



**COMMISSION  
EIGHTH REGULAR SESSION**  
Tumon, Guam, USA  
26-30 March 2012

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**WCPFC IUU Listing Process**

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**WCPFC8- 2011-DP/21  
(WCPFC-TCC7-2011-DP-16/Rev 1)**

**Paper prepared by the Kingdom of Tonga**



**TECHNICAL AND COMPLIANCE COMMITTEE  
SEVENTH REGULAR SESSION**

**Pohnpei, Federated States of Micronesia  
28 Sept - 4 Oct 2011**

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**WCPFC-TCC7-2011-DP-16/Rev 1**

**Delegation Paper from the Kingdom of Tonga  
Regarding the WCPFC IUU Listing Process**

## **Delegation Paper from the Kingdom of Tonga Regarding the WCPFC IUU Listing process.**

Since WCPFC5 in 2008, Tonga, on behalf of FFA Members, has sought to make improvements to the WCPFC IUU listing process, to ensure that coastal States satisfaction in seeking redress for offences within their waters plays a major role in determining if a vessel should or should not be IUU listed.<sup>1</sup>

Tonga's efforts have and continue to be, supported by other coastal States, including those of Te Vaka Moana (TVM) Participants (TVM includes the fisheries administrations of: Cook Islands, New Zealand, Niue, Samoa, Tokelau and Tonga).

Because of their limited MCS resources to secure and protect their fisheries, heavy penalties for IUU vessel operators, are critical to TVM Participants, to create a deterrent effect and prevent further IUU activities.

To date, Tonga's efforts have focussed on proposed revisions to paragraph 15 of the WCPFC IUU measure (CMM 2007-03) to ensure coastal States interests are protected. This has proven to be extremely difficult, with progress continually being blocked by one or two WCPFC Members.

Tonga believes it is time for the TCC Chair to take the lead on this important issue, and ensure that coastal States rights are secured and protected, by improving the measure.

To assist the Chair, Tonga now tables guidelines that have been successfully used by coastal States, including Cook Islands, New Zealand, Tokelau and Tonga, when considering levels of sanctions that should be applied in the case of IUU fishing within respective coastal State waters and in negotiating outcomes with flag States. These guidelines seek to ensure coastal States interests are taken into account by creating an equitable and transparent way to make determinations about the adequacy of actions taken or sanctions imposed and articulating the real cost of IUU cases.

Tonga notes that the WCPFC5 Summary Report also includes a list of similar criteria that could be used in such guidelines, and has been the basis for development of national guidelines with Te Vaka Moana Arrangement countries. These are:

- *The potential penalties imposed by the coastal State;*

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1. For a record of Tonga's effort in leading this process to date please refer to attachment one.

- *The number of violations committed;*
- *The quantity, species and value of fish taken whilst the violations were being committed;*
- *The potential loss of licensing revenue incurred;*
- *The cost for carrying out monitoring, control and surveillance activities to detect the violation;*
- *The cost of the investigation of the IUU matter;*
- *The ongoing cost of sending staff to WCPFC meetings to ensure that the vessel is placed on the IUU list; and*
- *The need to set a penalty that acts as an effective deterrent so as to secure compliance with coastal State laws and WCPFC measures.*

To be clear, Tonga and other TVM Participants are not seeking for WCPFC to agree to these TVM guidelines as they are applied within our respective coastal State jurisdictions. We intend to continue making use of these criteria in negotiations with flag States to seek redress for the IUU activities of flag State vessels within TVM EEZ's.

These guidelines respond to the outstanding task set by the Commission in Para 161 of the WCPFC5 Summary Report which says *“WCPFC5 agreed that further development of guidelines for how the Commission should consider and assess the adequacy of any actions taken, or sanctions imposed, in relation to CMM 2007-03 should be a priority work item and referred the matter to TCC5. It was noted that work on a control of national measures may inform this process”*

Tonga believes that the Commission should still develop guidelines as directed by WCPFC, and notes that they must be compatible with the guidelines in use within our coastal State waters.

Malo aupito

Viliani Moale

Head of the Kingdom of Tonga Delegation to TCC7

**Guidelines for articulating sanctions by TVM Coastal States where IUU fishing has occurred within TVM Coastal State waters**

<b>Criteria</b>	<b>Narrative</b>	<b>Assessed cost \$ (specify currency)</b>
Potential total value of penalties that may be imposed by coastal State		
Number of violations committed in coastal State waters		
Quantity, species and total value of fish estimated to have been taken from coastal State whilst violations were committed		
Potential loss of licensing revenue to coastal State		
Cost to coastal States of carrying out MCS activities to detect violation and ensure vessel does not repeat violation		
Cost to coastal States of investigation of the IUU matter		
Cost to coastal States of sending staff to WCPFC meetings to ensure vessel is IUU listed		
Additional factors to ensure that the penalty set acts as an effective deterrent so as to secure compliance with coastal State laws and WCPFC measures. May be financial but may also include other requirements such as IUU vessel required to report to coastal State VMS etc.		
<b>Total</b>		

## Attachment One

The following texts are records of Tonga's efforts and the Commissions records of work on this important issue.

### **1. Tonga Statement on Paragraph 15(b) CMM 2007-03 (Attachment G)**

Attachment G

**Technical and Compliance Committee**

**Fourth Regular Session**

**Pohnpei, Federated States of Micronesia**

**2-7 October 2008**

#### **TONGA'S STATEMENT ON PARA. 15(B) OF CMM-2007-03**

Mr Chair,

I am aware from our previous discussions on IUU listing cases and in particular the application of paragraph 15(b) of CMM-2007-03 that there are no explicit standards and criteria for assessing whether an action taken by flag State is effective.

With that in mind Mr Chair, Tonga delegations would like to request that the following issues be noted in the record.

**One**, that Tonga is concerned about having no explicit standards or criteria for assessing whether an action taken by flag State is effective.

**Two**, Tonga would like the Commission to take note that Tonga believes that there is a need to develop a clear and transparent criteria to be used when assessing the effectiveness of action taken by flag State when applying paragraph 15(b) of CMM-2007-03.

**Number of offences committed within the EEZ of a coastal State:** There is a need to take into account the number of offences committed within the EEZ of the coastal State. For example, in Tonga's case, there were 3 offences committed within the Tonga EEZ.

**Penalty and fine provided by the national law of a coastal State:** There is a need to consider the penalty and fine imposed by the national law of the coastal State with respect to the offences committed. For example, in Tonga's case, total fine amounted to 1.2 million US dollars.

**Number of days that the vessel had spent within the EEZ of a coastal State:** Take into account the number of days the vessel spend fishing (illegally) within the fisheries waters of the coastal State. For example, in Tonga's case, Chu Huai 638 fished illegally within Tonga EEZ for a total of 13 days.

**Total expenses incurred:** Take into account the total expenses incurred by the coastal State and others in carrying in combating IUU activities including costs to air surveillance, sea surveillance, to mention the least. For example, in Tonga's case, costs incurred by NZ air surveillance etc.

**Sovereign rights of coastal State:** The sovereign rights of coastal State whose waters the offences were committed should be taken into account in considering the effectiveness of action taken by flag State.

## **2. Decision by TCC4 regarding Tonga Statement (below)**

### **Technical and Compliance Committee**

#### **Fourth Regular Session**

#### **Pohnpei, Federated States of Micronesia**

**2–7 October 2008**

125. Tonga, supported by several CCMs, with regard to such evaluations suggested that factors including the number of offences, the applicable penalties under national law in the coastal State, the number of days of violation and the total expenses of MCS activities to the coastal State should be considered. Other CCMs supported Tonga and offered that two additional criteria — the dependency of the coastal State on its marine resources and the value of the illegal catch — would be useful to consider. Some CCMs considered that CMM-2007-03 needed to be revised, whereas others stated this guidance could be provided through other means.

126. Chinese Taipei stated their view that evaluation of whether effective action has been taken by the flag State should be transparent, fair, non-discriminatory, account for differences in legal systems between States, and traditional operating patterns and fishing history between the coastal State and the flag State.

127. The USA stated that an essential element of the assessment is that the evaluation of effective action cannot be taken by the flag State of the vessel nominated on the Draft IUU Vessel List.

128. In relation to resolving the issues associated with IUU listing, particularly the discharge by flag States of their obligations and the determination of the adequacy of the severity of sanctions imposed the flag State, Dr Tsamenyi drew attention to the importance of utilizing the provisions of Article 25 of the Convention in addition any subsequent actions through CMM-2007-03 to place the vessel on the Provisional IUU Vessel List.

129. The Philippines provided useful information pertaining to incidents involving the intrusion of vessels into the waters of coastal States. In such cases, the Philippines recognizes the authority of the coastal States to impose their domestic laws in dealing with such violations in the same manner that the Philippines expects that other flag States would recognize the authority of the Philippines in dealing with perpetrators until the issues are resolved. The Philippines indicated that these issues are also resolved diplomatically.

**130. TCC4 noted with concern the issue raised by Tonga regarding when a flag State has made sufficient action with respect to an IUU incident.**

**131. Tonga's position statement on this matter, which is attached as Attachment G, received strong support from CCMs.**

**132. TCC4 undertook to review this matter as a priority item at TCC5.**

### **3 Decision by WCPFC 5 regarding criteria raised by Tonga (below)**

**Commission for the Conservation and Management of  
Highly Migratory Fish Stocks in the Western and Central Pacific Ocean  
Fifth Regular Session  
Busan, Korea  
8–12 December 2008**

157. Several CCMs, including FFA members, stated the view that evaluating whether an effective action has been taken by a flag State, as required by CMM 2007-03 para.15(b), is a matter for consideration of the Commission, rather than just the flag State, and that it is important that the satisfaction of the coastal State be factored into making such considerations. These CCMs suggested that the following criteria should be considered when determining whether a satisfactory settlement has been reached.

a. The potential penalties imposed by the coastal State;



- b. The number of violations committed;
- c. The quantity, species and value of fish taken whilst the violations were being committed;
- d. The potential loss of licensing revenue incurred;
- e. The cost for carrying out monitoring, control and surveillance activities to detect the violation;
- f. The cost of the investigation of the IUU matter;
- g. The ongoing cost of sending staff to WCPFC meetings to ensure that the vessel is placed on the IUU list; and
- h. The need to set a penalty that acts as an effective deterrent so as to secure compliance with coastal State laws and WCPFC measures.

158. Some CCMs advised against formalizing provisions for mandatory involvement of the flag State in settlements, warning that such provisions could lead to double punishment of the vessel. It was also noted, however, that there are practical reasons why the flag State may be best placed to prosecute the vessel (e.g. when the vessel has fled the waters where the violation occurred).

159. Other CCMs stated the importance of requiring a settlement that is satisfactory to the coastal State whose resources were damaged by the violation, and urged that coastal State settlement take priority over a settlement imposed by the flag State. These CCMs noted that it would be unfair for the flag State to benefit (e.g. receive fines) when its vessels engage in IUU fishing activities, yet the coastal State where the violation occurs receives nothing.

160. Some CCMs suggested that in the first instance, and unless extenuating circumstances exist, settlement of IUU fishing incidents between the offending vessel and the coastal State should be given precedence.

**161. WCPFC5 agreed that further development of guidelines for how the Commission should consider and assess the adequacy of any actions taken, or sanctions imposed, in relation to CMM 2007-03 should be a priority work item and referred the matter to TCC5. It was noted that work on a control of national measures may inform this process.**

#### **4 Decision by WCPFC 7 regarding its decision in WCPFC5 on Tonga Proposal (below)**

**Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean Seventh Regular Session Honolulu, Hawaii, USA 6–10 December 2010**

(ii) Amendments to paras. 15 and 25

261. Tonga introduced WCPFC7-2010-DP-11, proposing amendments to para. 15 of CMM 2007-03 with the intent of (i) distinguishing between fishing violations that occur in a coastal State's waters and those that occur on the high seas, (ii) requiring that fishing violations that occur in a coastal State's waters be resolved to the satisfaction of that coastal State, and (iii) affirming the sovereignty and the exercise of sovereign rights of the coastal State.

262. Several CCMs stated they could not support the amendment.

263. FFA members voiced their support, and noted that the Convention Area differs from that of other RFMOs, due to including the EEZs of many Pacific Island countries. Several FFA members related problems they had experienced with IUU fishing vessels, stressing that the current paragraph did not effectively address situations where a vessel had fled their jurisdiction.

264. The EU has tabled a proposal by adding the coastal states in para 15 c) of CMM 2007-03 as follows....."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, of the Coastal State (if different from the former) and of the flag State involved".

265. The Chair summarized the issues, noting that if violations take place in an EEZ, and the vessel leaves, and the flag State does not take adequate measures, then the coastal State has no recourse. He suggested members develop a mechanism to get flag States to take action to punish violations in a way that is commensurate with the violation.

266. Tonga, on behalf of FFA members, thanked members who participated in the discussion, and proposed that the Commission revisit the decision taken by WCPFC5 with regard to application of IUU conservation and management measures: "WCPFC5 agreed that further development of guidelines for how the Commission should consider and assess the adequacy of any actions taken, or sanctions imposed, in relation to CMM 2007-03 should be a priority work item and referred the matter to TCC5. It was noted that work on a control of national measures may inform this process" (WCPFC5 Report, para 161). FFA members noted that the TCC5 summary report contains no evidence the issue was considered, and urged that the decision be revisited and TCC7 be directed as a matter of priority to consider the matter, and consider the issues in para 157 of the WCPFC5 report.

**267. WCPFC7 directed TCC7 to satisfy the following request made by WCPFC5: "WCPFC5 agreed that further development of guidelines for how the Commission should consider and assess the adequacy of any actions taken, or sanctions imposed, in relation to CMM 2007-03 should be a priority work item and referred the matter to TCC5." It was noted that work on a control of national's measure may inform this process.**