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**LEGAL ANALYSIS OF WCPFC CMM 2008-01**

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**WCPFC8-2011-47  
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**Paper prepared by Legal Adviser**

1. This paper responds to a request by some CCMs for the Legal Adviser to provide analysis of CMM 2008-01 in terms of the paragraphs which have expired and those which are continuing.
2. CMM 2008-01 is a very complex Measure. Many of the paragraphs are capable of different interpretations. In the absence of full knowledge of what the exact intent of the Members were when they adopted the Measure, a textual interpretation has been adopted in this analysis.
3. Based on the analysis, it can be concluded that most of the substantive provisions of CMM 2008-01 which are linked to specific years (i.e. 2009, 2010, and 2011) have expired.
4. Although provisions which are not time-bound do not expire, some of the provisions will require revision such as those that are linked to conservation and management measures which have been amended or those that are linked to provisions which have expired.
5. For easy reference, the analysis is presented in a matrix format (Appendix).

## Appendix

### LEGAL ANALYSIS OF CONSERVATION AND MANAGEMENT MEASURE 2008-01 Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean

	Sections/Provisions	Legal Analysis
1	<b>Preamble</b>	The preambular paragraphs do not expire. However some of the paragraphs will require revision. For example: <b>Preamble para 5: <i>Conscious</i></b> that the Commission, at its regular sessions in December 2005 and 2006 adopted CMMs for bigeye and yellowfin tuna and agreed to review annually those measures;”
2	<b>Objectives</b> Paragraph 1	The general principles embodied in the Objectives do not expire, however, some may require revision; for example: Objective dot point 2: “Achieve, through the implementation of a package of measures, over a three-year period commencing in 2009, a minimum of 30% reduction in bigeye tuna fishing mortality from the annual average during the period 2001-2004 or 2004”
3	<b>General Rules of Application</b> Paras 2-7	These provisions do not expire although some provisions may require updating. For example:  Para 2 with reference to charter arrangements: “The Commission shall consider the implementation of a Charter Arrangements Scheme at its 6th Session in 2009.”  Para 3 with reference to CMM 2004-02: “In giving effect to CMM 2004-02... the limits that apply to CNMs, particularly on the high seas, will be determined by the Commission in accordance with CMM 2004-02 or its revision.”
4	<b>Purse Seine Fishery</b> Paras 8-10	<b>Paragraph 8</b> expires because it is limited to a 3-year period which commenced in 2009.  <b>Paragraph 9</b> does not expire.  <b>Paragraph 10</b> , referring to levels of purse seine fishing effort on the high seas (2004, or 2001-2004 average), does not expire.

5	<b>Measures for 2009</b> EEZ and High Seas High Seas Alternative Paras 11-16	These provisions expired at the end of 2009.
6	<b>Measures for 2010-2011</b> EEZ High Seas Paras 17-22	These provisions are time-bound and expired at the end of 2011.  <b>Note:</b> As a result of the decision taken through correspondence in late 2011, all the provisions that would have expired in 2011 were extended to the end of the WCPFC8 meeting.
7	Paragraphs 23-30	All of these titles come under separate headings and <b>NOT</b> part of the heading: “Measures for 2010-2011” and do not expire.
12	<b>Longline Fishery</b> Paras 31-38	These provisions expire.  <b>Note:</b> The interpretation of paragraph 31 is a bit unclear and could be read as continuing, particularly the second part which provide “...The catch of yellowfin tuna is not to be increased in the longline fishery from the 2001-2004 levels.” However, the paragraph, read together with the rest of the paragraphs (i.e. paras 32, 33, 35, 36) under the same section can lead to the conclusion that the paragraphs expire because they relate to the 2009-2011 period.
13	Para 39-45	These paragraphs are not time-bound and therefore do not expire.
18	<b>Review of Measures</b> Para 46	This provision can either be read to expire or require revision.  There is a potential contradiction in paragraph 46 where it states...“The measure shall remain in place unless the Commission adopts alternative measures.” However, read together with the rest of the measure as a whole, in particular the time bound provisions highlighted above, can lead to the conclusion that this provision expires or requires revision.
19	<b>Final Clause</b> Para 47	This provision does not expire but requires revision..