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MARSHALL ISLANDS AND NAURU – PROPOSAL TO REVISE CMM 2004-01

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Submitted by Marshall Islands and Nauru

[DP-04 Rev. 2](#)

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Editor’s comment – Small working group met at Morning tea on Thursday. Agreement was reached on all outstanding discussion points from the issues that were raised for discussion in Plenary. This complements the agreements reached at TCC5. Changes made subsequent to the small meeting are highlighted in bold and grey shading for transparency.

A. Authorization to fish

1. Each member¹ 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;

¹ The term “member” when used in this measure includes cooperating non-members.

(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 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.

2. 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"); or

(c) Vessels operated under charter, lease, or similar mechanisms in accordance with paragraphs 41 to 43 of this measure.

3. 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.

4. 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

5. 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.

6. 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 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.

7. 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 6;
- (b) any change in the information referred to in paragraph 6 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,

8. 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.

9. 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.

10. 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 9.

C. WCPFC Record of Fishing Vessels

11. 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").

12. 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 9.

13. 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.

14. 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.

15. 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.

16. Any vessel not included in the Record or the Register shall be deemed not to be authorized to fish for, retain on board, transship 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.

17. Each CCM shall further prohibit landing at its ports or transshipment 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.

18. 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 transshipment of highly migratory fish stocks in the Convention Area.

19. 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.

20. 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.

21. 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 15, take appropriate action consistent with the Convention.

22. 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.

23. [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 as soon as practicable after being notified under paragraph 7(c).]

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

24. 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.

✚ 25. 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

26. The Commission hereby establishes an Interim Register of Non-Member Carrier and Bunker Vessels (the "Register").

27. Vessels that are included by the Commission on the Register in accordance with the provisions of this section shall be authorised 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.

28. 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 6 above as well as the flag State of the vessel.

29. 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 38 within the one-year period prior to the receipt of the information under paragraph 4.

30. It shall be a condition for inclusion on the Register that the owner or manager/operator of the vessel 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.

31. Until such time as the Commission undertakes a review to determine vessel specific costs relevant to paragraph 30 above, vessels operators shall commit to pay a nominal fee to contribute to the work of the Commission.

32. It 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.

33. 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. 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 28 within 15 days of the change.

34. 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.

35. Within 7 business days of receipt of complete information for a carrier or bunker vessel under paragraphs 28 to 30, 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 30, and the CCM(s) that requested inclusion of the vessel on the Register.

36. As soon as possible after receipt of complete information for a carrier and Bunker vessel under paragraphs 28 to 30, 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 30.

37. 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.

38. The Commission shall monitor the performance of the vessels on the Register with respect to the written undertakings submitted under paragraph 30. 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 38(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 38(d).

39. The Register shall expire 60 days after the Annual Regular Session of the Commission in 2012 unless the Commission decides otherwise at its Regular Annual Session in 2012. **The TCC will conduct a review in 2011 and 2012 of the non-CCM flagged fleet including an assessment of potential economic impacts to HMS fisheries in the Convention Area and unforeseen circumstances that could arise through prohibition of non-CCM carriers and bunkers.**

2013 and beyond

40. Noting paragraphs 24 and 25 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.

41. 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.

42. Such a charter, lease or other arrangement shall provide 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. Such charter, lease or other arrangement shall include an **explicit condition** that the 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 conditions. These conditions 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.

43. 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

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