



## **TECHNICAL AND COMPLIANCE COMMITTEE**

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## **DEVELOPMENT OF GUIDELINES FOR HIGH SEAS TRANSSHIPMENT FROM FISHING VESSELS OTHER THAN PURSE SEINE VESSELS (CMM 2009-06 PARA 37)**

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WCPFC-TCC12-2016-15\_rev2<sup>1</sup>

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### **Paper Prepared by Secretariat**

#### **Purpose**

1. The purpose of this paper is to table for the consideration of TCC12 draft guidelines for the determination of circumstances where it is impracticable for certain vessels to transship in port or in waters under national jurisdiction pursuant to paragraph 37 of CMM 2009-06.

#### **Background**

2. At WCPFC12, the Commission noted paragraph 37 of CMM 2009-06 and tasked the Executive Director to prepare draft guidelines for the determination of circumstances where it is impracticable for certain vessels to transship in port or in waters under national jurisdiction. TCC12 is tasked to consider these guidelines, and amend as necessary, and recommend them to the Commission for adoption in 2016. The Commission agreed that paragraph 13 should be considered as part of this tasking.<sup>2</sup> This paper responds to that directive.

3. CMM 2009-06 (Conservation and Management Measure on the Regulation of Transshipment) sets out the WCPFC rules on the regulation of transshipments at sea. Transshipment at sea by purse seine vessels is prohibited except in respect of limited exemptions granted by the Commission (paragraph 25). In the case of transshipments from non-purse seine vessels, there is to be no transshipment on the high seas except where a CCM has determined in accordance with guidelines “that it is impracticable for certain vessels that it is responsible for to operate without being able to transship on the high seas”, and has advised the Commission of this (paragraph 34). Paragraph 35 of CMM 2009-06 sets out the reporting obligations of CCMs where transshipment occurs on the high seas. These include advising the Commission of its procedures for monitoring and verification of the transshipments, and submitting a plan detailing what steps it is taking to encourage transshipment to occur in port in the future.

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<sup>1</sup> Rev 2 clarifies paragraph 1 of the draft guidelines to ensure consistency with the text of the paper. The additions are marked in underlining.

<sup>2</sup> WCPFC12 Summary Report, paragraph 717.

4. Where transshipments at sea are permitted, vessels are required to carry observers from the Regional Observer Programme (paragraph 13). In the case of transshipments to receiving vessels less than or equal to 33 metres in length, and not involving purse seine caught fish, or frozen longline caught fish, the observer may be deployed on either the offloading or receiving vessel. In the case of troll-caught or pole-and-line caught fish not covered above, and in the case of exempted purse seine caught fish and frozen longline caught fish, the observer is deployed on the receiving vessel.

5. Paragraph 37 of CMM 2009-06 requires the Executive Director to prepare draft guidelines for the determination of circumstances where it is impracticable for certain vessels to transship in port or in waters under national jurisdiction. The draft guidelines are to be considered by TCC and adopted by the Commission. According to paragraph 38 of CMM 2009-06, when adopting the Guidelines, the Commission is to consider whether to prohibit transshipment in areas of high seas in the Convention Area entirely surrounded by the EEZ of members of the Commission and Participating Territories. This consideration is to include a review of the catch and effort reported for fishing vessels in these areas, the Transshipment Declarations, and the role of the areas in supporting IUU fishing.

6. At TCC9, the Executive Director presented draft guidelines as required by paragraph 37 of CMM 2009-06.<sup>3</sup> The paper reviewed the background to the issue, including the lack of compliance with paragraph 35 of the measure. It concluded that high seas transshipment by non-purse seine vessels should only be allowed to continue under strict conditions which are fully complied with. It proposed draft guidelines essentially along the following lines:

- a. Transshipment by non-purse seine vessels is only allowed to occur in the high seas of the WCPF Convention Area where the transshipment occurs from longline fishing vessel to carrier vessels on which there is 100% observer coverage on both vessels.
- b. Transshipment can only occur where the provisions of paragraph 35 of CMM 2009-06 are fully complied with.
- c. Transshipment can only occur after a flag state annually provides documented evidence to the WCPFC Secretariat for circulation to members that it has complied with an economic assessment that the prohibition of transshipment at sea would pose a significant economic hardship.
- d. Failure to comply with these provisions would lead to the facility to engage in high seas transshipment to be withdrawn from that flag state.

7. There was extensive discussion of the draft guidelines at TCC9, but no recommendation from TCC to the Commission, and no decision adopted by the Commission.<sup>4</sup> The interim guidelines in CMM 2009-06 therefore continue to apply.

#### **Interim Guidelines in CMM 2009-06**

8. Paragraph 37 of CMM 2009-06 provides the following interim guidelines for the determination of circumstances where it would be impractical for certain vessels to transship in port or in waters under national jurisdiction:

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<sup>3</sup> WCPFC-TCC9-2013/17.

<sup>4</sup> WCPFC-TCC9 Summary Report, paras 254-268.

- a. The prohibition of transshipment in the high seas would cause a significant economic hardship, which would be assessed in terms of the cost that would be incurred to transship or land fish at feasible and allowable locations other than on the high seas, as compared to total operating costs, net revenues, or some other meaningful measure of costs and/or revenues; 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.

9. The interim guidelines are difficult to implement in practice. There are no criteria by which to assess “significant economic hardship” or “significant and substantial changes to its historical mode of operation”. The language of the interim guidelines (“significant” “substantial”) sets a high threshold. However, a large proportion, but not all, non-purse seine vessels are authorized by their flag State to transship on the high seas.<sup>5</sup> Some flag CCMs have advised that they do not allow their non-purse seine vessels to transship on the high seas.

10. The number of vessels which are authorized to transship on the high seas seems to have increased over the last few years. However, the increasing trend may in part be a result of improvements that were made in 2014/15 to the display of the Record of Fishing Vessels on the WCPFC website and the implementation of IT tools that among others enable the responsible flag CCM to confirm that it has made an affirmative determination under paragraph 37 of CMM 2009-06, for each of its relevant vessels on the Record of Fishing Vessels.<sup>6</sup> Since July 2014 determinations of impracticability made by individual CCMs are implied from information provided as part of the Record of Fishing Vessels.

11. During 2010-2012 a number of flag CCMs notified the Secretariat of the basis for their affirmative determinations under paragraph 37 of CMM 2009-06. The explanations tended to be that their non-purse seine vessels fleets had historically used high seas transshipment operations and the comparable cost of conducting transshipment activities in-port was prohibitive. No updates have been provided in recent years to the Secretariat or Commission by CCMs on the basis for their determinations. In general, little or no information is provided to the Commission on monitoring and verification procedures or on steps taken to encourage transshipment in port, as required by paragraph 35.<sup>7</sup>

12. The consensus in the Commission appears to be that the current interim guidelines are unsatisfactory and not workable.<sup>8</sup> Criticisms include that the guidelines are being used as a blanket exception, with no effort to encourage transshipment in port; there is no basis on which to assess the economic costs of transshipment in the high seas; the interim guidelines are subjective and imprecise; and the exception has become the norm. However, other CCMs consider that transshipment at sea is a “common global practice” and that what is needed is the provision of data on transshipments to prevent IUU activities. Against this background, this paper considers the relevant issues and recommends draft guidelines for consideration by TCC.

### **WCPF Convention and the international framework**

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<sup>5</sup> See paragraph 14 below.

<sup>6</sup> The Standards Specifications and Procedures for the Record of Fishing Vessel were first implemented in July 2014 (CMM 2013-03) but with the high seas transshipment authorisations classed as non-public domain information. In February 2015 the high seas transshipment authorisations became viewable on the public side of the WCPFC website.

<sup>7</sup> Some limited information was provided in response to the Secretariat’s consideration of this issue in 2013. See WCPFC-TCC9-2013/17.

<sup>8</sup> See for example WCPFC12 Summary Report, paras 697-717.

13. The Convention establishing the WCPFC provides the basis for the establishment and interpretation of CMMs on transshipment. Article 29(1) of the Convention provides: “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.” CMM 2009-06 follows the Convention and limits transshipment on the high seas by non-purse seine vessels to where “it is impracticable for certain vessels ... to operate without being able to transship on the high seas” (paragraph 34). CMM 2009-06 also sets out exemptions, subject to strict requirements, for transshipments at sea from certain purse seine vessels (paragraphs 25-32).

14. The international framework supports the Commission taking action to regulate transshipment at sea. The UN Fish Stocks Agreement provides for the duties of the flag State to include regulation of transshipment on the high seas “to ensure that the effectiveness of conservation and management measures is not undermined”.<sup>9</sup> The 2015 United Nations General Assembly Resolution on Sustainable Fisheries (A/Res/70/75) urges States, including through RFMOs, to develop and adopt effective MCS measures for transshipment, in order to monitor compliance, to collect and verify fisheries data, and to prevent, deter and eliminate IUU fishing activities.<sup>10</sup> The FAO Technical Guidelines for Responsible Fisheries suggest that effective regulation of transshipment could include prohibiting transshipments at sea.<sup>11</sup>

#### **Annual Report on transshipments in WCPFC high seas areas**

15. The main conclusions of the annual report prepared by the WCPFC Secretariat on transshipments can be summarized as follows:

- As at 11 July 2016: 2223 of 4468 (49.75%) vessels on the Record of Fishing Vessels (RFV) had a positive determination under paragraph 37 of CMM 2009-06. A majority of longline vessels are permitted to transship on the high seas (58.2% of all longline vessels). There are also significant proportion of carrier and bunker vessels (42.8%) and pole and line vessels (88.2%) on the RFV which have positive determinations under paragraph 37 of CMM-2009-06.
- In 2015, 2310 out of 5701 vessels (40.5%) on the RFV had a positive determination of authorisation to transship in the high seas.<sup>12</sup> Longline vessels comprised 86.1% of the total in 2015 (compared to 41.4% in 2016).
- The levels of high seas transshipment events and quantities transhipped in the high seas are comparable in 2013, 2014 and 2015.
- Transshipment events tend to be concentrated in the tropical eastern Pacific, particularly within and around the overlap area with the IATTC.
- Transshipment on the high seas tends to take place near the edge of an EEZ boundary. This includes in particular the area bounded by the EEZs of Kiribati, Tuvalu and Tokelau. Some transshipment takes place in high seas pockets, in particular HSP2-SMA.
- As in past years, reasonable proportions of the total estimated longline catch of bigeye tuna and swordfish were reported to have been transhipped in the high seas.

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<sup>9</sup> Article 18.1.

<sup>10</sup> A/Res/70/75, para. 99.

<sup>11</sup> FAO Technical Guidelines for Responsible Fisheries, No 9, “Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing”, FAO, Rome 2002, section 4.4.

<sup>12</sup> Annual Report on WCPFC transshipment reporting with an emphasis on high seas activities, WCPFC-TCC11-2015-RP03, 15 September 2015.

- Reporting by CCMs of high seas transshipment events has improved but gaps remain in WCPFC holdings of reported transshipment events.

16. Available information on transshipments in tuna fisheries in the WCPFC Convention Area, including the WCPFC annual reports on transshipment, suggests that transshipments on the high seas are being undertaken not when it would otherwise be “impracticable”, in other words practically impossible, but rather when it would otherwise be difficult. Impracticability should be assessed by examining the specific fisheries operations in the WCPFC, in light of the purpose of controls on transshipment on the high seas, including effective conservation and management, monitoring of compliance, collecting and verifying fisheries data, and preventing IUU fishing. This suggests that the following points should guide the development of guidelines on the impracticability of transshipment on the high seas.

17. **Monitoring of transshipments on the high seas:** Paragraph 13 of CMM 2009-06 provides for the carriage of observers to monitor transshipment events and paragraph 14 of CMM 2009-06 sets out the duties of observers. While the quality and timeliness of observer reports on transshipment events has improved, there are still gaps in reports on transshipment events and some differences in the utility of information that observers are providing to the Secretariat to assist with verifying transshipment activities. In addition, observers on receiving vessels are not able to easily review documents on the fishing vessel without either physically transferring to that other vessel or by having the documentation transferred to the receiving vessel. Physically transferring between vessels poses significant observer safety issues and is discouraged and inspection of documentation alone may not be sufficient for verification purposes. This suggests that adequate monitoring of transshipments on the high seas remains a concern.

18. Independent of any decision in respect of the guidelines under CMM 2009-06, and in view of concerns over monitoring of transshipments on the high seas, the Secretariat could be tasked to work with the relevant observer programmes who are involved in placement of high seas transshipment observers. Areas where the Secretariat might assist could include development of ROP high seas transshipment observer training materials and consideration of electronic tools that observer programmes could use to improve the timeliness and utility of high seas transshipment reporting by observers, as well as provide for observer safety.

19. **Fishing operations:** There are some fishing operations which rely upon transshipment at sea in order to maintain the highest standards of quality of tuna for sale. This applies, for example, to transshipments of fresh fish from ice-chilled longline, troll and pole-and-line vessels, or transshipments to supply the fresh sashimi market.<sup>13</sup> It may also apply to transshipments of tuna to supply the high-grade frozen sashimi market using ultra-low-temperature (ULT) freezing methods. Transshipments to ULT freezer carriers may in some circumstances result in a higher quality product than transshipment to other freezer carriers or transshipment in port. These transshipments can be contrasted with transshipments of frozen tuna from large-scale freezer longline vessels, in particular to supply the cannery market. Some such longline fleets do not find it necessary to transship on the high seas, whereas other fleets routinely do so. This suggests that preventing these longline vessels from transshipping on the high seas would impose an economic difficulty, rather than being “impracticable” as specified in CMM 2009-06.

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<sup>13</sup> “Fresh fish” is defined in IATTC Resolution C-12-07 as “tuna or tuna-like species that are alive, whole or dressed/gutted, but not further processed or frozen”. While fishing operations in the WCPFC area do not take tuna “alive” it may be useful to adopt the same definition of “fresh fish”.

20. **IATTC/WCPFC overlap area:** The IATTC regulations on transshipment permit transshipments on the high seas from large-scale tuna longline fishing vessels to carrier vessels authorized to receive transshipments, subject to notification requirements and observer coverage on the carrier vessel.<sup>14</sup> The IATTC regulations on transshipment do not cover troll vessels or pole and line vessels. There are a number of tuna longline vessels which fish in the overlap area, and carrier vessels that operate in the overlap area. Unless otherwise specified, CCMs have the choice of applying IATTC or WCPFC measures to their vessels fishing in the overlap area.<sup>15</sup> Consistency in the application of CMMs in the overlap area would suggest that WCPFC and IATTC should maintain comparable measures in this area, pending further joint work on managing tuna stocks.

21. **Conservation efforts:** Some transshipments of shark and shark fins take place on the high seas. These are subject to less monitoring than transshipments in port or in waters under national jurisdiction. Permitting such transshipments may therefore undermine efforts to conserve and manage sharks and may lead to increased IUU fishing.

22. **High seas pockets:** There are some transshipments which take place in the high seas pockets, but considerably more which take place on the edge of Pacific EEZs. This suggests that vessels are transshipping in these areas for convenience, and because the transshipment is subject to less monitoring, including by the coastal State, not because it is “impracticable” for them to transship in port or in waters under national jurisdiction. Prohibiting transshipments in the high seas pockets, as envisaged by paragraph 38 of CMM 2009-06, would be consistent with the need for enhanced monitoring of fishing activities in these areas for data collection and conservation and management purposes.

### **Proposed draft guidelines**

23. It should be recalled that paragraph 34 of CMM 2009-06 permits non-purse seine vessels to transship on the high seas where it is “impracticable” for the vessels to operate without being able to transship on the high seas. This suggests a high threshold and that there are specific operations that may be exempted from the prohibition on transshipment due to the characteristics of the fishery. This is consistent with the manner in which certain purse seine vessels are exempted from the prohibition on transshipments at sea in paragraphs 25 to 32 of CMM 2009-06, but subject to tight controls and TCC review.

24. The proposed guidelines should balance the terms of the Convention and CMM 2009-06 (both of which point to a prohibition on transshipment on the high seas unless “impractical”) with the characteristics of tuna fisheries in the Convention Area. They should include criteria which are easily measured, able to be monitored effectively, and do not advantage inefficient operators. They should also be consistent with the objectives of ensuring effective conservation and management, obtaining fisheries data, monitoring compliance, and preventing IUU fishing. The proposed draft guidelines respond to the tasking of WCPFC12. They do not address the policy issue of whether all transshipments on the high seas should be prohibited.

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<sup>14</sup> See IATTC Resolution C-12-07.

<sup>15</sup> WCPFC9 Decision on the WCPFC-IATTC Overlap Area, WCPFC9-2012-33.

Proposed draft Guidelines in accordance with paragraph 37 of CMM 2009-06

1. CCMs may only make a determination under paragraph 34 that it would be impracticable for non-purse seine vessels undertaking the following operations to be prohibited from transshipping in the high seas:
  - a. Non-purse seine vessels using flake ice or refrigerated sea water and which transship fresh fish to receiving vessels, where “fresh fish” means tuna or other highly migratory species that are alive, whole or dressed/gutted, but not further processed or frozen;
  - b. Ultra-low temperature (ULT) freezer longline vessels which transship tuna to ULT freezer carriers in order to supply the high-grade frozen sashimi market;
  - c. Non-purse seine vessels which fish in WCPFC/IATTC overlap area, provided that the CCM flag State has notified the WCPFC and IATTC that it will apply IATTC resolutions in accordance with the WCPFC9 Decision on the WCPFC-IATTC Overlap Area.
2. A CCM may not make a determination that it would be impracticable for a vessel to be prohibited from transshipping in the high seas where that vessel is authorized by the CCM to transship sharks or shark fins.
3. The provisions of paragraph 13 of CMM 2009-06 relating to observer coverage shall apply to any vessel where a CCM has made a determination that it would be impracticable to prohibit the vessel from transshipping on the high seas. Where a fishing vessel does not fall within paragraph 1 above, it may only be authorized by the CCM flag State to transship on the high seas provided an observer from the Regional Observer Programme is deployed on both the fishing vessel and the receiving vessel.
4. The provisions of paragraph 35 of CMM 2009-06 shall apply to CCMs which have made a determination in accordance with paragraph 1 above. In particular, such CCMs shall advise the Secretariat in its Annual Report of its procedures for monitoring and verification of the transshipments, and its plan detailing what steps it is taking to encourage transshipment to occur in port in the future.
5. These guidelines will be reviewed annually by the TCC to determine whether there has been a decrease in the number of transshipment events on the high seas and a decrease in the quantity of tuna transshipped on the high seas. This review will consider whether additional controls, including requiring an observer from the Regional Observer Programme to be placed on any non-purse seine fishing vessel wishing to undertake transshipment on the high seas, should be implemented.

**Recommendation**

- a. consider the proposed draft guidelines for the determination of impracticability under paragraph 37 of CMM 2009-06;
- b. consider in accordance with paragraph 38 of CMM 2009-06 whether to prohibit transshipment in areas of high seas in the Convention Area entirely surrounded by the EEZ of members of the Commission and Participating Territories; and
- c. consider tasking the Secretariat to work closely with ROP observer programmes to better support the training and safety of high seas transshipment observers, including through the use of electronic tools.

25. TCC is invited to: