



Technical and Compliance Committee

Fifth Regular Session

1-6 October 2009

Pohnpei, Federated States of Micronesia

SUMMARY REPORT: PRE-EDITED VERSION

*This Summary Report contains agreed decision points, **in bold**, which are the decisions of TCC5. The narrative text is the responsibility of the Chair.*

AGENDA ITEM 1 — OPENING OF MEETING

1.1 Welcome

1. The Chair of the Technical and Compliance Committee (TCC) Ambassador Wendell Sanford (Canada) opened the Fifth Regular Session of the Committee at 8:30am on 1 October 2009. He expressed his appreciation to the Federated States of Micronesia (FSM) Government and to the College of Micronesia for their support of the meeting. A prayer of condolence was offered for the victims of the recent tsunamis and earthquakes in Samoa, American Samoa, Tonga, Indonesia and elsewhere.

2. Ambassador Satya Nandan (Fiji), the Chair of the WCPFC delivered an opening address noting the impressive progress of the Commission in the short time since its establishment. He stressed that the ultimate effectiveness of the management measures adopted would depend on the commitment with which they are implemented by Commission Members, Cooperating Non-members and Participating Territories (CCMs).

3. The following CCMs attended TCC5: Australia, Canada, China, Cook Islands, European Community (EC), Federated States of Micronesia (FSM), Fiji, France, Japan, Kiribati, the Republic of Korea, Republic of the Marshall Islands (RMI), Nauru, New Caledonia, New Zealand, Republic of Palau, Papua New Guinea (PNG), Philippines, Samoa, Solomon Islands, Chinese Taipei, Tokelau, Tonga, Tuvalu, United States of America (U.S.) and Vanuatu. El Salvador attended TCC5 as a Cooperating Non-member.

4. Observers representing Ecuador, the Pacific Islands Forum Fisheries Agency (FFA), Greenpeace and Pacific International Maritime Law Association (PIMLA) also participated. A list of participants is provided as Attachment A.

1.2 Adoption of Agenda

5. The provisional agenda (WCPFC-TCC5-2009/03(Rev.3)) was adopted, as amended, by TCC5 (Attachment B).

1.3 Meeting Arrangements

6. Meeting support was provided by the WCPFC Executive Director Andrew Wright; Ken Smithson, Financial and Administrative Manager; Andrew Richards, Compliance Manager; Dr SungKwon Soh, Science Manager; Sam Taufao, ICT Manager; Karl Staisch, Observer Programme Coordinator; Albert Carlot, VMS Manager; Milo Abello and Julio Mendez, VMS Operations Officers; Glen Jano, Administrative Assistant Data Entry; Herolyn Movick, Office Manager; and Lucille Martinez, Executive Assistant. In addition to Secretariat staff, two meeting participants provided support services: Dr Martin Tsamenyi, legal advisor; and Dr Shelley Clarke, rapporteur.

1.4 Opening Statements

7. Korea made a statement expressing their concern regarding activities by Greenpeace on the high seas involving interference with fishing activities (Attachment C).

8. Some CCMs voiced their support for Korea's statement.

AGENDA ITEM 2 — PRIORITY MONITORING, CONTROL AND SURVEILLANCE (MCS) ISSUES BEFORE THE COMMISSION

2.1 Regional Observer Programme

(a) Report of the Third Meeting of the Inter-sessional Working Group

9. The Chair of the Regional Observer Programme (ROP) Interim Working Group (IWG), Dr. Charles Karnella (United States) presented the report of the Third ROP IWG (WCPFC-TCC5-2009/IP-03).

10. Dr Karnella described the recent accomplishments of the ROP-IWG3 as focused on agreements on additional five interim minimum standards (including a vessel safety checklist, observer training qualifications, liability and insurance, standardised procedures for deployment of ROP observers, and authorisation of debriefers and requirements of debriefing), other agreements (including ROP observer placement costs, fisheries to be monitored, coverage levels, cadre of observers, and ROP workbooks); recommendations for CCM Annual Report Part 2 ROP reporting requirements, and implementing the ROP to monitor the August-September 2009 FAD closure.

11. The ROP IWG-3 was, however unable to reach consensus on the definitions of some key terms (“occasional”, “principally”, “adjacent”, “independent”, “impartial”, “observer trip for longliners”) and whether some vessels could be exempted from requirements to carry observers due to their vessel size limitations. Dr. Karnella reminded TCC5 that Article 28, para.(1) of the Convention requires that the ROP be used to collect “verified catch data”, therefore if there are vessels which cannot accommodate an observer, these vessels must consider how they can meet the requirements of the Convention.

12. Some CCMs again voiced concerns about their ability to accommodate observers on small vessels but a portion of these accepted that an alternative means of providing verified data should be sought. The possibility of using video technology was raised by Canada. Another option involving increased coverage on some fleet sectors if other fleet sectors could not take observers was suggested.

13. Other CCMs emphasised the importance of collecting verified data across a representative sample of the fishing fleet, i.e. including small vessels. The majority among this

group supported ongoing and expanding implementation of the ROP despite the fact that not all elements of the ROP have yet been agreed.

14. TCC5 agreed to accept the recommendations of the ROP –IWG3 Summary Report and attachments (WCPFC-TCC5-2009/IP-03).

15. TCC5 agreed to recommend to the Commission that CCMs implement the ROP (CMM 2007-01) and report on their progress in Part 2 of their 2010 Annual Reports, including how they will achieve 5% coverage by June 2012 (CMM 2007-01, Annex C, para. 6).

(b) Consideration of outstanding issues

16. Dr. Karnella explained that consensus had not been reached on the definition of the “hybrid model/approach”, particularly in regard to when observers should not be nationals of the flag State of the vessel.

17. In response to the IWG-ROP Chair’s report on the IWG-ROP meetings not being able to reach consensus on definitions, some CCMs held that the original agreement on the hybrid model/approach was quite clear in its intended definitions and stressed the importance of implementing it. Some CCMs indicated that they are implementing it.

18. CCMs stated that the hybrid model/approach allowed for the use of national observers on their own longline vessels, including on the high seas. These CCMs stated that this is a practical option given that demand for observers will increase rapidly in the near future. These CCMs did not accept that there is necessarily any conflict of interest in using observers from the vessel flag State, and some stated that language and living conditions on longliners favoured the use of compatriot observers.

19. After summarizing a number of items of ongoing work, Dr. Karnella presented a recommendation that the ROP-IWG disband and that a Technical and Operational Advisory Group (TOAG) be formed to undertake additional technical and operational work in support of the ROP and the Secretariat’s Observer Programme Coordinator. He highlighted the amount of technical work likely to be involved in harmonising interim minimum standards from many different national and sub-regional programmes.

20. In response to this proposal, CCMs spoke in favour of formation of a TOAG, but several noted the importance of establishing Terms of Reference for the group and to ensure the group included the appropriate expertise and was of a manageable size.

21. In order to move forward on this issue a working paper was prepared during TCC5. After taking comments on a first draft, WCPFC-TCC5-2009/38 (Rev. 1) presented a simplified draft terms of reference for the proposed TOAG.

22. Several further amendments were offered and accepted by CCMs, but FFA members declined to support the proposal citing concerns about required credentials, a lack of clarity about the scope of the proposed TOAG, and its relationship to development and implementation standards for the ROP within coastal States’ national waters, and how the membership would be chosen.

23. There was general consensus that the intention was not to establish a new subsidiary body such as an IWG, rather the group should be informal and its main goal would be to provide support to the Secretariat’s Observer Programme Coordinator.

24. TCC5 reviewed the paper “ROP Technical and Operational Advisory Group-Draft Terms of Reference” (WCPFC-TCC5-2009/38 (Rev. 1)). TCC5 recommends that the

Observer Programme Coordinator work on the recommendation from the IWG and make that available to WCPFC6 for its consideration.

25. Dr. Karnella explained that it was necessary to develop a definition of a FAD set in order to implement the ROP for the recent FAD closure period during which 100% observer coverage was required. ROP-IWG3 discussed two definitions, one based on the IATTC and the other on a definition being proposed for use by the Parties to the Nauru Agreement (PNA) (WCPFC-TCC5-2009/DP-01). For the purposes of the ROP, during the FAD closure for 2009 the definition to be used is patterned after the PNA definition so that a FAD set is one in which the purse seine vessel is less than or equal to 1nm from the FAD when the skiff enters the water.

26. TCC5 discussed “Implementing robust and compatible rules for WCPFC FAD closures and catch retention” (WCPFC-TCC5-2009/DP-01) and a proposal for TCC5 to adopt these rules for the high seas (WCPFC-TCC5-2009/DP-23).

27. There was consensus that standardised definitions and rules for FAD fishing operations are needed for effective implementation of CMM 2008-01 and that CCMs should work toward agreeing such definitions and rules.

28. Some CCMs, noting that the significant majority of purse seine fishing occurs within national waters, advocated adopting the PNA rules for the high seas, if necessary on an interim basis, in order to promote computability between the high seas and EEZs. These CCMs stressed the importance of having agreement on definitions and rules in place prior to the 2010 closure.

29. Other CCMs stated that it might not be wise to adopt the EEZ FAD definitions and rules for the high seas without further consideration. Some of these CCMs suggested that more time is required to assess the outcomes of the August-September 2009 FAD closure both in terms of observer debriefing and national measures developed to implement it.

30. TCC5 discussed the paper “Implementing Robust and Compatible Rules for WCPFC FAD Closures and Catch Retention” (WCPFC-TCC5-2009/DP-01). CCMs agreed, with the Secretariat to coordinate, to discuss this paper electronically on an inter-sessional basis (comments to the Secretariat no later than 31 October) and develop a recommendation for a definition of FAD and FAD sets for consideration by WCPFC6. TCC noted that the definitions should be agreed before the next FAD closure.

31. Some CCMs commented that some of their vessels reported FAD sets during the closure period conducted by other flag States. These CCMs believe this situation is of great concern and points to the need for stricter specification of FAD sets and their monitoring, as well as debriefing observers and following up on known incidents.

32. Some CCMs requested more detail about alleged incidents, stating that data on flag State and the number of incidents would be necessary to look for patterns.

33. Other CCMs felt it would be premature to provide further details at TCC5, especially as the incidents have not yet been confirmed through observer debriefing.

34. Some CCMs suggested that the Secretariat prepare a report on compliance with the FAD closure provisions of CMM 2008-01 for discussion at WCPFC6.

35. One CCM suggested that in parallel with reporting on incidents involving vessel non-compliances, that incidents involving observer non-compliances should also be reported.

36. TCC5 recommended development of a report by the Secretariat on FAD closures as soon as possible and in advance of WCPFC6, if possible.

37. Dr Karnella also noted that the ROP-IWG had developed minimum standard data fields for FAD monitoring (WCPFC-TCC5-2009/IP-03, Attachment D) and that these fields had been augmented through discussion at SC5 to include an additional four data fields. TCC5 was asked to endorse the form for eventual consideration for approval by the Commission.

38. TCC recommends to the Commission adoption of ‘Minimum Standard Data Fields for Purse Seine FAD monitoring’ as contained in WCPFC-TCC5-2009/28, Attachment 1.

(c) Annual Report by the Secretariat

39. Karl Staisch, Observer Programme Coordinator presented the first annual report prepared by the Secretariat on the ROP as required under CMM 2007-01, para. 3 (WCPFC-TCC5-2009/07). The format of the report was based on CMM 2007-01, para. 13 which outlines the role of the Secretariat and the activities to be carried out. The presentation highlighted the following key points:

- i. Observer manual updates have been received from the Philippines, Nauru, Japan, Australia and New Zealand.
- ii. There has, as yet, been no longline coverage under the ROP though there is some coverage under national programmes. Purse seine coverage by sub regional multilateral programmes has been about 20% plus additional national coverage. During the 2-month FAD closure, purse seine coverage was 100%.
- iii. There is currently no shortage of observers but more observers will be required for the 100% observer coverage commencing January 2010.
- iv. The efforts of FFA and SPC to prepare the observers for the FAD closure period were gratefully acknowledged. Thanks were also given to the U.S. for supplemental funding which has supported aspects of ROP work.
- v. A number of incidents and misunderstandings were reported during the FAD closure period. Once these have been verified through observer debriefing, the issues involved can be clarified.
- vi. Most of the deployed observers were from the FFA Pacific Island observer programmes.
- vii. Efforts to agree cross-endorsement of observers with IATTC and guidance for when compatriot observers can be used are ongoing between the Secretariats of WCPFC and IATTC.
- viii. The Observer Programme Coordinator assisted and attended observer training courses held in the Philippines, PNG and FSM.
- ix. Data handling procedures are under development and will require greater attention as the ROP expands its implementation. This is likely to include the need to fund employment of a data quality officer. The position has been approved previously by the Commission and was budgeted to commence in 2010.
- x. In order to achieve full accreditation of national and sub-regional programmes by June 2012, a large number of programme audits will need to be commenced in 2010. These accreditation activities will require adequate funding.

40. FFA members thanked the Secretariat for its efforts to implement and advance the ROP noting that data were sparse in this first year but will improve as the ROP develops.

41. The EC highlighted the importance of referring to vessels registered to EC member countries as EC vessels.

42. Some CCMs expressed frustration with logistical problems encountered when trying to embark observers during the 2009 FAD closure period.

43. One CCM also pointed out that the list of fisheries to be monitored (WCPFC-TCC5-2009/IP-03, Attachment F) should be examined carefully as some fisheries appear to be missing. This CCM also suggested that the monitoring should not focus only on coverage rate but should be expanded to include what data are being collected, e.g. on bycatch.

44. This same CCM noted that a large number of accreditation audits will need to be carefully scheduled to ensure the June 2012 deadline can be met. Concern was expressed that if too much reliance is placed on audit information collected by the cadre of observers, who are also tasked with assisting with spill sampling trials, this might skew the auditing information toward purse seines when a balance between purse seines and other gear types is needed.

45. Another CCM emphasized the importance of using observers from the State where the fishing was being conducted unless no such observers are available. It was also requested that all incident reports be sent to the coastal States immediately upon receipt and that the ROP take account of ongoing improvements in sub-regional and national observer programmes.

46. In response to the request for ROP data to be immediately provided to the coastal state where the trip occurred, the Observer Programme Coordinator noted that this could certainly be done but would require a procedure to be drafted since the Commission's current data handling procedures do not cover this situation.

47. In addition to providing ROP data to the coastal state where the trip occurred, one CCM suggested that the flag State may also wish to obtain a copy of the data.

48. TCC accepted the first annual report of the ROP (WCPFC-TCC5-2009/07); and looks forward to the development of the ROP and clarification of the incidents which appear in this report.

(d) Estimated costs of observer data management options

49. The Observer Programme Coordinator presented an update on ROP data administration and management options (WCPFC-TCC5-2009/08). Initially, three data hosting options were examined: SPC at Noumea, SPC at Fiji, and the Secretariat at Pohnpei. These options were then augmented by a request from SC5 to include other options. It was estimated that the amount of data flowing into a single data provider would require 16 full-time data entry personnel. Other costs include equipment, digital reproduction, data communication, freight and travel costs. Estimated costs per observer trip for each of the ten options are presented in the paper.

50. It was noted that PNG is currently testing the use of electronic forms filled out by the observer while onboard the vessel and transmitted using VMS capabilities. This system reduces the amount of labour input but is still being evaluated in terms of overall effectiveness.

51. In discussion, some CCMs noted that many national observer programmes, particularly those in national waters, will already be entering data and could provide that data in a digital format. It was noted, however, that this situation would be different on the high seas where less assistance is likely to be provided by national programmes. It was further noted that provision of electronic data may not be sufficient if the electronic formats required by the national programmes and the ROP are different or incompatible.

52. The WCPFC Executive Director clarified that the Secretariat's current capability to process raw data is limited. Depending on how much longline observer coverage is provided by

the existing national and sub-regional observer service providers, the Secretariat may be able to process a small amount of data in Pohnpei.

53. Some CCMs, including FFA members expressed support for Option 5.1 which involves data management centre hosting by FFA, observer providers, and SPC noting that FFA members are gradually expanding their data management capabilities. Some of these CCMs pointed to the fact that a number of CCMs already channel their data through SPC and thus if SPC is relieved of its responsibility additional costs will be incurred.

54. Other CCMs supported Option 5.3 based on their position that the Commission should have a role in observer data management even if the cost was slightly higher. These CCMs stated that the Commission should start to develop a WCPFC observer database as soon as possible.

55. Several CCMs noted that costs may differ depending on whether near-term versus long-term scenarios are considered. It was suggested that these scenarios be considered alongside cost figures by formulating and discussing a draft transition plan including both near-term and long-term arrangements.

56. TCC5 reviewed estimated costs of managing observer data “Regional Observer Programme Data Administration and Management” (WCPFC-TCC5-2009/08, Table 6.1). Having narrowed the options to 5.1 and 5.3, the Secretariat is directed to draft budget proposals for both options to be provided to CCMs at WCPFC6. A draft transitional plan for consideration of financial aspects will be prepared for the WCPFC7 Finance and Administration Committee.

(e) Cross-endorsement of IATTC Observers

57. The Observer Programme Coordinator presented WCPFC-TCC5-2009/09 on a proposed agreement between IATTC and WCPFC on cross-endorsement of observers. This initiative derives from a requirement in CMM 2008-01, para. 29 for the Secretariat to work with IATTC to develop procedures to allow each RFMOs’ observers to work in the other’s Convention Area. This would allow vessels crossing the boundary between the two Convention areas to continue with the same observers and avoid having to return to port to swap the observer. Existing arrangements involving FFA and the U.S. Treaty are being examined as a potential model. The Secretariat hopes to continue discussions with IATTC in a few weeks time.

58. FFA members noted their support for the cross-endorsement proposal and indicated they would be conducting training to facilitate crossover assignments.

59. Some PNA members noted that any cross-endorsement arrangement would not override the requirements of domestic laws of PNA members which require 100% coverage by PNA observers on purse seiners in PNA waters.

60. The United States noted that existing arrangements must be accommodated in any agreed upon cross endorsement.

61. Several other CCMs spoke in favour of the proposed cross-endorsement arrangements, however, concerns expressed included the questions of whether data collected by an IATTC observer inside the WCPFC area could be used for compliance purposes and whether cross-endorsement might have the effect of lowering WCPFC observer standards.

62. One CCM noted that in their experience, IATTC would not release any data without the permission of the flag State, and that this could be a problem for the full access to and utilisation of cross-endorsement data.

63. The Observer Programme Coordinator responded that these issues would be clarified through discussion with IATTC and that legal advice on aspects of the agreement would be sought from the WCPFC Legal Advisor.

64. New Zealand stated that its position is that if the cross-endorsement arrangements would not provide for the data to be used in legal proceedings, then the arrangements should not be entered into and this was supported by other CCMs.

65. TCC noted the Secretariat paper WCPFC-TCC5-2009/09 on “Cross endorsement of observers between WCPFC and IATTC” and encourages the Secretariat to continue work to develop this proposal noting concerns regarding protection of the quality of the WCPFC programme and the investigative, judicial, and administrative use of data obtained. This work will take into account national requirements in PNA waters and existing arrangements.

2.2 Transshipment Verification Procedures

66. RMI presented its draft of a CMM on regulation of transshipment (WCPFC-TCC5-2009/DP-08). RMI explained that this version was based heavily on discussions at WCPFC5 and on a discussion paper circulated subsequent to WCPFC5.

67. In the opening discussion of the proposed text several CCMs stated their opposition to allowing transshipment on the high seas either due to a lack of control potentially leading to opportunities for IUU fishing, and/or the presumption under Article 29 of the Convention that transshipment is conducted in port. Some of these CCMs pointed out that the WCPFC differs from other RFMOs in that it has a high proportion of fish in the EEZs of SIDS.

68. Other CCMs noted that transshipment is widely practiced and is allowed under other RFMOs. These CCMs felt that consistency among RFMOs is desirable and that transshipment on the high seas would not necessarily facilitate IUU fishing activities if it is appropriately controlled.

69. As much of the text had been agreed through previous rounds of discussion, discussions at TCC5 were able to focus on the remaining key issues. As discussion of these issues progressed, proposed amendments to the draft CMM text were incorporated, eventually resulting in WCPFC-TCC5-2009/DP-08 (Rev. 3) (Attachment D). The key issues arising during these discussions can be categorized as either cross-cutting issues or issues specific to transshipment.

70. The cross-cutting issues involved crafting text which reflected agreements on issues discussed under other topics at TCC5, many of which were ongoing simultaneously with transshipment discussions. These topics included:

- i. Observer cross-endorsement (para. 15 of DP-08 (Rev. 3) and Item 2.1e of this report);
- ii. the Register of non-CMM fish carriers and bunkers (para. 18 of DP-08 (Rev. 3) and Item 2.3 of this report);
- iii. charter State responsibilities (para. 20 of DP-08 (Rev. 3) and Item 2.4 of this report); and
- iv. data handling for transshipment declaration and prior notice information (para. 34 of DP-08 (Rev. 3) and Item 2.5 of this report).

71. Four key issues specific to transshipment were discussed including the area of applicability, additional exemptions for certain fleets, a practicality test, and precision of the location specification for the prior notification of transshipment. These issues are discussed below.

72. The first issue concerned the area of applicability of the draft measure as specified in para. 1. Some CCMs questioned whether the measure could be used to control transshipment outside the Convention Area.

73. The Legal Advisor explained that if the fish is caught in the Convention Area, the Commission has the power to regulate it regardless of the location of transshipment. One of the mechanisms for this may be calling on CCMs with jurisdiction outside of the Convention Area to apply the Commission's rules on transshipment to extra-Convention Areas. Cooperation with other RFMOs is also a possibility. The Commission is clearly able to regulate any transshipment of fish inside the Convention Area.

74. The question of applicability of the measure to transshipment in high seas pockets, archipelagic waters and EEZs was also discussed with some CCMs in favour of such application and some opposed.

75. The Cook Islands, on behalf of FFA members, explained that the high seas pocket closure in CMM 2008-01 applies only to purse seiners however it does imply longliners should be affected as well. This is because there is little longlining effort in the high seas pockets, these areas are known as havens for IUU transshipment activities, and there is little reason why vessels could not practically move from the pockets to port for transshipment.

76. The second issue centred on observer coverage requirements, including discussion of the needs arrangements for vessels less than or equal to 33 metres other than purse seine or frozen longline vessels, and for troll and pole and line vessels (para. 12alt.). The U.S. stated 100% observer coverage is not necessary for these types of vessels, which pose little threat of IUU fishing. In the case of the U.S. fresh fish longline fishery at-sea transshipment of bigeye tuna is done occasionally from vessels targeting swordfish, which make relatively long trips, and since the bigeye tuna is bound for sushi markets it needs to be moved quickly to avoid spoilage, so it is sometimes transhipped, but only to other catcher vessels in the fleet, not to carrier vessels. The U.S. added that since the U.S. swordfish-directed longline fleet is already subject to 100% observer coverage, the U.S. would be supportive of the 100% coverage requirement for that fleet, as long as the observer is allowed to be either on the offloading or receiving vessel, since the current 100% coverage rate applies to the former. Under the U.S. proposal, troll, and pole and line vessels would be subject to 100% coverage as of 1 July 2013.

77. One CCM questioned the practicality of identifying which small longliners might be exempt from high seas transshipment.

78. The U.S. responded that all vessels engaged in transshipments, regardless of whether they have observer coverage or not, would be required to submit a prior notification of transshipment to the Executive Director, so all CCMs would have advance knowledge of all authorized at-sea transshipments, including details about the vessels involved.

79. An alternative proposal (para. 12) is that all transshipment activities would immediately be subject to observer monitoring on the receiving vessel.

80. The third issue concerned a practicality test whereby vessels which can demonstrate either a financial hardship or a historical reliance on high seas transshipment would be allowed to tranship on the high seas (para. 36). While efforts to make the definitions specific were welcomed, the economic test specified in para. 36 (a) was not supported by one CCM who suggested that the term "significant economic hardship" be left undefined for the moment.

81. The fourth issue related to the addition of a margin of error when specifying transshipment locations to allow for vessel drift and/or positioning errors (footnotes to Annexes I and III). Text

was proposed which would provide for transshipment location notices in decimal latitude and longitude to the nearest 0.1 degrees with a margin of error of 15 nautical miles.

82. Despite extensive debate, only some of the cross-cutting issues and none of these four transshipment-specific issues were resolved during TCC5 and thus they remain as bracketed text in the draft measure.

83. TCC5 reviewed “RMI draft Conservation and Management Measure on Regulation of Transshipment” (WCPFC-TCC5-2009/DP-08 (Rev. 2)). After extensive discussion it was decided by TCC5 to carry on discussions electronically of bracketed text (in Attachment D) in this important matter in advance of WCPFC6 with a view to bringing a draft before WCPFC6 for its consideration. RMI and Nauru will coordinate with comments to be received by 26 October 2009.

2.3 Non-CCM Flag Carriers and Bunkers

84. The TCC Chair noted that both the U.S. and RMI had brought proposals to revise CMM 2004-01 (Record of Fishing Vessels and Authorization to Fish) to TCC5 with the objective of addressing the recurring issue of non-CCM flag carriers and bunkers. Both CCMs expressed appreciation for the other’s efforts and agreed to work together to produce a consolidated proposal.

85. The U.S. introduced its proposal (WCPFC-TCC5-2009/DP-02) which would require the owner/operator of the carrier or bunker to provide a written statement agreeing to comply with all of the WCPFC CMMs.

86. In contrast, the RMI proposal (WCPFC-TCC5-2009/DP-09) requires, in an initial phase, for a CCM to enter into an agreement with the vessel and/or its flag State and vouch for its compliance with WCPFC CMMs. Under a second phase, beginning in January 2012, the RMI proposal expects that the majority of carrier and bunker vessels will be flagged to States participating in the WCPFC, perhaps under a special category of CNM which would allow them to provide only carriers and bunkers.

87. Some small island developing states (SIDS) expressed concern that the U.S. proposal would allow non-CCM flagged carriers and bunkers into the WCPFC Convention Area even though certain SIDS have, in the past, been limited from inviting non-CCM fishing vessels, e.g. longline and purse seine vessels, into their waters.

88. Some CCMs noted that the most long-standing and straightforward means of controlling vessels is by the flag State. Therefore, these CCMs suggested the best solution would be for the flag States of the carrier and bunker vessels to become CNMs, perhaps through a streamlined process.

89. Several CCMs saw merit in elements of both proposals and emphasized the importance of closing out opportunities for IUU fishing in the Convention Area presented by unregulated transshipment activities.

90. One CCM suggested that for ease of administration, any register of vessels, such as a register of carriers and bunkers, should not need to be renewed every year, rather it should only be adjusted for changes as necessary.

91. The Executive Director offered the Secretariat’s assistance in preparing a combined draft of a revision to CMM 2004-01. Due to the many connections between this issue and others, CCMs were referred to several related documents including a list of non-CCM fish carriers and bunkers in WCPFC-TCC5-2009/11 and other materials associated with the WCPFC Record of Fishing Vessels.

92. The RMI subsequently tabled a combined proposal for discussion (WCPFC-TCC5-2009/DP-09 (Rev. 2)).

93. Key remaining issues included:

- i. The time period for the interim register, including whether that period should be specified and if so how long it should extend (paras. 25, 35bis and 35ter). Some CCMs supported a firm expiry date for the interim register on the basis that continued extensions could act as a disincentive for States to become CNMs. Other CCMs expressed concern that requiring all carrier and bunker flag States to become CNMs is too onerous and may unduly limit the number of vessels able to provide these services in the Convention Area. This issue was resolved.
- ii. The respective roles of the owner/operator and the nominating CCM in committing to fully comply with all applicable decisions of the Commission (paras. 29, 29bis and 30). Some CCMs suggested an amendment to the U.S.'s original wording on the written undertaking to be provided by the owner/operator which would require the nominating CCM to require the owner/operator to provide this statement.
- iii. Procedures for de-authorizing the vessel if it should be placed on the WCPFC IUU Vessel List (para. 22). Some CCMs debated the need to acknowledge national procedures for de-listing versus the role of the Secretariat in removing IUU vessels from authorized vessel lists. Other CCMs asked for the paragraph to be deleted.
- iv. Whether and how to specify the history of operation of the vessel in the WCPFC Convention Area (para. 11). Some CCMs questioned the need for this provision.
- v. How details of the vessels should be provided for the register (para. 5). Some CCMs stated that terminology in the Convention text should take precedence whereas other CCMs suggested that other terms and units which may be more common or more appropriate can also be used (para. 5).

94. A revision reflecting these discussions (WCPFC-TCC5-2009/DP-09 (Rev. 3)) is contained in Attachment E.

95. TCC5 reviewed RMI's Proposal to Revise CMM 2004-01 [Consolidated U.S.-RMI, 2 October Version 1](WCPFC-TCC5-2009/DP-09 (Rev. 2)). After extensive discussions it was decided by TCC5 to carry on discussions electronically of bracketed text (in Attachment E) on this important matter in advance of WCPFC6 with a view to bringing a draft measure before WCPFC6 for its consideration. RMI and Nauru will take this forward with comments to be received by 26 October 2009.

96. The TCC recognized that because CNM status confers certain rights and responsibilities, the existing CNM application process may not be well-suited for States that operate or wish to operate only carrier and/or bunker vessels in the Convention Area. The TCC recommended that the Commission charge the TCC with assessing the suitability of the CNM application process and CNM status for States with only carriers and/or bunkers and providing recommendations to the Commission as to whether a modified or separate process and/or status should be developed for such States and what the process and status should be, and to complete this work by 2011.

2.4 Charter Arrangements

97. The Executive Director presented a paper on charter arrangement options (WCPFC-TCC5-2009/10) containing a comparison of charter arrangement proposals presented at previous meetings of the TCC, a table of the relevant provisions of existing CMMs, and a summary of existing charter arrangements. Three options were presented: 1) no action; 2) development of

guidelines for charter arrangements; and 3) adoption of a notification process under which CCMs acknowledge responsibility for charter vessels in all matters concerning the Commission.

98. Several CCMs voiced their support for the third option and suggested it might be possible to bring forward a proposal to WCPFC6 on the basis of this option.

99. Other CCMs, while not necessarily opposed to moving forward on the basis of the third option, raised the following individual concerns:

- i. The proposed notification procedures should be binding;
- ii. The notification procedures do not substitute for a long-term strategy for clarifying the provisions for and use of chartering;
- iii. If the vessel is chartered but does not change its flag there needs to be a joint system of responsibility between the flag State and the chartering State.

100. Several developing coastal States stressed the importance of chartering to their fisheries. Some of these rejected any need to obtain the cooperation or permission of the flag State for commercial partnerships in national waters. A minority acknowledged the importance of flag State control of vessel activities but still rejected the need for flag State permission.

101. The EC noted that under their new regulation to prevent IUU fishing by regulating imports of fish into the EC, catches must be certified by the flag State and delegation to the chartering State is not sufficient. For this reason, the EC sees the situation as one of joint responsibility between the flag State and the chartering State.

102. Fiji introduced a new draft measure based on WCPFC-TCC5-2009/10 and the preceding discussions as WCPFC-TCC5-2009/34.

103. Although the revised text represented a consensus view of some issues, other issues in the revised draft could not be agreed. These issues mainly centred on the need for flag state notification, or permission, when entering into charter arrangements. Various points were raised in connection with this issue including:

- i. assignment of responsibilities to the flag State and/or to the chartering State including which party is responsible for VMS, observers and reporting catch;
- ii. whether flag States should have the ability to permit or prohibit chartering arrangements given the fundamental role of the flag State in regulating the behaviour of the vessels but also acknowledging that flag States should not stray into regulating business partnerships;
- iii. whether in addition to the Secretariat, the flag State should be sent a copy of the notification;
- iv. concerns that flag State notification could lead to restrictions which hinder the ability of SIDS to develop their fisheries.

104. Through discussion it was decided to pursue a limited measure on chartering arrangements based on the existing points of agreement for approval at WCPFC6, and to work toward agreement on other issues thereafter. Fiji produced the text for the proposed measure as WCPFC-TCC5-2009/34 (Rev. 1) (Attachment F).

105. TCC5 reviewed draft Charter Notification Scheme CCM (WCPFC-TCC5-2009/34 (Rev. 1)). TCC5 recommends to WCPFC6 adoption of this proposed CMM.

2.5 AHTG [Data]

(a) Report of the Second Meeting of the AHTG [Data]

106. Chair of the Ad Hoc Task Group [Data], Holly Koehler (U.S.) presented a summary of the work of the Task Group over the past 20 months since its re-inception. This work has focused

on developing a separate set of procedures for the protection, access to, and dissemination data compiled by the Commission.

107. These procedures have been developed from an initial AHTG[Data] meeting held in Nadi, Fiji, then progressed electronically, culminating in a sixth draft produced at TCC5. This sixth draft represented agreed text with the exception of one bracketed paragraph. An FFA proposal for amendments to the sixth draft to resolve remaining issues was circulated as WCPFC-TCC5-2009/DP-15.

108. FFA members stated that the amendments addressed their key concerns that the basic principles for dissemination of data as encompassed in paras. 5 and 19 of the 2007 Rules of Procedure are reflected in a balanced manner. FFA members believe this balance should continue to be reflected in the proposed MCS data rules because these rules relate to access to high seas data for the purposes of MCS activities both in areas under national jurisdiction and high seas.

109. CCMs proposed two additional minor amendments to the FFA proposed text which was then adopted as a final text.

110. The Chair of the AHTG[Data] also explained that in response to a request arising from SC5, the AHTG[Data] considered whether operational data provided to the Commission under the three vessel rule are aggregated to the point that their information value believed by some analysts to be compromised. Proposed text by the AHTG[Data] was formulated based on the advice of data managers as conveyed at SC5 (WCPFC-TCC5-2009/37). The Chair of the AHTG[Data] clarified that this proposed text, if adopted by WCPFC6, would comprise an amendment to the Scientific Data to be Provided to the Commission and would not alter the three vessel rule itself.

111. One CCM suggested amendment of the text to read “CCMs are to provide, to the extent possible, the number...”. This was supported by several CCMs.

112. Some CCMs expressed concerns that such an amendment weakened the data provision requirements, but acknowledged that the proposed text represents progress in the interim while CCMs continue to address their data confidentiality issues, and so agreed to the amendment.

(b) Advice and Recommendations to the Commission

113. TCC5 recommends to WCPFC6 for its consideration “Rules and Procedures for the Protection, Access to, and Dissemination of High Seas Non-Public Domain Data and Information Compiled by the Commission for the Purpose of Monitoring, Control and Surveillance (MCS) Activities and Access to and Dissemination of High Seas VMS Data for Scientific Purposes” as agreed by the AHTG[Data].

114. TCC5 reviewed “Draft Recommendation of TCC5 regarding the AHTG[Data]’s Consideration of Issues raised by SC5 associated with the Implementation of the 2007 Commission Data Rules and Procedures” (WCPFC-TCC5-2009/37). It was agreed by TCC5 to recommend this proposal as amended to WCPFC6 for its consideration.

2.6 Vessel Monitoring Systems

(a) Annual Report on the Commission VMS

115. The VMS Manager (Albert Carlot) presented an annual report on the Commission VMS to TCC5 (WCPFC-TCC5-2009/12 (Rev.1)) as stipulated in paragraph 7.3.9 of the Commission VMS Standards, Specifications and Procedures (SSPs). This report covered several issues associated with the operations of the Commission VMS including: i) status of the Commission VMS database; ii) outer maritime limits data; iii) Service Level Agreement (SLA) with the FFA

Secretariat; iv) implementation of client access; v) status of contract negotiations with Mobile Communications Service Providers (MCSPs); and vi) draft Standard Operating Procedures (SOPs) for the Commission VMS.

116. The TCC Chair noted the tremendous achievements of the programme over the past year due to the outstanding efforts of the Secretariat and the service provider (FFA).

117. CCMs discussed Table 1 which provides a summary of the number of authorized vessels on the WCPFC Record of Fishing Vessels compared to the number of Vessel Tracking Agreement Forms (VTAFs) received and the number of vessels in the VMS database for each CCM. It was noted by several CCMs that the number of vessels on the WCPFC Record of Fishing Vessels was almost certainly inflated since not all of those vessels would be expected to be actively fishing. As an example, Canada noted that while the table showed over 2,000 vessels on the WCPFC Record of Fishing Vessels, only about 200 vessels are licensed to fish for tuna in the Convention Area and none of them are actively fishing this year. Canada undertook to resolve this issue in advance of WCPFC6. As another example, France noted that all 20 of its vessels fish exclusively inside the French Polynesia EEZ.

118. The Executive Director noted that CCMs are required to provide, by 1 July each year, a list of those vessels that fished beyond areas of national jurisdiction of the flag State in the Convention Area, reported as “fished” or “did not fish”, but that only fourteen CCMs have done so this year¹.

119. One CCM noted the apparent poor performance of non-CCM vessels, and suggested that the Executive Director write to them to remind them of their obligations with regard to the Commission’s VMS.

120. Some CCMs questioned the need to provide all of their VMS data including that from national waters and outside the Convention Area. These CCMs queried why it is not sufficient to subset the data for the Convention Area themselves.

121. The Executive Director explained that if the full dataset is provided it can be automatically subset by the service providers’ software and this reduces the possibility of human error.

122. Japan stated that since ALC service providers’ software can automatically select VMS data, ALC service providers should send the Commission only those VMS data for the high seas within the Convention Area. The Executive Director responded that the Secretariat will consider the suggestion.

123. Other CCMs noted issues with the VMS’s recent client access registration but noted that these have been addressed. These CCMs stated that Section 7.3.6 of the VMS SSPs made it clear that the Commission VMS is for the high seas only, unless a coastal State specifically requests its waters be covered by the Commission VMS.

124. TCC5 notes the VMS Annual Report (WCPFC-TCC5-2009/12) for the Commission. CCMs are invited to provide written comments regarding VMS standard operating procedures (SOPs) to the Secretariat by 31 October 2009 with a view to the Secretariat providing draft revised SOPs at WCPFC6.

(b) Operating Costs of the Commission VMS

¹ Australia, Belize, Cook Islands, EC, Federated States of Micronesia, Fiji, Japan, Korea, New Caledonia, New Zealand, Philippines, Chinese Taipei, USA, Vanuatu.

125. The VMS Manager presented a report to TCC5 on the operating costs of the Commission VMS for the period April-August 2009 (WCPFC-TCC5-2009/13 (Rev.1) covering cost-related issues including: i) implementation costs; ii) Service Level Agreement (SLA) monthly recurring costs; iii) direct reporting costs; and iv) cost recovery options. It was noted that direct reporting costs for ARGOS will be four times higher than for INMARSAT starting October 2009. This was one of the reasons for proposing options for cost recovery. Another factor was a desire to convert the WCPFC Record of Fishing Vessels and VMS costs to separate, stand-alone budget items, rather than integrating them into a general budget.

126. In response to a question, the Executive Director explained that the costs shown in the paper are those associated with direct reporting to the Commission's VMS only.

127. While some CCMs supported the idea of cost recovery, they cautioned against using the WCPFC Record of Fishing Vessels as a basis for cost recovery since it is not a reflection of active fishing presence.

128. It was clarified that only those vessels not already registered with FFA are charged an activation fee of \$200. There is a deactivation fee of \$50. In order to clarify this, the phrase "reporting directly to the Commission VMS" should be added to para. 4 of the paper. Use of the term "ALC" was suggested over "MTU" for consistency with terminology used when developing the Commission VMS.

129. TCC5 notes the Secretariat paper "Operating Costs of the VMS during 2009" (WCPFC-TCC5-2009/13). TCC will take possible cost recovery actions into account in drafting the budget for the year 2011.

(c) Enhancement Options and Future Work

130. The VMS Manager presented a report (WCPFC-TCC5-2009/14) to TCC5 outlining enhancement options and proposals for future work on the Commission VMS, as stipulated in paragraph 7.3.9 of the SSPs, including: i) high seas vessel day scheme; ii) electronic forms activation and evaluation; iii) electronic vessel registration (EVR); and iv) in-built redundancy (in Pohnpei) to ensure uninterrupted provision of services. He also presented information on the SSPs in relation to the resolution of issues relating to bracketed text and proposals for modification.

131. Most CMMs expressed a preference to evaluate the current (coastal State) Vessel Day Scheme before considering whether to develop one for the high seas.

132. Some caution was also expressed regarding electronic forms, particularly by CCMs who stated that new equipment would be needed on fishing vessels to accommodate these procedures. In contrast, some CCMs felt that the potential cost savings that could be achieved with the introduction of e-forms meant that it deserves serious consideration immediately.

133. CCMs also discussed replacing the current paper-based VTAF system with an electronic system located at Pohnpei. There would be no additional cost for such a system; the primary savings would be mainly in terms of Secretariat labour. Some views were expressed that the burden of responsibility for making sure the e-forms are filled out accurately and completely lies with the submitter (i.e. the vessel) in an electronic system.

134. CCMs debated the proposed modification to the VMS SSPs which would require that vessels subject to the Commission VMS report their position "prior to entry" rather than "upon entry" to high seas areas. The potential gap in time between subsequent reporting events, and the distance which could be covered in the interval, was also discussed. The proposed change in the text could be satisfied by automatic transmission when the vessel crosses into the high seas.

135. Some CCMs, which want to maintain a clear separation between the high seas and coastal VMSs, stated there was no need to change the existing SSPs.

136. Other CCMs suggested that more information regarding why the existing SSPs need amendment should be provided.

137. Regarding the issue of bracketed text that remains in the SSPs, some CCMs felt that a flexible and case-by-case approach is desirable, that a strict reporting interval was not necessary, nor would it be necessary to force a vessel back to port immediately just because the ALC was malfunctioning.

138. Manual reporting during malfunctioning was briefly discussed but considered to be undesirable by some (due to time) and burdensome (to fishermen) by others.

139. Redundancy of systems on board and strictly enforced reporting rules were also mentioned as keys to a robust system.

140. With regard to the request for the Secretariat to have administrative rights/privileges to Commission VMS hardware, software and data, the Executive Director announced that this had been resolved with FFA during a meeting immediately prior to TCC5 that had been convened to review the implementation and operation of the WCPFC/FFA Service Level Agreement. During that meeting the FFA had undertaken to provide the Secretariat with the information needed to resolve the Secretariat's concerns relating to high costs associated with anomalous reporting by MTUs over which the Secretariat has no immediate control.

141. In response to a question from the Chair regarding the requirement under CMM 2007-02 for the Commission to determine the activation date for the Commission VMS in the area north of 20°N and east of 175°E, Japan stated that they do not yet have a clear mandate to designate the exact date.

142. TCC5 notes Secretariat paper “Enhancement Options and Proposals for Future Work on the Commission VMS” (WCPFC-TCC5-2009/14). However, CCMs wish to see the current VMS system in operation for a period of time before considering implementation of a high seas VDS and e-forms. CCMs recommend implementation of electronic vessel registration (EVR) and establishment of a redundancy capacity in Pohnpei for the Commission VMS. TCC5 discussed the question of notification by vessels in advance of entry into the high seas of the Convention Area. CCMs directed the Secretariat to report on this issue at TCC6.

143. TCC5 discussed VMS SSPs paras. 5.4 and 5.5 but was unable to resolve this matter. CCMs were encouraged to discuss this matter electronically prior to WCPFC6, coordinated by the U.S. and RMI, with a view to seeking agreement during WCPFC6.

2.7 IUU Vessel List and IUU Listing Procedures

a) Draft Provisional IUU Vessel List for 2010

144. Information on the vessels proposed for the Draft Provisional IUU Vessel List for 2010 is presented in WCPFC-TCC5-2009/15 and in other materials distributed directly to delegations.

(i) Lina

145. The Lina, an Indonesian flagged vessel, was sighted fishing in the U.S. EEZ of Jarvis Atoll on 3 February 2008. The Lina is not listed on the WCPFC Record of Fishing Vessels.

146. The U.S. contacted the Indonesian authorities on 26 February 2008 and again on 5 March 2008 regarding this incident. The U.S. reported that Indonesia informed them that the vessel was not authorized to fish on the high seas and was doing so in violation of the WCPFC CMMs.

Indonesia subsequently issued a “reminder” to the Lina in accordance with Indonesian administrative procedures. The U.S. notified Indonesia by letter in early June 2009 of its intention to nominate the Lina for the Provisional IUU Vessel List. Indonesia acknowledged receipt of the letter on 16 June 2009.

147. Indonesia did not attend TCC5 and did not make a response to TCC5 on this issue.

148. France also reported an incident involving the Lina. France’s inspection of the carrier vessel Taiho Maru in Papeete, French Polynesia on 20 October 2008 indicated that the Taiho Maru was engaged in transshipment with the Lina within the WCPFC Convention Area. France notified the Indonesian government of this issue but did not receive a response.

149. Dr. Tsamenyi (WCPFC Legal Advisor) noted that the Lina had violated paragraphs 3(a) and (b) of CMM 2007-03 and that the decision not to list the Lina on the Provisional IUU Vessel List would depend on the flag State’s ability to demonstrate that the requirements for not listing the vessel under paragraph 15 of CMM 2007-03 have been met.

150. All CCMs which expressed views on the case of the Lina supported its listing on the WCPFC Provisional IUU Vessel List.

151. TCC5 agreed to include Lina on the Provisional IUU Vessel List.

(ii) Chia Shun Hsing No. 6

151. The Chia Shun Hsing No. 6, a Chinese Taipei flagged vessel, was found fishing inside the U.S. EEZ around the Northern Mariana Islands, a U.S. Commonwealth Territory, without a permit in August 2008 by U.S. vessel and aircraft patrols.

152. Chinese Taipei has acknowledged that the vessel fished illegally in U.S. waters and suspended the vessel’s license for 3 months and the captain’s license for 6 months in accordance with national administrative procedures.

153. The U.S. issued a fine in the amount of \$130,000 U.S. on 27 February 2009.

154. Chinese Taipei instructed the vessel to settle with the U.S. Government in September 2009. Settlement discussions are ongoing.

155. TCC5 agreed to include the Chia Shun Hsing No. 6 on the Provisional IUU Vessel List and noted that the vessel shall be removed from the List once the U.S. confirms satisfactory settlement of the matter.

(iii) Maan Feng Yu No. 36

156. The Mann Feng Yu No. 36, a Chinese Taipei flagged vessel, was found fishing inside the U.S. EEZ around the Northern Mariana Islands, a U.S. Commonwealth Territory, without a permit, in August 2008 by U.S. vessel and aircraft patrols.

157. Chinese Taipei has confirmed through VMS data that the vessel was indeed fishing illegally within the U.S. EEZ but has not imposed a sanction on this vessel, its captain or its owner.

158. The U.S. issued a fine in the amount of \$130,000 U.S. on 27 February 2009.

159. Chinese Taipei instructed the vessel to settle with the U.S. Government. Settlement discussions were ongoing during TCC5.

160. TCC5 agreed to include the Maan Feng Yu No. 36 on the Provisional IUU Vessel List and noted that the vessel shall be removed from the List once the U.S. confirms satisfactory settlement of the matter.

(iv) Jin Hai Fu No. 10

161. The Jin Hai Fu No. 10, a Chinese Taipei flagged vessel, was found fishing inside the U.S. EEZ around the Northern Mariana Islands, a U.S. Commonwealth Territory, without a permit, in August 2008 by U.S. vessel and aircraft patrols.

162. Both the owner of the vessel and Chinese Taipei have acknowledged the violation.

163. The U.S. issued a fine in the amount of \$130,000 U.S. on 27 February 2009.

164. Settlement discussions were ongoing during TCC5. The U.S. informed TCC5 on 6 October 2009 that the case had been settled to their satisfaction.

165. TCC5 reviewed the matter of the vessel Jin Hai Fu No. 10 (Chinese Taipei). As the matter was settled to the satisfaction of the nominating State (United States) during TCC5 it is decided not to place this vessel on the Provisional IUU Vessel List.

(v) Rong Yuan Yu 86, Rong Yuan Yu 87, Rong Da Yang No. 6, Rong Da Yang No. 7, Rong Da Yang No. 8 and Rong Da Yang No. 9

166. These six vessels are flagged to China and were sighted by New Zealand harvesting species covered by the WCPFC Convention on the High Seas within the Convention Area on 21 August 2008. The listing of these six vessels on the WCPFC Record of Fishing Vessels (RFV) was not finalised until 8 September 2008, therefore none of the six vessels were listed on the RFV at the time of the incident. New Zealand notified China of their intention to propose the vessels for listing on the Provisional IUU Vessel List in June 2009. There has been subsequent correspondence between China and New Zealand, and between China and the Secretariat.

167. China stated that it authorized these vessels to fish in March-April 2008 and then sent the information to the Secretariat. However, due to apparent technical problems the information was never received by the Secretariat and therefore the vessels were not entered on the WCPFC Record of Fishing Vessels (RFV) at the time of the incident.

168. China stated that it has now informed the fishing vessels that they cannot fish in the WCPFC Convention Area unless and until their names appear on the WCPFC RFV. China further stated that it has taken measures after the incident to ensure preventing such occurrences in the future including but not limited to confirming the receipt of emails sent to the Secretariat. For these reasons, China asked that the six vessels not be placed on the Provisional IUU Vessel List.

169. Dr. Tsamenyi noted that as the vessels were not listed on the RFV at the time of the incident, they had clearly contravened Para 3(a) of CMM 2007-03. TCC5 was invited to consider whether the explanation provided by China was sufficient not to place the vessels on the Provisional IUU Vessel List.

170. New Zealand stated that the WCPFC management framework must be respected and therefore vessels which are not on the RFV but which fish in the Convention Area must be considered to be in violation of the CMMs. New Zealand also noted that China had not provided a clear response to how it would prevent such administrative issues arising in the future.

171. China informed TCC5 that due to domestic law and procedures, it is not able to propose a vessel for listing on the RFV until after China authorizes that vessel to fish. However, China stated that it has now informed the fishing vessels that they cannot fish in the WCPFC Convention Area unless and until their names appear on the WCPFC RFV. China further stated that it has taken measures after the incident to ensure preventing such occurrences in the future including but not limited to confirming the receipt of emails sent to the Secretariat. For these reasons, China asked that the six vessels not be placed on the Provisional IUU Vessel List.

172. New Zealand and other CCMs maintained that it is the responsibility of each CCM to verify that their nominated vessels have been placed on the RFV after they submit the data to the Secretariat and before they are authorised to fish in the WCPFC Convention Area.

173. China stated that it shares the concern by some CCMs on full compliance of flag States, and informed TCC5 that due to domestic law and procedures, it is not able to propose a vessel for listing on the RFV until after China authorizes that vessel to fish.

174. Several CCMs, including FFA members, spoke in favour of listing these vessels. These CCMs noted the importance of curtailing fishing by unauthorised fishing vessels in the Convention Area and did not consider that the administrative issues encountered by China when submitting the vessels for listing on the RFV were a sufficient reason for not listing these vessels.

175. Some CCMs expressed concern that the effect of the listing would be to punish the vessels for an action which is the responsibility of the flag State.

176. Some CCMs questioned whether TCC5 could place these vessels on the Provisional IUU Vessel List without a consensus decision.

177. Dr. Tsamenyi reminded TCC5 that it was not taking a decision regarding the WCPFC IUU Vessel List, rather TCC5 is making a recommendation to the Commission regarding the Commission's decision about the WCPFC IUU Vessel List. He also advised that under Article 11, para. 4 of the Convention, if subsidiary bodies of the Commission cannot reach a consensus recommendation, majority and minority views shall be indicated in the committee report.

178. The majority of TCC members supported the inclusion of the following vessels: Rong Yuan Yu 86, Rong Yuan Yu 87, Rong Da Yang No. 6, Rong Da Yang No. 7, Rong Da Yang No. 8 and Rong Da Yang No. 9, whilst a minority of TCC members were against the inclusion of the above named vessels on the Provisional IUU Vessel List. TCC5 agreed to place these vessels on the Provisional IUU Vessel List with a note to WCPFC6 that consensus was not reached regarding these vessels.

179. In further discussion China, supported by several other CCMs, reiterated its concerns about the potential for listing of these vessels to in effect punish fishermen for administrative issues between the flag State and the Secretariat.

180. Some CCMs noted that in such cases the response of the flag State in terms of remedial measures taken to prevent future occurrences will be an important factor for consideration.

(vi) Yuh Chang No. 3

181. The Yuh Chang No. 3, a fishing vessel flagged to Chinese Taipei, was sighted by New Zealand harvesting species covered by the WCPFC Convention within the Convention Area on 21 August 2008. This vessel was not listed on the WCPFC Record of Fishing Vessels at the time of the incident. New Zealand notified Chinese Taipei of the incident.

182. Chinese Taipei confirmed that the Yuh Chang No. 3 is authorised by Chinese Taipei to fish in the Convention Area. Chinese Taipei submitted information to list the vessel on the WCPFC RFV to the Secretariat on 29 January 2008.

183. The Secretariat confirmed that a request to list the Yuh Chang No. 3 on the WCPFC RFV was received in late January 2008 but was incomplete. The Secretariat requested the missing information from Chinese Taipei but Chinese Taipei stated that it did not receive this communication. After noticing Yuh Chang No.3 was not listed on the WCPFC Record of Fishing Vessels, Chinese Taipei provided it to the Secretariat on 16 September 2009. At that time, the Secretariat listed the vessel on the RFV.

184. Dr. Tsamenyi noted that it is clear that the vessel was not listed on the RFV at the time of the incident, thus a contravention of para. 3(a) of CMM 2007-03. However, TCC5 was invited to consider whether the circumstances resulting in the Yuh Chang No.3 not being placed on the RFV warrant a lenient consideration by TCC. Dr. Tsamenyi also advised that CMM 2004-01 (Record of Fishing Vessels and Authorization to Fish) would appear not to empower the Secretariat to decline to place vessels on the WCPFC RFV on the basis of missing information.

185. Several CCMs supported placing Yuh Chang No. 3 on the Provisional IUU Vessel List because it clearly was fishing in the Convention Area without being listed on the RFV. Some of these CCMs noted that it is the responsibility of CCMs to ensure that vessels submitted for the WCPFC RFV are actually listed and to follow up with the Secretariat and resolve any administrative issues if this is not the case.

186. Some CCMs noted that a key difference in this case was the fact that the Secretariat received a request to list the vessel on the WCPFC RFV but declined to do so. Some of these CCMs also noted that the result of listing would be to punish the fishermen for a procedural error involving the flag State and Secretariat. For this reason these CCMs either were opposed to, or were inclined not to support, placing the vessel on the Provisional IUU Vessel List.

187. The majority of TCC members supported the inclusion of the Yuh Chang No. 3, whilst a minority of TCC members were against the inclusion of this vessel on the Provisional IUU Vessel List. TCC5 agreed to place this vessel on the Provisional IUU Vessel List with a note to WCPFC6 that consensus was not reached regarding this vessel.

(vii) Taiho Maru

188. The Taiho Maru, a fish carrier vessel flagged to Japan was inspected by French Authorities in Papeete, French Polynesia on 12 October 2008. Vessel records indicated that the Taiho Maru transhipped fish from the Lina, an Indonesian flagged fishing vessel which was not listed on the WCPFC RFV. France notified Japan of the incident and the two parties discussed whether a carrier vessel which receives fish from an unauthorized fishing vessel can be placed on the WCPFC Provisional IUU Vessel List.

189. Japan acknowledged that the Taiho Maru transhipped fish from the Lina. However, Japan pointed out that while CMM 2007-03 para. 3(g) states that a vessel which tranships with a vessel included on the IUU list can be presumed to have carried out IUU activities, the Lina was not on the WCPFC IUU Vessel List at the time of transhipment.

190. Dr Tsamenyi noted that the proposal to list the Taiho Maru should not be considered against CMM 2007-03 para. 3(g) because the Lina was not on the WCPFC IUU Vessel List at the time of the transhipment. However, TCC5 was invited to consider whether the Taiho Maru engaged in unauthorized fishing activities, as defined by Article 1 (d) of the Convention, by supporting an unauthorized fishing vessel, i.e. the Lina. Dr Tsamenyi suggested that CMM 2007-03 para. 3(i), which refers to activities which undermine WCPFC CMMs would provide a more justified basis for placing the Taiho Maru on the Provisional IUU Vessel List.

191. Japan stated that if they had understood that transhipment with vessels not listed on the WCPFC RFV was considered an IUU fishing activity, they would have clearly communicated this requirement to its vessels.

192. Some CCMs did not support listing the Taiho Maru on the grounds that the Lina's activities had not been clearly specified as IUU fishing activities at the time of the incident.

193. Several CCMs supported listing the Taiho Maru on the Provisional IUU Vessel List stating that transhipping from an unauthorized fishing vessel is clearly an IUU fishing activity.

194. After further discussions with Japan, France informed TCC5 that it wished to withdraw its nomination of the Taiho Maru.

195. Japan committed to undertaking a review of all CMM requirements and to re-issuing instructions to all carrier vessels in order to avoid any further misunderstandings.

196. TCC5 reviewed the matter of the vessel Taiho Maru. As the matter was settled to the satisfaction of the nominating State (France) during TCC5 it is decided not to place this vessel on the Provisional IUU Vessel List.

(viii) Senta

197. The Senta, a fish carrier vessel flagged to Panama, was inspected by French Authorities in Papeete, French Polynesia on 12 October 2008. During inspection, one of the fish holds was found to contain fish harvested from the WCPFC Convention Area by the fishing vessel Minako which is not listed on the WCPFC RFV. France notified Panama.

198. Panama, which is not a WCPFC CCM, did not provide a response.

199. Dr Tsamenyi noted that the case of the Senta was similar to that of the Taiho Maru with the exception that the Senta was not listed on the WCPFC Temporary Register of Fish Carriers and Bunkers, and was thus not authorized to engage in transshipment in the WCPFC Convention Area. Dr Tsamenyi further noted however, that subsequent to the incident the Senta was placed on the WCPFC Temporary Register of Fish Carriers and Bunkers.

200. Some CCMs were of the opinion that the sufficiency of CMM 2007-03 para. (i) as a basis listing fish carriers on the WCPFC IUU Vessel List was questionable and should be given careful consideration.

201. After further consideration France reaffirmed its nomination of the Senta, citing the facts that i) both the Senta and the fishing vessel it transhipped from were not on WCPFC authorized vessel lists; ii) the flag State did not respond to France's notification of intent to propose listing of the Senta on the WCPFC IUU Vessel List; and iii) the captain of the Senta was responsible for knowing the applicable requirements for transshipping in the area.

202. TCC5 reviewed the matter of the vessel Senta, and agreed to place this vessel on the Provisional IUU Vessel List.

(ix) Minako

203. The Minako, a fishing vessel flagged to Indonesia, was found by means of an inspection of the carrier vessel Senta in Papeete, French Polynesia by France to have transhipped fish to the Senta, a fish carrier not listed on the WCPFC Temporary Register of Fish Carriers and Bunkers. The Minako is not listed on the WCPFC RFV. When France notified Indonesia of their intention to propose the Minako for the WCPFC Provisional IUU Vessel List, Indonesia responded that the Minako had not fished in the WCPFC Convention Area.

204. Dr. Tsamenyi noted that since the Minako is not on the WCPFC RFV, if it fished in the WCPFC Convention Area, then the activity is clearly IUU fishing. However, Dr. Tsamenyi invited TCC5 to ascertain whether the Minako's activities took place in the WCPFC Convention Area.

205. All CCMs which expressed views on the case of the Minako considered that the vessel had fished in the WCPFC Convention Area and thus supported listing of the Minako on the WCPFC Provisional IUU Vessel List.

206. TCC5 agreed to include Minako on the Provisional IUU Vessel List.

(x) Yu Fong 168

207. The Yu Fong 168, a Chinese Taipei flagged fishing vessel listed on the WCPFC RFV, was detected by the Republic of the Marshall Islands (RMI) inside the RMI EEZ on 29 January 2009. This vessel was not licensed by RMI to fish in RMI waters. When the Yu Fong 168 was approached by an FSM patrol boat acting on behalf of RMI, it refused to submit to inspection and as a result of pursuit some damage was inflicted upon the FSM patrol boat. RMI contacted Chinese Taipei regarding this incident and requested their assistance in resolving the matter.

208. Chinese Taipei stated that it began investigating this incident immediately upon notification and confirmed that the Yu Fong 168 had entered the RMI EEZ without permission. Chinese Taipei ordered the vessel to stop fishing and return to port but subsequently the vessel ceased VMS transmissions and continued to evade Chinese Taipei's efforts to locate it. As a result Chinese Taipei stated that it has taken the strongest possible actions under its national law including revoking both the captain's and vessel's licenses, and removing it from the WCPFC RFV. Chinese Taipei supports the listing of the Yu Fong 168 on the WCPFC IUU Vessel List and requests the cooperation of CCMs in locating this vessel.

209. All of the other CCMs which expressed views on the case of the Yu Fong 168 supported its listing on the WCPFC Provisional IUU Vessel List.

210. TCC5 agreed to include Yu Fong 168 on the Provisional IUU Vessel List.

211. RMI stated their concern that listing the Yu Fong 168 does not satisfy their fundamental concern regarding the damages incurred to both RMI and FSM resource as a result of this incident.

b) WCPFC IUU Vessel List

212. TCC5 discussed whether to recommend to the Commission that the two vessels currently on the WCPFC IUU Vessel List be removed from the list.

(i) Daniela F

213. Based on notification from France, the Venezuelan flagged Daniela F was placed on the WCPFC IUU Vessel List in 2007. Since the listing, there has been no communication from the flag State with regard to the requirements of CMM 2007-03, para. 25.

214. All CCMs which expressed views on the case of the Daniela F supported its continued listing on the WCPFC Provisional IUU Vessel List.

215. TCC5 agreed to recommend to WCPFC6 that the vessel Daniela F not be removed from the IUU Vessel List.

(ii) Jinn Feng Tsair No. 1

216. Based on notification from FSM, the Chinese Taipei flagged Jinn Feng Tsair No. 1 was placed on the IUU Vessel List in 2007.

217. FSM explained that since the violation occurred in FSM waters, their position is that the Jinn Feng Tsair No. 1 must submit to legal proceedings under FSM law. As no progress has been made in this regard, FSM stated that the Jinn Feng Tsair No. 1 should remain on the WCPFC IUU Vessel List.

218. Chinese Taipei summarised the actions taken against the Jinn Feng Tsair No. 1 which include detaining the vessel from the time it returned to home port until now, an elapsed time of approximately two years. The taking of other legal actions has been constrained by the transfer of the vessel's ownership prior to the time that Chinese Taipei was informed of the incident by

FSM. The new owner is contesting the vessel detention via legal proceedings in Chinese Taipei. Chinese Taipei stated that the criteria for determining whether the flag State's action in response to the IUU fishing activities is of sufficient severity (CMM 2007-03, para. 25) must be determined by the laws of the flag State. Chinese Taipei submitted that a detention of two years, or even longer, is sufficient ground for removal from the WCPFC IUU Vessel List.

219. All of the other CCMs which expressed views on the case of the Jinn Feng Tsair No.1 supported its listing on the WCPFC Provisional IUU Vessel List.

220. The majority of TCC5 members supported a recommendation to WCPFC6 that the vessel Jinn Feng Tsair No. 1 not be removed from the Commission IUU Vessel List, whilst the minority favoured removal. Consensus was not reached on this decision.

c) Recent incidents brought to the attention of TCC5

221. **New Zealand** introduced this item by explaining that for the sake of transparency and awareness raising, several recent incidents of potential IUU fishing activities in the Convention Area are being brought to the attention of TCC5. The CCMs in whose waters these potential violations have been reported will further investigate the issues and decide whether to nominate the vessels for the WCPFC Provisional IUU Vessel List in 2010.

222. New Zealand presented information on the sighting of the Ta Chun No. 101, a Chinese Taipei flagged longliner, 83 nm within the New Zealand EEZ engaged in activities which appeared to indicate that fishing had just been conducted. This incident has been communicated to Chinese Taipei authorities and the WCPFC Executive Director and investigation is ongoing.

223. Chinese Taipei confirmed that they were informed of this incident on 25 September 2009 and immediately began investigating it. However, initial inquiries have indicated that VMS records do not show the Ta Chun No. 101 fishing in the New Zealand EEZ at that time.

224. **Tokelau** stated that the Zhou Yuan Yu 202 was found fishing without a license in the Tokelau EEZ in late June. The flag State and the WCPFC Executive Director have been notified. Tokelau noted its grave concern about this incident, particularly as it occurred in a small island State which is highly dependent on fisheries resources and which has a very limited ability to conduct MCS activities. Tokelau requested permission to present progress on investigating this incident to the Commission in December.

225. **Palau** informed TCC5 that two vessels flagged to a WCPFC CCM were sighted in early August fishing inside the Palau EEZ without a license and finning sharks. One of the vessels was apprehended and investigations are continuing. Palau does not tolerate IUU fishing and views this as an extremely serious violation.

226. **FSM** presented an incident which occurred during the 2009 August-September FAD closure in which an observer was bribed to not report that the vessel was setting on FADs. FSM noted that the flag State has been informed that FSM intends to take legal action and has indicated it will respond to the case presented.

227. Tuvalu, on behalf of FFA members, stated their serious concern about the number of violations that have been detected and those that potentially go undetected due to the limited ability of SIDS to conduct MCS activities. Coastal states' commitment to conserve and manage critical fisheries resources, and to deal strictly with any violations, was reaffirmed.

228. The EC highlighted the responsibility of developed states to assist coastal states with monitoring and control of fishing activities in their EEZs and suggested that more proactive initiatives are required in this regard.

229. TCC recommends to the Commission that New Zealand, Tokelau, Palau, and FSM report back to WCPFC6 on the recent alleged IUU activities raised at TCC5, and in accordance with Articles 23 para. 5 and Article 25 of the Convention that the member against whom the activity is alleged, report to WCPFC6 on the progress of the investigation, including details of any action taken or proposed to be taken in relation to the alleged activity.

(b) CMM 2007-03: Review of Outstanding Issues from WCPFC5

(i) Review of Paragraph 3(j) of CMM 2007-03

230. Dr. Tsamenyi presented a summary of WCPFC-TCC5-2009/16 concerning a review of CMM 2007-03 para. 3(j). This paragraph provides for listing of a vessel on the WCPFC IUU Vessel List on the basis that the vessel is under the control of an owner of any vessel on the IUU Vessel list. Therefore, a vessel may be listed by association with an owner implicated in IUU fishing activities, rather than having engaged in such activities itself. In this way, para. 3(j) differs from all of the other grounds for listing a vessel in para. 3, and as a result has been strongly debated at previous meetings of the TCC and the Commission. As a result of discussion at WCPFC5 it was agreed to suspend use of para. 3(j) as a basis for IUU vessel listing for one year to allow for the development of procedures to implement para. 3(j). The working paper presents the results of a study to develop such procedures.

231. Dr. Tsamenyi summarised the key issues and recommendations presented in the paper.

232. Some CCMs stated their opinion that listing of vessel on the WCPFC IUU Vessel List on the basis of para. 3(j) is contrary to justice and common sense. These CCMs also stated that as only a handful of RFMOs have included a similar provision in their IUU vessel listing procedures, and none of these RFMOs have yet applied this provision, there is no practical operational guidance available for its application. These CCMs preferred action would be to delete para. 3(j) from CMM 2007-03 but pending such action they urged TCC to recommend to the Commission a further suspension of para. 3(j) until further consideration can be given to its application procedures by their national legal counsels.

233. Several CCMs supported postponing a decision on revising CMM 2007-03 with regard to para. 3(j) to TCC6 pending further consideration. However, most of these CCMs expressed a reluctance to suspend the use of para. 3(j) in the interim, or in any case for more than one further year, referring to the potential deterrent effect this provision may have on IUU fishing activities.

234. The EC stressed the importance of gaining experience with para. 3(j) and related issue through its application, or potential application, noting that extending the current one-year suspension of the provision will not achieve this. Instead, the EC recommended that para. 3(j) could be applied with caution and/or only in clear cut cases.

235. One CCM emphasized the importance of outlining a process through which the issue can be advanced over the next year in order to facilitate resolution at TCC6.

236. Some CCMs expressed concerns that para. 3(j), while intended to discourage IUU fishing activities, might provide a disincentive for legitimate investment in fisheries development of small island developing states (SIDS).

237. In response to a question, Dr. Tsamenyi explained that, as described in the working paper, the requirements for demonstrating that vessels are under the control of the owner of any vessel on the IUU Vessel List have not been made clear. In addition, whether “associated vessels”, i.e. those proposed for the IUU Vessel List on the basis of para. 3(j), need to be proposed separately or in conjunction with the originally offending vessel which implicates the

owner is also unclear. Finally, procedures for removing vessels which have been listed on the basis of para. 3(j) from the IUU Vessel List have yet to be specified.

238. TCC5 reviewed the Secretariat paper regarding paragraph 3(j) of CMM 2007-03 (WCPFC-TCC5-2009/16). TCC5 determined that this issue required further reflection and discussion at TCC6. Given the importance of this matter, a further and final deferment of the application of 3 (j) is recommended to WCPFC6 for the year 2010. The majority were in favour of 2010 being the final deferment, while the minority were not. This recommendation was not made by consensus. TCC5 also recommended that the Commission establish a clear process for CCMs to advance this issue during 2010 to support TCC6 in its consideration of the issue.

239. One CCM expressed concerns about references to majority and minority opinions in TCC recommendations other than those pertaining to IUU vessel listings, and stressed the importance of making every effort to conduct the work of the TCC by consensus.

(ii) Control of Nationals

240. New Zealand presented WCPFC-TCC5-2009/DP-10 on a draft WCPFC CMM for the controls of nationals based on a measure adopted by CCAMLR. New Zealand highlighted that such control is an essential component of a robust MCS framework to combat IUU fishing activities.

241. One CCM requested that the concept of controlling nationals “to the greatest extent possible”, as specified in Article 23, para.5 of the Convention be included in the chapeau part of paragraph 1 of the draft CMM.

242. FFA members stated the control of nationals is important to prevent parties from one State hiding behind the flag of another State. These CCMs supported greater transparency in declaring owners and other controlling interests in fishing vessels, in particular for vessels on IUU vessel lists. However, these CCMs stressed that any CMM on control of nationals should not act to deter legitimate investment in fisheries in SIDS.

243. One CCM noted that the requirement to report to the Commission on the progress of the investigation within two months was perhaps too short a timeframe.

244. One CCM suggested that para. 2 of the draft CMM be revised to also refer to nationals who command vessels.

245. Some CCMs supported the draft measure as proposed noting that it was based on a measure adopted by CCAMLR, an organization of which many CCMs are members, and that the draft measure is fully in line with CCMs existing obligations under the Convention, specifically Article 23, para. 5.

246. Some CCMs indicated that the effective control of nationals may lie beyond the current remit of the agencies represented on their delegation. At a minimum these CCMs would need to consult national legal advisors before presenting a position on the draft CMM, and in some cases inter-agency coordination procedures may not yet be developed. Some of these CCMs noted that stakeholders in the CCAMLR fisheries are very different to stakeholders in the WCPFC fisheries and thus a different approach may be warranted.

247. New Zealand took these and other comments received during TCC5 into account in preparing revisions of the paper resulting in WCPFC-TCC5-2009/DP-10 (Rev. 2) contained in Attachment G.

248. TCC5 reviewed “Control of Nationals” (WCPFC-TCC5-2009/DP-10 (Rev. 2)). New Zealand will receive comments until 4 November 2009 with a view to providing a revised document for consideration by WCPFC6.

(iii) IUU Listing Procedures

249. Tonga presented a paper on a proposed amendment to CMM 2007-03, para. 15 concerning reasons why a vessel should not be included on the WCPFC IUU Vessel List (WCPFC-TCC5-2009/DP-12). It was noted that this issue was one of the priority issues identified for TCC5’s attention. The amendments proposed by Tonga are designed to remedy the fact that under the current wording of para. 15, a flag State is allowed to determine whether effective action has been taken against one of its fishing vessels even if the violation occurred in the national waters of another coastal State. Specifically, the amendments provide for the flag State to so determine if the violation occurred on the high seas, but when the violation occurred outside of the high seas, that the CCM in whose jurisdiction the violation occurred be satisfied with the settlement of the case.

250. Several CCMs, including FFA members spoke in favour of the proposal, emphasizing the need to take account of the interest of coastal States whose national laws have been infringed through IUU fishing activities. This was deemed to be particularly important in cases where, due to limited MCS capabilities, it is not possible to prevent the vessel from physically escaping from the jurisdiction of the coastal State.

251. Two CCMs voiced their concern regarding the amendments. These concerns are based on the possibility of unfair or unequal penalties being imposed by coastal States and a preference to tighten the CMMs but avoid increasing the number of punitive measures.

252. Based on these and other comments received during TCC5, Tonga prepared WCPFC-TCC5-2009/DP-12 (Rev. 1) contained in Attachment H.

253. Two CCMs requested more time to review the proposal citing the need to consult with their national legal counsels and stakeholders. One of these CCMs proposed an additional amendment to the text but this was opposed by a number of other CCMs. The Chair noted the short lead time for CCMs to consult with capitals and thanked CCMs for their efforts to do so.

254. TCC5 reviewed “Tonga’s proposed amendment to para. 15 of CMM 2007-03” (WCPFC-TCC5-2009/DP-12 (Rev. 1)). Tonga will take views electronically on an inter-sessional basis with comments to be received by 31 October. Tonga will endeavour to bring this paper forward for consideration by WCPFC6.

(c) Stateless Vessels

255. The U.S. introduced a proposal for a CMM on vessels without nationality (WCPFC-TCC5-2009/DP-04 (Rev. 1)). The draft CMM explicitly states that vessels without nationality fishing in the Convention Area will be presumed to be fishing in contravention of WCPFC CMMs. This measure will allow port States, such as the U.S., to prosecute stateless vessels when they enter port. Other provisions allow for boarding and inspection, and reporting of sightings to the Secretariat.

256. One CCM noted that while some port States do not require this CMM because under their existing legal systems they are able to prosecute stateless vessels, they understood the value of this CMM for other port States which do not currently have such mechanisms.

257. Several CCMs expressed their support for the proposed CMM.

258. FFA members asked that the proposal be deferred to WCPFC6 for further consideration.

259. TCC5 reviewed the U.S. paper “Proposal for a CMM on Vessels without Nationality” (WCPFC-TCC5-DP/04 (Rev.1)). As all CCMs did not have an opportunity to review this paper during TCC5, this paper along with comments provided by CCMs to the U.S. before 7 November 2009 will be forwarded to WCPFC6 for its consideration.

2.8 WCPFC Record of Fishing Vessels

(a) Current Status and Developments, including a web-based system for vessel record information

260. The Secretariat presented a paper on the status of, and developments related to, the WCPFC Record of Fishing Vessels (WCPFC-TCC5-2009/17). This paper describes the current status of the WCPFC Record of Fishing Vessels relating to: i) the number of vessels according to flag and vessel type; ii) issues associated with anomalies in the type and quality of information provided by CCMs for their respective authorized vessels; and iii) an analysis of vessel information gaps by flag. The Secretariat also provided information on enhancements to the WCPFC Record of Fishing Vessels, in particular a web-based system for entry of vessel information, and development of the WCPFC Information Management System that will cater for information flows relating to CMM 2004-01. The latter includes a RSS feed which can be subscribed to and provides automatic updates of the WCPFC RFV. The Secretariat also noted that all electronic submissions of information to the RFV should receive an automatic electronic message confirming the submission.

261. CCMs discussed the Secretariat’s proposals (WCPFC-TCC5-2009/17, Attachment 2) to further specify the type and quality of information provided by CCMs for authorized vessels as provided for in CMM 2004-01. Several CCMs noted that some of the proposals suggested terms or units which deviate from those specified either in CMM 2004-01 or from terms used in Annex IV of the Convention. A specific example ‘gross tonnage’ versus ‘gross register tonnage’ was raised. As some CCMs indicated they had many other points to raise, it was suggested that comments be provided to the Secretariat in writing.

262. With respect to the web-based data entry system under development, some CCMs emphasized the need for more flexible data input options, particularly the need for CCMs to be able to submit batch data without having to enter it by hand, which will lead to errors. One CCM also noted that many of the existing problems pointed out in the Secretariat’s paper could be solved simply by requiring that CCMs distinguish between “none” and “unknown” and perhaps between “not available” as well.

263. The TCC5 Chair noted that changes to the information requirements would need to be effected through amendment of CMM 2004-01.

264. A related point of discussion involved conversion to an electronic data submission system for authorized vessel information. All CCMs which voiced an opinion on this subject spoke in favour of such a system on the basis that it would improve both the quality of submitted data and the compliance record of CCMs.

265. One CCM suggested that capturing existing electronic data would be strongly preferred over having either the CCM or the Secretariat re-key the data.

266. One CCM suggested that all existing data on authorized vessels be re-submitted through the electronic system which could perform an automatic check on whether all required information was available.

267. Another CCM noted that Attachment 3 of WCPFC-TCC5-2009/17 indicates that many of the vessels on the WCPFC RFV have incomplete data and if incomplete data is grounds for not listing the vessels on the RFV then potentially a very large number of vessels could be considered

eligible for IUU vessel listing. Therefore, this CCM suggested decoupling the issue of data sufficiency from the decision to list CCMs' authorized vessels on the RFV.

268. Further regarding Attachment 3, some CCMs considered that the percent compliance shown did not reflect their efforts to provide complete information for their authorized vessels.

269. France noted a potential issue of double-counting its authorized vessels under both France and the EU.

270. TCC5 reviewed Secretariat paper “Status of, and developments related to, the WCPFC Record of Fishing Vessels (WCPFC-TCC5-2009/17)”. TCC5 recommended that CCMs work with the Secretariat to resolve gaps in information and move to a flexible web-based data system on an accelerated basis.

(b) Unique Vessel Identifier

271. The Secretariat presented a paper on a unique identifier for the WCPFC RFV and harmonization of Tuna RFMO Vessel Records (WCPFC-TCC5-2009/18 (Rev. 1)). This paper describes efforts undertaken to compare the fields required under the WCPFC RFV to those required by Lloyds Register-Fairplay to generate a unique vessel identifier (UVI). In order to generate a UVI, WCPFC CCMs would need to provide information for six additional data fields: address of the operator (Master); fishing number (national registration number); ship builder; nationality of ship builder; gross tonnage; and ship status. TCC5 was invited to consider whether to recommend to the Commission that CCMs be requested to provide these additional six data fields so that UVIs can begin to be generated for vessels on the WCPFC RFV. This will both contribute toward efforts underway by FAO to establish a global register of fishing vessels to combat IUU fishing, and by the Joint Tuna RFMOs to facilitate the exchange of vessel information.

272. Some CCMs, citing the value of UVIs to support global efforts to combat IUU fishing, recommended to the Commission the initiation of a pilot project to generate UVIs for vessels on the WCPFC RFV.

273. Other CCMs suggested that while UVIs have merit, the WCPFC should remain focused on its own needs for generating a comprehensive and complete RFV.

274. One CCM suggested that in some cases national legislation regarding privacy/confidentiality may prevent release of the information required by Lloyd Register-Fairplay.

275. One CCM recommended that national vessel register numbers be used to the maximum extent practical and that any system developed maintain compatibility with national systems.

276. TCC5 reviewed the Secretariat’s paper on “A Unique Identifier for the WCPFC Record of Fishing Vessels and Harmonization of Tuna RFMO Vessel Records” (WCPFC-TCC5-2009/18 (Rev 1)). TCC5 recommends that highest priority be given to completing the WCPFC Record of Fishing Vessels. TCC5 recommends that the Secretariat continue to participate in the tuna RFMO process. TCC5 encourages CCMs to cooperate with the Secretariat on a pilot programme basis as they are able to do so.

2.9 High Seas Boarding and Inspection (HSBI)

(a) Annual Reports by CCMs

277. In accordance with CMM 2006-08, para. 40, CCMs are required to report annually to the Commission on the boarding and inspections carried out by authorised inspection vessels. In presenting a summary of this information, the Secretariat noted the continued development of the

HSBI website. CCMs are also required to provide contact details for the authorities responsible for fishing vessels for posting on the website. To date only 9 CCMs (Belize, the EC, Canada, Chinese Taipei, Cook Islands, New Zealand, US, France and Japan) have provided this information, and 17 CCMs have not provided it.

278. Whilst noting that some CCMs may choose to report on HSBI activities within their Part 2, Annual Reports, CCMs were provided with the opportunity to make brief presentations on these activities at TCC5.

279. In addition to reporting in their Part 2, Annual Report, the U.S. noted that six HSBI were conducted in 2008. On 20 August a Japanese pole and line vessel was inspected on the high seas off Japan and no violations were observed. From September-November 2008 five Korean longliners were inspected near Palmyra and Kingman Reef and no violations were observed. All HSBI were conducted in accordance with CMM 2006-08 and proceeded smoothly and without incident.

280. Chinese Taipei deployed an inspection vessel for 89 days beginning in 6 October 2008 and has deployed two inspection vessels in 2009. These vessels have focused on HSBI of Chinese Taipei and other vessels in the high seas pockets, and on instructing the vessels to comply with the WCPFC CMMs. Chinese Taipei will continue these efforts.

281. During 2008, the Cook Island deployed two patrol boats to the high seas pocket area between French Polynesia, the Cook Islands and Kiribati. However, when the patrol vessels reached the area, the fishing vessels had already departed.

282. Two FFA members spoke in support of the WCPFC HSBI, noting that WCPFC is the only RFMO with such a scheme. It was also noted that the subregional programme will expand from the current focus on EEZs over the next year to include high seas areas, and will thus complement the WCPFC HSBI procedures.

283. Some CCMs reported on their HSBI activities while others commented on their intention to do so. TCC5 noted the progress of the WCPFC Boarding and Inspection Programme. TCC5 encouraged CCMs to report their HSBI activities in their Part 2, Annual Reports.

(b) Data Buoys

284. The U.S. presented a proposed CMM on data buoys (WCPFC-TCC5-2009/DP-03 (Rev. 1), explaining that comments received from Australia, New Zealand, the EC and the WCPFC Legal Advisor have been reflected in the latest draft. The proposed measure defines minimum standards for responsible conduct of fishing operations with regard to buoys. Its aim is to prevent damage to data buoys which provide valuable oceanographic and meteorological data including tsunami early warning. It also specifies that fishing activities which are inconsistent with these minimum standards will be considered to be undermining the WCPFC CMMs.

285. In discussion, CCMs raised several issues concerning the proposed CMM including:

- i. The need to provide a definition of data buoys so that the types and numbers of buoys that might be affected by the measure can be assessed;
- ii. There is a need for an exemption for scientific research activities;
- iii. Compatibility with national buoy classification and regulatory schemes in order to facilitate domestic implementation;

286. One CCM expressed concern about the provision to consider damage to data buoys as equivalent to undermining the WCPFC CMMs, but stated that a vessel should not be placed on the IUU Vessel List for damaging data buoys.

287. TCC5 discussed the U.S. proposed CMM on data buoys (WCPFC-TCC5-2009/DP-03 (Rev. 1). TCC5 agreed to continue to develop this proposal with a view to submitting a revised proposal at WCPFC6. Additional comments should be forwarded to the U.S. by 7 November 2009.

2.10 Compliance with Reporting Obligations

(a) Part 2 Reports

(i) Submissions by CCMs

288. The Secretariat presented “Review of CCMs’ Implementation of and Compliance with Conservation and Management Measures” (WCPFC-TCC5-2009/31 (Rev. 1)). To date, there are eight Part 2 Annual Reports outstanding including those from El Salvador, the EC, Kiribati, Marshall Islands, Niue, Philippines, Tokelau, and Wallis and Futuna. Of the 26 Part 2 Annual Reports received, 17 (Australia, Belize, Canada, Cook Islands, FSM, Fiji, France (including New Caledonia and French Polynesia which also submitted individual reports), Japan, Korea, Nauru, New Zealand, PNG, Solomon Islands, Chinese Taipei, Tonga, Tuvalu, and the U.S.) used the agreed Part 2 Annual Report template. Over the past year, CCMs and the Secretariat have worked toward retrospectively filling gaps in past Annual Report submissions and as a result the Commission’s data holdings are progressively approaching completion. CCMs were thanked for their efforts in this regard.

289. CCMs that wish to make corrections to current or past Part 2 Annual Reports were asked to work with Secretariat on these issues outside the meeting.

(ii) Part 2 Report Template

290. Referring to WCPFC-TCC5-2009/19, the Secretariat noted the requirement in paragraph 40 of CMM 2008-01 for TCC to prepare a template for reporting on the implementation of CMM 2008-01 for their fishing vessels operating on the high seas and/or in waters under national jurisdiction. This template was circulated to CCMs as WCPFC Circular 2009/06 in March 2009. Comments received from Australia and Japan and are attached to the paper.

291. In addition to the comments received from Australia and Japan, points raised by other CMMs in discussion included:

- i. There is a need to be aware of the burden that existing reporting requirements place on small coastal States and to seek ways to streamline reporting requirements as much as possible;
- ii. The Secretariat should review recommendations from CCMs made under other topics, e.g. the ROP, and incorporate reporting requirements for those programmes into the Part 2 Annual Reports;
- iii. Data fields including “management methods used for highly migratory fish species”, and those under the heading “Investigations and Prosecution Activity” require further clarification and/or justification.

292. TCC5 reviewed Secretariat paper “Revised Template for Annual Report, Part 2” (WCPFC-TCC5-2009/19). A number of specific proposals were made from the floor by CCMs. The Secretariat is directed to incorporate these suggestions in a revised Part 2 template for consideration at WCPFC6.

(b) Report by the Secretariat

293. The Secretariat presented WCPFC-TCC5-2009/31 (Rev.1) summarising information received from CCMs, including information received under Article 24, para. 5 of the Convention, relating to implementation of the Convention and the decisions of the Commission. The

Secretariat's report included information from CCMs relating to several CMMs including: i) CMM 2005-02; ii) CMM 2005-03; iii) CMM 2006-04; iv) CMM 2007-04; v) CMM 2008-01; vi) CMM 2008-03; and vii) CMM 2008-05. In relation to CMM 2008-01, the Secretariat noted that although this Measure is not due to be reported on until 2010, it contains some issues for the attention of the Secretariat.

294. New Zealand suggested that for the sake of transparency and for better self-tracking of compliance, the CCMs who have complied with these measures, or alternatively who have not complied, be listed.

295. The EC agreed that identifying which members had complied would be useful and suggested a report card format.

296. The Secretariat noted that there is now a data reconciliation facility on the Commission website whereby each CCM can review their own data submission status.

(i) CMM 2005-02: Conservation and Management Measure for South Pacific Albacore

297. This CMM calls for no increase in the number of fishing vessels actively fishing for South Pacific albacore south of 20°S above current (2005) levels or recent historical (2000-2004) levels. Information specifically about such activity, which is not required to be reported under the CMM, has been reported by Australia, Belize and New Zealand.

298. New Zealand called for CCMs fishing for this species to provide operational data, noting that it is impossible to confirm compliance unless such data are submitted.

299. Vanuatu, on behalf of FFA members, proposed to insert a footnote to Table 3 stating "the numbers in this table do not take into account para. 2 of CMM 2005-02" (WCPFC-TCC5-2009/DP-16).

(ii) CMM 2005-03: Conservation and Management Measure for North Pacific Albacore

300. This CMM requires that catch of albacore north of the equator, by gear type, be reported to the Commission every six months and that catch and effort data be reported annually. The Secretariat thanked the WCPFC Science Service Provider for preparing the estimated catches based on the 14 fleets' data listed in the paper.

301. There were no comments on this item.

(iii) CMM 2006-04: Conservation and Management Measure for Striped Marlin in the South West Pacific

302. This measure calls for CCMs to report the number of vessels that have fished for striped marlin in waters south of 15°S during the period 2000–2004, and thus nominate the maximum number of vessels that shall continue to be permitted to fish for striped marlin in the area south of 15°S. This CMM also requires annual reporting of the number of vessels that fished for striped marlin in that area. The Executive Director noted that six CCMs submitted the required data by the submission deadline.

303. Vanuatu, on behalf of FFA members, proposed to insert a footnote to the table in Attachment 1 stating "the numbers included in years 2000-2004 do not take into account para. 2 of CMM 2006-04" (WCPFC-TCC5-2009/DP-16).

(iv) CMM 2007-04: Conservation and Management Measure to Mitigate the Impact of Fishing for Highly Migratory Fish Stocks on Seabirds

304. The measure requires CCMs to report on seabird mitigation measures applied in the Convention Area south of 30°S or north of 23°N, including any changes it has made to its required mitigation measures or technical specifications about these measures. No CCM reported on any such changes.

305. There were no comments on this item.

(v) CMM 2008-01: Conservation and Management Measures of Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean

306. The Secretariat explained that while this measure will not be reported on until next year, several issues which will require reporting at that time are highlighted in the paper.

307. Vanuatu, on behalf of FFA members, requested that a footnote be added to Table 2 to state that “As stated in para. 30 of CMM 2008-01, the requirement to submit development plans for developing skipjack fisheries does not apply to the domestic purse seine fisheries of small island developing States”. Also, an amendment to para. 16 was suggested to accurately reflect paragraph 30 of CMM 2008-01 that the requirement in CMM 2008-01 does not apply to SIDS (WCPFC-TCC5-2009/DP-16).

308. Nauru, on behalf of FFA members, noted that during 2008 the applicable CMMs for bigeye and yellowfin were 2005-01 and 2006-01. Therefore the paper should be amended to avoid references to evaluating whether CMM 2008-01 was achieving its objectives (WCPFC-TCC5-2009/DP-17).

309. FSM, on behalf of FFA members, requested that Secretariat clarify the tables in future papers to clearly distinguish between limits applicable under CMM 2005-01, 2006-01, and 2008-01 (WCPFC-TCC5-2009/DP-18).

310. Fiji, on behalf of FFA members, commented that the indication in Table 3 that a limit of 2000 mt applies to Pacific Islands is not correct based on CMM 2005-01 and 2008-01 (WCPFC-TCC5-2009/DP-19). Therefore, the Secretariat was requested to note in future tables, that in accordance with paragraph 6 and 34 of CMM 2008-01 the 2000mt bigeye longline catch limit and reductions in paragraph 33 of CMM 2008-01 do not apply to Pacific Island fleets.

311. Tuvalu, on behalf of FFA members, expressed their deep concern that the deferment for provision of operational data to the Commission provided in the 2007 decision in “Scientific Data to be Provided to the Commission”, is being used by some CCMs to justify an almost complete failure to provide operational catch and effort data. Vanuatu, on behalf of FFA members, stated that CCMs should report in future Part 2 reports, specifically on their progress to meet the obligations of the 2007 decision “Scientific Data to be Provided to the Commission”, and the Secretariat should include a specific section on this matter in its report on compliance with data reporting obligations.

312. RMI requested a catch and effort level data review by the Secretariat with a view toward compliance.

313. Japan stated that it did not provide data under para. 39 of CMM 2008-01 because of difficulties in understanding the requirements of the last sentence, and called for guidance to be provided on this issue.

(vi) CMM 2008-03: Conservation and Management of Sea Turtles

314. This measure requires that fishing vessels fishing for swordfish in shallow sets reduce their sea turtle interaction rate.

315. Australia tabled a report on its sea turtle mitigation plan as WCPFC-TCC5-2009/DP-14.

(vii) CMM 2008-05: Conservation and Management of Swordfish

316. This measure requires each CCM to nominate the maximum total catch of swordfish that it shall continue to be permitted to fish in the area of south of 20°S in 2009. The Secretariat received this information from five CCMs.

317. Korea stated that it had submitted a catch report indicating a swordfish catch of about 50 mt but that it appeared that this catch report had not been received by the Secretariat.

318. New Zealand noted the following points for consideration with regard to CMM 2008-05:

- i. Chartered vessels may create anomalies in catch reporting and limit setting;
- ii. Penalty clauses will need to be amended;
- iii. The one year lag in data provision renders it impossible to respond immediately to any exceedance of catch limits; and
- iv. Catch limits should be re-confirmed in future years.

319. Australia supported SC5's recommendation that swordfish catch limits should be continued.

320. Fiji noted a minor error in para. 9 of CMM 2008-05 and will propose an amendment to rectify this at WCPFC6.

321. The Cook Islands stated that it will also seek amendment of para. 10 of CMM 2008-05 to account for the legitimate lag in data provision.

322. The EC stated that they did not provide information under CMM 2008-05 because the measure already specifies a catch figure for EC fleets. The catch limit set in CMM 2008-05 has been implemented under EC law and is monitored by France and by the EC. With regard to the issue of the review of the EC's swordfish catch data mandated by CMM 2008-05, EC stated that a report had been prepared and forwarded to the Secretariat. This report found that there was no divergence between the estimate of the catch by the WCPFC Science Service Provider (SPC) and the EC's current understanding of its fleet's swordfish catch.

323. Several CCMs questioned whether the EC's response complied with the requirements of CMM 2008-05. Specific issues with regard to the need for the review of the EC data to have been independently conducted, the need for the EC to provide data on bycatch, the lack of documentation provided regarding the review and its result, and a potential increase in EC vessels fishing for swordfish were raised. One CCM raised the issue of the provision of by-catch data as articulated in paragraph 241 of the report of the annual meeting.

324. The Secretariat indicated that neither Secretariat nor the WCPFC Science Service Provider had received copies of the EC's report on the swordfish data review.

325. TCC5 reviewed the implementation and compliance with CMMs and decisions of the Commission, including in respect of the submission of data (WCPFC-TCC5-2009/31 (Rev. 1)). TCC5 noted some elements of the paper related to measures to be implemented in 2009 and reported upon at TCC6 in 2010. Nevertheless, the paper identified a large number of reporting gaps for the majority of measures. TCC5 recommended future reports by the Secretariat attribute reporting gaps to the CCMs concerned. TCC5 noted recommendations by several CCMs to amend data tables. TCC5 forwarded these proposals to the Secretariat for its review and inclusion in a revised paper to be submitted to WCPFC6.

(c) Further development of the process for monitoring compliance

326. The Secretariat introduced progress on developing a process for monitoring compliance led by Australia. Draft terms of reference for a Compliance with Conservation and Management Measures Working Group, based on initial discussions at TCC4, were circulated by Australia in June 2009 and are contained in WCPFC-TCC5-2009/IP-06. Australia indicated that it did not receive comments on the terms of reference, but would take comments from TCC5 and table a revised draft at WCPFC6.

327. Some CCMs indicated their support for Australia's efforts and a willingness to provide further input. Specific issues raised include the possibility of learning from a similar process underway at ICCAT, and the need to develop remedial measures for non-compliances which are fair and proportional, and the importance of developing a transparent and equitable process.

328. TCC5 noted "Draft Terms of Reference for Compliance with Conservation and Management Measures (CCMM) Working Group" (WCPFC-TCC5-2009/IP-06). CCMs are asked to provide comments to Australia by 2 November 2009.

2.11 Advice and Recommendations in Relation to the Implementation of the CMMs

(a) CMM 2004-03, para. 4.1

329. Para. 4.1 of CMM 2004-03 provides scope for review, and amendment as appropriate, of the "Specifications for the Marking and Identification of Fishing Vessels". The Secretariat noted that during the 2009 FAD closure period many comments were received regarding the difficulties of identifying fishing vessels.

(b) CMM 2006-04, para. 6

330. This measure requires the Executive Director to compile information provided by CCMs on number of vessels and catch levels of striped marlin in the southwest Pacific and for TCC to monitor and review compliance with this measure and make recommendations to the Commission as necessary.

(c) CMM 2007-04, para. 6

331. This measure requires review of any new information on new or existing mitigation measures or on seabird interactions from observer or other monitoring programmes. TCC5 was invited to consider whether it was necessary to recommend to WCPFC6 an updated suite of mitigation measures, specifications for mitigation measures or recommendations for areas of application. WCPFC-TCC5-2009/33 provides an analysis of differences between a recent IOTC resolution and CMM 2007-04.

332. One CCM stated that since SC5 did not discuss these issues it was premature for TCC5 to make any recommendation and thus the matter should be tabled at TCC6.

333. One CCM noted that the IOTC technical specifications appeared to be more detailed than those currently put in place by WCPFC and suggested that the IOTC technical specifications be forwarded to WCPFC6. This CCM stressed that it was the role of TCC to make recommendations on technical issues.

334. Several CCMs referred to ongoing work by the ISC and an upcoming workshop on bycatch to be held by the Joint Tuna RFMOs (Kobe process) as useful to inform further discussion within the WCPFC.

335. The Executive Director explained that tint specifications for obtaining the appropriate colour of blue-dyed bait are now available and will be distributed to CCMs electronically and loaded on the Commission website.

336. TCC5 reviewed Secretariat Paper “Seabird Bycatch Mitigation” (WCPFC-TCC5-2009/33). While noting the SC’s role in this issue, CCMs stressed the importance for TCC to act on technical aspects. TCC5 noted the work on this subject being done within the Kobe process and encouraged the participation of WCPFC and CCMs. TCC5 recommends that WCPFC6 consider the Secretariat paper in the further development of technical specifications.

(d) CMM 2008-01, para. 21, 24, 26, 29, 43, 44 and 45

337. The Secretariat noted three papers relevant to this topic: Options for a High Seas Vessel Day Scheme (WCPFC-TCC5-2009/21), FAD Management and Monitoring (WCPFC-TCC5-2009/22) and Monitoring and Measuring Fishing Capacity in the WCPO (WCPFC-TCC5-2009/23).

338. All CCMs voicing an opinion on the potential high seas Vessel Day Scheme advocated postponing discussion on this issue until a later date.

339. With regard to FAD management and monitoring, the Solomon Islands, on behalf of FFA members, stated that more progress is needed on FAD management including study of market, identification and tracking of FADs and other electronic equipment related to fishing. A proposal for this study was tabled as WCPFC-TCC5-2009/DP-21.

340. The U.S. noted that while there is not currently a definition of a FAD set, a definition will be required in the future. In addition, the U.S. stated that given difficulties in implementing domestic regulations quickly, there may need to be a lag or phasing in of major CMMs, rather than immediate implementation.

341. Concerning monitoring and measuring fishing capacity, the EC stated that this is an important issue and must be addressed.

342. Some CCMs expressed an alternative view, suggesting that capacity is not one of the most important issues, and that other means of fisheries management would be a more useful focus.

343. Japan presented two papers, pursuant to CMM 2008-01 para. 43, on monitoring at purse seine catch landing sites in Japan (WCPFC-TCC5-2009/IP-06) and Thailand (WCPFC-TCC5-2009/IP-07). The first paper found that the amount of juvenile bigeye found in the port sampling was ~170% of the amount recorded in the logbooks regardless of whether or not there were observers onboard the purse seiners. The second paper found that Bangkok canneries compile species and size data along with the names of fishing vessel, carrier vessels, dates of landing and transshipment and thus are a useful source of information. However, there is still a high potential to underestimate the amount of juvenile bigeye, particularly given the volume of trade handled by these operations.

344. New Zealand explained that it had attempted similar verification monitoring in its ports but had been unable to reconcile logbook data with port sampling results. Given the difficulties encountered, New Zealand had decided that such arrangements were not worth pursuing. However, they suggested that it would be useful to try to link catch, offloading and cannery records in Thailand or other locations.

345. The U.S. stated the importance of continuing high observer coverage for purse seine fleets and expressed an interest in discussing further linkages to port and processing data sources. They also noted that the exemption available under CMM 2008-01, para. 43 only applies to 2009.

346. Japan presented two papers regarding port sampling and the canneries in Thailand (WCPFC-TCC5-2009/IP-06 and WCPFC-TCC5-2009/IP-07). TCC5 recommended that a

full range of monitoring measures including consideration of Thai and other canneries needed to be taken into account in the future.

(e) CMM 2008-03, para. 7, 9 and 12

347. CCMs are required to report on mitigation measures for minimising sea turtle interaction rates in swordfish fishery shallow sets.

348. Australia tabled a report on its sea turtle mitigation plan as WCPFC-TCC5-2009/DP-14. The plan contains three elements: trigger interaction rates, a management plan to be followed if trigger interaction rates are exceeded, and reporting provisions.

349. Some CCMs, including FFA members, spoke in support of Australia's plan and recommended it be forwarded to WCPFC6.

350. China informed TCC5 that it has supplied a set of cutters and de-hookers to all of its distant water longline vessels.

351. TCC5 reviewed "Australia Revised Draft Eastern Tuna and Billfish Fishery Sea Turtle Mitigation Plan (TMP)" (WCPFC-TCC5-2009/DP-14). TCC5 recommends to WCPFC6 approval of this paper.

(f) CMM 2008-05, para. 5 and 11

352. As described under item 2.10 (b) (vii), CCMs discussed the need for reporting on swordfish catches and bycatch under CMM 2008-05.

353. Having discussed the issue in the margins, the EC agreed to submit their report on the data verification process to the Secretariat for transmittal to the WCPFC Science Service Provider (SPC), and would investigate and confirm that all data required under CMM 2008-05 and WCPFC data provision rules have been provided.

354. The Secretariat clarified that no travel funding was available to support participation in the review by the WCPFC Science Service Provider.

(g) CMM 2008-06, para. 13

355. This measure requires consideration of the effectiveness of management measures for shark stocks. The Secretariat noted that this issue will be on the agenda at TCC6 and as such was highlighted for CCMs attention.

356. TCC5 reviewed a series of CMMs. It was agreed that a high seas vessel day scheme measure will be considered at a later date. It was noted that the role of capacity in overfishing is an issue which may require attention by the Commission.

AGENDA ITEM 3 —APPLICATIONS FOR COOPERATING NON-MEMBER STATUS

357. TCC5 assessed the applications for CNM status against the requirements of CMM 2008-02. The results are provided in WPCFC-TCC5-2009/35 (Rev. 1).

358. TCC5 recommended Belize for consideration by the Commission for CNM status subject to the information requested in WPCFC-TCC5-2009/35 (Rev. 1) being provided to, and accepted by, the Commission. TCC5 also recommends that the Executive Director provide, in advance of WCPFC6, an analysis of the applicant's compliance with the commitments and any specific limits on fishing activities undertaken by the applicant at WCPFC5.

359. TCC5 recommended Ecuador for consideration by the Commission for CNM status subject to the information requested in WPCFC-TCC5-2009/35 (Rev. 1) being provided to, and accepted by, the Commission. TCC5 also recommends that the Executive Director provide, in advance of WCPFC6, based on available information, an analysis of compliance with commitments and any specific limits on fishing activities undertaken by the applicant at WCPFC5.

360. TCC5 recommended El Salvador for consideration by the Commission for CNM status subject to the information requested in WPCFC-TCC5-2009/35 (Rev. 1) being provided to, and accepted by, the Commission. TCC5 recommends that the Executive Director provide, in advance of WCPFC6, based on available information, an analysis of compliance with commitments and any specific limits on fishing activities undertaken by the applicant at WCPFC5.

361. TCC5 recommended Indonesia for consideration by the Commission for CNM status subject to the information requested in WPCFC-TCC5-2009/35 (Rev. 1) being provided to, and accepted by, the Commission. TCC5 also recommends that the Executive Director provide, in advance of WCPFC6, based on available information, an analysis of compliance with commitments and any specific limits on fishing activities undertaken by the applicant at WCPFC5.

362. TCC5 recommended Mexico for consideration by the Commission for CNM status subject to the information requested in WPCFC-TCC5-2009/35 (Rev. 1) being provided to, and accepted by, the Commission. TCC5 also recommends that the Executive Director provide, in advance of WCPFC6, based on available information, an analysis of compliance with commitments and any specific limits on fishing activities undertaken by the applicant at WCPFC5.

363. TCC5 recommended Senegal for consideration by the Commission for CNM status subject to the information requested in WPCFC-TCC5-2009/35 (Rev. 1) being provided to, and accepted by, the Commission. TCC5 also recommends that the Executive Director provide, in advance of WCPFC6, based on available information, an analysis of compliance with commitments and any specific limits on fishing activities undertaken by the applicant at WCPFC5.

364. TCC5 recommended Vietnam for consideration by the Commission for CNM status subject to the information requested in WPCFC-TCC5-2009/35 (Rev. 1) being provided to, and accepted by, the Commission.

365. The Executive Director stated that he will frame a letter to each applicant requesting a response by 7 November 2009. As responses are received from the applicants they will be posted on the Commission website for CCMs' review.

366. New Zealand requested that the summary of scientific data provided by applicants for CNM status prepared by SPC-OFP be provided to each applicant as an attachment to the letter prepared by the Secretariat.

AGENDA ITEM 4 — ADDITIONAL MONITORING, CONTROL AND SURVEILLANCE (MCS) ISSUES BEFORE THE COMMISSION

4.1 Port State Measures

367. The WCPFC Legal Advisor, Dr. Tsamenyi, presented a paper updating TCC5 on the status of the FAO's Port State Measures consultation (WCPFC-TCC5-2009/32 (Rev. 2)). Dr. Tsamenyi noted that while TCC had postponed further discussion of port State measures pending

completion of the consultation at FAO. However, with the recent agreement of the text, and the likely opening for signature of the agreement in November 2009, TCC was invited to consider a recommendation to the Commission on the way forward.

368. Australia, on behalf of FFA members made the following points regarding port State measures:

- i. They are an important tool in combating IUU fishing activities but should be considered to represent only minimum standards;
- ii. Port States will maintain discretion over their own affairs, including applying stricter port states measures, such as those in place in FFA member states, if they so desire;
- iii. There should not be a transfer of the burden of combating IUU fishing activities to SIDS.
- iv. Further discussion at TCC6 was suggested.

369. The EC agreed that discussion of port State measures should be a priority for TCC6, noting that it is one of the most effective weapons against IUU fishing.

370. TCC5 discussed the port state measures paper WCPFC-TCC5-2009/32 (Rev.2). It was agreed this was a priority matter for discussion at TCC6, noting its impact on small island developing States.

4.2 Catch Documentation Scheme

371. The Secretariat presented a paper describing the background to RMFO catch and trade documentation schemes, introducing the EC IUU catch certification system to be implemented in January 2010, and discussing and comparing best practice elements in existing schemes. TCC5 was invited to consider the benefits of developing a catch documentation schemes (CDS) for the WCPFC which can be recognized by the EC as equivalent to their catch certification scheme.

372. Some CCMs, including FFA members, considered that the best approach to developing a WCPFC CDS was to build on existing national catch or trade documentation programmes, while using the Secretariat to perform an audit function. These CCMs supported formulation of a working group to progress development of a scheme.

373. Other CCMs urged a practical approach to defining the scope of the species and product forms to be included under the scheme. In particular, issues of species identification in purse seine fisheries, and handling fresh fish through customs given the CDS procedures without spoilage, were highlighted.

374. The EC voiced its continuing support for the development of a CDS for the WCPFC. The EC noted that the only schemes that are likely to be acknowledged as being equivalent to the EC catch certification are the ICCAT bluefin CDS, the CCAMLR CDS and possibly the CCSBT CDS.

375. The U.S. stressed the importance of having a clear process within the WCPFC to progress the development of a scheme if it was a priority of CCMs and the Commission, given the complexity of the topic.

376. TCC5 reviewed the catch document paper “Catch/Trade Documentation, EC Council Regulation (EC) 1005/2008 and the WCPFC” (WCPFC-TCC5-2009/24 (Rev. 2))”. TCC5 recommended to WCPFC6 creation of an inter-sessional working group on catch documentation with terms of reference to be developed electronically in advance of WCPFC6. TCC5 recommends to the Commission that it decide on a mechanism to advance this issue during 2010.

4.3 Procedures for Granting CNM Status

377. The U.S. presented a flowchart illustrating the process of considering applications for CNM status (WCPFC-TCC5-2009/DP-20 (Rev. 1)).

378. New Zealand suggested some minor amendments to the wording of the flowchart and agreed to provide these changes to the U.S. for incorporation.

379. The Executive Director confirmed that an electronic template for CNM application submissions is under consideration. This will serve the dual purpose of facilitating the applicant's information submission and formatting the information into a table for CCMs' subsequent appraisal and consideration.

380. CCMs discussed whether the flowchart, once finalized and agreed, will be incorporated into CMM 2008-02. There was consensus that the flowchart would become part of CMM 2008-02 but that the text of the measure would take precedence for any issues of interpretation.

381. TCC5 reviewed the issue of cooperating non-member party procedures "U.S. Revised CNM Flowchart" (WCPFC-TCC5-2009/DP-20 (Rev. 1)) was discussed. TCC5 agreed that comments are to be provided to the U.S. in anticipation of the development of a revised flowchart.

AGENDA ITEM 5 — SPECIAL REQUIREMENTS OF SMALL ISLAND DEVELOPING STATES

382. Cook Islands, on behalf of FFA, presented a statement highlighting the importance of combating IUU fishing in small island developing States and Territories. Two sources of funding for building capacity of SIDS to undertake monitoring, control and surveillance (MCS) activities were identified: the Special Requirements Fund, with a current balance of just over 152,000 USD, and the Japan Trust Fund, whose funding for 2010 will be decided shortly. The U.S. and FSM were thanked for their contributions to the former, and appreciation was expressed to Japan for the latter, but it was noted that this funding is inadequate to be able to assist all SIDS with national MCS activities. CCMs were reminded that Article 30, para. 4, provides guidance on how the Commission can cooperate with SIDS to address IUU fishing including financial assistance, assistance related to human resource development, technical assistance, transfer of technology, including through joint venture arrangements, and advisory and consultative services. CCMs were invited to provide updates to TCC on ways that they are contributing or intend to contribute to assisting SIDS with eliminating IUU fishing.

383. Tuvalu, on behalf of FFA members, referred to the need to avoid constraints on the development and investment in SIDS as embodied in Resolution 2008-01. FFA members expressed their desire for Resolution 2008-01 to serve as a basis for building principles and strategies, such as "islandization" into future CMMs. CCMs were reminded of the commitment at the recent meeting of the Joint Tuna RMFOs (Kobe 2) to enhance the ability of SIDS to participate in fisheries management and to develop their own fisheries for such stocks, including on the high seas.

384. Palau suggested that CCMs provide reports on their implementation of Article 30 of the Convention to each meeting of the TCC.

385. Japan encouraged SIDS to make their own applications to the Japan Trust Fund rather than applying through other organizations.

386. Several CCMs, including the EC, supported the EC's earlier point regarding the responsibility of developed states to assist coastal states with monitoring and control of fishing activities in their EEZs. The EC noted that it provides considerable funding to SPC in this regard, and New Zealand and the U.S. listed several MCS initiatives involving SIDS.

387. The Executive Director noted that the Commission has received funding from the Global Environmental Facility to assist with developing the legal and institutional capacity for implementing the Commission's CMMs in Indonesia, the Philippines and Vietnam. He also highlighted the availability of internship positions with the Secretariat, especially in the first half of each year.

388. TCC5 discussed the special requirements of small island developing states noting particularly Resolution 2008-01. Small island developing States were encouraged to take advantage of current development programmes and joint MCS activities. Developed States were encouraged to contribute to the growth of capacity of SIDS in accordance with Article 30 of the Convention and to report annually on this issue.

AGENDA ITEM 6 — FUTURE WORK PROGRAMME

6.1 Report by the Secretariat on Implementation of the 2009 Approved Programme of Work

389. A report on the implementation status of the 2009 TCC work programme is contained in WCPFC-TCC5-2009/26.

6.2 Draft Work Program for 2010-2014

390. The Executive Director presented the Draft Work Programme and Budget for 2010-2014 (WCPFC-TCC5-2009/27). He noted that the work programme is based on the ten priority issues identified at WCPFC5 but that, due to higher than forecast uptake of the Commission VMS and estimates associated with the processing of ROP-generated data, the provisional budget was significantly more than presented in previous forecasts. Budget priorities were highlighted as being electronic/web-based data submission processes and funding for the compliance officer and ROP data quality officer position. Based on an earlier suggestion for a study of FADs, the Secretariat will develop terms of reference for such a study and include it in the budget for consideration at WCPFC6.

391. In response to questions, the Executive Director explained that the item described as VMS training is designed to build capacity and promote understanding of the VMS and HSBI procedures through a workshop for interested CCMs.

392. Most CCMs were of the opinion that rather than extend the TCC meeting, it would be preferable to prioritize the issues for discussion and optimize the existing time available. The TCC Chair noted that as major issues such as data, VMS, boarding and inspection and the ROP are now well in hand, the TCC workload may ease.

393. Several CCMs noted the importance of adequate resourcing of the Secretariat.

394. The Secretariat agreed to provide Japan with further details on projected VMS operational costs for 2010-2013.

395. Japan reserved its right to provide further comments on VMS operational costs after reviewing these further details.

396. A variety of other specific issues were discussed by TCC5 and were reflected in an agreed decision point (below).

397. TCC5 reviewed in detail the draft Work Programme and Budget 2010-2014 (WCPFC-TCC5-2009/27). TCC5 noted the progress made on major MCS elements. CCMs stressed the need to prioritize items for the TCC6 agenda. CCMs encouraged the utilisation of web-based systems by WCPFC and ensuring these systems are well-funded in the short term to make budget savings in the longer term. Focused work is to be undertaken inter-

sessionally on port state measures and catch documentation schemes during 2010 as a matter of priority. TCC noted the importance of ensuring the ROP and VMS are funded adequately to implement effective programmes. TCC5 recommends to WCPFC6 that the draft Work Programme and Budget with amendments proposed during TCC5 be considered by the Finance and Administrative Committee of WCPFC6.

AGENDA ITEM 7 — SUPPLEMENTARY ITEMS

7.1 Issues arising from SC5

398. The Executive Secretary presented a document highlighting two issues arising from SC5, i.e. definition of a FAD set and cooperation with IATTC (WCPFC-TCC5-2009/28).

399. TCC noted “SC5 Outcomes Relating to the TCC” (WCPFC-TCC5-2009/28).

7.2 Independent Performance Review of the Commission

400. The Executive Director noted that WCPFC5 had tasked TCC5 with developing a structure and budget for an independent performance review to be conducted in 2010. A delegation paper originally submitted by Australia in 2007 is appended to WCPFC-TCC5-2009/IP-04.

401. Australia, supported by several other CCMs, noted that WCPFC is one of only two RFMOs that have yet to undertake an independent performance review. In the view of these CCMs, although the WCPFC is recently established there would be considerable benefit to having early feedback on its effectiveness relative to the principles laid out in the Convention.

402. One CCM questioned the need for an independent performance review.

403. FSM, on behalf of FFA members, noted that if WCPFC CCMs were to be included in the review panel as proposed by Australia, FFA members should constitute more than 50% of the allotted seats and participation of FFA members must be financially supported.

404. The Executive Director noted that the review would be supported by the Secretariat as much as possible but that there are opportunity costs because support for the review would mean that staff may not be available to undertake other priority work.

405. TCC5 reviewed “Independent Performance Review for the Commission” (WCPFC-TCC5-2009/IP-04). TCC5 recommended to WCPFC6 that it agree to implement an independent performance review beginning in early 2010 with adequate funding being provided.

7.3 Cooperation with Other Organizations

406. The Executive Director presented “Relations with other organizations” (WCPFC-TCC5-2009/29). He noted that the approved formal and informal arrangements for cooperation with other organizations have been uploaded to the key documents section of the Commission website. The draft agreement with the North Pacific Anadromous Fisheries Commission was endorsed by SC5, and TCC5 was invited to consider recommending this document to WCPFC6.

407. TCC5 reviewed “Relations with other organizations” (WCPFC-TCC5-2009/29). TCC5 recommends to WCPFC6 acceptance of the draft MOU with NPAFC.

408. TCC5 then discussed the draft data exchange agreement with IATTC.

409. Several CCMs commented that para. 1(c) in this draft agreement was unacceptable because it prohibits the use of any exchanged data as the basis for legal action. These CCMs

noted the linkages between this data exchange agreement and the ongoing process of agreeing cross-endorsement of observers.

410. TCC5 recommends to WCPFC6 that it not accept para. 1(c) of the “Draft Memorandum of Cooperation on the Exchange and Release of Data between WCPFC and IATTC” and that the Commission advise IATTC to this effect.

Second Meeting of the Five Tuna RFMOs (WP 2009/30 (Rev. 1))

411. The Secretariat presented a paper summarising outcomes of the second meeting of Joint Tuna RFMOs in San Sebastian, Spain held 28 June to 3 July 2009 (WCPFC-TCC5-2009/30 (Rev. 1)). Four workshops arising from the San Sebastian discussions will be convened in 2010, one of which is on management of tuna fisheries and will be hosted by FFA members.

412. TCC5 noted the report “Second Meeting of the Five Tuna RFMOs” (WCPFC-TCC5-2009/30 (Rev. 1)). TCC5 noted that the FFA members have offered to host the workshop on RFMO management of tuna fisheries, and to provide a chair for this workshop.

7.4 Election of Officers

413. TCC5 recommends to WCPFC6 the nomination of Noan Pakop (PNG) as Chair of the TCC and Dr. Charles Karnella (U.S.) as Vice-Chair for the period 2010-2011.

7.5 Next Meeting

414. Provisional dates for TCC6 of 30 September to 5 October 2010 were discussed.

415. TCC5 recommends to WCPFC6 that TCC6 take place in Pohnpei, FSM, 30 September to 5 October 2010.

AGENDA ITEM 8 — REPORT TO THE COMMISSION

8.1 Adoption of the Summary Report of the Fifth Regular Session of the Technical and Compliance Committee, and any Recommendations to the Commission

416. The advice and recommendations of the Summary Report **were adopted** by TCC5. The Chair agreed to circulate the complete Summary Report by 13 October 2009 for CCMs’ comments. Once comments are considered and incorporated as appropriate, the Summary Report will be forwarded to WCPFC6 for its consideration.

AGENDA ITEM 9 — CLOSE OF MEETING

9.1 Close of Meeting

417. The Chair thanked all delegations, observers and the Secretariat for their efforts during TCC5. The meeting was closed at 18:40 on 6 October 2009.



**Technical and Compliance Committee
Fifth Regular Session
1-6 October 2009
Pohnpei, Federated States of Micronesia**

ATTACHMENTS

Attachment A:	List of Participants
Attachment B:	Agenda
Attachment C:	Statement by Korea about Greenpeace
Attachment D:	WCPFC-TCC5-2009/DP-08 (Rev.3)
Attachment E:	WCPFC-TCC5-2009/DP-09 (Rev.3)
Attachment F:	WCPFC-TCC5-2009/34 (Rev.1)
Attachment G:	WCPFC-TCC5-2009/DP-10 (Rev.2)
Attachment H:	WCPFC-TCC5-2009/DP-12 (Rev.1)

Statement by the Korean Delegation on Greenpeace Action

Thank you, Mr. Chairman for allowing me to make some remarks.

I would like to express my deep concern about the illegal activity of Greenpeace against a Korean longliner, which was normally operating in the high seas near the Kiribati waters in accordance with the Convention and its conservation and management measure. On September 14, 2009, the Esperanza, the vessel from Greenpeace, approached to the Korean longliner, Oryong 717, and Greenpeace activists cut the fishing gear. Greenpeace also publicized its activity on its website under the title “Greenpeace confiscates Korean tuna fishing gear”. The word “confiscates” is far from being appropriate in this case since Greenpeace has no authority to deter fishing activities. A fishing vessel should be controlled by the flag state in accordance with the Convention and its conservation and management measures, not by a NGO.

The Republic of Korea regards this Greenpeace action as definitely illegal, just like that of a pirate in the sea. This should not be justified under any circumstances.

Mr. Chairman,

Korea never opposes Greenpeace campaign toward resource conservation. However, the campaign should be fulfilled peacefully according to the international law. Korea, as a state, has responsibility to protect its people and their property. And I’m afraid that Greenpeace repeated illegal action against Korean fishing vessel could drive the Korean government to take certain reaction in the national level. And we believe, also in the level of Commission, we should not support any unlawful activities of Greenpeace within the Convention area and send a strong message not to repeat an illegal activity in the sea.

Having said so, Korea wants these statements to be recorded in the meeting report.

Thank you, Mr. Chairman.