regulating imports of fish into the EC, catches must be certified by the flag State and delegation to the chartering State is not sufficient. For this reason, the EC sees the situation as one of joint responsibility between the flag State and the chartering State.

102. Fiji introduced a new draft measure based on WCPFC-TCC5-2009/10 and the preceding discussions as WCPFC-TCC5-2009/34.

103. Although the revised text represented a consensus view of some issues, other issues in the revised draft could not be agreed on. These issues mainly centred on the need for flag State notification, or permission, when entering into charter arrangements. Various points were raised in connection with this issue including:

- i. assignment of responsibilities to the flag State and/or to the chartering State including which party is responsible for vessel monitoring system (VMS), observers and reporting catch;
- ii. whether flag States should have the ability to permit or prohibit chartering arrangements given the fundamental role of the flag State in regulating the behavior of vessels but also acknowledging that flag States should not stray into regulating business partnerships;

- iii. whether in addition to the Secretariat, the flag State should be sent a copy of the notification;
- iv. concerns that flag State notification could lead to restrictions, which hinder the ability of SIDS to develop their fisheries.

104. Through discussion it was decided to pursue a limited measure on chartering arrangements based on the existing points of agreement for approval at WCPFC6, and to work toward agreement on other issues thereafter. Fiji produced the text for the proposed measure as WCPFC-TCC5-2009/34 (Rev. 1) (Attachment F).

105. TCC5 reviewed draft Charter Notification Scheme CCM (WCPFC-TCC5-2009/34, Rev. 1). TCC5 recommends to WCPFC6 to adopt this proposed CMM.

2.5 Ad Hoc Task Group (AHTG) on Data

a) Report of the Second Meeting of the AHTG on Data

106. Chair of the AHTG on Data, Holly Koehler (USA) presented a summary of the work of the task group over the past 20 months since its re-inception. This work has focused on developing a separate set of procedures for the protection, access to, and dissemination data compiled by the Commission.

107. These procedures have been developed from an initial AHTG on Data meeting held in Nadi, Fiji, then progressed electronically, culminating in a sixth draft produced at TCC5. This sixth draft represented agreed on text, with the exception of one bracketed paragraph. An FFA proposal for amendments to the sixth draft to resolve remaining issues was circulated as WCPFC-TCC5-2009/DP-15.

108. FFA members stated that the amendments addressed their key concern, which is that the basic principles for dissemination of data as encompassed in paras 5 and 19 of the 2007 Rules of Procedure are reflected in a balanced manner. FFA members believe this balance should continue to be reflected in the proposed monitoring, control and surveillance (MCS) data rules because these rules relate to access to high seas data for the purposes of MCS activities, both in areas under national jurisdiction and high seas.

109. CCMs proposed two additional minor amendments to the FFA proposed text, which was then adopted as a final text.

110. The Chair of the AHTG on Data also explained that in response to a request arising from SC5, the AHTG on Data considered whether operational data provided to the Commission under the three-vessel rule are aggregated to the point that their information value believed by some analysts to be compromised. Proposed text by the AHTG on Data was formulated based on the advice of data managers as conveyed at SC5 (WCPFC-TCC5-2009/37). The Chair of the AHTG on Data clarified that this proposed text, if adopted by WCPFC6, would comprise an amendment to the Scientific Data to be Provided to the Commission and would not alter the three-vessel rule itself.

111. One CCM suggested an amendment of the text to read “CCMs are to provide, to the extent possible, the number...”. This was supported by several CCMs.

112. Some CCMs expressed concerns that such an amendment weakened the data provision requirements, but acknowledged that the proposed text represents progress in the interim while CCMs continue to address their data confidentiality issues, and so agreed to the amendment.

b) Advice and recommendations to the Commission

113. TCC5 recommends to WCPFC6 for its consideration “Rules and Procedures for the Protection, Access to, and Dissemination of High Seas Non-Public Domain Data and Information Compiled by the Commission for the Purpose of MCS Activities and Access to and Dissemination of High Seas VMS Data for Scientific Purposes” as agreed by the AHTG on Data.

114. TCC5 reviewed “Draft Recommendation of TCC5 regarding the AHTG on Data’s Consideration of Issues raised by SC5 associated with the Implementation of the 2007 Commission

Data Rules and Procedures” (WCPFC-TCC5-2009/37). It was agreed by TCC5 to recommend this proposal as amended to WCPFC6 for its consideration.

2.6 Vessel monitoring system

a) Annual report on the Commission VMS

115. VMS Manager, Albert Carlot, presented an annual report on the Commission VMS to TCC5 (WCPFC-TCC5-2009/12, Rev.1) as stipulated in para 7.3.9 of the Commission VMS Standards, Specifications and Procedures (SSPs). This report covered several issues associated with the operations of the Commission VMS including: i) status of the Commission VMS database; ii) outer maritime limits data; iii) Service Level Agreement (SLA) with the FFA Secretariat; iv) implementation of client access; v) status of contract negotiations with Mobile Communications Service Providers (MCSPs); and vi) draft Standard Operating Procedures (SOPs) for the Commission VMS.

116. The TCC Chair noted the tremendous achievements of the programme over the past year due to the outstanding efforts of the Secretariat and the service provider (FFA).

117. CCMs discussed Table 1, which provides a summary of the number of authorized vessels on the WCPFC Record of Fishing Vessels compared with the number of vessel tracking agreement forms (VTAFs) received and the number of vessels in the VMS database for each CCM. It was noted by several CCMs that the number of vessels on the WCPFC Record of Fishing Vessels was almost certainly inflated because not all of those vessels would be expected to be actively fishing. As an example, Canada noted that while the table showed over 2,000 vessels on the WCPFC Record of Fishing Vessels, only about 200 vessels are licensed to fish for tuna in the Convention Area and none of them are actively fishing this year. Canada undertook to resolve this issue in advance of WCPFC6. As another example, France noted that all 20 of its vessels fish exclusively inside of French Polynesia’s exclusive economic zone (EEZ).

118. WCPFC’s Executive Director noted that CCMs are required to provide (by 1 July each year) a list of those vessels that fished beyond areas of national jurisdiction of the flag State in the Convention Area, reported as “fished” or “did not fish”, but that only 14 CCMs have done so this year.²

119. One CCM noted the apparent poor performance of non-CCM vessels, and suggested that the Executive Director write to them to remind them of their obligations with regard to the Commission’s VMS.

120. Some CCMs questioned the need to provide all of their VMS data, including that from national waters and outside of the Convention Area. These CCMs queried why it is not sufficient for them to filter the data for the Convention Area themselves.

121. The Executive Director explained that if the full dataset is provided it can be automatically filtered by the service providers’ software and this reduces the possibility of human error.

122. Japan stated that because automatic location communicators (ALC) service providers’ software can automatically select VMS data, ALC service providers should send the Commission only those VMS data for the high seas within the Convention Area. The Executive Director responded that the Secretariat will consider the suggestion.

123. Other CCMs noted issues with the VMS’s recent client access registration but noted that these have been addressed. These CCMs stated that section 7.3.6 of the VMS SSPs made it clear that the Commission VMS is for the high seas only, unless a coastal State specifically requests its waters be covered by the Commission VMS.

² Australia, Belize, Cook Islands, EC, FSM, Fiji, Japan, Korea, New Caledonia, New Zealand, Philippines, Chinese Taipei, USA, Vanuatu.

124. TCC5 notes the VMS Annual Report (WCPFC-TCC5-2009/12, Rev. 2) for the Commission. CCMs are invited to provide written comments regarding VMS SOPs to the Secretariat by 31 October 2009 with a view to the Secretariat providing draft revised SOPs at WCPFC6.

b) Operating costs of the Commission VMS

125. The VMS Manager presented a report to TCC5 on the operating costs of the Commission VMS for the period April–August 2009 (WCPFC-TCC5-2009/13, Rev.1) covering cost-related issues including: i) implementation costs; ii) SLA monthly recurring costs; iii) direct reporting costs; and iv) cost recovery options. It was noted that direct reporting costs for Argos will be four times higher than for Inmarsat. This was one of the reasons for proposing options for cost recovery. Another factor was a desire to convert the WCPFC Record of Fishing Vessels and VMS costs to separate, stand-alone budget items, rather than integrating them into a general budget.

126. In response to a question, the Executive Director explained that the costs shown in the paper are those associated with direct reporting to the Commission’s VMS only.

127. While some CCMs supported the idea of cost recovery, they cautioned against using the WCPFC Record of Fishing Vessels as a basis for cost recovery because it is not a reflection of active fishing presence.

128. It was clarified that only those vessels not already registered with FFA are charged an activation fee of USD 200. There is a deactivation fee of USD 50. In order to clarify this, the phrase “reporting directly to the Commission VMS” should be added to para 4 of the paper. Use of the term “ALC” was suggested over “MTU” (mobile transceiver unit) for consistency with terminology used when developing the Commission VMS.

129. TCC5 notes the Secretariat’s paper “Operating costs of the VMS during 2009” (WCPFC-TCC5-2009/13, Rev.1). TCC will take possible cost recovery actions into account in drafting the budget for the year 2011.

c) Enhancement options and future work

130. The VMS Manager presented a report (WCPFC-TCC5-2009/14) to TCC5, outlining enhancement options and proposals for future work on the Commission VMS, as stipulated in paragraph 7.3.9 of the SSPs, including: i) high seas vessel day scheme; ii) electronic forms activation and evaluation; iii) electronic vessel registration (EVR); and iv) in-built redundancy (in Pohnpei) to ensure uninterrupted provision of services. He also presented information on the SSPs in relation to the resolution of issues relating to bracketed text and proposals for modification.

131. Most CMMs expressed a preference to evaluate the current (coastal State) vessel day scheme before considering whether to develop one for the high seas.

132. Some caution was also expressed regarding electronic forms, particularly by CCMs who stated that new equipment would be needed on fishing vessels to accommodate these procedures. In contrast, some CCMs felt that the potential cost savings that could be achieved with the introduction of electronic forms (e-forms) meant that it deserves immediate serious consideration.

133. CCMs also discussed replacing the current paper-based vessel tracking agreement form (VTAF) system with an electronic system located at Pohnpei. There would be no additional cost for such a system; the primary savings would be mainly in terms of Secretariat labor. Some views were expressed that the burden of responsibility for making sure the e-forms are filled out accurately and completely lies with the submitter (i.e. the vessel) in an electronic system.

134. CCMs debated the proposed modification to the VMS SSPs, which would require that vessels subject to the Commission VMS report their position “prior to entry” rather than “upon entry” to high seas areas. The potential gap in time between subsequent reporting events, and the distance that could be

covered in the interval, was also discussed. The proposed change in the text could be satisfied by automatic transmission when the vessel crosses into the high seas.

135. The CCMs that want to maintain a clear separation between the high seas and coastal VMSs stated there was no need to change the existing SSPs.

136. Other CCMs suggested that more information regarding why the existing SSPs need amendment should be provided.

137. Regarding the issue of bracketed text that remains in the SSPs, some CCMs felt that a flexible and case-by-case approach is desirable, that a strict reporting interval was not necessary, nor would it be necessary to force a vessel back to port immediately just because the ALC was malfunctioning.

138. Manual reporting during malfunctioning was briefly discussed but considered to be undesirable by some (due to time) and burdensome (to fishermen) by others.

139. Redundancy of systems on board and strictly enforced reporting rules were also mentioned as keys to a robust system.

140. With regard to the request for the Secretariat to have administrative rights or privileges to Commission VMS hardware, software and data, the Executive Director announced that this had been resolved with FFA during a meeting immediately prior to TCC5, which had been convened to review the implementation and operation of the WCPFC/FFA Service Level Agreement. During that meeting the FFA had undertaken to provide the Secretariat with the information needed to resolve the Secretariat's concerns relating to high costs associated with anomalous reporting by MTUs over which the Secretariat has no immediate control.

141. In response to a question from the Chair regarding the requirement under CMM 2007-02 for the Commission to determine the activation date for the Commission VMS in the area north of 20⁰N and east of 175⁰E, Japan stated that they do not yet have a clear mandate to designate the exact date.

142. TCC5 noted the Secretariat's paper "Enhancement Options and Proposals for Future Work on the Commission VMS" (WCPFC-TCC5-2009/14). However, CCMs wish to see the current VMS system in operation for a period of time before considering implementation of a high seas VDS and e-forms. CCMs recommend implementation of electronic vessel registration (EVR) and establishment of a redundancy capacity in Pohnpei for the Commission VMS. TCC5 discussed the question of notification by vessels in advance of entry into the high seas of the Convention Area. CCMs directed the Secretariat to report on this issue at TCC6.

143. TCC5 discussed VMS SSPs paras 5.4 and 5.5 but was unable to resolve this matter. CCMs were encouraged to discuss this matter electronically prior to WCPFC6, coordinated by the USA and RMI, with a view to seeking agreement during WCPFC6.

2.7 IUU Vessel List and IUU listing procedures

a) Draft Provisional IUU Vessel List for 2010

144. Information on the vessels proposed for the Draft Provisional IUU Vessel List for 2010 is presented in WCPFC-TCC5-2009/15 and in other materials distributed directly to delegations.

(i) *Lina*

145. The *Lina*, an Indonesian-flagged vessel, was sighted fishing in the USA's EEZ of Jarvis Atoll on 3 February 2008. The *Lina* is not listed on the WCPFC Record of Fishing Vessels.

146. The USA contacted the Indonesian authorities on 26 February 2008 and again on 5 March 2008 regarding this incident. The USA reported that Indonesia informed them that the vessel was not authorized to fish on the high seas and was doing so in violation of the WCPFC CMMs. Indonesia

subsequently issued a “reminder” to the *Lina* in accordance with Indonesian administrative procedures. The USA notified Indonesia by letter in early June 2009 of its intention to nominate the *Lina* for the Provisional IUU Vessel List. Indonesia acknowledged receipt of the letter on 16 June 2009.

147. Indonesia did not attend TCC5 and did not make a response to TCC5 on this issue.

148. France also reported an incident involving the *Lina*. France’s inspection of the carrier vessel *Taiho Maru* in Papeete, French Polynesia on 20 October 2008 indicated that the *Taiho Maru* was engaged in transshipment with the *Lina* within the WCPFC Convention Area. France notified the Indonesian Government of this issue but did not receive a response.

149. Dr Tsamenyi (WCPFC Legal Advisor) noted that the *Lina* had violated paras 3a and 3b of CMM 2007-03, and that the decision not to list the *Lina* on the Provisional IUU Vessel List would depend on the flag State’s ability to demonstrate that the requirements for not listing the vessel under para 15 of CMM 2007-03 have been met.

150. All CCMs that expressed views on the case of the *Lina* supported its listing on the WCPFC Provisional IUU Vessel List.

151. TCC5 agreed to include the *Lina* on the Provisional IUU Vessel List.

(ii) *Chia Shun Hsing No. 6*

152. The *Chia Shun Hsing No. 6*, a Chinese Taipei-flagged vessel, was found fishing inside the USA’s EEZ around the Northern Mariana Islands, a USA Commonwealth Territory, without a permit in August 2008 by USA vessel and aircraft patrols.

153. Chinese Taipei has acknowledged that the vessel fished illegally in US waters and suspended the vessel’s license for three months and the captain’s license for six months in accordance with national administrative procedures.

154. The USA issued a fine in the amount of USD 130,000 on 27 February 2009.

155. Chinese Taipei instructed the vessel to settle with the USA Government in September 2009. Settlement discussions are ongoing.

156. TCC5 agreed to include the *Chia Shun Hsing No. 6* on the Provisional IUU Vessel List and noted that the vessel shall be removed from the list once the USA confirms satisfactory settlement of the matter.

(iii) *Maan Feng Yu No. 36*

157. The *Mann Feng Yu No. 36*, a Chinese Taipei-flagged vessel, was found fishing inside the USA’s EEZ around the Northern Mariana Islands, a USA Commonwealth Territory, without a permit, in August 2008 by USA vessel and aircraft patrols.

158. Chinese Taipei has confirmed through VMS data that the vessel was indeed fishing illegally within the USA’s EEZ but has not imposed a sanction on this vessel, its captain or its owner.

159. The USA issued a fine in the amount of USD 130,000 on 27 February 2009.

160. Chinese Taipei instructed the vessel to settle with the USA Government. Settlement discussions were ongoing during TCC5.

161. TCC5 agreed to include the *Maan Feng Yu No. 36* on the Provisional IUU Vessel List and noted that the vessel shall be removed from the list once the USA confirms satisfactory settlement of the matter.

(iv) *Jin Hai Fu No. 10*

162. The *Jin Hai Fu No. 10*, a Chinese Taipei-flagged vessel, was found fishing inside the USA's EEZ around the Northern Mariana Islands, a USA Commonwealth Territory, without a permit, in August 2008 by USA vessel and aircraft patrols.

163. Both the owner of the vessel and Chinese Taipei have acknowledged the violation.

164. The USA issued a fine in the amount of USD 130,000 on 27 February 2009.

165. Settlement discussions were ongoing during TCC5. The USA informed TCC5 on 6 October 2009 that the case had been settled to their satisfaction.

166. TCC5 reviewed the matter of the vessel *Jin Hai Fu No. 10* (Chinese Taipei). As the matter was settled to the satisfaction of the nominating State (USA) during TCC5, it is decided not to place this vessel on the Provisional IUU Vessel List.

(v) *Rong Yuan Yu 86, Rong Yuan Yu 87, Rong Da Yang No. 6, Rong Da Yang No. 7, Rong Da Yang No. 8 and Rong Da Yang No. 9*

167. These six Chinese-flagged vessels were sighted by New Zealand harvesting species covered by the WCPFC Convention on the High Seas within the Convention Area on 21 August 2008. The listing of these six vessels on the WCPFC Record of Fishing Vessels (RFV) was not finalized until 8 September 2008; therefore, none of the six vessels were listed on the RFV at the time of the incident. New Zealand notified China of their intention to propose the vessels for listing on the Provisional IUU Vessel List in June 2009. There has been subsequent correspondence between China and New Zealand, and between China and the Secretariat.

168. China stated that it authorized these vessels to fish in March–April 2008 and then sent the information to the Secretariat. However, due to apparent technical problems, the information was never received by the Secretariat and, therefore, the vessels were not entered on the WCPFC Record of Fishing Vessels (RFV) at the time of the incident.

169. China stated that it has now informed the fishing vessels that they cannot fish in the WCPFC Convention Area unless, and until, their names appear on the WCPFC RFV. China further stated that it has taken measures after the incident to ensure prevention of such occurrences in the future, including but not limited to, confirming the receipt of email messages sent to the Secretariat. For these reasons, China asked that the six vessels not be placed on the Provisional IUU Vessel List.

170. Dr Tsamenyi noted that as the vessels were not listed on the RFV at the time of the incident, and that they had clearly contravened para 3(a) of CMM 2007-03. TCC5 was invited to consider whether the explanation provided by China was sufficient not to place the vessels on the Provisional IUU Vessel List.

171. New Zealand stated that the WCPFC management framework must be respected and, therefore, vessels that are not on the RFV, but which fish inside the Convention Area, must be considered to be in violation of the CMMs. New Zealand also noted that China had not provided a clear response to how it would prevent such administrative issues from arising in the future.

172. China informed TCC5 that due to domestic law and procedures, it is not able to propose a vessel for listing on the RFV until after China authorizes that vessel to fish.

173. New Zealand and other CCMs maintained that it is the responsibility of each CCM to verify that their nominated vessels have been placed on the RFV after they submit the data to the Secretariat and before they are authorized to fish in the WCPFC Convention Area.

174. China stated that it shares the concern by some CCMs on full compliance of flag States, and informed TCC5 that due to domestic law and procedures, it is not able to propose a vessel for listing on the RFV until after China authorizes that vessel to fish.

175. Several CCMs, including FFA members, spoke in favor of listing these vessels. These CCMs noted the importance of curtailing fishing by unauthorized fishing vessels in the Convention Area and did not consider that the administrative issues encountered by China when submitting the vessels for listing on the RFV were a sufficient reason for not listing these vessels.

176. Some CCMs expressed concern that the effect of the listing would be to punish the vessels for an action that is the responsibility of the flag State.

177. Some CCMs questioned whether TCC5 could place these vessels on the Provisional IUU Vessel List without a consensus decision.

178. Dr Tsamenyi reminded TCC5 that it was not taking a decision regarding the WCPFC IUU Vessel List, rather TCC5 was making a recommendation to the Commission regarding the Commission's decision about the WCPFC IUU Vessel List. He also advised that under Article 11, para 4 of the Convention, if subsidiary bodies of the Commission cannot reach a consensus recommendation, majority and minority views shall be indicated in the committee report.

179. The majority of TCC members supported the inclusion of the following vessels on the Provisional IUU Vessel List: *Rong Yuan Yu 86, Rong Yuan Yu 87, Rong Da Yang No. 6, Rong Da Yang No. 7, Rong Da Yang No. 8 and Rong Da Yang No. 9*, while a minority of TCC members were against the inclusion of the above named vessels on the Provisional IUU Vessel List. TCC5 agreed to place these vessels on the Provisional IUU Vessel List with a note to WCPFC6 that consensus was not reached regarding these vessels.

180. In further discussion, China, which was supported by several other CCMs, reiterated its concerns about how listing these vessels would in effect punish fishermen for administrative issues between the flag State and the Secretariat.

181. Some CCMs noted that in such cases the response of the flag State in terms of remedial measures taken to prevent future occurrences will be an important factor for consideration.

(vi) *Yuh Chang No. 3*

182. The *Yuh Chang No. 3*, a Chinese Taipei-flagged fishing vessel, was sighted by New Zealand harvesting species covered by the WCPFC Convention within the Convention Area on 21 August 2008. This vessel was not listed on the WCPFC RFV at the time of the incident. New Zealand notified Chinese Taipei of the incident.

183. Chinese Taipei confirmed that the *Yuh Chang No. 3* is authorized by Chinese Taipei to fish in the Convention Area. Chinese Taipei submitted information to list the vessel on the WCPFC RFV to the Secretariat on 29 January 2008.

184. The Secretariat confirmed that a request to list the *Yuh Chang No. 3* on the WCPFC RFV was received in late January 2008 but was incomplete. The Secretariat requested the missing information from Chinese Taipei but Chinese Taipei stated that it did not receive this communication. After noticing *Yuh Chang No.3* was not listed on the WCPFC Record of Fishing Vessels, Chinese Taipei provided it to the Secretariat on 16 September 2009. At that time, the Secretariat listed the vessel on the RFV.

185. Dr Tsamenyi noted that it is clear that the vessel was not listed on the RFV at the time of the incident, thus this constitutes a contravention of para 3(a) of CMM 2007-03. However, TCC5 was invited to consider whether the circumstances resulting in the *Yuh Chang No. 3* not being placed on the RFV warrant a lenient consideration by TCC. Dr Tsamenyi also advised that CMM 2004-01 (Record of

Fishing Vessels and Authorization to Fish) would appear not to empower the Secretariat to decline to place vessels on the WCPFC RFV on the basis of missing information.

186. Several CCMs supported placing *Yuh Chang No. 3* on the Provisional IUU Vessel List because it clearly was fishing in the Convention Area without being listed on the RFV. Some of these CCMs noted that it is the responsibility of CCMs to ensure that vessels submitted for the WCPFC RFV are actually listed, and to follow up with the Secretariat and resolve any administrative issues if this is not the case.

187. Some CCMs noted that a key difference in this case was the fact that the Secretariat received a request to list the vessel on the WCPFC RFV but declined to do so. Some of these CCMs also noted that the result of listing the vessel would be to punish the fishermen for a procedural error involving the flag State and Secretariat. For this reason these CCMs either were opposed to, or were inclined not to support, placing the vessel on the Provisional IUU Vessel List.

188. The majority of TCC members supported the inclusion of the *Yuh Chang No. 3*, while a minority of TCC members were against the inclusion of this vessel on the Provisional IUU Vessel List. TCC5 agreed to place this vessel on the Provisional IUU Vessel List with a note to WCPFC6 that consensus was not reached regarding this vessel.

(vii) *Taiho Maru*

189. The *Taiho Maru*, a Japanese-flagged fish carrier vessel was inspected by French Authorities in Papeete, French Polynesia on 12 October 2008. Vessel records indicated that the *Taiho Maru* transhipped fish from the *Lina*, an Indonesian-flagged fishing vessel that was not listed on the WCPFC RFV. France notified Japan of the incident and the two parties discussed whether a carrier vessel that receives fish from an unauthorized fishing vessel can be placed on the WCPFC Provisional IUU Vessel List.

190. Japan acknowledged that the *Taiho Maru* transhipped fish from the *Lina*. However, Japan pointed out that while CMM 2007-03 para 3(g) states that a vessel that tranships with a vessel included on the IUU list can be presumed to have carried out IUU activities, the *Lina* was not on the WCPFC IUU Vessel List at the time of transhipment.

191. Dr Tsamenyi noted that the proposal to list the *Taiho Maru* should not be considered against CMM 2007-03 para 3(g) because the *Lina* was not on the WCPFC IUU Vessel List at the time of the transhipment. However, TCC5 was invited to consider whether the *Taiho Maru* engaged in unauthorized fishing activities, as defined by Article 1(d) of the Convention, by supporting an unauthorized fishing vessel (i.e. the *Lina*). Dr Tsamenyi suggested that CMM 2007-03 para 3(i), which refers to activities that undermine WCPFC's CMMs would provide a more justified basis for placing the *Taiho Maru* on the Provisional IUU Vessel List.

192. Japan stated that if they had understood that transhipment with vessels not listed on the WCPFC RFV was considered an IUU fishing activity, they would have clearly communicated this requirement to its vessels.

193. Some CCMs did not support listing the *Taiho Maru* on the grounds that the *Lina's* activities had not been clearly specified as IUU fishing activities at the time of the incident.

194. Several CCMs supported listing the *Taiho Maru* on the Provisional IUU Vessel List, stating that transhipping from an unauthorized fishing vessel is clearly an IUU fishing activity.

195. After further discussions with Japan, France informed TCC5 that it wished to withdraw its nomination of the *Taiho Maru*.

196. Japan committed to undertaking a review of all CMM requirements and to re-issuing instructions to all carrier vessels in order to avoid any further misunderstandings.

197. TCC5 reviewed the matter of the vessel *Taiho Maru*. As the matter was settled to the satisfaction of the nominating State (France) during TCC5 it was decided not to place this vessel on the Provisional IUU Vessel List.

(viii) *Senta*

198. The *Senta*, a Panamanian-flagged fish carrier vessel, was inspected by French authorities in Papeete, French Polynesia on 12 October 2008. During inspection, one of the fish holds was found to contain fish harvested from the WCPFC Convention Area by the fishing vessel *Minako*, which is not listed on the WCPFC RFV. France notified Panama.

199. Panama, which is not a WCPFC CCM, did not respond.

200. Dr Tsamenyi noted that the case of the *Senta* was similar to that of the *Taiho Maru* with the exception that the *Senta* was not listed on the WCPFC Temporary Register of Fish Carriers and Bunkers, and was, thus, not authorized to engage in transshipment in the WCPFC Convention Area. Dr Tsamenyi further noted however, that subsequent to the incident, the *Senta* was placed on the WCPFC Temporary Register of Fish Carriers and Bunkers.

201. Some CCMs were of the opinion that the sufficiency of CMM 2007-03 para (i) as a basis listing fish carriers on the WCPFC IUU Vessel List was questionable and should be given careful consideration.

202. After further consideration, France reaffirmed its nomination of the *Senta*, citing the facts that i) both the *Senta* and the fishing vessel it transhipped from were not on the WCPFC's authorized vessel lists; ii) the flag State did not respond to France's notification of intent to propose listing of the *Senta* on the WCPFC IUU Vessel List; and iii) the captain of the *Senta* was responsible for knowing the applicable requirements for transshipping in the area.

203. TCC5 reviewed the matter of the vessel *Senta*, and agreed to place this vessel on the Provisional IUU Vessel List.

(ix) *Minako*

204. The *Minako*, an Indonesian-flagged fishing vessel, was found by means of an inspection of the carrier vessel *Senta* in Papeete, French Polynesia by France to have transhipped fish to the *Senta*, a fish carrier not listed on the WCPFC Temporary Register of Fish Carriers and Bunkers. The *Minako* is not listed on the WCPFC RFV. When France notified Indonesia of its intention to propose the *Minako* for the WCPFC Provisional IUU Vessel List, Indonesia responded that the *Minako* had not fished in the WCPFC Convention Area.

205. Dr Tsamenyi noted that because the *Minako* is not on the WCPFC RFV, if it fished in the WCPFC Convention Area, then the activity is clearly IUU fishing. However, Dr Tsamenyi invited TCC5 to ascertain whether the *Minako*'s activities took place in the WCPFC Convention Area.

206. All CCMs that expressed views on the case of the *Minako* considered that the vessel had fished in the WCPFC Convention Area and, thus, supported listing the *Minako* on the WCPFC Provisional IUU Vessel List.

207. TCC5 agreed to include the *Minako* on the Provisional IUU Vessel List.

(x) *Yu Fong 168*

208. The *Yu Fong 168*, a Chinese Taipei-flagged fishing vessel listed on the WCPFC RFV, was detected by RMI inside of RMI's EEZ on 29 January 2009. This vessel was not licensed by RMI to fish in RMI waters. When the *Yu Fong 168* was approached by an FSM patrol boat acting on behalf of RMI, it refused to submit to inspection, and as a result of pursuit, some damage was inflicted upon the FSM patrol boat. RMI contacted Chinese Taipei regarding this incident and requested their assistance in resolving the matter.

209. Chinese Taipei stated that it began investigating this incident immediately upon notification and confirmed that the *Yu Fong 168* had entered RMI's EEZ without permission. Chinese Taipei ordered the vessel to stop fishing and return to port, but subsequently the vessel ceased VMS transmissions and continued to evade Chinese Taipei's efforts to locate it. As a result, Chinese Taipei stated that it has taken the strongest possible actions under its national law, including revoking both the captain's and vessel's licenses, and removing it from the WCPFC RFV. Chinese Taipei supports the listing of the *Yu Fong 168* on the WCPFC IUU Vessel List and requests the cooperation of CCMs in locating this vessel.

210. All of the other CCMs that expressed views on the case of the *Yu Fong 168* supported its listing on the WCPFC Provisional IUU Vessel List.

211. TCC5 agreed to include the *Yu Fong 168* on the Provisional IUU Vessel List.

212. RMI stated its concern that listing the *Yu Fong 168* does not satisfy its fundamental concern regarding the damages incurred to both RMI and FSM resources as a result of this incident.

b) WCPFC IUU Vessel List

213. TCC5 discussed whether to recommend to the Commission that the two vessels currently on the WCPFC IUU Vessel List be removed from the list.

(i) *Daniela F*

214. Based on notification from France, the Venezuelan-flagged *Daniela F* was placed on the WCPFC IUU Vessel List in 2007. Since the listing, there has been no communication from the flag State with regard to the requirements of CMM 2007-03, para 25.

215. All CCMs that expressed views on the case of the *Daniela F* supported its continued listing on the WCPFC Provisional IUU Vessel List.

216. TCC5 agreed to recommend to WCPFC6 that the vessel *Daniela F* not be removed from the IUU Vessel List.

(ii) *Jinn Feng Tsair No. 1*

217. Based on notification from FSM, the Chinese Taipei-flagged *Jinn Feng Tsair No. 1* was placed on the IUU Vessel List in 2007.

218. FSM explained that because the violation occurred in FSM waters, its position is that the *Jinn Feng Tsair No. 1* must submit to legal proceedings under FSM law. As no progress has been made in this regard, FSM stated that the *Jinn Feng Tsair No. 1* should remain on the WCPFC IUU Vessel List.

219. Chinese Taipei summarized the actions taken against the *Jinn Feng Tsair No. 1*, which include detaining the vessel from the time it returned to home port until now, an elapsed time of approximately two years. The taking of other legal actions has been constrained by the transfer of the vessel's ownership prior to the time that Chinese Taipei was informed of the incident by FSM. The new owner is contesting the vessel detention via legal proceedings in Chinese Taipei. Chinese Taipei stated that the criteria for determining whether the flag State's action in response to the IUU fishing activities is of sufficient severity (CMM 2007-03, para 25) must be determined by the laws of the flag State. Chinese Taipei submitted that a detention of two years, or even longer, is sufficient ground for removal from the WCPFC IUU Vessel List.

220. All of the other CCMs that expressed views on the case of the *Jinn Feng Tsair No. 1* supported its listing on the WCPFC Provisional IUU Vessel List.

221. The majority of TCC5 members supported a recommendation to WCPFC6 that the vessel *Jinn Feng Tsair No. 1* not be removed from the WCPFC IUU Vessel List, while the minority favored removal. Consensus was not reached on this decision.

c) Recent incidents brought to the attention of TCC5

222. **New Zealand** introduced this item by explaining that for the sake of transparency and awareness raising, several recent incidents of potential IUU fishing activities in the Convention Area are being brought to the attention of TCC5. The CCMs in whose waters these potential violations have been reported will further investigate the issues and decide whether to nominate the vessels for the WCPFC Provisional IUU Vessel List in 2010.

223. New Zealand presented information on the sighting of the *Ta Chun No. 101*, a Chinese Taipei-flagged longline vessel, 83 nm within New Zealand's EEZ. This vessel was engaged in activities that appeared to indicate that fishing had just been conducted. This incident has been communicated to Chinese Taipei authorities and the WCPFC Executive Director, and investigation is ongoing.

224. Chinese Taipei confirmed that they were informed of this incident on 25 September 2009 and immediately began investigating it. However, initial inquiries have indicated that VMS records do not show the *Ta Chun No. 101* fishing in New Zealand's EEZ at that time.

225. **Tokelau** stated that the *Zhou Yuan Yu 202* was found fishing without a license in Tokelau's EEZ in late June. The flag State and the WCPFC Executive Director have been notified. Tokelau noted its grave concern about this incident, particularly as it occurred in a small island State that is highly dependent on fisheries resources and which has a very limited ability to conduct MCS activities. Tokelau requested permission to present progress on investigating this incident to the Commission in December.

226. **Palau** informed TCC5 that two vessels flagged to a WCPFC CCM were sighted in early August fishing inside Palau's EEZ without a license and was found de-finning sharks. One of the vessels was apprehended and investigations are continuing. Palau does not tolerate IUU fishing and views this as an extremely serious violation.

227. **FSM** presented an incident that occurred during the August–September 2009 FAD closure in which an observer was bribed to not report that the vessel was setting on FADs. FSM noted that the flag State has been informed that FSM intends to take legal action and has indicated that it will respond to the case presented.

228. **Tuvalu**, on behalf of FFA members, stated its serious concern about the number of violations that have been detected and those that potentially go undetected due to the limited ability of SIDS to conduct MCS activities. Coastal States' commitment to conserve and manage critical fisheries resources, and to deal strictly with any violations, was reaffirmed.

229. The **EC** highlighted the responsibility of developed States to assist coastal States with monitoring and control of fishing activities in their EEZs, and suggested that more proactive initiatives are required in this regard.

230. TCC recommended to the Commission that New Zealand, Tokelau, Palau and FSM report back to WCPFC6 on the recent alleged IUU activities raised at TCC5, and in accordance with Article 23 para 5 and Article 25 of the Convention that the member against whom the activity is alleged, report to WCPFC6 on the progress of the investigation, including details of any action taken or proposed to be taken in relation to the alleged activity.

d) CMM 2007-03: Review of outstanding issues from WCPFC5

i) Review of paragraph 3(j) of CMM 2007-03

231. Dr Tsamenyi presented a summary of WCPFC-TCC5-2009/16 concerning a review of CMM 2007-03 para 3(j). This paragraph provides for listing of a vessel on the WCPFC IUU Vessel List on the basis that the vessel is under the control of an owner of any vessel on the IUU Vessel List. Therefore, a vessel may be listed by association with an owner implicated in IUU fishing activities, rather than having engaged in such activities itself. In this way, para 3(j) differs from all of the other grounds for listing a

vessel in para 3, and as a result, has been strongly debated at previous meetings of the TCC and the Commission. As a result of discussion at WCPFC5 it was agreed to suspend use of para 3(j) as a basis for IUU vessel listing for one year to allow for the development of procedures to implement para 3(j). The working paper presents the results of a study to develop such procedures.

232. Dr Tsamenyi summarized the key issues and recommendations presented in the paper.

233. Some CCMs stated the opinion that listing a vessel on the WCPFC IUU Vessel List on the basis of para 3(j) is contrary to justice and common sense. These CCMs also stated that because only a handful of RFMOs have included a similar provision in their IUU vessel listing procedures, and none of these RFMOs have yet applied this provision, there is no practical operational guidance available for its application. These CCMs' preferred action would be to delete para 3(j) from CMM 2007-03, but pending such action they urged TCC to recommend to the Commission a further suspension of para 3(j) until further consideration can be given to its application procedures by their national legal counsels.

234. Several CCMs supported postponing a decision on revising CMM 2007-03 with regard to para 3(j) to TCC6 pending further consideration. However, most of these CCMs expressed a reluctance to suspend the use of para 3(j) in the interim, or in any case for more than one additional year, referring to the potential deterrent effect this provision may have on IUU fishing activities.

235. The EC stressed the importance of gaining experience with para 3(j) and the related issue through its application, or potential application, noting that extending the current one-year suspension of the provision will not achieve this. Instead, the EC recommended that para 3(j) could be applied with caution and/or only in clear cut cases.

236. One CCM emphasized the importance of outlining a process through which the issue can be advanced over the next year in order to facilitate resolution at TCC6.

237. Some CCMs expressed concerns that para 3(j), while intended to discourage IUU fishing activities, might provide a disincentive for legitimate investment in fisheries development of SIDS.

238. In response to a question, Dr Tsamenyi explained that, as described in the working paper, the requirements for demonstrating that vessels are under the control of the owner of any vessel on the IUU Vessel List have not been made clear. In addition, whether "associated vessels" (i.e. those proposed for the IUU Vessel List on the basis of para 3(j)), need to be proposed separately or in conjunction with the originally offending vessel that implicates the owner, is also unclear. Finally, procedures for removing vessels that have been listed on the basis of para 3(j) from the IUU Vessel List have yet to be specified.

239. TCC5 reviewed the Secretariat's paper regarding para 3(j) of CMM 2007-03 (WCPFC-TCC5-2009/16). TCC5 determined that this issue required further reflection and discussion at TCC6. Given the importance of this matter, a further and final deferment of the application of 3(j) is recommended to WCPFC6 for the year 2010. The majority of CCMs were in favor of 2010 being the final deferment, while the minority were not. This recommendation was not made by consensus. TCC5 also recommended that the Commission establish a clear process for CCMs to advance this issue during 2010 to support TCC6 in its consideration of the issue.

240. One CCM expressed concerns about references to majority and minority opinions in TCC recommendations other than those pertaining to IUU vessel listings, and stressed the importance of making every effort to conduct the work of the TCC by consensus.

ii) Control of nationals

241. New Zealand presented WCPFC-TCC5-2009/DP-10 on a draft WCPFC CMM for the control of nationals based on a measure adopted by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). New Zealand highlighted that such control is an essential component of a robust MCS framework to combat IUU fishing activities.

242. One CCM requested that the concept of controlling nationals “to the greatest extent possible”, as specified in Article 23, para 5 of the Convention be included in the chapeau part of para 1 of the draft CMM.

243. FFA members stated that the control of nationals is important to prevent parties from one State hiding behind the flag of another State. These CCMs supported greater transparency in declaring owners and other controlling interests in fishing vessels, in particular for vessels on IUU vessel lists. However, these CCMs stressed that any CMM on control of nationals should not act to deter legitimate investment in fisheries in SIDS.

244. One CCM noted that the requirement to report to the Commission on the progress of the investigation within two months was perhaps too short a timeframe.

245. One CCM suggested that para 2 of the draft CMM be revised to also refer to nationals who command vessels.

246. Some CCMs supported the draft measure as proposed noting that it was based on a measure adopted by CCAMLR, an organization of which many CCMs are members, and that the draft measure is fully in line with CCMs’ existing obligations under the Convention, specifically Article 23, para 5.

247. Some CCMs indicated that the effective control of nationals may lie beyond the current remit of the agencies represented on their delegation. At a minimum, these CCMs would need to consult national legal advisors before presenting a position on the draft CMM, and in some cases inter-agency coordination procedures may not yet be developed. Some of these CCMs noted that stakeholders in the CCAMLR fisheries are very different to stakeholders in the WCPFC fisheries and thus a different approach may be warranted.

248. New Zealand took these and other comments received during TCC5 into account in preparing revisions of the paper resulting in WCPFC-TCC5-2009/DP-10 (Rev. 2) contained in Attachment G.

249. TCC5 reviewed “Control of Nationals” (WCPFC-TCC5-2009/DP-10, Rev. 2). New Zealand will receive comments until 4 November 2009 with a view to providing a revised document for consideration by WCPFC6.

iii) IUU listing procedures

250. Tonga presented a paper on a proposed amendment to CMM 2007-03, para 15, concerning reasons why a vessel should not be included on the WCPFC IUU Vessel List (WCPFC-TCC5-2009/DP-12). It was noted that this was one of the priority issues identified for TCC5’s attention. The amendments proposed by Tonga are designed to remedy the fact that under the current wording of para 15, a flag State is allowed to determine whether effective action has been taken against one of its fishing vessels even if the violation occurred in the national waters of another coastal State. Specifically, the amendments provide for the flag State to determine if the violation occurred on the high seas, but when the violation occurred outside of the high seas, that the CCM in whose jurisdiction the violation occurred be satisfied with the settlement of the case.

251. Several CCMs, including FFA members, spoke in favor of the proposal, emphasizing the need to take account of the interest of coastal States whose national laws have been infringed through IUU fishing activities. This was deemed to be particularly important in cases where, due to limited MCS capabilities, it is not possible to prevent the vessel from physically escaping from the jurisdiction of the coastal State.

252. Two CCMs voiced their concern regarding the amendments. These concerns are based on the possibility of unfair or unequal penalties being imposed by coastal States and a preference to tighten the CMMs but avoid increasing the number of punitive measures.

253. Based on these and other comments received during TCC5, Tonga prepared WCPFC-TCC5-2009/DP-12 (Rev. 1) contained in Attachment H.

254. Two CCMs requested more time to review the proposal, citing the need to consult with their national legal counsels and stakeholders. One of these CCMs proposed an additional amendment to the text but this was opposed by a number of other CCMs. The Chair noted the short lead time for CCMs to consult with capitals, and thanked CCMs for their efforts to do so.

255. TCC5 reviewed “Tonga’s proposed amendment to para 15 of CMM 2007-03” (WCPFC-TCC5-2009/DP-12, Rev. 1). Tonga will take views electronically on an intersessional basis with comments to be received by 31 October. Tonga will endeavor to bring this paper forward for consideration by WCPFC6.

e) Stateless vessels

256. The USA introduced a proposal for a CMM on vessels without nationality (WCPFC-TCC5-2009/DP-04, Rev. 1). The draft CMM explicitly states that vessels without nationality fishing in the Convention Area will be presumed to be fishing in contravention of WCPFC CMMs. This measure will allow port States, such as the USA, to prosecute stateless vessels when they enter port. Other provisions allow for boarding and inspection, and reporting of sightings to the Secretariat.

257. One CCM noted that while some port States do not require this CMM because under their existing legal systems they are able to prosecute stateless vessels, they understood the value of this CMM for other port States, which do not currently have such mechanisms.

258. Several CCMs expressed their support for the proposed CMM.

259. FFA members asked that the proposal be deferred to WCPFC6 for further consideration.

260. TCC5 reviewed the USA’s paper “Proposal for a CMM on Vessels without Nationality” (WCPFC-TCC5-DP/04 (Rev.1)). As all CCMs did not have an opportunity to review this paper during TCC5, this paper along with comments provided by CCMs to the U.S. before 7 November 2009 will be forwarded to WCPFC6 for its consideration.

2.8 WCPFC Record of Fishing Vessels

a) Current status and developments, including a web-based system for vessel record information

261. The Secretariat presented a paper on the status of, and developments related to, the WCPFC Record of Fishing Vessels (WCPFC-TCC5-2009/17). This paper describes the current status of the WCPFC Record of Fishing Vessels relating to: i) the number of vessels according to flag and vessel type; ii) issues associated with anomalies in the type and quality of information provided by CCMs for their respective authorized vessels; and iii) an analysis of vessel information gaps by flag. The Secretariat also provided information on enhancements to the WCPFC Record of Fishing Vessels, in particular a web-based system for entry of vessel information, and development of the WCPFC Information Management System that will cater for information flows relating to CMM 2004-01. The latter includes an RSS feed³ that can be subscribed to and provides automatic updates of the WCPFC RFV. The Secretariat also noted that all electronic submissions of information to the RFV should receive an automatic electronic message confirming the submission.

262. CCMs discussed the Secretariat’s proposals (WCPFC-TCC5-2009/17, Attachment 2) to further specify the type and quality of information provided by CCMs for authorized vessels as provided for in CMM 2004-01. Several CCMs noted that some of the proposals suggested terms or units that deviate from those specified either in CMM 2004-01 or from terms used in Annex IV of the Convention. The

³ RSS = “Really Simple Syndication” or “Rich Site Summary”. A convenient way to receive content “feeds” from a variety of sources.

specific examples of “gross tonnage” versus “gross register tonnage” was raised. Because some CCMs indicated that they had many other points to raise, it was suggested that comments be provided to the Secretariat in writing.

263. With respect to the web-based data entry system under development, some CCMs emphasized the need for more flexible data input options, particularly the need for CCMs to be able to submit batch data without having to enter it by hand, which will lead to errors. One CCM also noted that many of the existing problems pointed out in the Secretariat’s paper could be solved simply by requiring that CCMs distinguish between “none” and “unknown” and perhaps between “not available” as well.

264. The TCC5 Chair noted that changes to the information requirements would need to be effected through amendment of CMM 2004-01.

265. A related point of discussion involved conversion to an electronic data submission system for authorized vessel information. All CCMs that voiced an opinion on this subject spoke in favor of such a system on the basis that it would improve both the quality of submitted data and the compliance record of CCMs.

266. One CCM suggested that capturing existing electronic data would be strongly preferred over having either the CCM or the Secretariat re-key the data.

267. One CCM suggested that all existing data on authorized vessels be re-submitted through the electronic system, which could perform an automatic check on whether all required information was available.

268. Another CCM noted that Attachment 3 of WCPFC-TCC5-2009/17 indicates that many of the vessels on the WCPFC RFV have incomplete data and if incomplete data are grounds for not listing the vessels on the RFV, then potentially a very large number of vessels could be considered eligible for IUU vessel listing. Therefore, this CCM suggested decoupling the issue of data sufficiency from the decision to list CCMs’ authorized vessels on the RFV.

269. Further regarding Attachment 3, some CCMs considered that the percent compliance shown did not reflect their efforts to provide complete information for their authorized vessels.

270. France noted a potential issue of double-counting its authorized vessels under both France and the EU.

271. TCC5 reviewed Secretariat paper “Status of, and developments related to, the WCPFC Record of Fishing Vessels (WCPFC-TCC5-2009/17)”. TCC5 recommended that CCMs work with the Secretariat to resolve gaps in information and move to a flexible web-based data system on an accelerated basis.

b) Unique vessel identifier

272. The Secretariat presented a paper on a unique identifier for the WCPFC RFV and harmonization of Tuna RFMO Vessel Records (WCPFC-TCC5-2009/18, Rev. 1). This paper describes efforts undertaken to compare the fields required under the WCPFC RFV with those required by Lloyds Register-Fairplay to generate a unique vessel identifier (UVI). In order to generate a UVI, CCMs would need to provide information for six additional data fields: address of the operator (Master); fishing vessel number (national registration number); ship builder; nationality of ship builder; gross tonnage; and ship status. TCC5 was invited to consider whether to recommend to the Commission that CCMs be requested to provide these additional six data fields so that UVIs can begin to be generated for vessels on the WCPFC RFV. This will both contribute toward efforts underway by FAO to establish a global register of fishing vessels to combat IUU fishing, and by the Joint Tuna RFMOs to facilitate the exchange of vessel information.

273. Some CCMs, citing the value of UVIs to support global efforts to combat IUU fishing, recommended to the Commission the initiation of a pilot project to generate UVIs for vessels on the WCPFC RFV.

274. Other CCMs suggested that while UVIs have merit, the WCPFC should remain focused on its own needs for generating a comprehensive and complete RFV.

275. One CCM suggested that in some cases national legislation regarding privacy or confidentiality may prevent release of the information required by Lloyds Register-Fairplay.

276. One CCM recommended that national vessel register numbers be used to the maximum extent practical and that any system developed maintain compatibility with national systems.

277. TCC5 reviewed the Secretariat's paper on "A Unique Identifier for the WCPFC Record of Fishing Vessels and Harmonization of Tuna RFMO Vessel Records" (WCPFC-TCC5-2009/18, Rev 1). TCC5 recommends that highest priority be given to completing the WCPFC Record of Fishing Vessels. TCC5 recommended that the Secretariat continue to participate in the tuna RFMO process. TCC5 encouraged CCMs to cooperate with the Secretariat on a pilot programme basis as they are able to do so.

2.9 High seas boarding and inspection (HSBI)

a) Annual reports by CCMs

278. In accordance with CMM 2006-08, para 40, CCMs are required to report annually to the Commission on boarding and inspections carried out by authorized inspection vessels. In presenting a summary of this information, the Secretariat noted the continued development of the HSBI website. CCMs are also required to provide contact details for the authorities responsible for fishing vessels for posting on the website. To date, only 9 CCMs (Belize, Canada, Chinese Taipei, Cook Islands, EC, France, Japan, New Zealand and USA,) have provided this information, and 17 CCMs have not provided it.

279. While noting that some CCMs may choose to report on HSBI activities within their Part 2, Annual Reports, CCMs were provided with the opportunity to make brief presentations on these activities at TCC5.

280. In addition to reporting in their Part 2, Annual Report, the USA noted that six HSBI were conducted in 2008. On 20 August, a Japanese pole-and-line vessel was inspected on the high seas off Japan and no violations were observed. From September–November 2008 five Korean longline vessels were inspected near Palmyra and Kingman Reef and no violations were observed. All HSBI were conducted in accordance with CMM 2006-08 and proceeded smoothly and without incident.

281. Chinese Taipei deployed an inspection vessel for 89 days beginning in 6 October 2008 and has deployed two inspection vessels in 2009. These vessels have focused on HSBI of Chinese Taipei and other vessels in the high seas pockets, and on instructing the vessels to comply with WCPFC CMMs. Chinese Taipei will continue these efforts.

282. During 2008, the Cook Islands deployed two patrol boats to the high seas pocket area between French Polynesia, the Cook Islands and Kiribati. However, when the patrol vessels reached the area, the fishing vessels had already departed.

283. Two FFA members spoke in support of the WCPFC HSBI, noting that WCPFC is the only RFMO with such a scheme. It was also noted that the subregional programme will expand from the current focus on EEZs over the next year to include high seas areas, and will thus complement the WCPFC HSBI procedures.

284. Some CCMs reported on their HSBI activities while others commented on their intention to do so. TCC5 noted the progress of the WCPFC Boarding and Inspection Programme. TCC5 encouraged CCMs to report their HSBI activities in their Part 2, Annual Reports.

b) Data buoys

285. The USA presented a proposed CMM on data buoys (WCPFC-TCC5-2009/DP-03, Rev. 1), explaining that comments received from Australia, New Zealand, the EC and the WCPFC Legal Advisor have been reflected in the latest draft. The proposed measure defines minimum standards for responsible conduct of fishing operations with regard to buoys. Its aim is to prevent damage to data buoys that provide valuable oceanographic and meteorological data, including tsunami early warning. It also specifies that fishing activities that are inconsistent with these minimum standards will be considered to be undermining WCPFC CMMs.

286. In discussion, CCMs raised several issues concerning the proposed CMM including:

- i. The need to provide a definition of data buoys so that the types and numbers of buoys that might be affected by the measure can be assessed;
- ii. There is a need for an exemption for scientific research activities;
- iii. Compatibility with national buoy classification and regulatory schemes in order to facilitate domestic implementation.

287. One CCM expressed concern about the provision to consider damage to data buoys as equivalent to undermining WCPFC CMMs, but stated that a vessel should not be placed on the IUU Vessel List for damaging data buoys.

288. TCC5 discussed the USA's proposed CMM on data buoys (WCPFC-TCC5-2009/DP-03, Rev. 1). TCC5 agreed to continue to develop this proposal with a view to submitting a revised proposal at WCPFC6. Additional comments should be forwarded to the USA by 7 November 2009.

2.10 Compliance with reporting obligations

a) Part 2 reports

i) Submissions by CCMs

289. The Secretariat presented "Review of CCMs' Implementation of and Compliance with Conservation and Management Measures" (WCPFC-TCC5-2009/31, Rev. 1). To date, there are seven Part 2 Annual Reports outstanding, including those from El Salvador, the EC, Kiribati, Niue, Philippines, RMI and Tokelau. Of the 27 Part 2 Annual Reports received, 17 (Australia, Belize, Canada, Cook Islands, FSM, Fiji, France (including New Caledonia and French Polynesia which also submitted individual reports), Japan, Korea, Nauru, New Zealand, PNG, Solomon Islands, Chinese Taipei, Tonga, Tuvalu, and the USA) used the agreed upon Part 2 Annual Report template. Over the past year, CCMs and the Secretariat have worked toward retrospectively filling gaps in past Annual Report submissions, and as a result the Commission's data holdings are progressively approaching completion. CCMs were thanked for their efforts in this regard.

290. CCMs that wish to make corrections to current or past Part 2 Annual Reports were asked to work with Secretariat on these issues outside the meeting.

ii) Part 2 report template

291. Referring to WCPFC-TCC5-2009/19, the Secretariat noted the requirement in para 40 of CMM 2008-01 for TCC to prepare a template for reporting on the implementation of CMM 2008-01 for their fishing vessels operating on the high seas and/or in waters under national jurisdiction. This template was circulated to CCMs as WCPFC Circular 2009/06 in March 2009. Comments received from Australia and Japan and are attached to the paper.

292. In addition to the comments received from Australia and Japan, points raised by other CMMs in discussion included:

- i. There is a need to be aware of the burden that existing reporting requirements place on small coastal States, and to seek ways to streamline reporting requirements as much as possible;
- ii. The Secretariat should review recommendations from CCMs made under other topics (e.g. the ROP), and incorporate reporting requirements for those programmes into the Part 2 Annual Reports;
- iii. Data fields including “management methods used for highly migratory fish species”, and those under the heading “Investigations and Prosecution Activity” require further clarification and/or justification.

293. TCC5 reviewed the Secretariat’s paper “Revised Template for Annual Report, Part 2” (WCPFC-TCC5-2009/19). A number of specific proposals were made from the floor by CCMs. The Secretariat is directed to incorporate these suggestions in a revised Part 2 template for consideration at WCPFC6.

b) Report by the Secretariat

294. The Secretariat presented WCPFC-TCC5-2009/31 (Rev.1), summarizing information received from CCMs, including information received under Article 24, para 5 of the Convention, relating to implementation of the Convention and the decisions of the Commission. The Secretariat’s report included information from CCMs relating to several CMMs including: i) CMM 2005-02; ii) CMM 2005-03; iii) CMM 2006-04; iv) CMM 2007-04; v) CMM 2008-01; vi) CMM 2008-03; and vii) CMM 2008-05. In relation to CMM 2008-01, the Secretariat noted that although this measure is not due to be reported on until 2010, it contains some issues for the attention of the Secretariat.

295. New Zealand suggested that for the sake of transparency and for better self-tracking of compliance, the CCMs who have complied with these measures, or alternatively who have not complied, be listed.

296. The EC agreed that identifying which members had complied would be useful and suggested a report card format.

297. The Secretariat noted that there is now a data reconciliation facility on the Commission website whereby each CCM can review their own data submission status.

i) CMM 2005-02: Conservation and Management Measure for South Pacific Albacore

298. This CMM calls for no increase in the number of fishing vessels actively fishing for South Pacific albacore south of 20⁰S above current (2005) levels or recent historical (2000–2004) levels. Information specifically about such activity, which is not required to be reported under the CMM, has been reported by Australia, Belize and New Zealand.

299. New Zealand called for those CCMs that fish for this species to provide operational data, noting that it is impossible to confirm compliance unless such data are submitted.

300. Vanuatu, on behalf of FFA members, proposed to insert a footnote to Table 3 stating “the numbers in this table do not take into account para 2 of CMM 2005-02” (WCPFC-TCC5-2009/DP-16).

ii) CMM 2005-03: Conservation and Management Measure for North Pacific Albacore

301. This CMM requires that catch of albacore north of the equator, by gear type, be reported to the Commission every six months and that catch and effort data be reported annually. The Secretariat thanked the WCPFC science service provider (SPC) for preparing the estimated catches based on the 14 fleets’ data listed in the paper.

302. There were no comments on this item.

iii) CMM 2006-04: Conservation and Management Measure for Striped Marlin in the Southwest Pacific

303. This measure calls for CCMs to report the number of vessels that have fished for striped marlin in waters south of 15°S during the period 2000–2004, and thus nominate the maximum number of vessels that shall continue to be permitted to fish for striped marlin in the area south of 15°S. This CMM also requires annual reporting of the number of vessels that fished for striped marlin in that area. The Executive Director noted that six CCMs submitted the required data by the submission deadline.

304. Vanuatu, on behalf of FFA members, proposed to insert a footnote to the table in Attachment 1 stating “the numbers included in years 2000–2004 do not take into account para 2 of CMM 2006-04” (WCPFC-TCC5-2009/DP-16).

iv) CMM 2007-04: Conservation and Management Measure to Mitigate the Impact of Fishing for Highly Migratory Fish Stocks on Seabirds

305. The measure requires CCMs to report on seabird mitigation measures applied in the Convention Area south of 30°S or north of 23°N, including any changes it has made to its required mitigation measures or technical specifications about these measures. No CCM reported on any such changes.

306. There were no comments on this item.

v) CMM 2008-01: Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean

307. The Secretariat explained that while this measure will not be reported on until next year, several issues that will require reporting at that time are highlighted in the paper.

308. Vanuatu, on behalf of FFA members, requested that a footnote be added to Table 2 to state that “As stated in para 30 of CMM 2008-01, the requirement to submit development plans for developing skipjack fisheries does not apply to the domestic purse seine fisheries of small island developing States”. Also, an amendment to para 16 was suggested to accurately reflect para 30 of CMM 2008-01, that the requirement in CMM 2008-01 does not apply to SIDS (WCPFC-TCC5-2009/DP-16).

309. Nauru, on behalf of FFA members, noted that during 2008 the applicable CMMs for bigeye and yellowfin tuna were 2005-01 and 2006-01. Therefore, the paper should be amended to avoid references to evaluating whether CMM 2008-01 was achieving its objectives (WCPFC-TCC5-2009/DP-17).

310. FSM, on behalf of FFA members, requested that the Secretariat clarify the tables in future papers to clearly distinguish between limits applicable under CMM 2005-01, 2006-01, and 2008-01 (WCPFC-TCC5-2009/DP-18).

311. Fiji, on behalf of FFA members, commented that the indication in Table 3 that a limit of 2000 mt applies to the Pacific Islands is not correct based on CMM 2005-01 and 2008-01 (WCPFC-TCC5-2009/DP-19). Therefore, the Secretariat was requested to note in future tables, that in accordance with paras 6 and 34 of CMM 2008-01 the 2000 mt bigeye longline catch limit and reductions in para 33 of CMM 2008-01 do not apply to Pacific Island fleets.

312. Tuvalu, on behalf of FFA members, expressed their deep concern that the deferment for provision of operational data to the Commission provided in the 2007 decision in “Scientific Data to be Provided to the Commission”, is being used by some CCMs to justify an almost complete failure to provide operational catch and effort data. Vanuatu, on behalf of FFA members, stated that CCMs should report in future Part 2 Annual Reports, specifically on their progress to meet the obligations of the 2007 decision “Scientific Data to be Provided to the Commission”, and the Secretariat should include a specific section on this matter in its report on compliance with data reporting obligations.

313. RMI requested a catch and effort level data review by the Secretariat with a view toward compliance.

314. Japan stated that it did not provide data under para 39 of CMM 2008-01 because of difficulties in understanding the requirements of the last sentence, and called for guidance to be provided on this issue.

vi) CMM 2008-03: Conservation and Management of Sea Turtles

315. This measure requires that fishing vessels fishing for swordfish in shallow sets reduce their sea turtle interaction rate.

316. Australia tabled a report on its sea turtle mitigation plan as WCPFC-TCC5-2009/DP-14.

vii) CMM 2008-05: Conservation and Management of Swordfish

317. This measure requires each CCM to nominate the maximum total catch of swordfish that it shall continue to be permitted to fish in the area of south of 20°S in 2009. The Secretariat received this information from five CCMs.

318. Korea stated that it had submitted a catch report indicating a swordfish catch of about 50 mt but that it appeared that this catch report had not been received by the Secretariat.

319. New Zealand noted the following points for consideration with regard to CMM 2008-05:

- i. Chartered vessels may create anomalies in catch reporting and limit setting;
- ii. Penalty clauses will need to be amended;
- iii. The one-year lag in data provision renders it impossible to respond immediately to any exceedance of catch limits; and
- iv. Catch limits should be re-confirmed in future years.

320. Australia supported SC5's recommendation that swordfish catch limits should be continued.

321. Fiji noted a minor error in para 9 of CMM 2008-05 and will propose an amendment to rectify this at WCPFC6.

322. The Cook Islands stated that it will also seek an amendment of para 10 of CMM 2008-05 to account for the legitimate lag in data provision.

323. The EC stated that it did not provide information under CMM 2008-05 because the measure already specifies a catch figure for EC fleets. The catch limit set in CMM 2008-05 has been implemented under EC law and is monitored by France and by the EC. With regard to the issue of the review of the EC's swordfish catch data mandated by CMM 2008-05, the EC stated that a report had been prepared and forwarded to the Secretariat. This report found that there was no divergence between the catch estimate by the WCPFC science service provider and the EC's current understanding of its fleet's swordfish catch.

324. Several CCMs questioned whether the EC's response complied with the requirements of CMM 2008-05. Specific issues were raised with regard to the need for the review of EC data to have been independently conducted, the need for the EC to provide data on bycatch, the lack of documentation provided regarding the review and its result, and a potential increase in EC vessels fishing for swordfish. One CCM raised the issue of the provision of bycatch data as articulated in para 241 of the report of the annual meeting.

325. The Secretariat indicated that neither the Secretariat nor the WCPFC science service provider had received copies of the EC's report on the swordfish data review.

326. TCC5 reviewed the implementation and compliance with CMMs and decisions of the Commission, including in respect of the submission of data (WCPFC-TCC5-2009/31, Rev. 1). TCC5 noted some elements of the paper related to measures to be implemented in 2009 and reported on at TCC6 in 2010. Nevertheless, the paper identified a large number of reporting gaps

for the majority of measures. TCC5 recommended that future reports by the Secretariat should attribute reporting gaps to the CCMs concerned. TCC5 noted recommendations by several CCMS to amend data tables. TCC5 forwarded these proposals to the Secretariat for its review and inclusion in a revised paper to be submitted to WCPFC6.

c) Further development of the process for monitoring compliance

327. The Secretariat introduced progress on developing a process for monitoring compliance, led by Australia. Draft terms of reference for a Compliance with Conservation and Management Measures Working Group, based on initial discussions at TCC4, were circulated by Australia in June 2009 and are contained in WCPFC-TCC5-2009/IP-06. Australia indicated that it did not receive comments on the terms of reference, but would take comments from TCC5 and table a revised draft at WCPFC6.

328. Some CCMs indicated their support for Australia's efforts, and a willingness to provide further input. Specific issues raised include the possibility of learning from a similar process underway at the International Commission for the Conservation of Atlantic Tunas (ICCAT), and the need to develop remedial measures for non-compliances, which are fair and proportional, and the importance of developing a transparent and equitable process.

329. TCC5 noted "Draft Terms of Reference for Compliance with Conservation and Management Measures (CCMM) Working Group" (WCPFC-TCC5-2009/IP-06). CCMs are asked to provide comments to Australia by 2 November 2009.

2.11 Advice and recommendations in relation to the implementation of CMMs

a) CMM 2004-03, para 4.1

330. Para 4.1 of CMM 2004-03 provides scope for review, and amendment as appropriate, of the "Specifications for the Marking and Identification of Fishing Vessels". The Secretariat noted that during the 2009 FAD closure, many comments were received regarding the difficulties of identifying fishing vessels.

b) CMM 2006-04, para 6

331. This measure requires the Executive Director to compile information provided by CCMs on vessel numbers and catch levels of striped marlin in the southwest Pacific, and for TCC to monitor and review compliance with this measure and make recommendations to the Commission as necessary.

c) CMM 2007-04, para 6

332. This measure requires review of any new information on new or existing mitigation measures or on seabird interactions from observer or other monitoring programmes. TCC5 was invited to consider whether it was necessary to recommend to WCPFC6 an updated suite of mitigation measures, specifications for mitigation measures, or recommendations for areas of application. WCPFC-TCC5-2009/33 provides an analysis of differences between a recent Indian Ocean Tuna Commission (IOTC) resolution and CMM 2007-04.

333. One CCM stated that because SC5 did not discuss these issues, it was premature for TCC5 to make any recommendation and thus the matter should be tabled at TCC6.

334. One CCM noted that the IOTC technical specifications appeared to be more detailed than those currently in place by WCPFC, and suggested that the IOTC technical specifications be forwarded to WCPFC6. This CCM stressed that it was TCC's role to make recommendations on technical issues.

335. Several CCMs referred to ongoing work by the International Scientific Committee (ISC) for Tuna and Tuna-like Species in the North Pacific Ocean and an upcoming workshop on bycatch to be held by the Joint Tuna RFMOs (Kobe process), as useful for informing further discussions within the WCPFC.

336. The Executive Director explained that tint specifications for obtaining the appropriate color of blue-dyed bait are now available and will be distributed to CCMs electronically, and will be loaded on the Commission's website.

337. TCC5 reviewed the Secretariat's paper on "Seabird Bycatch Mitigation" (WCPFC-TCC5-2009/33). While noting the role of the WCPFC's Scientific Committee in this issue, CCMs stressed the importance for TCC to act on technical aspects. TCC5 noted the work on this subject being done within the Kobe process, and encouraged the participation of WCPFC and CCMs. TCC5 recommends that WCPFC6 consider the Secretariat's paper in the further development of technical specifications.

d) CMM 2008-01, paras 21, 24, 26, 29, 43, 44 and 45

338. The Secretariat noted three papers relevant to this topic: Options for a High Seas Vessel Day Scheme (WCPFC-TCC5-2009/21), FAD Management and Monitoring (WCPFC-TCC5-2009/22), and Monitoring and Measuring Fishing Capacity in the WCPO (WCPFC-TCC5-2009/23).

339. All CCMs voicing an opinion on the potential high seas vessel day scheme advocated postponing discussion on this issue until a later date.

340. With regard to FAD management and monitoring, the Solomon Islands, on behalf of FFA members, stated that more progress is needed on FAD management, including a market study, and the identification and tracking of FADs and other electronic equipment related to fishing. A proposal for this study was tabled as WCPFC-TCC5-2009/DP-21.

341. The USA noted that while there is not currently a definition of a FAD set, a definition will be required in the future. In addition, the USA stated that given the difficulties in implementing domestic regulations quickly, there may need to be a lag or phasing in of major CMMs, rather than immediate implementation.

342. Concerning monitoring and measuring of fishing capacity, the EC stated that this is an important issue and must be addressed.

343. Some CCMs expressed an alternative view, suggesting that capacity is not one of the most important issues, and that other means of fisheries management would be a more useful focus.

344. Japan presented two papers, pursuant to CMM 2008-01 para 43, on monitoring at purse seine catch landing sites in Japan (WCPFC-TCC5-2009/IP-06) and Thailand (WCPFC-TCC5-2009/IP-07). The first paper found that the amount of juvenile bigeye found in port sampling was ~170% of the amount recorded in the logbooks, regardless of whether or not there were observers onboard the purse seine vessels. The second paper found that Bangkok canneries compile species and size data along with the names of fishing vessels, carrier vessels, dates of landing and transshipment, and thus are a useful source of information. However, there is still a high potential to underestimate the amount of juvenile bigeye, particularly given the volume of trade handled by these operations.

345. New Zealand explained that it had attempted similar verification monitoring in its ports but had been unable to reconcile logbook data with port sampling results. Given the difficulties encountered, New Zealand decided that such arrangements were not worth pursuing. However, they suggested that it would be useful to try to link catch, offloading and cannery records in Thailand or other locations.

346. The USA stated the importance of continuing high observer coverage for purse seine fleets and expressed an interest in discussing further linkages to port and processing data sources. The USA also noted that the exemption available under CMM 2008-01, para 43 only applies to 2009.

347. Japan presented two papers regarding port sampling and canneries in Thailand (WCPFC-TCC5-2009/IP-06 and WCPFC-TCC5-2009/IP-07). TCC5 recommended that a full range of

monitoring measures, including consideration of Thai and other canneries, needed to be taken into account in the future.

e) CMM 2008-03, paras 7, 9 and 12

348. CCMs are required to report on mitigation measures for minimizing sea turtle interaction rates in swordfish fishery shallow sets.

349. Australia tabled a report on its sea turtle mitigation plan as WCPFC-TCC5-2009/DP-14. The plan contains three elements: trigger interaction rates, a management plan to be followed if trigger interaction rates are exceeded, and reporting provisions.

350. Some CCMs, including FFA members, spoke in support of Australia's plan and recommended it be forwarded to WCPFC6.

351. China informed TCC5 that it has supplied a set of cutters and de-hookers to all of its distant-water longline vessels.

352. TCC5 reviewed "Australia Revised Draft Eastern Tuna and Billfish Fishery Sea Turtle Mitigation Plan (TMP)" (WCPFC-TCC5-2009/DP-14). TCC5 recommends that WCPFC6 approve this paper.

f) CMM 2008-05, para 5 and 11

353. As described under item 2.10 (b) (vii), CCMs discussed the need for reporting on swordfish catches and bycatch under CMM 2008-05.

354. Having discussed the issue in the margins, the EC agreed to submit their report on the data verification process to the Secretariat for transmittal to the WCPFC science service provider (SPC), and would investigate and confirm that all data required under CMM 2008-05 and WCPFC data provision rules have been provided.

355. The Secretariat clarified that no travel funding was available to support participation in the review by the WCPFC science service provider.

g) CMM 2008-06, para 13

356. This measure requires consideration of the effectiveness of management measures for shark stocks. The Secretariat noted that this issue will be on the agenda at TCC6 and as such was highlighted for CCMs' attention.

357. TCC5 reviewed a series of CMMs. It was agreed that a high seas vessel day scheme measure will be considered at a later date. It was noted that the role of capacity in overfishing is an issue which may require attention by the Commission.

AGENDA ITEM 3 — APPLICATIONS FOR COOPERATING NON-MEMBER STATUS

358. TCC5 assessed the applications for CNM status against the requirements of CMM 2008-02. The results are provided in WCPFC-TCC5-2009/35 (Rev. 1).

359. TCC5 recommended Belize for consideration by the Commission for CNM status subject to the information requested in WCPFC-TCC5-2009/35 (Rev. 1) being provided to, and accepted by, the Commission. TCC5 also recommended that the Executive Director provide, in advance of WCPFC6, an analysis of the applicant's compliance with the commitments and any specific limits on fishing activities undertaken by the applicant at WCPFC5.

360. TCC5 recommended Ecuador for consideration by the Commission for CNM status subject to the information requested in WCPFC-TCC5-2009/35 (Rev. 1) being provided to, and accepted by, the Commission. TCC5 also recommended that the Executive Director provide, in advance of

WCPFC6, based on available information, an analysis of compliance with commitments and any specific limits on fishing activities undertaken by the applicant at WCPFC5.

361. TCC5 recommended El Salvador for consideration by the Commission for CNM status subject to the information requested in WPCFC-TCC5-2009/35 (Rev. 1) being provided to, and accepted by, the Commission. TCC5 recommended that the Executive Director provide, in advance of WCPFC6, based on available information, an analysis of compliance with commitments and any specific limits on fishing activities undertaken by the applicant at WCPFC5.

362. TCC5 recommended Indonesia for consideration by the Commission for CNM status subject to the information requested in WPCFC-TCC5-2009/35 (Rev. 1) being provided to, and accepted by, the Commission. TCC5 also recommended that the Executive Director provide, in advance of WCPFC6, based on available information, an analysis of compliance with commitments and any specific limits on fishing activities undertaken by the applicant at WCPFC5.

363. TCC5 recommended Mexico for consideration by the Commission for CNM status subject to the information requested in WPCFC-TCC5-2009/35 (Rev. 1) being provided to, and accepted by, the Commission. TCC5 also recommended that the Executive Director provide, in advance of WCPFC6, based on available information, an analysis of compliance with commitments and any specific limits on fishing activities undertaken by the applicant at WCPFC5.

364. TCC5 recommended Senegal for consideration by the Commission for CNM status subject to the information requested in WPCFC-TCC5-2009/35 (Rev. 1) being provided to, and accepted by, the Commission. TCC5 also recommended that the Executive Director provide, in advance of WCPFC6, based on available information, an analysis of compliance with commitments and any specific limits on fishing activities undertaken by the applicant at WCPFC5.

365. TCC5 recommended Vietnam for consideration by the Commission for CNM status subject to the information requested in WPCFC-TCC5-2009/35 (Rev. 1) being provided to, and accepted by, the Commission.

366. The Executive Director stated that he will frame a letter to each applicant requesting a response by 7 November 2009. As responses are received from the applicants they will be posted on the Commission website for CCMS' review.

367. New Zealand requested that the summary of scientific data provided by applicants for CNM status prepared by SPC be provided to each applicant as an attachment to the letter prepared by the Secretariat.

AGENDA ITEM 4 — ADDITIONAL MONITORING, CONTROL AND SURVEILLANCE ISSUES BEFORE THE COMMISSION

4.1 Port State Measures

368. The WCPFC Legal Advisor, Dr Tsamenyi, presented a paper updating TCC5 on the status of FAO's Port State Measures consultation (WCPFC-TCC5-2009/32, Rev. 2). Dr Tsamenyi noted that TCC had postponed further discussion of port State measures pending completion of the consultation at FAO. However, with the recent agreement of the text, and the likely signing of the agreement in November 2009, TCC was invited to consider a recommendation to the Commission on the way forward.

369. Australia, on behalf of FFA members, made the following points regarding port State measures:

- i. They are an important tool in combating IUU fishing activities but should be considered to represent only minimum standards;
- ii. Port States will maintain discretion over their own affairs, including applying stricter port States measures, such as those in place in FFA member States, if they so desire;

- iii. There should not be a transfer of the burden of combating IUU fishing activities to SIDS;
- iv. Further discussion at TCC6 was suggested.

370. The EC agreed that discussion of port State measures should be a priority for TCC6, noting that it is one of the most effective weapons against IUU fishing.

371. TCC5 discussed the port State measures paper WCPFC-TCC5-2009/32 (Rev.2). It was agreed this was a priority matter for discussion at TCC6, noting its impact on SIDS.

4.2 Catch documentation scheme

372. The Secretariat presented a paper describing the background to RFMO catch and trade documentation schemes, introducing the EC IUU catch certification system to be implemented in January 2010, and discussing and comparing best practice elements in existing schemes. TCC5 was invited to consider the benefits of developing a catch documentation scheme (CDS) for the WCPFC, which can be recognized by the EC as equivalent to their catch certification scheme.

373. Some CCMs, including FFA members, considered that the best approach to developing a WCPFC CDS was to build on existing national catch or trade documentation programmes, while using the Secretariat to perform an audit function. These CCMs supported formulating a working group to progress development of a scheme.

374. Other CCMs urged a practical approach to defining the scope of the species and product forms to be included under the scheme. In particular, issues of species identification in purse seine fisheries, and handling fresh fish through customs given the CDS procedures without spoilage, were highlighted.

375. The EC voiced its continuing support for developing a CDS for the WCPFC. The EC noted that the only schemes that are likely to be acknowledged as being equivalent to the EC catch certification are the ICCAT bluefin CDS, the CCAMLR CDS, and possibly the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) CDS.

376. The USA stressed the importance of having a clear process within the WCPFC to progress the development of a scheme (if it was a priority of CCMs and the Commission), given the complexity of the topic.

377. TCC5 reviewed the catch document paper “Catch/Trade Documentation, EC Council Regulation (EC) 1005/2008 and the WCPFC” (WCPFC-TCC5-2009/24, Rev. 2)”. TCC5 recommends to WCPFC6 the creation of an intersessional working group on catch documentation with terms of reference to be developed electronically in advance of WCPFC6. TCC5 recommended to the Commission that it decide on a mechanism to advance this issue during 2010.

4.3 Procedures for granting CNM status

378. The USA presented a flowchart illustrating the process of considering applications for CNM status (WCPFC-TCC5-2009/DP-20, Rev. 1).

379. New Zealand suggested some minor amendments to the flowchart’s wording, and agreed to provide these changes to the USA for incorporation.

380. The Executive Director confirmed that an electronic template for CNM application submissions is under consideration. This will serve the dual purpose of facilitating the applicant’s information submission, and formatting the information into a table for CCMs’ subsequent appraisal and consideration.

381. CCMs discussed whether the flowchart, once finalized and agreed on, will be incorporated into CMM 2008-02. There was consensus that the flowchart would become part of CMM 2008-02 but that the text of the measure would take precedence for any issues of interpretation.

382. TCC5 reviewed the issue of cooperating non-member party procedures “USA Revised CNM Flowchart” (WCPFC-TCC5-2009/DP-20, Rev. 1) was discussed. TCC5 agreed that comments were to be provided to the USA in anticipation of developing a revised flowchart.

AGENDA ITEM 5 — SPECIAL REQUIREMENTS OF SMALL ISLAND DEVELOPING STATES

383. Cook Islands, on behalf of FFA, presented a statement highlighting the importance of combating IUU fishing in SIDS. Two sources of funding for building capacity of SIDS to undertake MCS activities were identified: the Special Requirements Fund, with a current balance of just over USD 152,000, and the Japan Trust Fund, whose funding for 2010 will be decided on shortly. The USA and FSM were thanked for their contributions to the former, and appreciation was expressed to Japan for the latter; however, it was noted that this funding is inadequate for assisting all SIDS with national MCS activities. CCMs were reminded that Article 30, para 4, provides guidance on how the Commission can cooperate with SIDS to address IUU fishing, including financial assistance, assistance related to human resource development, technical assistance, transfer of technology (including through joint venture arrangements), and advisory and consultative services. CCMs were invited to provide updates to TCC on ways that they are contributing or intend to contribute to assisting SIDS with eliminating IUU fishing.

384. Tuvalu, on behalf of FFA members, referred to the need to avoid constraints on the development of and investment in SIDS as embodied in Resolution 2008-01. FFA members expressed their desire for Resolution 2008-01 to serve as a basis for building principles and strategies, such as “islandization” into future CMMs. CCMs were reminded of the commitment at the recent meeting of the Joint Tuna RMFOs (Kobe 2) to enhance the ability of SIDS to participate in fisheries management and to develop their own fisheries for such stocks, including on the high seas.

385. Palau suggested that CCMs provide reports on their implementation of Article 30 of the Convention to each meeting of the TCC.

386. Japan encouraged SIDS to make their own applications to the Japan Trust Fund rather than applying through other organizations.

387. Several CCMs, including the EC, supported the EC’s earlier point regarding the responsibility of developed States to assist coastal States with monitoring and control of fishing activities in their EEZs. The EC noted that it provides considerable funding to SPC in this regard, and New Zealand and the USA listed several MCS initiatives involving SIDS.

388. The Executive Director noted that the Commission has received funding from the Global Environmental Facility to assist with developing the legal and institutional capacity for implementing the Commission’s CMMs in Indonesia, the Philippines and Vietnam. He also highlighted the availability of internship positions with the Secretariat, especially in the first half of each year.

389. TCC5 discussed the special requirements of SIDS, noting particularly Resolution 2008-01. SIDS were encouraged to take advantage of current development programmes and joint MCS activities. Developed States were encouraged to contribute to the growth of capacity of SIDS in accordance with Article 30 of the Convention, and to report annually on this issue.

AGENDA ITEM 6 — FUTURE WORK PROGRAMME

6.1 Report by the Secretariat on implementation of the 2009 approved programme of work

390. A report on the implementation status of the 2009 TCC work programme is contained in WCPFC-TCC5-2009/26.

6.2 Draft work programme for 2010–2014

391. The Executive Director presented the draft work programme and budget for 2010–2014 (WCPFC-TCC5-2009/27). He noted that the work programme is based on the 10 priority issues identified at WCPFC5 but, due to a higher than forecasted uptake of the Commission VMS, and due to estimates associated with the processing of ROP-generated data, the provisional budget was significantly more than presented in previous forecasts. Budget priorities were highlighted as being electronic or web-based data submission processes, and funding for the compliance officer and ROP data quality officer positions. Based on an earlier suggestion for a FAD study, the Secretariat will develop terms of reference for such a study and include it in the budget for consideration at WCPFC6.

392. In response to questions, the Executive Director explained that the item described as VMS training is designed to build capacity and promote understanding of the VMS and HSBI procedures through a workshop for interested CCMs.

393. Most CCMs were of the opinion that rather than extend the TCC meeting, it would be preferable to prioritize the issues for discussion and optimize the existing time available. The TCC Chair noted that because major issues such as data, VMS, boarding and inspection and the ROP are now well in hand, the TCC workload may ease.

394. Several CCMs noted the importance of providing the Secretariat with adequate resources.

395. The Secretariat agreed to provide Japan with further details on projected VMS operational costs for 2010–2013.

396. Japan reserved its right to provide further comments on VMS operational costs after reviewing these further details.

397. A variety of other specific issues were discussed by TCC5 and were reflected in an agreed decision point (below).

398. TCC5 reviewed in detail the draft work programme and budget for 2010–2014 (WCPFC-TCC5-2009/27). TCC5 noted the progress made on major MCS elements. CCMs stressed the need to prioritize items for the TCC6 agenda. CCMs encouraged the use of web-based systems by WCPFC, and ensuring that these systems are well-funded in the short term to enable budget savings in the longer term. Focused work is to be undertaken intersessionally on port State measures and catch documentation schemes during 2010 as a matter of priority. TCC noted the importance of ensuring the ROP and VMS are funded adequately to implement effective programmes. TCC5 recommends to WCPFC6 that the draft work programme and budget, with amendments proposed during TCC5, be considered by the Finance and Administrative Committee of WCPFC6.

AGENDA ITEM 7 — SUPPLEMENTARY ITEMS

7.1 Issues arising from SC5

399. The Executive Secretary presented a document highlighting two issues arising from SC5 (i.e. a definition of “FAD set”, and cooperation with IATTC [WCPFC-TCC5-2009/28]).

400. TCC noted “SC5 Outcomes Relating to the TCC” (WCPFC-TCC5-2009/28).

7.2 Independent performance review of the Commission

401. The Executive Director noted that WCPFC5 had tasked TCC5 with developing a structure and budget for an independent performance review to be conducted in 2010. A delegation paper originally submitted by Australia in 2007 is appended to WCPFC-TCC5-2009/IP-04.

402. Australia, supported by several other CCMs, noted that WCPFC is one of only two RFMOs that have yet to undertake an independent performance review. Although the WCPFC has only recently been

established, there would be considerable benefit to having early feedback on its effectiveness relative to the principles laid out in the Convention.

403. One CCM questioned the need for an independent performance review.

404. FSM, on behalf of FFA members, noted that if WCPFC CCMs were to be included in the review panel as proposed by Australia, FFA members should constitute more than 50% of the allotted seats and participation of FFA members must be financially supported.

405. The Executive Director noted that the review would be supported by the Secretariat as much as possible but that there are opportunity costs because support for the review would mean that staff may not be available to undertake other priority work.

406. TCC5 reviewed “Independent Performance Review for the Commission” (WCPFC-TCC5-2009/IP-04). TCC5 recommends to WCPFC6 that it agree to implement an independent performance review beginning in early 2010 with adequate funding being provided.

7.3 Cooperation with other organizations

407. The Executive Director presented “Relations with other organizations” (WCPFC-TCC5-2009/29). He noted that the approved formal and informal arrangements for cooperation with other organizations have been uploaded to the key documents section of the Commission website. The draft agreement with the North Pacific Anadromous Fish Commission (NPAFC) was endorsed by SC5, and TCC5 was invited to consider recommending this document to WCPFC6.

408. TCC5 reviewed “Relations with other organizations” (WCPFC-TCC5-2009/29). TCC5 recommends to WCPFC6 acceptance of the draft MOU with NPAFC.

409. TCC5 then discussed the draft data exchange agreement with IATTC.

410. Several CCMs commented that para 1(c) in this draft agreement was unacceptable because it prohibits the use of any exchanged data as the basis for legal action. These CCMs noted the linkages between this data exchange agreement and the ongoing process of agreeing cross-endorsement of observers.

411. TCC5 recommends to WCPFC6 that it not accept para 1(c) of the “Draft Memorandum of Cooperation on the Exchange and Release of Data between WCPFC and IATTC” and that the Commission advise IATTC to this effect.

Second Meeting of the Five Tuna RFMOs (WP 2009/30, Rev. 1)

412. The Secretariat presented a paper summarizing outcomes of the second meeting of Tuna RFMOs in San Sebastian, Spain held from 28 June to 3 July 2009 (WCPFC-TCC5-2009/30, Rev. 1). Four workshops arising from the San Sebastian discussions will be convened in 2010, one of which is on management of tuna fisheries, which will be hosted by FFA members.

413. TCC5 noted the report “Second Meeting of the Five Tuna RFMOs” (WCPFC-TCC5-2009/30, Rev. 1). TCC5 noted that FFA members have offered to host the workshop on RFMO management of tuna fisheries, and to provide a chair for this workshop.

7.4 Election of officers

414. TCC5 recommends to WCPFC6 the nomination of Noan Pakop (PNG) as Chair of the TCC and Dr Charles Karnella (USA) as Vice-Chair for the period 2010–2011.

7.5 Next meeting

415. Provisional dates for TCC6 of 30 September to 5 October 2010 were discussed.

416. TCC5 recommends to WCPFC6 that TCC6 take place in Pohnpei, FSM, from 30 September to 5 October 2010.

AGENDA ITEM 8 — REPORT TO THE COMMISSION

8.1 Adoption of the Summary Report of the Fifth Regular Session of the Technical and Compliance Committee, and any recommendations to the Commission

417. The advice and recommendations of the Summary Report were adopted by TCC5. The Chair agreed to circulate the complete Summary Report by 13 October 2009 for CCMs' comments. Once comments are considered and incorporated as appropriate, the Summary Report will be forwarded to WCPFC6 for its consideration.

AGENDA ITEM 9 — CLOSE OF MEETING

9.1 Close of meeting

418. The Chair thanked all delegations, observers and the Secretariat for their efforts during TCC5. The meeting was closed at 18:40 on 6 October 2009.

**Commission for the Conservation and Management of
Highly Migratory Fish Stocks in the Western and Central Pacific Ocean**

**Technical and Compliance Committee
Fifth Regular Session**

**1–6 October 2009
Pohnpei, Federated States of Micronesia**

ATTACHMENTS

Attachment A.	List of Participants
Attachment B.	Agenda
Attachment C.	Statement by Korea about Greenpeace
Attachment D.	WCPFC-TCC5-2009/DP-08 (Rev. 3)
Attachment E.	WCPFC-TCC5-2009/DP-09 (Rev. 3)
Attachment F.	WCPFC-TCC5-2009/34 (Rev. 1)
Attachment G.	WCPFC-TCC5-2009/DP-10 (Rev. 2)
Attachment H.	WCPFC-TCC5-2009/DP-12 (Rev. 1)

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LIST OF PARTICIPANTS

TCC CHAIR

Ambassador Wendell Sanford
High Commissioner
Canadian High Commissioner
Brunei
Ph: 673-222-0043 ext. 3800
wendell.sanford@international.gc.ca

AUSTRALIA

Lara Santana
Senior Policy Officer
Department of Agriculture, Fisheries and
Forestry
GPO Box 858
Canberra ACT 2600
Ph: 61- 2-6272-55715
lara.santana@daff.gov.au

Fraser McEachan
Manager International Fisheries Policy
Australian Fisheries Management Authority
PO Box 7051
Canberra Mail Centre
ACT 2601
Ph: 61-2-62255555
fraser.mceachan@afma.gov.au

CANADA

Robert Martinolich
Chief Enforcement Operations
Fisheries and Oceans Canada
#200-401 Burrard Street
Vancouver
BC V6C3S4
Robert.Martinolich@dfo-mpo.gc.ca

Lauren Donihee
International Fisheries Advisor
Fisheries and Oceans Canada
200 Kent Street, Station 8E229
Ottawa
Ontario K1A
Ph: 613-993-1853
lauren.donihee@dfo-mpo.gc.ca

CHINA

Wan Chen
Bureau of Fisheries
Ministry of Agriculture
No. 11 Nongzhanguan Nanli
Beijing 100125
Ph: 86-1059192969
bofdwf@agri.gov.cn

Zhao Gang

Deputy Secretary General
Distant Water Fisheries Branch of China
Fisheries Association
Room 1216 Jingchao Mansion, No.5
Nongzhanguan Nanlu
Ph: 86-10-65854085
admin@tuna.org.cn

COOK ISLANDS**Peter Graham**

Director of Policy and Legal Division
Ministry of Marine Resources
PO Box 85
Rarotonga
Ph: 682-28721
P.W.Graham@mnr.gov.ck

Colin Brown

Fisheries Adviser
Ministry of Marine Resources
PO Box 2011
Rarotonga
Ph: 682-70361
cibn@oyster.net.ck

EUROPEAN COMMUNITY**Staffan Ekwall**

Principal Administrator
200 Rue de la Roi
1000 Bruxelles
Belgium
Ph: 32-2-2996907
Staffan.ekwall@ec.europa.eu

Richard Thomasson

EC Delegate
European Commission
B-1049 Brussels
Belgium
Ph: 32-2-295-8346
richard.thomasson@ec.europa.eu

Maria Sagrario

Ministerio Medio Ambiente
Velaquez 144
Madrid
Spain
Ph: 34-91-347-6138
smosetma@wap.es

FEDERATED STATES OF MICRONESIA**Bernard Thoulag**

Executive Director
National Oceanic Resource Management
Authority (NORMA)
PO Box PS122
Palikir
Pohnpei FM 96941
Ph: 691-320-2700
norma@mail.fm / bthoulag@hotmail.com

Eugene Pangelinan

Deputy Director
National Oceanic Resource Management
Authority (NORMA)
PO Box PS122
Palikir
Pohnpei FM 96941
Ph: 691-320-2700
eugenep@mail.fm

James T. Movick

Consultant
FSM Government R&D
PO Box 2143
Kolonias
Pohnpei 96941
Ph: 691-320-5133
mbps@mail.fm

Milan Kamber

General Manager
Caroline Fisheries Corporation, Inc.
PO Box 7
Kolonias
Pohnpei 96941
Ph: 691-320-5791
cfc@cfctuna.com

Marko Kamber

Assistant Manager
Caroline Fisheries Corporation, Inc.
PO Box 7
Kolonia
Pohnpei 96941
Ph: 691-320-5791
cfc@cfctuna.com

Nicholson Solomon

CEO/President
National Fisheries Corporation
PO Box R
Kolonia
Pohnpei 96941
Ph: 691-320-2529
nicksolomon@aol.com

Samuel T. Chou

COO and President (Far East)
Luen Thai Fishing Venture Ltd.
5/F Nanyang Plaza
57 Hungto Road
Kwun Tong, Kowloon
Hong Kong
Ph: 852-2193-3000
samchou1@aol.com

FIJI**Madden George**

MCS Officer
Fiji Fisheries Department
Takayawa Building
Suva
Ph: 679-330-1611
joji_madden@yahoo.com

Jone Amoe

Oceanic Fisheries Officer
Department of Fisheries
Ministry of Primary Industries
PO Box 3165
Lami
Ph: 679-3301611
fishfinderfj@gmail.com

FRANCE**Dominique Person**

Head of Maritime Affairs, French Polynesia
French Ministry of Agriculture and Fisheries
BP 9096 98715
Papeete
French Polynesia
Ph: 689-54-95-30; cell: 689-77-69-07
dominique.person@affaires-maritimes

JAPAN**Naozumi Miyabe**

Chairman, Scientific Committee
National Research Institute of Far Seas Fisheries
Fisheries Research Center
5 Chome, 7-1 Orido Shimizu-ku
Shizuoka, 424 8633
Ph: 81-54-336-6000
miyabe@fra.affrc.go.jp

Takashi Koya

Senior Fisheries Negotiator
International Affairs Division
Fisheries Agency of Japan
1-2-1 Kasumigaseki, Chiyoda-ku
Tokyo 100-8907
Ph: 81-3-3502-8459
takashi_koya@nm.maff.go.jp

Takumi Fukuda

Assistant Director
International Affairs Division, Fisheries Agency
of Japan
1-2-1 Kasumigaseki, Chiyoda-ku
Tokyo 100-8907
Ph: 81-3-3502-8459
takumi_fukuda@nm.maff.go.jp

Akihiko Yatsuzuka

National Offshore Tuna Fisheries Association of
Japan
Tohan No.3 Bldg. 1-3-1 Uchikanda
Chiyoda-ku
Tokyo 101-0047
Ph: 81-3-3295-3721
yatsuzuka@kinkatsukyo.or.jp

Ikuo Miura

Furuno Electric Co., Ltd.
2-6 Kandaizumi-cho, Chiyoda-ku
Tokyo 101-0024
Ph: 81- 3-5687-0489
ikuo_miura@furuno.co.jp

Masaaki Nakamura

Japan Tuna Fisheries Cooperative Association
2-31-1 Eitai, Koto-ku
Tokyo, 135-0034
Ph: (81) 3-5646-2382
gyogyo@japantuna.or.jp

Minoru Honda

Japan Far Seas Purse Seine Fishing Association
Shonan Bldg. 6F, 14-10, Ginza1-Chome
Chuo-ku
Tokyo
Ph: 81-3-3564-2315
japan@kaimaki.or.jp

Takashi Shibata

Company President
Cubic-i-Ltd.
2-15-9 Nishi-Gotanda Shinagawa-ku
Tokyo 141-0031
Ph: 81-3-3779-5506
shibata@cubic-i-co.jp

Takeshi Miwa

Far Seas Division
Fisheries Agency of Japan
1-2-1 Kasumigaseki, Chiyoda-ku
Tokyo 100-8907
Ph: 81-3-3502-8459
takeshi_miwa@nm.maff.go.jp

Wataru Tanoue

International Affairs Division
Fisheries Agency of Japan
1-2-1 Kasumigaseki, Chiyoda-ku
Tokyo 100-8907
Ph: 81-3-3502-8459
wataru_tanoue@nm.maff.go.jp

Higaki Kosuke

Manager
National Ocean Tuna Fishery Association
Ph: 81-3-3294-9633
k-higaki@zengyoren.jf_net.ne.jp

Kikuo Chiyo

Manager
Japan Tuna Fisheries Cooperative Association
2-31-1 Eitai Koto-ku
Tokyo 135-0034
Ph: 81-3-5646-2382
gyogyo@japantuna.or.jp

Hiroshi Hashizu

Japan Far Seas Purse Seine Fishing Association
Shonan Bldg. 6F, 14-10, Ginza1-Chome
Chuo-ku, Tokyo
Ph: 81-3-3564-2315
japan@kaimaki.or.jp

Koichi Sakonju

Resident Representative
Overseas Fishery Cooperation Foundation
FSM Office
PO Box 2112, Kolonia
Pohnpei 96941
Ph: 691-320-8581/6867
sakonju@mail.fm

KIRIBATI**Mbwenea Teioki**

Ministry of Fisheries and Marine Resources
Development
mbweneat@mfmrd.gov.ki

KOREA**Cheol Woo Lee**

Director General, Distant Water Fish. Bureau
88, GwanMun-Ro, GwanCheon-si
Gyeonggi-Do 427-719
Ph: 82-2-500-1524
lcw216@mifaff.go.kr

Chiguk Ahn

Deputy Director
88 Gwanmu-ro, Gwacheon-Si
Syeonggi-do 427-719
Ph: 82-2-500-2422
yhefish@mifaff.go.kr
Ph: 82-2-500-2429
Chiguka62@yahoo.com

Jongkwan Ahn

Assistant Director
International Fisheries Organization Div.
88, GwanMun-Ro, GwanCheon-si
Gyeonggi-Do 427-719
Ph: 82-2-500-2415
Mobile: 82-2-503-9174
Ahnjk90@korea.kr

Kyung-Soo Lee

Deputy General Manager
Sajo Industries Co., Ltd
#157 Cheong Jeong-Ro, 2Ga Seodaemun-ku
Seoul
Ph: 82-2-3277-1815
kslee@sajo.co.kr

Hyunai Shin

Korea Overseas Fisheries Association
Seoul
Ph: 822-589-1613
fleur@kosfa.org

Jinsoo Park

Sajo Industries Co., Ltd
No.157 Chungjeongro 2ga, Seodaemungu
Seoul
Ph: 82-3277-1662
jspark@sajo.co.kr

Kwang-Se Lee

Executive Managing Director
(Silla Bldg) Baekjegobunno #362
Seokchon-Dong, Songpa-Gu
Seoul
Ph: 82-2-3434-9777 /417-2882
tunalee@sla.co.kr

Byung-Goo Min

Marine Business Division / Managing Director
Dongwon Industries Co. Ltd
#275, Yangjae-Dong, Seocho-Gu
Seoul
Ph: 82-2-589-3072
bgmin@dongwon.com

Hyosang Kim

Korea Overseas Fisheries Association
Seoul
Ph: 822-589-1615
Coelho@kosfa.org

REPUBLIC OF THE MARSHALL ISLANDS**Glen Joseph**

Director
Marshall Islands Marine Resources Authority
PO Box 860
Majuro
Ph: 692-625-8262
gjoseph@mimra.com

Samuel Lanwi Jr.

Deputy Director
Marshall Islands Marine Resources Authority
PO Box 860
Majuro
Ph: 692-625-8262
skljr@mimra.com

Doreen deBrum

Fisheries Policy and Planning Advisor
Division of Policy, Planning and Statistics
MIMRA
PO Box 860
Majuro 96960
Ph: 692-625-8262/5632
Fax: 692-625-5447
ddebrum@mimra.com

Tion Nabau

Fisheries Legal Advisor
tion-nabau@gmail.com

Austen Jurelang
RMI Sea Patrol
Majuro

Michael Vredenburg
Port State Control Officer
Trust Company of the Marshall Is.
PO Box 1405
Majuro, MI 96960
Ph: 692-247-3018
tcmipsc@ntamar.net

Derrick Wang
Vice President, South Pacific
Luen Thai Fishing Venture Ltd
278 Leon Guerrero Drive
Tamuning
Guam 96931
Ph: 1-671-647-0017
Mobile: 1-671-688-6692
wangderrick@aol.com

Eugene Muller
Manager
Koo's Fishing Co.
PO Box 321
Majuro, MI 96960
gene.muller@ntamar.net

NAURU

Murin Jeremiah
VMS
PO Box 449
Republic of Nauru
Ph: 674-444-3733/3739
Fax: 674-444-3812
Nauru Fisheries
murin.jeremiah@naurugov.nr

Terry Amram
Oceanic Manager
Nauru Fisheries and Marine Resources
PO Box 449
Awio District
Ph: 674-444-3733/3739

NEW CALEDONIA

Regis Etaix-Bonnin
Fisheries Expert
Government of New Caledonia
BP 36 98845
NOUMEA Cedex
Ph: 687-27-26-26
regis.etaix-bonnin@gouv.nc

NEW ZEALAND

Matt Hooper
International Policy
Ministry of Fisheries
PO Box 1020
Wellington
Ph: 64-4-819-4619
matt.hooper@fish.govt.nz

David Marx
Senior International Advisor
Ministry of Fisheries
New Zealand Government
PO Box 1020
Wellington
Ph: 64-4819-4231
david.marx@fish.govt.nz

Graeme McGregor
Senior Fisheries Advisor
Ministry of Fisheries
PO Box 19747
Auckland
Ph: 64-9-820 1990
DDI: 64-9-820-7689
graeme.mcgregor@fish.govt.nz

Jacqui Caine
Deputy Director, Legal Division
New Zealand Ministry of Foreign Affairs and
Trade
Private Bag 18901
Wellington
Ph: 64-4-439-8595
jacqui.caine@mfat.govt.nz

Gary Orr
Manager Maritime Operations
Ministry of Fisheries
ASB House
101-103 The Terrace
Wellington 6011
Ph: 64-4-8194230
gary.orr@fish.govt.nz

Martin de Beer
Pacific Tuna Manager
Sanford Limited
22 Jellicoe Street, Freemans Bay
PO Box 443
Auckland 1140
Ph: 64-27489302
mdebeer@sanford.co.nz

REPUBLIC OF PALAU

Nannette D. Malsol
Fisheries Law Compliance Officer II
Ministry of Resources and Development
PO Box 5050
Koror 96940
Ph: 680-488-3125
tunapal@palaunet.com

Thomas Tutii
Police Officer
Marine Law Enforcement
PO Box 5022
Koror 96940
Ph: 680-488-2882
thomastutii@yahoo.com

William H. Moses
Acting Director
Ministry of Public Infrastructure Industries and
Commerce
Koror 96940
Ph: 680-767-1000 ext.5009
dot@palaunet.com

Ernestine K. Rengil
Attorney General
Republic of Palau
Koror 96940
Ph: 680-488-2481
ekrengiil@palaunt.com

PAPUA NEW GUINEA

Sylvester Pokajam
Managing Director
National Fisheries Authority
PO Box 2016
Port Moresby, NCD
Ph: 675-309-0444

Noan Pakop
National Fisheries Authority
PO Box 2016
Port Moresby, NCD
Ph: 675-309-0444
npakop@fisheries.gov.pg

Ludwig Kumoru
National Fisheries Authority
PO Box 2016
Port Moresby, NCD
Ph: 675-309-0444
lkumoru@fisheries.gov.pg

Justin Ilakini
National Fisheries Authority
PO Box 2016
Port Moresby, NCD
Ph: 675-309-0444
jilakini@fisheries.gov.pg

David Karis
National Fisheries Authority
PO Box 2016
Port Moresby, NCD
Ph: 675-309-0444
dkaris@fisheries.gov.pg

Thomas Negints
General Manager
South Seas Tuna Corporation (Industry)
Box 376
Port Moresby, NCD
Ph: 675-321-3200
Thomas.Negints@South

Maurice Brownjohn
President, Fisheries Industry Association
PO Box 5860
Boroko, NCD
Ph: 675-309-0444
Netshop1@daltron.com.pg

Francis Houji

Fairwell Fishery (PNG) Ltd
PO Box 262
Gordons, NCD 0135
hope@daltron.com.pg

Chris Hsu

Vice-President
Southseas Tuna Corp.
Wewak
Ph: 675-933301733
sstcchris@gmail.com

PHILIPPINES**Benjamin F.S. Tabios Jr.**

Assistant Director
Bureau of Fisheries and Aquatic Resources
3rd Floor, PCA Bldg., Elliptical Road, Diliman,
Quezon City
Ph: 632-426-3426
benjo_tabios@yahoo.com

Noel C. Barut

National Fisheries Research and Development
Institute
940 Kayumanggi Press Bldg. 1, Quezon Avenue
Quezon City 1103
Ph: 63-2-3725063
noel_c_barut@yahoo.com

Alma C. Dickson

Agricultural Center Chief IV
Bureau of Fisheries and Aquatic Resources
3rd Floor PCA Main Bldg., Elliptical Road
Diliman, Quezon City
Ph: 632-929-6668
alma_dickson@yahoo.com

Augusto Natividad

Vice President
Frabelle Fishing Cooperation
Navotos City

SAMOA**Antonio P. Mulipola**

Assistant CEO
Fisheries Division
Ministry of Agriculture and Fisheries
PO Box 1874
Apia
Ph: 685-23863/ 20369
Fax: 685-24292
apmulipola@fisheries.gov.ws

SOLOMON ISLANDS**Charles Tobasala**

PFO (VMS/Surveillance)
Ministry of Fisheries and Marine Resources
PO Box 624
Honiara
Ph: 677-38106/38730
ctobasala@fisheries.gov.sb

Albert Wata

Fishing Industry
National Fisheries Development Ltd.
PO Box 717
Panatina Plaza Unit 15
Honiara
Ph: 677-30991
awata@trimarinegroup.com

Phil Roberts

Industry Representative
Trimarine International
Ph: 65-9829-3112
philroberts@trimarinegroup.com

CHINESE TAIPEI**Hong-Yen Huang**

Director
Fisheries Agency of Taiwan
Ph: 886-2-3343-6182
hangyen@msl.ga.gov.tw

Chi-Chao Liu

Section Chief
Fisheries Agency of Taiwan
No.1. Fishing Harbour North 1st Rd
Chien-chen District, Kaohsiung
Ph: 886-7-823-9843
chichao@msl.f.a.gov.tw

Ke-Yang Chen

Specialist, Deep Sea Fisheries Division
Fisheries Agency
No. 2, Chao-chow Street
Ph: 886-2-3343-6088
ckeyang@msl.f.a.gov.tw

Joseph Chia-Chi Fu

Secretary
Overseas Fisheries Development Council
19, Lane 113, Roosevelt Rd, S4
Taipei
Ph: 886-2-2738-1522 ext. 115
joseph@ofdc.org.tw

Huang-Chih Chiang

Professor
National Taiwan University
No. 2 Hsu Chow Road, No.1, Sect.4
Taipei
Ph: 886-2-3366 8919
hcchiang@ntu.edu.tw

Hsien-Chang Yang

Office, Coast Guard Administration
No. 296, Hsin-Lung Rd., Sec 3
Taipei
Ph: 886-2-2239-9303
yang631207@sea.cga.gov.tw

Chih-Kuo Chia

Office, Coast Guard Administration
No. 296, Hsin-Lung Rd., Sec 3
Taipei
Ph: 886-2-22399712
zenocck@cga.gov.tw

Chiung Hui Tsai

Representative
Fongkuo Fisheries
janettsai@fongkuo.com.tw

TOKELAU**Pouvave Fainuulelei**

Director of Fisheries
Government of Tokelau
Atafu
Ph: 685-770-3375
fainuulelei@lesamoa.net

Lise Hope Suveinakama

Senior Legal Advisor
Government of Tokelau
Atafu
Ph: 685-20-822; 778 5231
fainuulelei@lesamoa.net

TONGA**Viliami Mo'ale**

Principal Fisheries Officer
Fisheries Division
Ministry of Agriculture, Food, Forests &
Fisheries
PO Box 871
Nuku'alofa
Ph: 676-21399
vmoale@tongafish.gov.to

Mele Ikatonga Tauati

Fisheries Officer, Fisheries Division
Ministry of Agriculture, Food, Forests and
Fisheries
3 Olovaha Avenue, Fanga
Nuku'alofa
Ph: 676-23007/676-872-5701
imakasini@ongafish.gov.to
t_makasini@hotmail.com

TUVALU**Seve Lausaseve**

Permanent Secretary
Ministry of Natural Resources and Environment
Vaiaku, Funafuti
Ph: 688-20-160
ausaveve7@yahoo.com.au

Falasese Tupau

Fisheries Licensing officer
Department of Fisheries
Vaiaku, Funafuti
Ph: 688-20143
ffavms@tuvalu.tv/falasese@yahoo.com

UNITED STATES OF AMERICA**William L. Robinson**

Regional Administrator
NOAA Fisheries Service - PIRO
1601 Kapiolani Blvd., Suite 1110
Honolulu, HI 96814
Ph: 1-808-944-2200
bill.robinson@noaa.gov

Charles Karnella

International Fisheries Administrator - PIRO
US Department of Commerce
NOAA Fisheries Service
Pacific Islands Regional Office
1601 Kapiolani Blvd., Suite 1110
Honolulu, HI 96814
Ph: 1-808-944-2206
Fax: 1-808-973-2941
charles.karnella@noaa.gov

Thomas Graham

Fisheries Analyst
NOAA Fisheries Service - PIRO
1601 Kapiolani Blvd. Suite 1110
Honolulu, HI 96814
Ph: 1-808-944-2219
tom.graham@noaa.gov

Raymond Clarke

Fisheries Biologist
NOAA Fisheries Service - PIRP
1601 Kapiolani Blvd., Suite 1110
Honolulu, HI 96814
Ph: 1-808-944-2205
Raymond.Clarke@noaa.gov

Alexa Cole

Senior Enforcement Attorney
NOAA Office of General Counsel
Pacific Islands Region
1601 Kapiolani Blvd, Suite 1110
Honolulu, HI 96814
Ph: 1-808-944-2167 Fax: 1-808-973-2941
alexa.cole@noaa.gov

Sarah McTee

Office of Marine Conservation
US Department of State
2201 C Street, NW Suite 2758
Washington, DC 20520
Ph: 1-202-647-3941
McTeeSA@state.gov

Holly Koehler

Foreign Affairs Officer
Office of Marine Conservation,
US Department of State
2201 C Street, NW Suite 2758
Washington, DC 20520
Ph: 1-202-647-3010
koehlerhr@state.gov

Brad Wiley

Foreign Affairs Specialist
National Marine Fisheries Service
1315 East West Highway
Silver Spring, MD 20910
Ph: 1-301-713-2276
brad.wiley@noaa.gov

Rhea Moss

Fishery Policy Analyst
PIRO 1601 Kapiolani Blvd., Suite 1110
Honolulu, HI 96814
Rhea.Moss@noaa.gov

Paul Krampe

Executive Director
American Tunaboat Association
1 Tuna Lane Suite 1
San Diego, CA 92101
Ph: 1-619-233-6407; Fax: 1-619-839-3643
krampepaul@aol.com

Terry Boone
VMS Manager, OLE
1601 Kapiolani Blvd., Suite 950
Honolulu, HI 96814
Ph: 1-808-203-2503
Terry.Boone@noaa.gov

Linda Paul
Hawaii Audubon Society
815 Pahumele Place
Kailua, HI 96734
Ph: 1-808-262-6859
Fax: 1-808-263-7728
linpaul@aloha.net

Eric Kingma
NEPA Coordinator
West Pac. Fishery Management Council
1164 Bishop St.
Honolulu, HI 96813
Ph: 1-808-522-8220
eric.kingma@noaa.gov

John Barylsky
Assistant Special Agent in Charge
NOAA office of Law Enforcement
1601 Kapiolani Blvd., Suite 950
Honolulu, HI 96814
Ph: 1-808-203-2555

Chris Barrows
US Coast Guard Liaison
Office of Marine Conservation
U.S. Department of State
2201 C. Street NW, Suite 2758
Washington DC 20520
Ph: 1-202-647-3371
barrowscm@state.gov

Sean Martin
Western Pacific Fishery Council
1133 N.Nimitz Highway
Ph: 1-808-478-0023
Sean@pop-hawaii.com

Jay Caputo
Fisheries Law Enforcement
US Coast Guard District 14
300 Ala Moana Blvd.
Honolulu, HI 96850
jay.caputo@uscg.mil

Frederick Tucker
Regional Counsel
Office of NOAA General Counsel
Pacific Islands Region
1601 Kapiolani Blvd.
Honolulu, HI 96814
Ph: 1-808-944-2164
Frederick.tucker@noaa.gov

Randi Parks Thomas
Vice President
National Fisheries Institute
7918 Jones Branch Dr, Suite 700
McLean, VA 22102
Ph: 1-703-752-8895
rthomas@nfi.org

Svein Fougner
Hawaii Longline Association
32506 Seahill Dr.
Rancho Palos Verdes, CA 90275
Ph: 1-310-377-2661
sveinfougner@cox.net

VANUATU

Robert Jimmy
Acting Director
Vanuatu Fisheries Department
VMB 9045
Port Vila
Ph: 678-23119
Fax: 678-23641; 7747336
robert.jimmy@gmail.com

Wesley Obed
Acting Compliance Manager
Vanuatu Fisheries Department
VMB 9045
Port Vila
Ph: 678-23119; 7741318
Fax: 678-23641
wes.obed@gmail.com

Tony Taleo

Observer & Data Manager
Vanuatu Fisheries Department
VMB 9045
Port Vila
Ph: 678-23119; 7755560
Fax: 678-23641
ttaleo@gmail.com

COOPERATING NON-MEMBERS***EL SALVADOR*****Carlos Sanchez**

Fisheries Department Representative
Edificio Gran Plaza, 1er. Nivel
Local #103 Boulevard de Hil
Ph: 34-607-18-7230
carlos.sanchez@calvo.es

OBSERVERS***ECUADOR*****Rafael Truillo**

Director Executive
Chamber of Fisheries
9 De Octubre 424, of 802
Guayaquill
Ph: 593-4-2306142
direjec@camaradedepesqueria.com

FORUM FISHERIES AGENCY**Transform Aqorau**

Deputy Director General
Pacific Islands Forum Fisheries Agency
PO Box 629
Honiara, Solomon Islands
Ph: 677-21124
transform.aqorau@ffa.int

Andrea Volentras

Director Fisheries Operation
Pacific Islands Forum Fisheries Agency
PO Box 629
Honiara, Solomon Islands
andrea.volentras@ffa.int

Manu Tupou-Roosen

Legal Counsel
Pacific Islands Forum Fisheries Agency
PO Box 629
Honiara, Solomon Islands
Ph: 677-21124
Fax: 677-23995
manu.tupou-roosen@ffa.int

Timothy Park

Observer Program Manager
Pacific Islands Forum Fisheries Agency
PO Box 629
Honiara, Solomon Islands
Ph: 677-21124
tim.park@ffa.int
timothy.park@ffa.int

Apolosi Turaganivalu

Compliance Policy Officer
Pacific Islands Forum Fisheries Agency
PO Box 629
Honiara, Solomon Islands
Ph: 677-21124
apolosi.turaganivalu@ffa.int

Ramesh Chand

Acting VMS Manager
Pacific Islands Forum Fisheries Agency
PO Box 629
Honiara, Solomon Islands
Ph: 677-21124
Fax: 677-23995
ramesh.chand@ffa.int

Lara Manarangi-Trott

Coordinator/Policy Advisor-WCPFC
Pacific Islands Forum Fisheries Agency
PO Box 629
Honiara, Solomon Islands
Ph: 677-21124
Fax: 677-23995
lara.manarangi-trott@ffa.int

Anton Jimwereiy
PNA Coordinator
Pacific Islands Forum Fisheries Agency
PO Box 629
Honiara, Solomon Islands
Ph: 677-21124
Fax: 677-23995
anton.jimwereiy@ffa.int

Wez Norris
Fisheries Management Advisor
Pacific Islands Forum Fisheries Agency
PO Box 629
Honiara, Solomon Islands
Ph: 677-21124
wez.norris@ffa.int

Les Clark
Consultant
85 Innes Road
Christchurch, New Zealand
Ph: 64-3-356-2896
les_g_clark@xtra.co.nz

Callista Murdoch
PA-Deputy Director-General
Pacific Islands Forum Fisheries Agency
PO Box 629
Honiara, Solomon Islands
Ph: 677-21124
callista.murdoch@ffa.int

Glenn Hurry
Consultant
Pacific Islands Forum Fisheries Agency
1 FFA Rd
Honiara, Solomon Islands
glenn.hurry@afma.gov.au

GREEN PEACE

Duncan Williams
Oceans Campaigner (Pacific)
1st Floor Old Town Hall building
Victoria Parade
Suva, Fiji
Ph: 679-331-2861/3315
duncan.williams@greenpeace.org

PACIFIC INTERNATIONAL MARITIME LAW ASSOCIATION

Timoci Romanu
Staff Attorney
FSM Department of Justice
PO Box PS
Palikir, FSM
Ph: 691-320-2354
romanu_t@yahoo.com

SECRETARIAT

Ambassador Satya Nandan
Chairman WCPFC
301 East 48th St.
New York, NY 10017
Ph: 212-752-2449
Mobile: 917-386-6336

Andrew Wright
Executive Director
PO Box 2356
Kolonias, Pohnpei 96941
Federated States of Micronesia
Ph: 691-320-1992
Fax: 691-320-1108
wcpfc@wcpfc.int
andrew.wright@wcpfc.int

SungKwon Soh
Science Manager
PO Box 2356
Kolonias, Pohnpei 96941
Federated States of Micronesia
Ph: 691-320-1992
Fax: 691-320-1108
sungkwon.soh@wcpfc.int

Andrew Richards
Compliance Manager
PO Box 2356
Kolonias, Pohnpei 96941
Federated States of Micronesia
Ph: 691-320-1992
Fax: 691-320-1108
andrew.richards@wcpfc.int

Ken Smithson

Finance and Administration Officer
PO Box 2356
Kolonias, Pohnpei 96941
Federated States of Micronesia
Ph: 691-320-1992
Fax: 691-320-1108
ken.smithson@wcpfc.int

Shelley Clarke

Rapporteur
Imperial College, London
1675 Sasama-kami, Kawane-cho, Shizuoka-ken
Japan 428-0211
Ph: 81-547-54-0275
shelley.clarke@imperial.ac.uk

Karl Staisch

Observer Program Coordinator
PO Box 2356
Kolonias, Pohnpei 96941
Federated States of Micronesia
Ph: 691-320-1992
Fax: 691-320-1108
karl.staisch@wcpfc.int

Sam Taufao

ICT Manager
P.O Box 2356
Kolonias, Pohnpei 96941
sam.taufao@wcpfc.int

Albert Carlot

Manager VMS
PO Box 2356
Kolonias, Pohnpei 96941
albert.carlot@wcpfc.int

Glenn Jano

Administrative Assistant Data Entry
PO Box 2356
Kolonias, Pohnpei 96941
Ph: 691-320-1992
Fax: 691-320-1108
glenn.jano@wcpfc.int

Herolyn Movick

Admin. Support
PO Box 2356
Kolonias, Pohnpei 96941
Ph: 691-320-1992/1993
Fax: 691-320-1108
herolyn.movick@wcpfc.int

Lucille Martinez

Admin. Support
PO Box 2356
Kolonias, Pohnpei 96941
Ph: 691-320-1992/1993
Fax: 691-320-1108
lucille.martinez@wcpfc.int

Mercy Ringlen

Admin. Support
PO Box 2356
Kolonias, Pohnpei 96941
Ph: 691-320-1992/1993
Fax: 691-320-1108
mercy.ringlen@wcpfc.int

Milo Abello

VSMS Operations Officer
PO Box 2356
Kolonias, Pohnpei 96941
Federated States of Micronesia
Ph: 691-320-1992/1993
Fax: 691-320-1108
milo.abello@wcpfc.int

Julio Mendez

VMS Operations Officer
PO Box 2356
Kolonias, Pohnpei 96941
Ph: 691-320-1992/1993
Fax: 691-320-1108
Julio.mendez@wcpfc.int

**Commission for the Conservation and Management of
Highly Migratory Fish Stocks in the Western and Central Pacific Ocean**

**Technical and Compliance Committee
Fifth Regular Session**

**1–6 October 2009
Pohnpei, Federated States of Micronesia**

AGENDA FOR THE FIFTH REGULAR SESSION OF THE TCC

**WCPFC-TCC5-2009/03 (Rev.4)
1 October 2009**

AGENDA ITEM 1 OPENING OF MEETING

- 1.1 Welcome
- 1.2 Adoption of agenda
- 1.3 Meeting arrangements
- 1.4 Opening Statements

**AGENDA ITEM 2 PRIORITY MONITORING, CONTROL AND SURVEILLANCE (MCS)
ISSUES BEFORE THE COMMISSION**

- 2.1 Regional Observer Programme
 - a) Report of the Third Meeting of the Inter-sessional Working Group
 - b) Consideration of outstanding issues
 - c) Annual Report by the Secretariat (see CMM 2007-01, para. 3)
 - d) Estimated costs of observer data management options
 - e) Cross-endorsement of IATTC Observers
- 2.2 Transshipment verification procedures
- 2.3 Non-CCM flag carriers and bunkers
- 2.4 Charter Arrangements (CMM 2008-01, para. 2 and CMM 2008-05, para. 7)
- 2.5 AHTG [Data]
 - a) Report of the Second Meeting of the AHTG [Data]
 - b) Advice and recommendations to the Commission
- 2.6 VMS
 - a) Annual Report on the Commission VMS (see para. 7.3.9 SSPs)
 - b) Operating costs of the Commission VMS
 - c) Enhancement options and future work (also provided for in para. 7.3.9 SSPs)
- 2.7 IUU Vessel List and IUU Listing Procedures.
 - a) Draft Provisional IUU Vessel List for 2010
 - b) WCPFC IUU Vessel List
 - c) Recent incidents brought to the attention of TCC5
 - d) CMM 2007-03 – Review of outstanding issues from WCPFC5
 - i) Review of paragraph 3(j) of CMM 2007-03
 - ii) Control of nationals
 - iii) IUU listing procedures
 - e) Stateless Vessels
- 2.8 WCPFC Record of Fishing Vessels

- a) Current status and developments, including a web-based system for vessel record information
- b) Unique Vessel Identifier
- 2.9 High Seas Boarding and Inspection.
 - a) Annual Reports by CCMs (see para. 40, CMM 2006-08)
 - b) Data Buoys
- 2.10 Compliance with reporting obligations.
 - a) Part 2 Reports
 - i) Submissions by CCMs.
 - ii) Part 2 Report Template.
 - b) Report by the Secretariat.
 - c) Further development of the process for monitoring compliance.
- 2.11 Advice and recommendations in relation to the implementation of CMMs.
 - a) CMM 2004-03, para. 4.1
 - b) CMM 2006-04, para. 6
 - c) CMM 2007-04, para. 6
 - d) CMM 2008-01, para. 21, 24, 26, 29, 43, 44 and 45
 - e) CMM 2008-03, para. 7, 9 and 12
 - f) CMM 2008-05, para. 5 and 11
 - g) CMM 2008-06, para. 13

AGENDA ITEM 3 APPLICATIONS FOR COOPERATING NON-MEMBER STATUS

AGENDA ITEM 4 ADDITIONAL MONITORING, CONTROL AND SURVEILLANCE (MCS) ISSUES BEFORE THE COMMISSION

- 4.1 Port State Measures
- 4.2 Catch Documentation Scheme
- 4.3 Procedures for granting CNM status

AGENDA ITEM 5 SPECIAL REQUIREMENTS OF SMALL ISLAND DEVELOPING STATES

AGENDA ITEM 6 FUTURE WORK PROGRAM

- 6.1 Report by the Secretariat on implementation of the 2009 approved programme of work
- 6.2 Draft Work Program for 2010-2014

AGENDA ITEM 7 SUPPLEMENTARY ITEMS

- 7.1 Issues arising from SC5
- 7.2 Independent Performance Review of the Commission
- 7.3 Cooperation with Other Organizations
- 7.4 Election of Officers
- 7.5 Next Meeting.

AGENDA ITEM 8 REPORT TO THE COMMISSION

- 8.1 Adoption of the Summary Report of the Fifth Regular Session of the Technical and Compliance Committee, and any recommendations to the Commission.

AGENDA ITEM 9 CLOSE OF MEETING

- 9.1 Close of meeting

**Commission for the Conservation and Management of
Highly Migratory Fish Stocks in the Western and Central Pacific Ocean**

**Technical and Compliance Committee
Fifth Regular Session**

**1–6 October 2009
Pohnpei, Federated States of Micronesia**

STATEMENT BY KOREAN DELEGATION ON GREENPEACE ACTION

Thank you, Mr. Chairman for allowing me to make some remarks.

I would like to express my deep concern about the illegal activity of Greenpeace against a Korean longliner, which was normally operating in the high seas near the Kiribati waters in accordance with the Convention and its conservation and management measure. On September 14, 2009, the Esperanza, the vessel from Greenpeace, approached to the Korean longliner, Oryong 717, and Greenpeace activists cut the fishing gear. Greenpeace also publicized its activity on its website under the title “Greenpeace confiscates Korean tuna fishing gear”. The word “confiscates” is far from being appropriate in this case since Greenpeace has no authority to deter fishing activities. A fishing vessel should be controlled by the flag State in accordance with the Convention and its conservation and management measures, not by a NGO.

The Republic of Korea regards this Greenpeace action as definitely illegal, just like that of a pirate in the sea. This should not be justified under any circumstances.

Mr. Chairman,

Korea never opposes Greenpeace campaign toward resource conservation. However, the campaign should be fulfilled peacefully according to the international law. Korea, as a State, has responsibility to protect its people and their property. And I’m afraid that Greenpeace repeated illegal action against Korean fishing vessel could drive the Korean government to take certain reaction in the national level. And we believe, also in the level of Commission, we should not support any unlawful activities of Greenpeace within the Convention area and send a strong message not to repeat an illegal activity in the sea.

Having said so, Korea wants these statements to be recorded in the meeting report.

Thank you, Mr. Chairman.

**Commission for the Conservation and Management of
Highly Migratory Fish Stocks in the Western and Central Pacific Ocean**

**Technical and Compliance Committee
Fifth Regular Session**

**1–6 October 2009
Pohnpei, Federated States of Micronesia**

**MARSHALL ISLANDS — DRAFT CONSERVATION AND MANAGEMENT MEASURE ON
REGULATIONS OF TRANSHIPMENT**

**WCPFC-TCC5-2009/DP-08 (Rev.3)
5 October 2009**

The Commission for the Conservation and Management of Highly Migratory Fish Stock in the Western and Central Pacific Ocean,

Acknowledging that effective conservation and management of highly migratory fish stocks is dependent on the provision of accurate reporting of catches of such stocks in the Convention Area;

Recognizing that transshipment at sea is a common global practice, but that unregulated and unreported transshipment of catches of highly migratory fish stocks at sea, in particular on the high seas, contributes to distorted reporting of catches of such stocks and supports IUU fishing in the Convention Area;

Recalling Article 29(1) of the Convention which provides that in order to support efforts to ensure accurate reporting of catches, the members of the Commission shall encourage their fishing vessels, to the extent practicable, to conduct transshipment in port.

Recalling also Article 29(2) and (3) of the Convention that transshipment at a port or in an area within waters under the national jurisdiction of a member of the Commission shall take place in accordance with applicable national laws, and that the Commission shall develop procedures to obtain and verify data on the quantity and species transhipped both in port and at sea in the Convention Area and procedures to determine when transshipment covered by the Convention has been completed;

Recalling further Article 29(4) of the Convention that Transshipment at sea in the Convention Area beyond areas under national jurisdiction shall take place only in accordance with the terms and conditions set out in article 4 of Annex III to the Convention, and any procedures established by the Commission pursuant to Article 29(3). Such procedures shall take into account the characteristics of the fishery concerned;

Recalling further that Article 29(5) of the Convention prohibits transshipping at sea by purse seine vessels operating within the Convention Area, subject to specific exemptions which the Commission shall adopt in order to reflect existing operations;

Recognizing the importance of economic benefits from port operations to Small Island Developing State CCMs;

Noting that those CCMs with a real interest in undertaking monitoring, control and surveillance activities in the high seas require access to information about transshipment activities in the convention area before they occur.

Desiring to establish procedures to obtain and verify data on the quantity and species transhipped in the Convention Area to ensure accurate reporting of catches, and enhance stock assessments of highly migratory fish stocks.

Adopts in accordance with Article 10 of the WCPFC Convention:

SECTION 1 – GENERAL RULES

1. [[The provisions of this Measure shall apply to all transshipment in the Convention Area of all highly migratory fish stocks covered by the Convention, and will apply to the transshipment outside the Convention Area of highly migratory fish stocks covered by the Convention taken in the Convention Area.]]
2. The provisions of this Measure shall not apply to transshipment of highly migratory fish stocks where fish is taken and transhipped wholly in archipelagic waters or territorial seas.
3. Transshipment in a port or in waters under the national jurisdiction of a CCM shall take place in accordance with applicable national laws. With the exception of Section 2 (which applies article 29(5) of the Convention), nothing in this Measure shall prejudice the application of national laws when transshipment occurs in areas under the national jurisdiction of a CCM, including the application of more stringent requirements.
4. A CCM may notify the Executive Director of its designated port or ports for transshipment. The Executive Director shall circulate periodically to all members a list of such designated ports. “Port” includes offshore terminals and other installations for landing, transshipping, processing, refuelling or resupplying;
5. Nothing in this Measure shall derogate the obligations on flag states to ensure compliance by vessels flying their flag while operating on the high seas. Each CCM shall take necessary measures to ensure that vessels flying its flag comply with this Measure.
6. For the purposes of this Measure, CCMs are responsible for reporting against vessels flying their flag except where the vessel is operated under charter, lease or other similar mechanisms, as an integral part of the domestic fleet of a coastal state in the Convention Area. In such case, the chartering state shall be the CCM responsible for reporting against the vessel.
7. Pursuant to paragraph 6, chartering CCMs and flag CCMs will cooperate for the appropriate management of the vessel to ensure compliance.
8. For a carrier vessel that is flagged to a non-CCM and is included on the WCPFC Interim Register of non-Member Carrier and Bunker Vessels, the vessel master shall be responsible for reporting against the vessel unless it is operating under a charter arrangement.
9. A WCPFC Transshipment Declaration, including the information set out in Annex I shall be

completed by both the offloading and receiving vessel for each transshipment in the Convention Area, and each transshipment of catch taken in the Convention Area. Where required in this Measure the Transshipment Declaration shall be sent to the Executive Director.

10. CCMs shall report on all transshipment activities covered by this Measure (including transshipment activities that occur in ports or EEZs) as part of their Annual Report in accordance with the guidelines at Annex II. In doing so, CCMs shall take all reasonable steps to validate and where possible, correct information received from vessels undertaking transshipment using all available information such as catch and effort data, position data, observer reports and port monitoring data.
11. Notices to the Executive Director under paragraphs 22 and 33.a.iii shall be given via a means of two-way communication by data (e.g., telex, facsimile, email). The CCMs responsible for reporting against both the offloading and receiving vessels are responsible for providing notices, but may authorize the vessel or the vessel operator to provide notices directly. Notices must include the information set out in Annex III.
12. [Each CCM shall ensure that there is 100% coverage on [[receiving vessels]] by observers from the WCPFC Regional Observer Programme (ROP) of all transshipments at sea. Observers shall monitor implementation of this Measure, and notably that the transhipped quantities are consistent with information available to the observer, which may include any of the following:
 - a. the catch reported in the WCPFC Transshipment Declaration;
 - b. catch and effort logsheets, including catch and effort logsheets reported to coastal waters in waters from which fish being transhipped has been taken;
 - c. position data; and
 - d. the intended port of landing.]

[[12 alt. Each CCM shall ensure that vessels they are responsible for carry observers from the WCPFC Regional Observer Programme (ROP) to observe transshipments at sea as follows:

- a. for transshipments to receiving vessels less than or equal to 33 meters in length, and not involving purse seine-caught fish or frozen longline-caught fish, 100% observer coverage starting on the effective date of this Measure, with the observer(s) deployed on either the offloading vessel or receiving vessel;
- b. for transshipments involving only troll-caught or pole-and-line-caught fish, 100% observer coverage starting 1 January 2013;
- c. for all other transshipments covered by this Measure, 100% observer coverage starting on the effective date of this Measure, with the observer(s) deployed on the receiving vessel.

12 alt bis. Observers shall monitor implementation of this Measure, and notably {refer to 12 a-d}...]]

13. Observers shall have full access to both the unloading and the receiving vessel in order to ensure that proper verification of catches can occur.

14. Receiving vessels shall only receive product from one unloading vessel at a time for each observer that is available to monitor the transshipment.
15. [[OBSERVER CROSS ENDORSEMENT.....]]
16. The Commission shall provide appropriate financial and technical assistance to developing states, in particular small island developing states, in the implementation of this Measure including in accordance to Article 30.
17. The measure shall be reviewed periodically in response to other measures and decisions taken by the Commission and taking into account the implementation of this and other measures.

1A – Transhipment to and from non-CCM Vessels

18. [[CCMs shall take measures to ensure that vessels do not tranship to or from a vessel flagged to a non-CCM unless that vessel is authorized by a decision of the Commission, such as:
- a. a non-CCM carrier vessel that is on the WCPFC Interim Register of non-CCM Carrier and Bunker Vessels established under CMM 2009-XX; or
 - b. a non-CCM fishing vessel that is licensed to fish in the EEZ of a CCM in accordance with a decision of the Commission.]]
19. To retain any authorisation from the Commission relevant to paragraph 18, a non-CCM vessel shall not tranship to or from a non-authorized non-CCM vessel.
20. In cases where transhipment involves a non-CCM vessel specified in paragraph 18.a, any required communications to the Executive Director, including pre-transhipment notices and transhipment declarations that are required under various sections of this measure, shall be responsibility of the vessel master of the carrier vessel or chartering CCM.

1B – Force Majeure or Serious Mechanical Breakdown

21. Unless otherwise stated, the restrictions in this measure shall not prevent a vessel from transhiping in cases of force majeure or serious mechanical breakdown that could threaten the safety of the crew or result in a significant financial loss though fish spoilage.
22. In such cases, the Executive Director must be notified of the transhipment and the circumstances giving rise to the force majeure within 12 hours of the completion of transhipment. The CCMs responsible for each vessel shall provide the Executive Director with a WCPFC Transhipment Declaration consistent with the requirement under paragraph 7 within 15 days of the transhipment.

SECTION 2 – TRANSHIPMENT FROM PURSE SEINE FISHING VESSELS

23. In accordance with Article 29 (5) of the Convention, transhipment at sea by purse seine vessels shall be prohibited except in respect of exemptions granted by the Commission for:
- a. existing group seine operations composed of small purse seine boats (600 mt or less) flagged to Papua New Guinea and Philippines that meet the following conditions:
 - i. operate in tandem with freezer carrier boat/s to freeze the catch or if operating closer to base with ice carrier boat/s to store the fish,
 - ii. operate as one group together with their support vessels such as freezer carrier boat/s and/or ice carrier boat/s.
 - iii. undertake transhipment when refrigerated or other ice carrier boats dock alongside catcher boats and tranship fish from the catcher boats
 - b. transhipment activities involving New Zealand flagged domestic purse-seine vessels where the fishing activity, transhipment and landing of fish all take place within New Zealand fisheries waters in accordance with New Zealand’s existing legal and operational framework for monitoring and control of transhipment activity and the verification of catch.

24. CCMs seeking to apply an exemption for a vessel(s) that meets the conditions set out in paragraph 23, shall submit a written request to the Executive Director by 1 July of a given year that includes, at a minimum, the following information:
 - a. Details about the vessel(s) as they are required to appear on the WCPFC Record of Fishing Vessels under CMM 2004-01;
 - b. The vessel's history of prior transshipment exemptions,
 - c. The main species and product forms that would be transhipped,
 - d. The areas where transshipments would take place, to as much detail as possible,
 - e. The period of exemption being requested, and
 - f. An explanation for the exemption request.
25. The Executive Director shall compile all requests for transshipment exemptions and circulate them to all CCMs at least 30 days in advance of the regular annual session of the Technical and Compliance Committee (TCC). The TCC shall review the requests and make recommendations to the Commission regarding the application of the exemptions in para 18.
26. Taking into account the recommendations of the TCC, the Commission, during its regular annual session, shall consider each request and may adopt exemptions in accordance with Article 29(5) of the Convention. The Commission may attach to each granted exemption any conditions or requirements that it determines necessary to achieve the objectives of the Convention, such as limitations on areas, time periods or species, the fishing vessels that may be transhipped to, and any additional requirements necessary for the purposes of monitoring, control and surveillance.
27. CCMs shall only authorize those purse seine vessels that that have received an exemption by the Commission to engage in transshipment outside of port. CCMs shall issue vessel-specific authorizations outlining any conditions or requirements identified by the Commission or CCM, and shall require that vessel operators carry such authorizations on board at all times.
28. The flag State CCM any such authorized purse-seine vessel that is required to be on the WCPFC Record of Fishing Vessels shall notify the Executive Director that the vessel is authorized to engage in transshipment outside of port, in accordance with the Commission-granted exemption and shall indicate in such notification any limitations, conditions or requirements on its authorization.
29. The Executive Director shall maintain and make publicly available, including on the Commission's website, the list of purse seine vessels that have been granted exemptions and are authorized to tranship outside of port, as well as any corresponding conditions or provisions attached to their exemption.
30. All purse seine vessels, including those that receive an exemption to tranship at sea under process described in paragraphs 24 to 28 shall be prohibited from commencing transshipping on the high seas in the Convention Area.

SECTION 2 – TRANSHIPMENT FROM FISHING VESSELS OTHER THAN PURSE SEINE VESSELS

31. Transshipment from longline, troll and pole and line fishing vessels in national waters shall be managed in accordance with relevant domestic laws and procedures pursuant to paragraph 3.
32. There shall be no transshipment on the high seas except where a CCM has determined, in accordance with the guidelines described in paragraph 36 below, that it is impracticable for certain vessels that it is responsible for to operate without being able to tranship on the high seas, and has advised the Commission of such.
33. Where transshipment does occur on the high seas:
 - a. the CCMs responsible for reporting against both the offloading and receiving vessels shall, as appropriate:
 - i. advise the Commission of its procedures for monitoring and verification of the transshipments;
 - ii. indicate vessels to which the determinations apply.
 - iii. notify the information in Annex III to the Executive Director at least 36 hours prior to each transshipment.
 - iv. provide the Executive Director with a WCPFC Transshipment Declaration within 15 days of completion of each transshipment; and
 - v. Submit to the Commission a plan detailing what steps it is taking to encourage transshipment to occur in port in the future.
34. [[USA text to RMI??.....]]
35. The Commission, through the TCC, shall review each vessel determination after a period of 3 years and every 2 years thereafter to establish whether monitoring and verification has been effective. After review, the Commission may prohibit transshipment on the high seas by any vessel or vessels in relation to which monitoring and verification of transshipment on the high seas is proven to have been ineffective, or establish or vary any conditions for transshipping on the high seas.
36. The Executive Director shall prepare draft guidelines for the determination of circumstances where it is impracticable for certain vessels to tranship in port or in waters under national jurisdiction. The Technical and Compliance Committee shall consider these guidelines, amend as necessary, and recommend them to the Commission for adoption in 2012. In the meantime, CCMs shall use the following guidelines when determining the practicability of high seas transshipments
 - a. The prohibition of transshipment in the high seas would cause a significant economic hardship,[which would be assessed by comparing the average value of the catch to be transshipped with the average cost that would be incurred to move into waters under the national jurisdiction of a CCM]; and
 - b. The vessel would have to make significant and substantial changes to its historical mode of operation as a result of the prohibition of transshipment in the high seas;
37. When adopting the Guidelines referred to in paragraph 36, the Commission shall consider whether to prohibit transshipment in areas of high seas in the Convention Area entirely surrounded by the

exclusive economic zones of CCMs. This consideration will include a review of the catch and effort reported for fishing vessels in these areas, the information from Transshipment Declarations in these areas and the role of the areas in supporting IUU activities.

ANNEX I

INFORMATION TO BE INCLUDED IN WCPFC TRANSHIPMENT DECLARATION

1. A unique document identifier
2. the name of the fishing vessel and its WIN,
3. the name of the carrier vessel and its WIN
4. the quantity of product⁴ (including species and its processed state⁵) to be transhipped
5. the state of fish (fresh or frozen)
6. the quantity of by-product⁶ to be transhipped,
7. the geographic location⁷ of the highly migratory fish stock catches
8. the date and location⁸ of the transhipment
9. If applicable, the name and signature of the WCPFC observer
10. The quantity of product already on board the receiving vessel and the geographic origin⁹ of that product.

⁴ Tuna and tuna-like species.

⁵ Whole; gutted and headed; gutted, headed and tailed; gutted only, not gilled; gilled and gutted; gilled, gutted and tailed; shark fins.

⁶ Non tuna and tuna-like species

⁷ Geographic location of catch means sufficient information to identify what proportion of the catch was taken in the following areas: High seas, outside the WCPFC Convention Area, EEZs (listed separately).

⁸ Location of transhipment is to be in decimal Latitude and Longitude to the nearest 0.1 degrees and accompanied by a description of the location, such as high seas, outside the convention area or within a named EEZ.

⁹ The origin of product shall be reported by RFMO area and will include the quantity of product from each different area.

ANNEX II

TRANSHIPMENT INFORMATION TO BE REPORTED ANNUALLY BY CCMs

Each CCM shall include in Part 1 of its Annual Report to the Commission:

- (1) the total quantities, by weight, of highly migratory fish stocks covered by this measure that were transhipped by fishing vessels the CCM is responsible for reporting against, with those quantities broken down by:
 - a. offloaded and received;
 - b. transhipped in port, transhipped at sea in areas of national jurisdiction, and transhipped beyond areas of national jurisdiction;
 - c. transhipped inside the Convention Area and transhipped outside the Convention Area;
 - d. caught inside the Convention Area and caught outside the Convention Area;
 - e. species; and
 - f. product form;
- (2) the number of transhipments involving highly migratory fish stocks covered by this measure by fishing vessels that is responsible for reporting against, broken down by:
 - a. offloaded and received;
 - b. transhipped in port, transhipped at sea in areas of national jurisdiction, and transhipped beyond areas of national jurisdiction;
 - c. transhipped inside the Convention Area and transhipped outside the Convention Area; and
 - d. caught inside the Convention Area and caught outside the Convention Area.

ANNEX III

INFORMATION TO BE INCLUDED IN NOTICES TO THE EXECUTIVE DIRECTOR

1. the name and WCPFC Identification Number (WIN) of the offloading vessel,
2. the name and WIN of the receiving vessel,
3. the product (including species and its processed state) to be transhipped,
4. the tonnage by product to be transhipped,
5. the date and estimated or proposed location¹⁰ of transhipment (latitude and longitude to a tenth of a degree with a margin of error of 15 nautical miles), and
6. the geographic location of the highly migratory fish stock catches¹¹.

¹⁰ Location of transhipment is to be in [decimal Latitude and Longitude to the nearest 0.1 degrees with a margin of error of 15 nautical miles] and accompanied by a description of the location, such as high seas, outside the convention area or within a named EEZ. Notice can be updated if location changes.

¹¹ Not required for receiving vessels.

**Commission for the Conservation and Management of
Highly Migratory Fish Stocks in the Western and Central Pacific Ocean**

**Technical and Compliance Committee
Fifth Regular Session**

**1–6 October 2009
Pohnpei, Federated States of Micronesia**

**MARSHALL ISLANDS' PROPOSAL TO REVISE CMM 2004-01 [Consolidated USA-RMI, 2
October, ver. 1]**

**WCPFC-TCC5-2009/DP-09 (Rev.3)
5 October 2009**

A. Authorization to fish

1. Each member¹² of the Commission shall:
 - (a) authorize its vessels to fish in the Convention Area, consistent with article 24 of the Convention, only where it is able to exercise effectively its responsibilities in respect of such vessels under the 1982 Convention, the Agreement and this Convention;
 - (b) take necessary measures to ensure that its vessels comply with conservation and management measures adopted pursuant to the Convention;
 - (c) take necessary measures to ensure that fishing for highly migratory fish stocks in the Convention Area is conducted only by vessels flying the flag of a member of the Commission, and in respect of non-member carriers and bunkers, in accordance with Section D of this Measure;
 - (d) take necessary measures to ensure that any fishing vessel flying its flag conducts fishing in areas under the national jurisdiction of another State only where the vessel holds an appropriate license, permit or authorization, as may be required by such other State;
 - (e) undertake to manage the number of authorizations to fish and the level of fishing effort commensurate with the fishing opportunities available to that member in the Convention Area;
 - (f) ensure that no authorization to fish in the Convention Area is issued to a vessel that has a history of illegal, unreported or unregulated (IUU) fishing, unless the ownership of the vessel has subsequently changed and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no legal, beneficial or financial interest in, or control of the vessels, or the member concerned is satisfied that, having

¹² The term “member” when used in this measure includes cooperating non-members.

taken into account all relevant facts, the vessel is no longer engaged in or associated with IUU fishing;

- (g) withdraw authorizations to fish consistent with article 25(4) of the Convention;
- (h) take into account the history of violations by fishing vessels and operators when considering applications for authorization to fish by fishing vessels flying its flag;
- (i) take necessary measures to ensure that the owners of the vessels on the Record flying its flag are citizens, residents or legal entities within its jurisdiction so that any control or punitive actions can be effectively taken against them.

1 bis Each member of the Commission shall take necessary measures to ensure that its fishing vessels, when in the Convention Area, only tranship to/from, and provide bunkering for, are bunkered by or otherwise supported by:

- (a) vessels flagged to members, or
- (b) Other vessels flagged to States not members of the Commission only if such vessels are on the WCPFC Interim Register of non-Member Carrier and Bunker Vessels established under section D below (the "Register").

2. No member of the Commission shall allow any fishing vessel entitled to fly its flag to be used for fishing in the Convention Area beyond areas of national jurisdiction unless it has been authorized to do so by the appropriate authority or authorities of that member.

3. Each such authorization shall set forth for the vessel to which it is issued:

- (a) the specific areas, species and time periods for which the authorization is valid;
- (b) permitted activities by the vessel;
- (c) a prohibition of fishing, retention on board, transshipment or landing by the vessel in areas under the national jurisdiction of another State except pursuant to any license, permit or authorization that may be required by such other State;
- (d) the requirement that the vessel keep on board the authorization issued pursuant to paragraph 1 above, or certified copy thereof; any license, permit or authorization, or certified copy thereof, issued by a coastal State, as well as a valid certificate of vessel registration; and
- (e) any other specific conditions to give effect to the provisions of the Convention and conservation and management measures adopted pursuant to it.

B. Members' record of fishing vessels

4. Pursuant to article 24(4) on the Convention, each member of the Commission shall maintain a record of fishing vessels entitled to fly its flag and authorized to fish in the Convention Area beyond its area of national jurisdiction, and shall ensure that all such fishing vessels are entered in that record.

5. Each member of the Commission shall submit, electronically where possible, to the Executive Director by 1 July 2005 the following information with respect to each vessel entered in its record:

- (a) name of the fishing vessel, registration number, WCPFC Identification Number (WIN), previous names (if known) and port of registry;
- (b) name and address of the owner or owners;
- (c) name and nationality of the master;
- (d) previous flag (if any);
- (e) International Radio Call sign
- (f) vessel communication types and numbers (Inmarsat A, B and C numbers and satellite telephone number);
- (g) colour photograph of the vessel;
- (h) where and when the vessel was built;
- (i) type of vessel;
- (j) normal crew complement;
- (k) type of fishing method or methods;
- (l) length (specify type [eg. length overall (LOA) or length between perpendiculars (LBP)] and metric);
- (m) moulded depth (specify metric);
- (n) beam (specify metric);
- (o) gross registered tonnage (GRT) or gross tonnage (GT);
- (p) power of main engine or engines (specify metric);
- (q) carrying capacity, including freezer type, capacity and number, fish hold capacity and capacity of freezer chambers (specify metric); and
- (r) the form and number of the authorization granted by the flag State including any specific areas, species and time periods for which it is valid.

6. After 1 July 2005, each member of the Commission shall notify the Executive Director, within 15 days, or in any case within 72 hours before commencement of fishing activities in the Convention Area by the vessel concerned, of:

- (a) any vessel added to its Record along with the information set forth in paragraph 5;
- (b) any change in the information referred to in paragraph 5 with respect to any vessel on its record; and
- (c) any vessel deleted from its record along with the reason for such deletion in accordance with article 24 (6) of the Convention,

7. Each member of the Commission shall submit to the Executive Director, information requested by the Executive Director with respect to fishing vessels entered in its national record of fishing vessels within fifteen (15) days of such request.

8. Before 1 July of each year, each Member shall submit to the Executive Director a list of all vessels that appeared in its record of fishing vessels at any time during the preceding calendar year, together with each vessel's WCPFC identification number (WIN) and an indication of whether each

vessel fished for highly migratory fish stocks in the Convention Area beyond its area of national jurisdiction. The indication shall be expressed as (a) fished, or (b) did not fish.

9. Members that operate lease, charter arrangements or similar arrangements that result in data reporting obligations being conferred to a party other than the flag State will make arrangements to ensure that the flag State can meet its obligations under paragraph 8.

C. WCPFC Record of Fishing Vessels

10. The Commission shall, in accordance with article 24(7) of the Convention and based on the information provided to the Commission in accordance with the Convention and these procedures, establish and maintain its own record of fishing vessels authorized to fish in the Convention Area beyond the national jurisdiction of the member of the Commission whose flag the vessel is flying. Such record shall be known as the WCPFC Record of Fishing Vessels (the "Record").

[11. The Record shall include for each vessel an indication of whether or not it was active in the Convention Area beyond its flag State's area of national jurisdiction in each of the preceding years starting in 2007, consistent with the information provided by Members under paragraph 8.]

12. The Executive Director shall ensure that due publicity is given to the Record and the Register including making its contents available through an appropriate website.

13. In addition, the Executive Director shall circulate an annual summary of the information contained in the Record and the Register to all members and participating territories (CCMs) of the Commission at least 30 days prior to the annual meeting of the Commission.

14. CCMs shall review their own internal actions and measures taken pursuant to paragraph 1, including sanctions and punitive actions and, in a manner consistent with domestic law as regards disclosure, report annually to the Commission the results of the review. In consideration of the results of such review, the Commission shall, if appropriate, request that the Flag State, or member, of vessels on the Record or the Register take further action to enhance compliance by those vessels with WCPFC conservation and management measures.

15. Any vessel not included in the Record or the Register shall be deemed not to be authorized to fish for, retain on board, tranship or land highly migratory fish stocks in the Convention Area beyond the national jurisdiction of its flag State. Each member of the Commission shall prohibit such activities by any vessel entitled to fly its flag that is not included on the Record or Register and shall treat a violation of this prohibition as a serious violation.

16. Each CCM shall further prohibit landing at its ports or transhipment to vessels flying its flag of highly migratory fish stocks caught in the Convention Area by vessels not entered on the Record or the Register,

17. Each CCM shall notify the Executive Director, in accordance with the relevant provisions of article 25 of the Convention, of any factual information showing that there are reasonable grounds to suspect that a vessel that is not on the Record or the Register is or has been engaged in fishing for or transhipment of highly migratory fish stocks in the Convention Area.

18. If such vessel is flying the flag of a member of the Commission, the Executive Director shall notify that member and shall request that member to take the necessary measures to prevent the vessel from fishing for highly migratory fish stocks in the Convention Area and to report back on the actions taken with respect to the vessel.

19. Paragraphs 16 to 18 do not apply in respect of vessels that operate entirely in the Exclusive Economic Zone of a CCM [and that are flagged to that CCM].

20. If such vessel is flying the flag of a non-member without cooperating status or if the flag of the vessel cannot be determined, the Executive Director shall inform all CCMs so that they may, in addition to measures specified in paragraph 16, take appropriate action consistent with the Convention.

21. The Commission and the CCMs concerned shall communicate with each other, and make the best efforts with FAO and other relevant regional fishery management bodies to develop and implement appropriate measures, where feasible, including the establishment of records of a similar nature in a timely manner so as to avoid adverse effects upon fishery resources in other oceans. Such adverse effects might consist of excessive fishing pressure resulting from a movement of IUU fishing vessels between areas covered by other regional fishery management organizations.

22. [If, through a decision of the Commission, a vessel that is contained on the Record is included on the WCPFC IUU List, the flag State or responsible State shall revoke, consistent with applicable national law, the vessels' authorization to fish beyond the national jurisdiction of its flag State. Executive Director shall remove that vessel from the Record within 7 days of the decision taking effect.]

D. WCPFC Interim Register of non-Member Carrier and Bunker Vessels

23. The Commission encourages all flag states of carrier and bunker vessels that operate in the Convention Area and have been listed on the Temporary Register of Non-CCM Carrier and Bunker Vessels to apply for Cooperating Non-Member (CNM) status as soon as possible. Towards that end, the Secretariat will share copies of this conservation and management measure with appropriate contacts in all such flag States as soon as practicable.

24. The Commission shall consider all such applicants in accordance with the conservation and management measure, noting its ability to grant CNM status to an applicant subject to the restriction that it may only provide carrier and bunker vessels to the fishery.

[2010 to 2012]

25. [The Commission hereby establishes an Interim Register of Non-Member Carrier and Bunker Vessels (the "Register"). [The Commission will take steps, including as described in paragraph 35bis, to eventually eliminate this Register and the authorizations it confers on non-Member flagged carrier and bunker vessels.]

26. Vessels that are included by the Commission on the Register in accordance with the provisions of this section shall be authorized to be used in the Convention Area to receive transshipments of highly migratory fish stocks and to bunker or otherwise supply CCM-flagged fishing vessels used to fish for highly migratory fish stocks in the Convention Area Nauru TEXT.....

27. Any Member of the Commission may at any time submit to the Executive Director, in electronic format if possible, a list of any carrier vessels and bunker vessels that it wishes to be included on the Register. This List shall include the information described at paragraph 5 above as well as the flag State of the vessel.

28. The CCM(s) recommending vessels to be included on the Register shall attest that the vessel or vessels being recommended are not vessels:

- (a) with a history of illegal, unreported or unregulated (IUU) fishing, unless the ownership of the vessel has subsequently changed and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no legal, beneficial or financial interest in, or control of the vessels, or the CCM concerned is satisfied that, having taken into account all relevant facts, the vessel is no longer engaged in or associated with IUU fishing; or
- (b) that are currently listed on any of the IUU vessel lists adopted by regional fishery management organizations (RFMOs); or
- (c) that were removed from the Register pursuant to paragraph 34 within the one-year period prior to the receipt of the information under paragraph 3.

29. [The nominating CCM shall ensure that the owner or manager/operator of the vessel, as a condition for inclusion on the Register, provides a written undertaking, addressed to the Commission, that the owner, manager/operator and master of the carrier or bunker vessel will fully comply with all applicable decisions of the Commission, including conservation and management measures. Any reference in Commission decisions to member-flagged vessels shall be construed to include non-member flagged-vessels for the purposes of these written undertakings. These undertakings shall include an explicit commitment to allow any inspection duly authorized under the Commission's High Seas Boarding and Inspection Procedures to board and inspect the vessel on the high seas. These undertakings shall also include an agreement to cover the costs associated with complying with Commission decisions, such as the costs of VMS registration and observer placement.

29 bis. [The nominating CCM shall ensure that the owner or manager/operator of the vessel, shall be the responsibility of the owner or manager/operator to ensure that any such undertaking is compliant with national laws of its flag State. In addition, the owner or manager/operator of the vessel is encouraged to obtain a statement of support from the flag State, including an explicit statement of its position in respect of high seas boarding and inspection.]

[30. The Secretariat will post on the Commission website a list of all the applicable conservation and management measures and other applicable Commission decisions that the written undertaking must cover. [The nominating CCM shall ensure that the owner or manager/operator of the vessel, It will also be a condition that the owner, manager/operator or master of the carrier or bunker vessel will notify the Secretariat of any changes to the information provided under paragraph 27 within 15 days of the change.]

31. Failure by the owner, manager/operator or master of a vessel on the Register to fully comply with applicable decisions of the Commission, including conservation and management measures, shall constitute an appropriate basis for placement of such vessel on the Commission's Draft IUU Vessel List in accordance with the relevant conservation and management measure for establishing the WCPFC IUU Vessel List.

32. Within 7 business days of receipt of complete information for a carrier or bunker vessel under paragraphs 27 to 29 bis, the Secretariat will include the vessel on the Register and within 7 business days of receipt of any changes to such information, the Secretariat will include the updated information in the Register. For each vessel, the Register will include all the information listed in paragraph 5, a copy of the written undertaking provided under paragraph 29, and the CCM(s) that requested inclusion of the vessel on the Register.

32 bis. As soon as possible after receipt of complete information for a carrier and Bunker vessel under paragraphs 27 to 29, the Secretariat shall notify the flag State and provide an opportunity for the flag State to convey its position, including an explicit statement or position in respect of high seas boarding and inspection if not already done so under paragraph 29 bis.

33. The Commission will periodically monitor the IUU vessel lists maintained by RFMOs. At any time that a vessel on the Register is also on one of those IUU vessel lists, the Secretariat will:

- (a) notify Members and the owner of the vessel of its finding and that the vessel will be removed from the Register, effective 30 days from the date of the notice; and
- (b) 30 days from the notice given under sub-paragraph (a), remove the vessel from the Register.

34. The Commission shall monitor the performance of the vessels on the Register with respect to the written undertakings submitted under paragraph 29. If at any time a Member of the Commission finds evidence that the owner, manager/operator or master of a vessel on the Register has failed to fully discharge those undertakings:

- (a) the Member of the Commission shall immediately submit such evidence to the Secretariat;
- (b) the Secretariat will immediately circulate such evidence to the CCMs of the Commission;
- (c) the Commission shall review the evidence and decide whether or not to remove the vessel from the Register. If the Commission is to next meet between 14 and 60 days after the circulation made under paragraph 34(b), such decision shall be made in the next session of the Commission, otherwise it shall be made in accordance with the Commission Rules of Procedure as they relate to inter-sessional decision-making;
- (d) if the Commission decides to remove a vessel from the Register, the Secretariat will notify the owner of the vessel of the decision within 7 days and remove the vessel from the Register 60 days after the Commission's decision.
- (e) The Executive Director shall advise all CCMs and the flag State of the completion of action taken under paragraph 34(d).

[34 bis. The Register shall expire 60 days after the Annual Regular Session of the Commission in 2012, unless the Commission, based on a review by the TCC in 2012 of the non-CCM flagged fleet and an assessment of potential economic impacts to HMS fisheries in the Convention Area, decide otherwise at its Regular Annual Session in 2012.]

[2013 and beyond]

35. Noting paragraphs 23 and 24 above the Commission expects that after the annual regular session of the Commission in 2013, the majority of carrier and bunker vessels will be flagged to Members.

[35bis. In 2013 and if and as needed thereafter, the TCC will review the numbers and flags of non-Member flagged carrier and bunker vessels on the Register. Based on that review and any other pertinent information, the TCC will seek to assess the potential economic impacts on HMS fisheries in the Convention Area of eliminating the Register and the authorizations it confers on non-Member flagged carrier and bunker vessels, and will recommend to the Commission whether and when the Register should be eliminated.

35ter. Upon the effective date of a Commission decision to eliminate the Register, which will be made no earlier than at its regular annual session in 2013, the Register will be eliminated and fishing vessels flagged to States not Members of the Commission shall no longer be authorized by the Commission, and they may no longer be used to receive HMS from, or to bunker or otherwise supply, HMS fishing vessels in the Convention Area, except as provided in paragraphs 36-38.]

36. Notwithstanding this expectation, a carrier or bunker vessel flagged to a non-member but operated under charter, lease or other similar mechanisms as an integral part of the fishery of a CCM shall be considered to be vessels of the host CCM and, where the vessel shall be operating in waters under the jurisdiction of more than one CCM, must be included in the CCM's record of fishing vessels under

section B accordingly. In such case, the Record shall distinguish between vessels flagged to the CCM and vessels affiliated through this provision.

37. Such a charter, lease or other arrangement must include the ability for the host Member to conduct Monitoring, Control and Surveillance activities relevant to the vessel at any time and allow the Commission to place responsibility on the host Member for ensuring the vessel's compliance with conservation and management measures.

38. Such arrangements may only authorize non-member carrier and bunker vessels to operate in ports and waters under the jurisdiction of a member, as duly authorized by the host Member and the coastal State. The host Member acknowledges that failure by the vessel to comply with conservation and management measures will result in penalties that could include IUU listing, refusal to register other vessels of the same flag and sanctions against the host Member.

E. General

39. The Commission shall keep these procedures under review and may amend them as appropriate.

**The Commission for the Conservation and Management of
Highly Migratory Fish Stocks in the Western and Central Pacific Ocean**

**Technical and Compliance Committee
Fifth Regular Session**

**1–6 October 2009
Pohnpei, Federated States of Micronesia**

**DRAFT CHARTER NOTIFICATION SCHEME CMM
(prepared by Fiji at the request of the TCC Chair)**

**WCPFC-TCC5-2009/34 (Rev.1)
5 October 2009**

WCPFC CHARTER NOTIFICATION SCHEME

The Western and Central Pacific Fisheries Commission (WCPFC)

ACKNOWLEDGING the important contribution of chartered vessels to sustainable fisheries development in the Western & Central Pacific Ocean;

CONCERNED with ensuring that charter arrangements do not promote IUU fishing activities or undermine conservation and management measures;

REALIZING that there is a need for the WCPFC to regulate charter arrangements;

ADOPTS, in accordance with Article 10 of the WCPF Convention that:

1. The provisions of this measure shall apply to Commission Members and Participating Territories that charter, lease or enter into other similar mechanisms with vessels flagged to a CCM for the purpose of conducting fishing operations in the Convention Area as an integral part of the domestic fleet of that chartering Member or Participating Territory.
2. Each chartering Member or Participating Territory shall notify the Commission of any vessel to be identified as chartered in accordance with this measure by submitting electronically where possible to the Executive Director by 1 July 2010 the following information with respect to each chartered vessel:
 - a) name of the fishing vessel;
 - b) WCPFC Identification Number (WIN);
 - c) name and address of owner(s);
 - d) name and address of the charterer;
 - e) the duration of the charter arrangement; and
 - f) the flag state of the vessel.

3. After 1 July 2010, each chartering Member or Participating Territory shall notify the Executive Director, within 15 days, or in any case within 72 hours before commencement of fishing activities under a charter arrangement of:

- a) any additional chartered vessels along with the information set forth in paragraph 2;
- b) any change in the information referred to in paragraph 2 with respect to any chartered vessel; and
- c) termination of the charter of any vessel previously notified under paragraph 2.

4. Only vessels listed on the WCPFC Record of Fishing Vessels or the WCPFC Interim Register of Non-CCM Carriers and Bunkers, and not on the WCPFC IUU vessel list, or IUU List of another RFMO, are eligible for charter.

5. The Executive Director shall make the information required in paragraph 2 and 3 available to all CCMs.

6. Each year the Executive Director shall present a summary of all notified chartered vessels to the Commission for review. If necessary, the Commission may review and revise this measure.

7. The Commission will continue to work on the development of a broader framework for the management and control of chartered vessels. In particular, this work shall cover the issues of attribution of catch and effort by chartered vessels and the relationship between the flag State and the chartering Member or Participating Territory on control of, and responsibilities towards, the chartered vessels.

**The Commission for the Conservation and Management of
Highly Migratory Fish Stocks in the Western and Central Pacific Ocean**

**Technical and Compliance Committee
Fifth Regular Session**

**1–6 October 2009
Pohnpei, Federated States of Micronesia**

**NEW ZEALAND — DRAFT WCPFC CONSERVATION AND MANAGEMENT MEASURE
FOR THE CONTROL OF NATIONALS**

**WCPFC-TCC5-2009/DP-10 (Rev.2)
3 October 2009**

Convinced that illegal, unreported and unregulated (IUU) fishing undermines the objectives of the Convention, and the effectiveness of conservation and management measures adopted by the WCPFC;

Recalling that the FAO International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing (IPOA-IUU), calls on States to take, to the greatest extent possible, measures or cooperate to ensure that nationals subject to their jurisdiction do not support or engage in IUU fishing and discourage nationals subject to their jurisdiction from supporting and engaging in any activity that undermines the effectiveness of international conservation and management measures;

Recalling also Articles 23 and 25 of the WCPF Convention regarding the obligations of members of the Commission and provisions for compliance and enforcement, and specifically the obligation on states to take measures to control their nationals to the greatest extent possible;

Concerned that vessel owners or operators engaged in IUU fishing activities may re-flag their vessels to avoid compliance with WCPFC measures;

Considering the actions undertaken in other regional fisheries management organisations to address this issue;

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

Control of nationals

1. Without prejudice to the primacy of the responsibility of the flag State, WCPFC Members, Cooperating Non-Members and Participating Territories (CCMs) shall, subject to and in accordance with any applicable national laws and regulations:
 - (i) investigate allegations and/or reports that any natural or legal persons subject to their jurisdiction have engaged in the activities described in paragraph 2 of this measure;
 - (ii) take appropriate action in response to any such activities;
 - (iii) report to the Commission and, where relevant, other States or fishing entities, within two months of receiving the allegation or report referred to in para. 2, subject to the national laws of confidentiality, on the progress of the investigation, including actions and measures taken consistent with paragraph 1(ii); and
 - (iv) cooperate to investigate the actions referred to in paragraph 1(i) above.

2. A CCM may, directly, or through the Executive Director, forward relevant information to a CCM regarding a national of that CCM, who owns, controls, commands or operates a vessel alleged to have engaged in an activity identified as a serious violation in the Commission's High Seas Boarding and Inspection Procedures or an IUU activity as identified in the Commission's IUU Listing Measure, and may as appropriate, draw such activity to the attention of the Commission.

**The Commission for the Conservation and Management of
Highly Migratory Fish Stocks in the Western and Central Pacific Ocean**

**Technical and Compliance Committee
Fifth Regular Session**

**1–6 October 2009
Pohnpei, Federated States of Micronesia**

TONGA — PROPOSED AMENDMENT TO PARAGRAPH 15 OF CMM 2007-03

**WCPFC-TCC5-2009/DP-12 (Rev.1)
06 October 2009**

TCC4 noted with concern the issue raised by Tonga regarding when a flag State has made sufficient action with respect to an IUU incident. Paragraph 15 of the CMM 2007-03 places the onus on the flag State to demonstrate that it has fulfilled any one of the actions (below) so that the TCC does not list the vessel on the Provisional IUU List.

Paragraph 15 of CMM 2003-07 provides that:

“The TCC shall not include a vessel on the Provisional IUU Vessel List if the vessel’s flag State demonstrates that:

- 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 WCPF Convention;
- 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
- 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.”

Tonga strongly believes that coastal State satisfaction should be the only consideration in order for a vessel not to be placed on the Provisional IUU List.

Attachment A includes amendments to paragraph 15 b) and c) that seek to separate the treatment of IUU activity in an EEZ from IUU activity on the high seas. In particular, the amendment to paragraph 15 c) ensures that EEZ offences or contravention of national laws could only be resolved through the satisfaction of the coastal State.

It is also intended that a high seas offence would be subject to the test of “adequate severity”. Criteria based on the types of issues described by Tonga throughout 2008 could form the basis for qualifying adequate severity such as the number of offences committed on the high seas, the number of days the vessel has spent fishing illegally on the high seas.