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PHILIPPINES – ADDITIONAL INFORMATION SUPPORTING WCPFC6-2009/DP13 ON THE PROPOSED AMENDMENTS TO PARAGRAPH 22 OF CMM 2008-01

WCPFC6-2009/DP18
3 December 2009

Submitted by the Philippines

The Honourable **SATYA NANDAN**
Chairman
Western and Central Pacific Fisheries Commission (WCPFC)
PO Box 2356
Kolonia, Pohnpei State 96941
Federated States of Micronesia

Thru: **Mr. Andrew Wright**
Executive Director, WCPFC Secretariat

Dear **Chairman Nandan**:

We would like to submit additional information supporting and clarifying our position on the proposed amendments to paragraph 22 of Conservation and Management Measure (CMM) 2008-01 (WCPFC6-2009/DP13). We respectfully request that this additional information be circulated to the Members and Cooperating Non-Members (CCMs) of the Commission for further discussion.

The Philippines is committed to ensuring the long-term sustainability of straddling and highly migratory fish stocks consistent with its rights and obligations under the 1982 Law of the Sea Convention, UN Fish Stocks Agreement, and the WCPF Convention. This commitment may be noted from the progressive implementation of the WCPF Convention and conservation and management measures in the country, as well as the continuing cooperation of the Philippines with other CCMs. However, the Philippines strongly maintains that high seas closure would be detrimental to the very existence of its fishing industry, particularly small- and medium-scale vessels which have been fishing on the high seas areas of the western and central Pacific Ocean (WCPO) for decades.

Aside from the significant importance of fisheries to the food security and economic sustainability of the Philippines, the substantial impact that a high seas closure will have on the Philippine fishing industry, as well as the peace and security issues in Mindanao, Southern Philippines, we would like to highlight a number of compelling

factors that CCMs would need to take into account in the application of paragraph 22 of CMM 2008-01. As elaborated in the Attachment to this letter, these factors include:

- The requirement to consider relevant environmental and economic factors in the implementation of compatible measures on BET and YFT for the high seas and the EEZ as provided in Article 5 of the WCPF Convention;
- The need to ensure that measures adopted by the Commission do not result in a disproportionate burden of conservation action onto developing States Parties, territories and possessions in accordance with Article 30(2)(c) of the WCPF Convention;
- The requirement for the Commission to encourage CCMs to ensure that the effectiveness of specific measures adopted in CMM 2008-01 is not undermined by a transfer of effort into archipelagic waters and territorial seas;
- The need to consider scientific evidence in support of adopting conservation and management measures, such as studies by the Secretariat of the Pacific Community (SPC) suggesting that high seas closure will have a negligible effect on reducing overfishing or moving the stock away from an overfished state (WCPFC6-2009/IP18); and,
- The potential application of measures such as the Vessel Days Scheme, and other measures, which could similarly achieve the objectives of CMM 2008-01 without adversely affecting the development of domestic fisheries, in keeping with Resolution 2008-01 on the Aspirations of Small Island Developing States and Territories.

In light of the above considerations and for reasons further explained in the Attachment of this letter, the Philippines would like to reiterate its position to review paragraph 22 of CMM 2008-01 on high seas closure. **The Philippines proposes that high seas areas west of 140 degrees East remain open for purse seine fishing for vessels not exceeding 500GT, and that the Commission adopt a Vessel Days Scheme as an additional measure to control fishing effort on the said high seas area of the WCPO.** The Philippine small- and medium-scale purse seine fleet, all under 500GT and mostly in the 100-250GT group, has been customarily fishing in this area for decades.

Thank you for considering our request. We also wish to ask for the possibility for the Head of our Delegation, Atty Benjamin Tabios Jr., to have a brief meeting with you, at a suitable time during the Commission meeting, to seek your advice and discuss some of our concerns. We look forward to a fruitful discussion at the 6th Regular Session of the WCPFC.

Respectfully

GIL A. ADORA
Officer-in-Charge
Office of the Director

Attachment

ADDITIONAL INFORMATION SUPPORTING WCPFC6-2009/DP13 ON THE PROPOSED AMENDMENTS TO PARAGRAPH 22 OF CMM 2008-01

1. The Philippines expresses its strong commitment to promote effective management in order to achieve the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean (WCPO) in accordance with the 1982 Law of the Sea Convention, the UN Fish Stocks Agreement, and the WCPF Convention. In giving effect to the provisions of the WCPF Convention, the Philippines upholds that conservation and management measures developed by the Commission, including CMM 2008-01 on the conservation and management of BET and YFT, would need to embody the principles and measures adopted under the Convention.
2. CMM 2008-01 adopts some of the key principles and measures provided in the WCPF Convention. It has four main objectives according to paragraph 1:
 - Ensure through the implementation of compatible measures for the high seas and EEZs that BET and YFT stocks are maintained at levels capable of producing their maximum sustainable yield, as qualified by relevant environmental and economic factors including the special requirements of developing States in the Convention area as expressed by Article 5 of the Convention.
 - Achieve, through the implementation of a package of measures, over a three-year period commencing in 2009, a minimum of 30% reduction in BET fishing mortality from the annual average during the period 2001-2004 or 2004;
 - Ensure that there is no increase in fishing mortality for YFT beyond the annual average during the period 2001-2004 average or 2004; and
 - Adopt a package of measures that shall be reviewed annually and adjusted as necessary by the Commission taking account of the scientific advice available at the time as well as the implementation of the measures. In addition, this review shall include any adjustments required by Commission decisions regarding management objectives and reference points.

It is on the basis of these objectives, as well as the principles and measures under the WCPF Convention that the Philippines seeks to have paragraph 22 on high seas closure be reviewed by the Commission.

3. The Philippines have identified five factors that would need to be considered by the Commission in the application of paragraph 22 of CMM 2008-01. These factors are:
 - The requirement to consider relevant environmental and economic factors in the implementation of compatible measures on BET and YFT for the high seas and the EEZ as provided in Article 5 of the WCPF Convention;
 - The need to ensure that measures adopted by the Commission do not result in a disproportionate burden of conservation action onto developing States Parties, territories and possessions in accordance with Article 30(2)(c) of the WCPF Convention;

- The requirement for the Commission to encourage CCMs to ensure that the effectiveness of specific measures adopted in CMM 2008-01 is not undermined by a transfer of effort into archipelagic waters and territorial seas;
- The need to consider scientific evidence in support of adopting conservation and management measures, such as studies by the Secretariat of the Pacific Community (SPC) suggesting that high seas closure will have a negligible effect on reducing overfishing or moving the stock away from an overfished state (WCPFC6-2009/IP18); and
- The potential application of measures such as the Vessel Days Scheme, and other measures, which could similarly achieve the objectives of CMM 2008-01 without adversely affecting the development of domestic fisheries, in keeping with Resolution 2008-01 on the Aspirations of Small Island Developing States and Territories.

These factors, and their relevance to the Philippines, are discussed below.

Relevant Environmental and Economic Factors

4. As stated in Article 5 of the WCPF Convention and CMM 2008-01, measures to be adopted on BET and YFT would need to consider relevant environmental and economic factors. This provision is supported by Article 119(1) of the Law of the Sea Convention on the conservation of living resources on the high seas and Article 5(b) of the UN Fish Stocks Agreement.
5. The Philippines maintains that a number of relevant issues have yet to be taken into account in applying paragraph 22 of CMM 2008-01. The first issue is with respect to the environmental and resource management impact of a high seas closure on fishing in the Celebes (Sulawesi) Sea, which is a major spawning ground for BET and YFT. The Philippine Government, for the past twenty years, has been encouraging its fleet to move into the high seas or seek access into the EEZ of Pacific Islands in order to reduce pressure and protect the resources in the Celebes Sea. A complete closure of the two high seas pockets in the WCPO would result in a displacement of Philippine- flagged vessels fishing on the high seas back to the Celebes Sea. This situation will have a negative impact on the BET and YFT stocks managed by the Commission. It will also contravene the commitments of the Philippines with respect to the Coral Triangle Initiative, which has a similar aim of protecting the resources in the Celebes Sea.
6. In addition to environmental factors, there are economic and social factors that the Commission would need to seriously consider before it applies paragraph 22 of CMM 2008-01. It is submitted that high seas closure will negatively impact on the already impoverished economy of Mindanao in Southern Philippines, where the country's tuna industry is based, affecting over 120,000 people in the Philippine tuna industry, including a loss of over 20,000 direct and ancilliary jobs in local and subsistence coastal economies. There is real concern among vessel owners of small and medium purse seiners (<250GT) that high seas closure, combined with FAD closure, would make their tuna fishery untenable. These vessels deliver a significant portion of their catch to the Mindanao domestic market where tuna is a major source of protein for 22 million of Filipinos, a population larger than those

of most Pacific Island countries combined. Thus, a high seas closure will also greatly affect the food security of Mindanao.

7. The Philippines would also like to raise an important concern related to the economic development of Southern Philippines. Peace and development are two intertwined nagging aspects of security in Southern Philippines. The Philippines has been implementing various development programs and projects to create more jobs alongside its humanitarian efforts in pursuance of the peace process. The progress of the tuna industry in Southern Mindanao is a key pillar of this peace and development process. If high seas closure is implemented in January 2010, it will have an abrupt and adverse economic impact on Southern Mindanao and may potentially contribute to the instability not only of the area, but also of the Southeast Asian subregion. Without peace, domestic businessmen cannot be expected to expand and no new investors will venture in Mindanao. Without new economic activities, there can be no employment opportunities, no income for the household and much less revenues for the government.
8. The impending loss of about 20,000 jobs for people involved in the fishing industry resulting from the high seas closure will lead to a social dislocation and marginalization of more than 100,000 people and will derail the country's sincere efforts to achieve lasting peace in Mindanao, Southern Philippines and the Southeast Asian subregion. This will further add to the already big number of unemployed in the island, making them very vulnerable to recruitment by terrorists and secessionists in the region. With joblessness, coupled by poverty and hunger, crime against persons and properties will rise and insurgency and terrorism will become stronger, and peace may never be attained in Mindanao. Given the fact that Mindanao is part of the archipelagic and maritime region with porous borders, it is not remote that, inescapably and inevitably, should this happen, the region may not be immune from its security implications.
9. It is for the above compelling reasons that the Philippines is seeking the Commission to seriously consider relevant environmental and economic factors consistent with the objectives of the WCPF Convention and CMM 2008-01.

High Seas Closure as a Disproportionate Burden to the Philippines

10. Under Article 30(2)(c) of the WCPF Convention, the Commission is required to take into account "the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States Parties, and territories and possessions." The Philippines reiterates its longstanding position that the closure of high seas areas in the WCPO creates a disproportionate burden on the country not only due to the economic impact of the closure to its fishing industry, but also by requiring the country to apply conservation measures to areas under national jurisdiction that largely affect the livelihoods of the same local communities affected by the high seas closure.
11. While the Philippines is conscious of its obligations under the WCPF Convention, there are legitimate rights established in the regional Convention, as well as the Law of the Sea Convention, and the UN Fish Stocks Agreement that would need

to be recognised by the Commission. As part of its duty to cooperate and its commitment to conserve and manage highly migratory fish stocks in its entire range, the Philippines, as the vanguard over the tuna spawning area and of the Coral Triangle, is already implementing measures to protect the spawning and juvenile tuna population in the Celebes Sea that migrate to the greater Pacific ocean and caught by fishing vessels of other CCMs. These measures include the regulation of mesh size nets, FAD closure, designation of marine protected areas, and moratorium on fishing licences, all of which already have an impact on the small- and medium-scale fishermen of Southern Philippines. Further closure of fishing areas would be an additional burden to the Philippines and its fishing industry, and puts the Philippine government in a difficult position to find alternative livelihoods for local communities.

Transfer of Effort into the Archipelagic Waters of the Philippines

8. Paragraph 5 of CMM 2008-01 provides that “(t)he Commission encourages CCMs to ensure that the effectiveness of these measures is not undermined by a transfer of effort into archipelagic waters and territorial seas.” This provision is another compelling factor why the Commission should reconsider the implementation of paragraph 22 of CMM 2008-01. There is no provision in CCM 2008-01 for the absorption of effort from high seas fishing into the surrounding EEZs. Hence, the Philippines expresses its concerns that the displacement of small- and medium-scale vessels fishing on the high seas areas of the WCPO would transfer the effort for BET and YFT back into the archipelagic waters and territorial seas of the Philippines, where the spawning population and juvenile tuna abound. Such transfer of effort will not only diverge from the domestic conservation measures in place, but is also inconsistent with the provisions of CMM 2008-01.

Use of Best Scientific Evidence Available

9. Article 5(b) of the WCPF Convention provides that the Commission would need to ensure that conservation and management measures are based on best scientific evidence available. This principle is reiterated in the objectives of CMM 2008-01. The WCPFC Scientific Committee has determined that there is a high probability that the BET stocks are subject to overfishing and that the YFT stocks are currently being fished at capacity. This scientific evidence has become the basis for the adoption of CMM 2008-01.
10. In a more recent study of the Secretariat of the Pacific Community (SPC) however, it was suggested that high seas closure will have a negligible effect on reducing overfishing or moving the stock away from an overfished state (WCPFC6-2009/IP18). In its report, the SPC stated that closure of the two high seas pockets will result in a small reduction in BET fishing mortality only if the effort that would have otherwise fished in the high seas pockets is removed from the fishery. However, if the effort is only transferred into areas east where BET appear to be more vulnerable, the net effect is an increase in BET fishing mortality.
11. Based on this evaluation by the SPC, the Philippines would like to call on the Commission to consider the effectiveness of the closure of the two high seas

pockets in the WCPO area. The effectiveness of some of the measures under CMM 2008-01 to achieve its objectives would need to be addressed to avoid applying unnecessary and burdensome measures directed at small fishing industries that have been depending on the high seas fishery for decades.

12. The same SPC report stated that concerns on the large increases in the reported catches of small BET by the domestic fisheries in the Philippines. It could be noted that there have been preliminary observations that the increase in the reported catches of small BET is related to the problem of species identification rather than an actual increase in catch.

Philippine Conservation and Management Measures on BET and YFT

13. The Philippines would like to draw the attention of the Commission to the various management measures that it has put in place to comply with the measures provided under the WCPF Convention and to achieve the objectives of CMM 2008-01. Some of these measures include the ongoing moratorium on the issuance of fishing licences, adoption of a Philippine Tuna Management Plan, enactment of the Philippine Handline Fishing Law, the development of the Philippine Bigeye Tuna Management Plan and a FAD Management Plan, designation of marine protected areas, continuous collection and analysis of data, in particular operational catch and effort data, implementation of the logbook system and observer programme, and impending adoption of a vessel monitoring system and catch certification system. These measures apply to fishing activities in areas under national jurisdiction and to Philippine-flagged vessels fishing on the high seas.
14. The Philippines is continuously implementing a moratorium on fishing licences for the last five years. This has resulted in the decline in the number of active fishing vessels and purse seine effort. An independent estimate of the historical fisheries production of large tuna species by Philippine flagged vessels concludes that the decrease in the number of vessels has resulted in a decline of tuna landings (WCPFC-SC3-FT SWG/IP-10). It should be further noted that the number of handline vessels, as well as their catches have significantly decreased over the years due to the lack of access to resources and the increasing unprofitability of handline fishing.
15. The Philippines has also adopted a number of management measures under the Philippine Tuna Management Plan, including limit in effort, fishing capacity, fishing gears, number and location of FADs, and minimum fish size catch. The National Tuna Management Plan provides for the maximum sustainable yield of approximately 278,000 MT in Philippine waters and a total allowable catch of 267,500 MT of tuna, including 150,000 MT of skipjack, 110,000 MT of yellowfin, and 7,500 MT of bigeye tuna.
16. The Philippines is also developing a BET Management Plan and a FAD Management Plan, both of which are scheduled to be implemented in 2010. These Plans provide for the regulation of BET catch level, FAD reduction scheme, mesh size regulation, designation of fish sanctuaries, port monitoring, and fishing gear inspection and inventory, and catch retention.

17. In terms of data collection, the Philippines is continuously collecting and verifying operational catch and effort data in its EEZ. The Philippines is also implementing a logbook system and an observer programme to enhance the collection of data consistent with its obligations under the WCPF Convention. The Philippines will also be implementing a number of research programmes such as a tuna data enhancement and stock assessment, genetic stock structure of YFT and BET in the Philippines, temporal and spatial variation of ichthyoplankton in relation to oceanographic conditions in selected fishing grounds in the Philippines, and technical assessment of the effects of mesh size and net depth on the catch composition and size structure of tunas in surrounding nets. These data collection efforts and research projects are expected to increase the necessary information to support the management of tuna not only in Philippine waters but also in the WCPO.
18. Furthermore, the Philippines has started to investigate the possible role of the depth of purse seine nets in reducing the catch of BET and YFT given the fact that they are usually found in the deeper part of the water column than SKJ. Initial observations are encouraging and comparative catch studies will be undertaken in the early part of 2010 with the end view of reducing BET and YFT mortality through fishing gear modifications.
19. The Philippines submits that the above undertaking may be considered as a package of measures that meet the four objectives of CMM2008-01. The current tuna catch in Philippine waters is close to, but does not exceed the TAC. Similarly, the objectives to reduce the fishing mortality of BET and not to increase the fishing mortality of YFT beyond the 2001-2004 average have already been exceeded by the Philippines. On the other hand, there is a possibility that the displacement of Philippine vessels from the high seas back into Philippine waters will cause the TAC to be exceeded. The closure of two high seas pockets according to CMM 2008-01 may therefore operate against the management goals of the Philippines and its conservation obligations under the WCPF Convention.

Proposed Alternative to High Seas Closure

20. In light of the reasons given above, the Philippines requests the Commission to reconsider the application of and rescind paragraph 22 of CMM 2008-01. In particular, **the Philippines proposes that high seas areas west of 140 degrees East remain open for purse seine fishing for vessels not exceeding 500GT.** The proposed high seas area of the WCPO has been accessed by Philippine vessels for decades. Ceasing Philippine fishing operations on this high seas area would be detrimental not only to the development and existence of the industry, but also to the economic security of and peace in Mindanao, Southern Philippines where the tuna industry's base is located.
21. The Philippines high seas purse seine fleet consists of 55 purse seine fishing fleets, all under 500GT, and mostly in the 100-250 GT class. Most of these vessels do not have freezer holds and the catch is directly loaded onto ice carriers. The average annual catch for the 100-250 GT vessels ranges from 1,200 to 1,500 MT per vessel, only about one-fifth of the annual catch for a superseiner. The 100GT

vessels generally use shallow nets with an effective working depth of only 80 meters, which limits their catch of the deeper swimming tunas (e.g. YTF, 8-10%; and, BET, <1% of total catch). The contribution of the Philippine fleet to the high seas catch is relatively small; however, the impact of vessel relocation to the Celebes Sea may have a major impact on the regional YFT and BET stocks.

22. It is these types of small domestic fisheries that WCPFC Resolution 2008-01 aims to protect. Resolution 2008-01 resolves in accordance to Articles 4, 8, 10, and 30 of the Convention that “CCMs will develop, interpret and apply conservation and management measures in the context of and in a manner consistent with the 1982 Convention and the Agreement. To this end, CCMs shall cooperate, either directly or through the Commission, to enhance the ability of developing States, particularly the least developed among them and SIDS and Territories in the Convention Area, to develop their own fisheries for highly migratory fish stocks, including but not limited to the high seas within the Convention Area.”
23. The Philippines also supports the application of an additional measure to control fishing effort on the high seas, such as a Vessel Days Scheme, which is compatible with the measure implemented in the EEZ of PNA countries.
24. In summary, the Philippines upholds that the closure of the high seas will result in a disproportionate burden of conservation action on the country and will result in a transfer of effort into the Philippine archipelagic waters and territorial sea where the spawning population and juvenile tuna are situated. The Philippines also maintains that the implementation of measures under CMM2008-01 would need to be qualified by relevant environmental and economic factors consistent with Article 5 of the WCPF Convention. **In the light of all the foregoing as well as in the spirit of amity, equity and fairness, the Philippines therefore seeks for the Commission to rescind the decision to close the two high seas pockets in the WCPO and proposes that high seas areas west of 140 degrees East remain open for purse seine fishing by vessels not exceeding 500GT. It also proposes the application of Vessel Days Scheme to augment the measures implemented on the high seas for the conservation and management of highly migratory fish stocks.**