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**NEW ZEALAND POSSIBLE AMENDMENTS TO CMM 2007-03 TO ADDRESS THE
120 DAY ISSUE**

WCPFC7-2010-DP/05
7 November 2010

Paper prepared by New Zealand

Introduction:

This paper is the result of intersessional work from TCC6 on the above issue of the 120 day rule in CMM 2007-03. The paper includes the summary from New Zealand, a comparative table of dates and suggestions received from Japan, Chinese Taipei and FFA Members for consideration by WCPFC7.

6 November 2010

Professor Glenn Hurry
Executive Director
Western and Central Pacific Fisheries Commission
PO Box 2356, Kaselehlie Street, Kolonia
96941, Pohnpei
Federated States of Micronesia

Dear Glenn

**POSSIBLE AMENDMENTS TO CMM 2007-03 TO ADDRESS 120 DAY
TIMEFRAME ISSUE**

FFA members and other WCPFC CCMs have previously raised concerns with the present IUU listing procedures. Currently CMM2007-03 requires CCMs to report allegations of IUU fishing to the Executive Director 120 days before the annual TCC meeting in late September, meaning that for vessels detected after that date it may be December of the following year before the vessel can be placed on the Commission's IUU vessel list at the annual Commission meeting. A vessel may be able to fish for 18 months after it has been alleged to have engaged in IUU fishing.

At TCC6 New Zealand agreed to lead a small group and an intercessional process to discuss potential modifications to CMM2007-03 with the objective of reducing the transmittal time for IUU listing nominations. Principles agreed were that the TCC should continue to play a fundamental role in the process and that any amendments should be consistent with requirements in the Convention, particularly Article 25(2). Comments from CCMs were due on 31 October 2010. New Zealand has received written comments on the proposal discussed at TCC6 from Japan and Chinese Taipei, and copies of these are attached.

At their recent meeting in Honiara, Solomon Islands, FFA members also discussed possible timeframes for IUU transmittal dates. The timeframes proposed by FFA members were provided to New Zealand and are set out in Attachment 1 along with the proposals from Japan and Chinese Taipei. All three proposals allow flag States at least two full months to investigate allegations of IUU fishing, and the alleged IUU incidents will continue to be considered at the annual TCC meeting before a final decision is made at the annual Commission meeting.

FFA members have also indicated that they may want to explore a process for listing vessels on the IUU vessel list intercessionally sometime in the future. However, at this stage, FFA members propose that the IUU transmittal dates be amended as set out in the attached table.

Yours sincerely

Matt Hooper
Head of New Zealand Delegation to WCPFC

Attachment 1 – Summary Table

Activity as specified in CMM 2007-03	Current Timeframe in CMM 2007-03	Possible modification from TCC6 small group	Japan	Chinese Taipei	FFA
CCMs submit a list of possible IUU vessels and evidence to WCPFC Secretariat (para. 4)	120 days before TCC	80 days before TCC	90 days before TCC	90 days before TCC	70 days before TCC
Before or at same time nominating CCM notifies flag State (para. 5)	120 days before TCC	80 days before TCC	90 days before TCC	90 days before TCC	70 days before TCC
WCPFC Secretariat compile and send list out (para. 6)	90 days before TCC	70 days before TCC	60 days before TCC	80 days before TCC	55 days before TCC
Flag States investigate and respond (para. 9) ¹	30 days before TCC	20 days before TCC	30 days before TCC	20 days before TCC	10 days before TCC
WCPFC Secretariat recirculate Draft IUU List and other information (para. 10)	14 days before TCC	14 days before TCC	14 days before TCC	7 days before TCC	7 days before TCC
TCC Meeting	0	0	0	0	0

¹ Note that there needs to be a minimum period of 60 days from the time the flag State is notified to the time it is expected to report. This complies with Article 25(2) - a maximum period of two months is provided for the flag State to investigate and report on alleged violations of its flagged vessels to a requesting CCM and the Commission.

Japan's comments on 12-day transmittal date

Article 25 (2) of the Convention stipulates the obligation of CCMs to provide a progress report on the investigation within two months of a request by other CCMs for an investigation into presumed IUU activity. In other words, the Convention certainly recognizes this particular timeframe as a period necessary for CCMs to investigate and provide a first progress report. Thus, and taking account of Para 5 requiring nominating CCMs to provide flag states with such notification on IUU activity before or at the same time as the notification of Para 4, at least 60 days must be ensured between Para 4 and Para 9,

Bearing this in mind and being mindful of small island countries' serious concern over relentless IUU fishing activities in and adjacent their waters, as the maximum compromise, Japan would suggest following numbers.

4. At least ~~120 days~~ 90 days before the annual meeting of the Technical and Compliance Committee (TCC), CCMs shall transmit to the Executive Director their list of vessels presumed to be carrying out IUU activities in the Convention Area during the current or the previous year, accompanied by suitably documented information, as provided in para 2, concerning the presumption of this IUU activity.

6. The Executive Director shall draw up a draft IUU Vessel List incorporating the lists of vessels and suitably documented information received pursuant to para 4, and any other suitably documented information at his disposal, and shall transmit it, together with all the supporting information provided, to all CCMs, as well as to non-CCMs with vessels on the list, at least ~~90 days~~ 60 days before the TCC's annual meeting.

9. As appropriate, CCMs and non-CCMs with vessels on the list should transmit, at least 30 days before the TCC's annual meeting, their comments to the Executive Director, including suitably documented information, showing that the vessels have 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 WCPFC Convention.

10. The Executive Director shall re-circulate the draft IUU Vessel List, **two weeks** in advance of the TCC's annual meeting, to the CCMs and the non-CCMs concerned, together with all the suitably documented information provided pursuant to paras 4 and 9 above.



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October 29, 2010

Mr. David Marx
Senior International Advisor
Ministry of Fisheries
PO Box 1020
Wellington, New Zealand

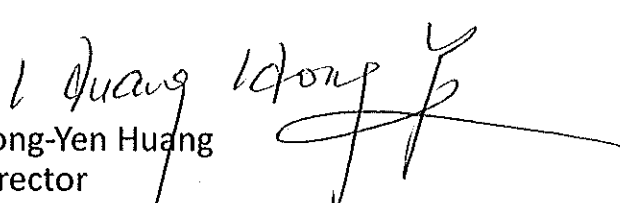
Re: Written Comments from Chinese Taipei regarding "120-day transmittal date"

Dear Mr. Marx

We would like to appreciate for your efforts to facilitate the discussion of the issue of "120-day transmittal date".

Attached please find our suggestion of revision on the relevant paragraphs and look forward to exchanging views at the upcoming WCPFC7.

Sincerely yours,


Hong-Yen Huang
Director
Deep Sea Fisheries Division
Fisheries Agency

CC: Stephanie Hill, Senior Fisheries Analyst, Ministry of Fisheries, New Zealand;
Secretariat, Western and Central Pacific Fisheries Commission;
Dr. Glenn Hurry, Executive Director, Western and Central Pacific Fisheries Commission

Report of Small Group on 120-day transmittal date (Taiwan)

The general preference of the group was for a one-track process to address this issue on the basis of two key principles:

- (1) that flag states have an obligation in 25(2) of the Convention to report on the outcome of investigations into alleged IUU fishing within 2 months; and
- (2) it is important that alleged cases of IUU fishing are considered at TCC.

The approach followed by the group was to consider reducing the timeframe in paragraph 4 (and other consequential changes in paragraphs 6, 9 and 10). Further discussion will need to take place on the numbers and some delegations will need to consult further, but there was agreement to proceed with bracketed numbers in paragraphs 4, 6, 8 and 10 of CMM2007-03:

There were a range of ideas about what numbers might be included in the brackets. Some CCMs thought that paragraph 4 should read two months consistent with Article 25(2) of the Convention. Others thought time difference provided for in paragraphs 6 and 9 should be two months.

The relevant paragraphs are reproduced here:

4. At least [~~90~~ days] before the Annual Meeting of the Technical and Compliance committee (TCC), CCMs shall transmit to the Executive Director their list of vessels presumed to be carrying out IUU activities in the Convention Area during the current or the previous year, accompanied by suitably documented information, as provided in paragraph 2, concerning the presumption of this IUU activity.

...

6. The Executive Director shall draw up a draft IUU vessel list incorporating the lists of vessels and suitably documented information received pursuant to paragraph 4, and any other suitably documented information at his disposal, and shall transmit it, together with all the supporting information provided,

to all CCMs, as well as to non-CCMs with vessels on the List, at least [~~90~~80 days] before the Annual Meeting of the TCC.

...

9. As appropriate, CCMs and non-CCMs with vessels on the list should transmit, at least [~~30~~20 days] before the Annual Meeting of the TCC, their comments to the Executive Director, including suitably documented information, showing that the vessels have 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 WCPFC Convention.

...

10. The Executive Director shall re-circulate the draft IUU Vessel List, [~~two~~ one weeks] in advance of the Annual Meeting of the TCC, to the CCMs and the non-CCMs concerned, together with all the suitably documented information provided pursuant to paragraphs 4 and 9 above.

There was agreement to work further on this intersessionally in the lead up to WCPFC7. New Zealand is happy to coordinate comments on this proposal.