



**WEST PACIFIC EAST ASIA
OCEANIC FISHERIES MANAGEMENT
PROJECT**

WPEA OFMP



CONSULTANCY REPORT

**Review of Policy and Legal Arrangements for WCPFC-related
Matters and Checklist of Compliance Shortfalls**

May 2011



**Directorate of Fisheries Resource Management
Directorate General of Capture Fisheries
Republic of the Indonesia
and
Western and Central Pacific Fisheries Commission**

ACKNOWLEDGEMENTS

The funding support from the Global Environment Facility, and co-finances from the Australian Government Overseas Aid Program, Japan Trust Fund, and WCPFC are gratefully acknowledged.

Y2-DOC-IDN-13

**Review of Policy and Legal Arrangements for WCPFC
related Matters and Checklist of Compliance Shortfalls**

**Consultancy Report
2011**

**WPEA OFM Project Directorate General
for Capture Fisheries Indonesia**



PREFACE

This Report seeks to provide analysis on Indonesian policy and legislation on the conservation and management of high seas fisheries. The analysis is directed at identifying the prospects as well as shortfalls to comply with the Western and Central Pacific Fisheries Convention to which Indonesia is now in the status of a Cooperating non-Member (CNM). On the part of the Government of Indonesia (GOI), it is an urgent need to reveal what matters to deal with if the GOI enters into full membership of this Regional Fisheries Management Organization (RFMO). The shortfalls are to be identified in relation to the existing policy and legal arrangements with regard to the conservation and management of highly migratory species (HMS) occurring in the Indonesian Economic Zone and in the adjacent high seas of the Pacific Ocean.



TABLE OF CONTENT

PREFACE

TABLE OF CONTENT

		i
Chapter 1.	INTRODUCTION	1•1
Chapter 2.	THE WCPFC CONVENTION VERSUS NATIONAL POLICY	2•1
2.1.	General	2•1
2.2.	Management Policy in the Convention Area	2•1
2.3.	Management Objective	2•2
2.4.	Regulatory Policy	2•2
2.5.	Conservation and Management Measures	2•3
2.5.1.	Specifications For The Marking And Identification Of Fishing Vessels	2•4
2.5.2.	Resolution On Reduction Of Overcapacity	2•5
2.5.3.	Resolution On Non-Target Species	2•5
2.5.4.	Western And Central Pacific Fisheries Commission Boarding And Inspection Procedures	2•5
2.5.5.	Conservation And Management Measure For The Regional Observer Program	2•6
2.5.6.	Commission Vessel Monitoring System	2•6
2.5.7.	Conservation And Management Measures To Establish A List Of Vessels Presumed To Have Carried Out Illegal, Unreported And Unregulated Fishing Activities In The Western And Central Pacific Ocean	2•7
2.5.8.	Conservation And Management Measure To Mitigate The Impact Of Fishing For Highly Migratory Fish Stock On Seabirds	2•8
2.5.9.	Conservation And Management Measure For Big-Eye And Yellow-Fin Tuna In The Western And Central Pacific Ocean	2•8
2.5.10.	Conservation And Management Of Sea Turtles	2•9
2.5.11.	Conservation And Management Measure To Prohibit The Use Of Large-Scale Driftnets On The High Seas In The Convention Area.	2•9
2.5.12.	Record Of Fishing Vessels And Authorization To Fish	2•9
2.5.13.	FAD Closures And Catch Retention	2•10
2.5.14.	Conservation And Management Of Swordfish	2•11
2.5.15.	Conservation And Management Of Shark	2•11
2.5.16.	Prohibition Of Fishing On Data Buoys	2•12
2.5.17.	Regulation Of Transshipment	2•12
2.5.18.	Vessels Without Nationality	2•13
2.5.19.	Cooperating Non-Member	2•13



Chapter 3.	CHECKLIST OF COMPLIANCE SHORTFALLS	3•1
3.1.	General	3•1
3.2.	National Policy on High Seas Fisheries	3•1
3.3.	Legislations on Offshore Fisheries	3•2
Chapter 4.	Review On Policy, National Legislation And Arrangement For The WCPF Convention - Related Matters	4•1
4.1.	Offshore Fisheries Policy	4•1
4.2.	Implementing Regulations	4•2
4.2.1.	Marking of Fishing Vessel	4•2
4.2.2.	Vessel Productivity	4•3
4.2.3.	Fishing Port	4•3
4.2.4.	Fishing Gear	4•4
4.2.5.	Non-target Species	4•5
4.2.6.	Observer Program and Inspection Procedures	4•5
4.2.7.	Vessel Monitoring System	4•6
4.2.8.	IUU Fishing	4•6
4.2.9.	Authorization to Fish	4•6
4.2.10.	Fish Aggregating Device	4•7
4.2.11.	Transshipment	4•8
Chapter 5.	SUMMARIES AND RECOMMENDATIONS	5•1
Chapter 6.	IMPROVEMENTS NEEDED	6•1
6.1.	Flag States Jurisdiction	6•1
6.2.	Coastal States Jurisdiction	6•3
6.3.	Port States Jurisdiction	6•4



Chapter 1

INTRODUCTION

The roles of regional fisheries management organizations (RFMO) in the conservation and management of highly migratory species (HMS) have been increasing significantly since the last two decades. The fisheries of their specific concern to address include highly migratory species occurring in the high seas beyond the 200-mile limit EEZ of coastal states jurisdiction. Most of the existing RFMO adopt the regulatory policy, namely: “species approach” rather than “spatial approach” which has been common to coastal states jurisdiction over their EEZs. The species approach deals with the HMS according to the natural characteristics of individual species regardless wherever they occur. Their migration routes are of special concern to deal with in entirety. In this case, the spatial approach is no longer relevant to the RFMO due to the fact that the HMS do not obey any man-made boundaries as they move across oceans in the course of pursuing their preys. This regulatory policy affects significantly on the implementation of sovereign rights over these species occurring in the EEZ of coastal states, including that of Indonesian EEZ adjacent to the high seas of the Pacific Ocean. Therefore, closer cooperation between the GOI and the Western and Central Pacific Fishery Commission is very important in view of conserving and managing the HMS of common concern.

According to the stipulation of Article 64 of the UNCLOS, 1982, coastal states whose nationals engage in fishing for HMS on the high seas should cooperate through the existing RFMO. Meanwhile, in the region where RFMO does not exist yet, the coastal states of the same region should establish one and cooperate in the management and conservation of the HMS. In this regard, it is imperative for Indonesia to comply with this Article, due to the fact that Indonesia is one among countries, which have ratified the Convention. Up to the present, Indonesia has been participating in the work of RFMOs, such as The Indian Ocean Tuna Commission (IOTC) and in the implementation of the Convention of Conservation of Southern Blue-fin Tuna (CCSBT). Therefore, the possibilities and constraints to participate in the work of other RFMO, such as the Western and Central Pacific Fishery Commission (WCPFC), is worth assessed to reveal shortfalls for full participation.



With regard to the historical background of establishment of the WCPF Convention, the fisheries for HMS in this region have been dominated by long distance fishing nations (LDFNs), Meanwhile, in line with the changes in International Law of the Sea, the small island states in this region gained new perspectives in the exploitation of HMS frequented in the high seas surrounding their EEZ's. They have now, new and abundance source of national income from fisheries, especially by way of licensing their sovereign rights over the HMS resources to the LDFNs. However, problems arise due to insufficient sources of enforcement capacity of individual states to control the activities of fishing fleets of the LDFNs previously licensed to operate in their EEZ's.

In line with the improvement of knowledge and fishing technologies, dwindling in the harvest of certain species of tuna have been noticed in the region. Aware of the possibilities of declining revenues, the small island states in this region agree with each other to initiate concerted actions to solve problems associated with the management HMS fisheries. The problems include: unregulated fishing, over-capitalization, excessive fleet capacity, vessel re-flagging to escape controls, insufficiently selective gear, unreliable databases and insufficient multilateral cooperation in respect to the conservation and management of HMS fisheries. Therefore, one may perceive that the establishment of Western and Central Pacific Fisheries Convention (WCPFC) may be viewed as a "common front" for small island states in the region to deal with the powerful LDFNs.

On the part of Indonesia, which is neither LDFN nor "small island state", the intention to become full member of the WCPFC is dedicated to fulfill its commitments toward implementing agreements associated with the UNCLOS, 1982. In addition, and the most important thing, Indonesia is one of the "resource owner" of the HMS frequented in its EEZ of the Western Pacific Ocean. Therefore, full participation in the work of WCPF Commission is expected to yield benefits to Indonesia. The benefits that may accrue to the GOI, among others are: access to the consolidated and standardized data collection; effective and efficient monitoring, control and surveillance (MCS); and concerted effort in the enforcement measures.

For the sake of implementation of WCPF Convention, in which the GOI would be fully participating, there is an urgent need to assess the compatibility between the GOI and the WCPF Commission. The assessment on compatibility covers the policy formulation and national legislations in support of pursuing the predetermined common objectives of offshore fisheries management in the



Western and Central Pacific Ocean. Following the general observation on the WCPF Convention, review on the national fisheries policy and legislations will be made in view of revealing the shortfalls in implementing the international rights and duties by the GOI. Finally, summaries and recommendations on the WCPF Convention-related matters will be presented to provide the GOI with legal considerations in making final decision for full participation in the work of the WCPF Commission.



Chapter 2 **THE WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION**

2.1. GENERAL

Convention on the Conservation and Management of Highly Migratory Fish Stocks of the Western and Central Pacific Ocean was adopted on 5 September 2000, in Honolulu. This Convention was established in line with the objectives stipulated in Article 64 of the UNCLOS 1982. Whereas, Article 64 of the UNCLOS, 1982 had been previously followed further by the implementing rules, regulations and procedures as embodied in the articles of the UNIA, 1995. Furthermore, on the part of Indonesia, the UNIA, 1995 has been ratified by Act 21 of 2009, which means that the UNIA, 1995 has now been adopted as part of national law of the Republic of Indonesia. Therefore, at the level of policy formulation, one may not find any of incompatibility between the national fisheries policy of the GOI and the regional fisheries policy of the WCPF Commission. The inference is based on the legal fact that both the GOI and the WCPF Commission are obliged to implement the provisions embodied in the UNIA, 1995. However, shortfalls may be found with regard to the implementing regulations and enforcement.

2.2. MANAGEMENT POLICY IN THE CONVENTION AREA

Principles underlying the fisheries management adopted by the WCPF Convention are actually derived from Fisheries Science, which are neutral in character. Those principles were further adopted in international declarations and resolutions via various international conferences. Finally, the principles have gained their imperative characters since they had been adopted by international agreements between states, either regional or even global scope of application.

The principles underlying the management and conservation of HMS in the Convention Area, among others are: inter-generational equity; cooperation; precautionary approach; integrity of the



ecosystem; optimum utilization; compatible measures; international minimum standard; and species protection.

On the part of the GOI, those of the fisheries management principles are derived from the UNIA, 1995, which have been ratified by the GOI with Act 21 of 2009. Therefore, although the GOI has not yet participated fully in the work of the WCPF Commission, those of the principles have already been adopted in the national law on offshore fisheries, Problems may appear whether the GOI has or has not established all of the related implementing rules, regulations and procedures compatible with that of already adopted by the WCPF Commission. In some respects, the GOI has been following the right tract toward the predetermined management objectives similar to those of being pursued by the existing RFMOs, whose regulatory areas surround the Indonesian EEZs adjacent to the high seas of the Indian Ocean and the Pacific Ocean.

2.3. MANAGEMENT OBJECTIVE

The objective of the WCPF Convention is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory species in the Western and Central Pacific Ocean in accordance with the UNCLOS, 1982 and the Agreement for the Implementation of the Provisions of the UNCLOS of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNIA, 1995).

2.4. REGULATORY POLICY

In general, the regulatory policy adopted by the WCPF Commission in the Convention Area has always been weighed between the two extreme considerations, the carrying capacity of the resources and the sustained economic exploitation. Balanced condition shall be met by mean of establishing rules, regulations and procedures directed at conserving the resource at the level of maximum sustainable yield. In this case, the total harvesting capacity of the member states shall be determined to allow the resources undergo natural replenishment. To this end, a number of conservation and management measures (CMM) have been adopted by the Commission in line with the improving



knowledge about the resource. Those measures are adopted according to the recent information about actual condition of the target species as well as non-target species, both prior and after the exploitation.

With regard to the fisheries for the HMS in the Convention Area, the WCPF Commission has adopted regulatory policies specific to the problems encountered in the region. The problems include: unregulated fishing, over-capitalization, excessive fleet capacity, vessel re-flagging to escape controls, insufficiently selective gear, unreliable databases and insufficient multilateral cooperation in respect to the conservation and management of HMS fisheries. In this regard, the Commission has adopted Conservation and Management Measures (CMM) specific to the problems encountered in the Convention Area. However, the Commission leaves the enforcement of the CMM to the Flag States concerned. The Commission may establish rules, standards and procedures to be adopted by consensus during the annual meeting of the member states. Furthermore, it depends on the willingness of all the member states to establish compatible rules, standards and procedures in their own national law. This regulatory policy represents considerable respect of the Commission to the sovereignty of all member states in accordance with International Law.

On the part of the member states, the sovereignty means the authority to prescribe and promptly enforce rules, regulations, standards and procedures on the high seas of their own national jurisdictions. This means that the member states do not mean to surrender the EEZs to the authority of WCPF Commission. Therefore, the adoption of the CMM by consensus of the delegates does not mean that the CMM has its automatic binding force. The member states still have to prescribe rules, regulations, standards, and procedures in their own languages with commitment to enforce promptly when violation occurs. In this case, one may have inference that the compliance to the regulatory policy of the WCPF Commission does not mean to surrender their sovereignty to prescribe and enforce rules, regulations, standards and procedures. Therefore, each of the member states shall translate the related CMMs into national language. At this point, the GOI is not an exception. As an integral part of national law, all the relevant CMMs have to be translated into Bahasa Indonesia.

2.5. CONSERVATION AND MANAGEMENT MEASURES

According the mandates derived from the Convention, the WCPF Commission has adopted a number of Resolutions and Conservation and Management Measures (CMMs) to solve fisheries



problems in the Convention Area. Some of the CMMs, especially which relate to the interests of Indonesian offshore fisheries in the Pacific Ocean, are presented below. These include CMM for target species, protection of non-target, related or dependent species; compliance; enforcement; cooperation between member states; fishing gear, and scientific research.

2.5.1. SPECIFICATIONS FOR THE MARKING AND IDENTIFICATION OF FISHING VESSELS

CMM 2004-03 Dated 8 December 2004

This measure is intended to specify identification for fishing vessels operating in the Convention Area. In this case, the member states shall urge the operator to adopt International Telecommunication Union Radio Call Signs (IRCS). In addition, the vessel shall have WCPFC Identification Number (WIN), by which the Commission shall include the vessel into the List of Vessel Authorized to Fish in the Convention Area. The member states shall ensure that:

- a. Apart from the vessel's name or identification mark and the port of registry or may be required by international practice or national legislation, the WIN as specified shall be the only other vessel identification mark, consisting of letters and numbers to be painted on the hull or superstructure.
- b. The requirement for the marking of fishing vessel with the WIN is a condition for issuing the authorization to fish in the Convention Area beyond areas of national jurisdiction.
- c. The following are offences under national legislation:
 - (1) Non-compliance with the abovementioned specifications;
 - (2) Non-marking or wrongful marking of vessel;
 - (3) Deliberate removal or obstruction of the WIN;
 - (4) The use of WIN allocated to another operator or to another vessel.
- d. Offences listed above may be used as legal basis for refusing the authorization to fish.



2.5.2. RESOLUTION ON REDUCTION OF OVERCAPACITY

Res.2005-02 Dated 16 December 2005

This resolution urges all member states to exercise restraint in respect of fishing effort and capacity due to dwindling HMS resources in the Convention Area. Therefore, the reduction of fishing capacity of purse seine fishery operating in Convention Area is imperative. However, all member states shall work together to ensure no adverse effects on the fishing industries of small island states which has been operating legally in the region.

2.5.3. RESOLUTION ON NON-TARGET SPECIES

Res. 2005-03 Dated 16 December 2005

This resolution recognizes that the Commission shall adopt measures to minimize discards, catch of non-target fish species, and the impacts on associated and dependent species. The Commission encourages all the member states to avoid capture of non-target species that are not to be retained. The non-target fish that are not to be retained shall be promptly released into the water unharmed.

2.5.4. WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION BOARDING AND INSPECTION PROCEDURES

CMM 2006-08 Dated 15 December 2006

This CMM is intended to implement Article 26 and Annex III and Article 6(2) of the Convention to ensure compliance to those procedures regarding boarding and inspection and to the conservation and management measures adopted by the Commission. The implementation of the procedures has to take into account the presence of inspector on board of the vessel, the frequency, and the results of past inspection. Priority for boarding and inspection is to be given to:

1. Vessel which is not on the record of authorized vessel (WCPFC Record of Fishing Vessels) but flagged to the member of the Commission.
2. Vessel which is not in direct inspection by its own flag states;



3. Vessel engages in fishing without observer on board;
4. Large-scale Tuna Fishing Vessels; and
5. Vessel which has known history of violation to the conservation and management measures adopted by international agreement or national law and regulation of any country.

2.5.5. CONSERVATION AND MANAGEMENT MEASURE FOR THE REGIONAL OBSERVER PROGRAM

CMM 2007-01 Dated 7 December 2007

Regional Observer Program is directed at collecting catch data; monitoring on the implementation of the CMMs; and, collecting additional information related to the fishery. The Secretariat shall coordinate the program and authorize the observer providers to the Regional Observer Program. The Commission shall develop guidelines on the following:

- a. Guidelines for the Rights and Responsibilities of Observers
- b. Guidelines for the Rights and Responsibilities of Vessel Operators, Captains, and Crew
- c. Guidelines for the Implementing Schedule

2.5.6. COMMISSION VESSEL MONITORING SYSTEM

CMM 2007-02 Dated 7 December 2007

This CMM replaced CMM 2006-06. Vessel Monitoring System (VMS) is an essential component of any regional fisheries management organization. In this regard the Commission has developed a stand-alone VMS system in which the Commission receives data and information directly from vessels fishing on the high seas in the Convention Area. This system may be integrated with the Forum Fisheries Agency VMS, so vessels operating in the Convention Area may transmit their reports via FFA-VMS. The member states shall ensure that their VMS are compatible with that of the Commission VMS. The Commission shall develop rules and procedures for the operation of the VMS.



2.5.7. CONSERVATION AND MANAGEMENT MEASURES TO ESTABLISH A LIST OF VESSELS PRESUMED TO HAVE CARRIED OUT ILLEGAL, UNREPORTED AND UNREGULATED FISHING ACTIVITIES IN THE WESTERN AND CENTRAL PACIFIC OCEAN

CMM 2007-03 Dated 7 December 2007

This CMM replaced CMM 2006-09 and further adopt the International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing adopted by FAO Council on 23 June, 2001 (IPOA-IUU Fishing). According to this CMM, IUU Fishing undermines the objectives being pursued by the Commission. Therefore, substantial supports from other international organization, such as the WTO, can contribute to the effective implementation of the CMMs. For example, embargoes to the fishery products associated with IUU Fishing are presumed to have substantial effects to the success of the CMMs.

This CMM provides the power of the Commission to establish the IUU Vessel List which accommodates reports of the member states on vessels presumed to have conducted IUU Fishing in the Convention Area. According to paragraph 3 of this CMM, a vessel presumed to have conducted IUU Fishing if it is fit to one of the following 10 criteria established by the Commission.

1. Harvest the species under control of the Convention in the Convention Area;
2. Fishing in the waters of coastal state without permission;
3. Do not record or report their catch;
4. Take undersized fish;
5. Fishing on the closed area during a closed season
6. Use prohibited fishing gear;
7. Transship the catch or support the vessels on the IUU Vessel List
8. Vessel without nationality;
9. Engage in any other activities that undermine the Convention and the CMMs adopted by the Commission; and
10. Vessel under control of the owner of vessel that already on the IUU Vessel List.



2.5.8. CONSERVATION AND MANAGEMENT MEASURE TO MITIGATE THE IMPACT OF FISHING FOR HIGHLY MIGRATORY FISH STOCK ON SEABIRDS

CMM 2007-04 Dated 7 December 2007

The Commission has to pay sufficient attention to the fact that migratory seabirds are incidentally caught during the fishing operation. This is a logical consequence of the principle of ecosystem integrity, which underlies the management policy of the WCPF Commission.

2.5.9. Conservation and Management Measure for Big-eye and Yellow-fin Tuna in the Western and Central Pacific Ocean

CMM 2008-01 Dated 12 December 2008

The big-eye and yellow-fin tuna are among the target species under the auspice of the Commission. However, the previous measures to decrease fishing mortality of juveniles of big-eye as well as yellow-fin were unsuccessful. Failures were also experienced in the previous efforts to limit the fishing capacity for these species in the Convention Area. Therefore, further efforts should be directed to decrease fishing mortality and eliminate the risks of overfishing for these species. To ensure the compatibility in the regulatory policy, similar conservation and management measures shall be taken by the member states within the waters of their national jurisdictions.

The Commission calls for the implementation of Article 8 (1) and Article 10 of the Convention, which encourages compatible conservation measures between the Convention Area and the EEZs of national jurisdictions. For example, in view of reducing the mortality of juvenile big-eye, purse-seine fishing on the FAD shall cease from 1 August to 30 September for over 3 years, starting from 2009. The Commission shall inform the CNM wishing to join the fishery in the Convention Area the fact that the big-eye tuna is being overfished and the Commission shall determine the limit of fishing efforts. Exception applies to purse-seine fishing in the Convention Area only if such a vessel carries with it an observer on board to monitor and examine the fishing operation and provide report to the Commission.



2.5.10. CONSERVATION AND MANAGEMENT OF SEA TURTLES

CMM 2008-03 Dated 12 December 2008

This CMM adopts the FAO Guidelines, 2005 to reduce sea turtles mortality in fishing operation. In the meantime five species of sea turtles occurring in the Convention Area have already been on the list of endangered species. In accordance with articles 5 and 10 of the Convention, the Commission urges all the member states to apply the Guidelines on purse-seine fishing in their respective national jurisdictions and on the Convention Area. If the sea turtles are incidentally captured or entangled in the net, the crews shall make every efforts to the extent possible to release the turtles and make sure that their safety are improved before returning them into the sea.

2.5.11. CONSERVATION AND MANAGEMENT MEASURE TO PROHIBIT THE USE OF LARGE-SCALE DRIFTNETS ON THE HIGH SEAS IN THE CONVENTION AREA.

CMM 2008-04 Dated 12 December 2008

This CMM adopts the United Nations General Assembly (UNGA) Resolution 46/215 which calls for global moratorium for the use of large-scale driftnets fishing due to the detrimental effects on the marine ecosystem. The member states of the WCPF Convention shall prohibit the use of this type of fishing gear by vessels flying its flag in the Convention Area. Exception applies to a vessel which can demonstrate that it is dully authorized to use this type of fishing gear while operating in the waters of national jurisdiction. When such a vessel is in the Convention Area, this fishing gear shall be stowed or secured in such a manner that this destructive fishing gear is not readily available to be used.

2.5.12. RECORD OF FISHING VESSELS AND AUTHORIZATION TO FISH

CMM 2009-01 Dated 11 December 2009

This CMM replaces CMM 2004-01. The CMM stipulates that the authorization to fish in the Convention Area requires the member states to have sufficient ability to exercise effective control upon the fishing vessel concerned. The ability of a state to take control over the vessel means to enforce the relevant rules and institute legal proceedings should the violation occurs. The state shall take steps necessary to allow the vessel to comply with the CMM. The state shall maintain the Record of all



vessels authorized to fish in its jurisdiction. Article 24 of the WCPF Convention requires that fishing activities in the Convention Area are conducted only by vessels flying the flag of the member states to which the Commission maintains the Register of the vessels. Meanwhile, fishing in the jurisdiction of other states should have appropriate license, permit or authorization of such other states. The number of authorization shall be managed at a level commensurate with fishing opportunities to that member in the Convention Area. In addition, there shall be no authorization to fish for a vessel that has history of IUU Fishing.

2.5.13. FAD CLOSURES AND CATCH RETENTION

CMM 2009-02

This CMM recalls CMM 2008-01 concerning CMM for Big-eye and Yellow-fin Tuna in the Western and Central Pacific Ocean. The Commission was conscious that incomplete or inconsistent application of CMM 2008-01 may undermine the effectiveness of the measures. Therefore, the measures adopted by this CMM are to be read as a part of CMM 2008-01.

The objectives of this Measure are:

To ensure consistent and robust application of FAD closures and catch retention in the high seas between 20 degree S and 20 degree N through the specification of minimum standards.

The requirement of high standards to the application of the FAD closure and catch retention in view to remove any possibility for the targeting of aggregated fish, or the discard of small fish.

The definition of FAD in the CMM 2008-01 shall be interpreted as including any object or group of objects, of any size, that has or has not been deployed, that is living or non-living, including but not limited to buoys, floats, netting, webbing, plastics, bamboo, logs and whale sharks floating on or near the surface of the water that fish may associate with.

During the FAD closure period, no purse seine vessel shall conduct any part of a set within one nautical mile of a FAD. That is, at no time may the vessel or any of its fishing gear or tenders be located within one nautical mile of a FAD while a set is being conducted.



Where the operator of a vessel determines that fish should not be retained on board because of the size, marketability, or species composition, the fish shall only be released before one half of the net is fully pursed and one half of the net has been retrieved.

Where the operator of a vessel determines that the fish should not be retained on board because they are unfit for human consumption, the following definitions shall apply:

Unfit for human consumption includes, but not limited to fish that:

- *is meshed or crushed in the purse seine net; or*
- *is damaged due to shark or whale depredation; or*
- *has died and spoiled in the net where a gear failure has prevented both the normal retrieval of the net and catch and efforts to release the fish alive; and*
- *unfit for human consumption does not include fish that:*
 - *is considered undesirable in terms of size, marketability, or species composition; or*
 - *is spoiled or contaminated as the result of an act or omission of the crew of the fishing vessel.*

2.5.14. CONSERVATION AND MANAGEMENT OF SWORDFISH

CMM 2009-03

This CMM replaced the CMM 2008-05. At the time of establishment of this CMM the Commission noticed the abundance of the stocks which meant the swordfish was not overfished. However, there will be no further increase in fishing efforts to allow fish replenish above its reference point. This CMM intends to protect the interest of small islands states, whose fisheries overwhelmingly dependent upon these stocks.

2.5.15. CONSERVATION AND MANAGEMENT OF SHARK

CMM 2009-04

The CMM 2009-04 replaced CMM 2008-06. This CMM protect basking shark and great white shark which had entered into Appendix II of the Convention on International Trade in Endangered



Species, 1973. On the other hand, blue shark, silky shark, whitetip shark, mako shark, and tresher shark have already listed in Annex I of the UNCLOS, 1982.

2.5.16. PROHIBITION OF FISHING ON DATA BUOYS

CMM 2009-05

Data buoys are deployed throughout oceans worldwide to collect information for many purposes, including weather forecasting, search and rescue at sea, tsunami warning and others, but not for the purposes of fishing operation. Meanwhile, tuna and tuna-like species usually aggregate in the vicinity of data buoys, especially juveniles of big-eye and yellow-fin tuna. On the other hand, significant lost of information from data buoys are damaged due to vandalism or the operation of certain fishing methods. These malpractices are considered to have conducted serious violation in accordance with Article 25 of the WCPF Convention and the agreed international minimum standards of fishing operation. In this case, the Commission has to spend considerable time and resources to locate data buoys and repair or replace them. Therefore, this CMM prohibit fishing operation within one nautical mile from the location of the data buoys.

2.5.17. REGULATION OF TRANSSHIPMENT

CMM 2009-06

This CMM relate to the fact the success and failure of the management for the HMS depends on accurate reporting of catches in the Convention Area. On the other hand, unregulated and unreported transshipment contributes significantly to the distorted reporting of catches and supports the IUU-Fishing. According to Article 29 of the WCPF Convention, transshipment of catches is supposedly to be conducted in the designated fishing ports, and in accordance with national law to allow application of stringent requirements. This CMM regulates transshipment of catches both in port and at sea in the Convention Area in view of obtaining and verify data on the quantity and species transshipped and determine when the transshipment has been completed. However, transshipment of catches is prohibited only to the purse seine fishery, which subject to exemptions to be determined by the Commission. The exemptions apply to the transshipment of the HMS taken in the archipelagic waters or territorial seas of the member states.



2.5.18. VESSELS WITHOUT NATIONALITY

CMM 2009-09

This CMM was adopted in accordance with Article 10 of the Convention. A vessel determined to be without nationality means not flying the flag of any state or vessel flying the flag of two or more states in accordance with Article 92 of the UNCLOS, 1982. In this case, the member states whose vessel or aircraft made the sighting, shall take preventive measures by reporting to the Secretariat as soon as possible by appropriate authorities

2.5.19. COOPERATING NON-MEMBER

CMM 2009-11

This CMM reaffirmed Article 32(4) of the WCPF Convention concerning the need to request non-parties whose vessels fish or intend to fish in the Convention Area to cooperate fully to implement conservation and management measures for the highly migratory stocks adopted by the Commission. The non-party shall submit its request to the Commission for the status of Cooperating Non-Member (CNM). The request shall be submitted at least 60 days in advance of the Annual Meeting of the Technical and Compliance Committee. The request may include: reasons for seeking CNM status and the commitment to cooperate fully in the implementation of the CMMs. However, to the greatest extent possible, the concerned state shall ensure that its nationals comply with the provisions of the Convention and the CMMs adopted by the Commission. In addition, the requesting states shall express its consent to accept the procedures on high seas boarding and inspection and submit any other information as determined by the Commission, including financial contributions.

Furthermore, the Technical and Compliance Committee will assess the applications for CNM status and provide the Commission with recommendations and technical advice. At this point, the Commission shall consider whether or not the information is sufficient to make decision on the status of Cooperating Non Member (CNM)

As indicated in paragraphs 3 to12 of this CMM, the status of CNM, if so granted, shall subject to further monitoring by the Commission with regards to its commitment to implement the provisions of



the Convention and all the CMM adopted by the Commission. However, revocation of the status is possible if the concerned CNM fails to comply with any of the CMM adopted by the Commission. The concerned CNM shall be deemed to have undermined the effectiveness of the CMM to which the Commission shall impose sanctions and penalties.



Chapter 3

NATIONAL POLICY AND LEGAL ARRANGEMENTS CONCERNING HIGH SEAS FISHERIES

3.1. GENERAL

National policy and the implementing legislations concerning high seas fisheries may be embodied in the considerations of the related acts such as: Act 5/1983 concerning Indonesian EEZ and Act 31/2004 as amended by Act 45/2009 concerning Fisheries. In addition, Act 17/1985 concerning Ratification of the UNCLOS 1982 carry with it substantial influence to the offshore national fishery policy, due to the fact that the UNCLOS 1982 has been followed by various implementing conventions, agreements, declarations and resolutions in which the GOI has been taking part.

In addition, the fishery policy and legislation shall follow the legal structure adopted in the national legal system. For example, the Fisheries Act, being the highest in the system, shall be followed by gradually implementing legislations, which consist of: government regulations, presidential decisions or regulations, ministerial decisions or regulations and decision of the director general (in this case, the Directorate General of Capture Fisheries). Since the Fisheries Act or the EEZ Act rank the highest in the national legal structure, one may only find the so called “national fisheries policies” only in those two acts. Meanwhile, if one is to find the “international fisheries policies”, such as those embodied in the UNCLOS 1982, then he/she may only find it only as the legal basis, which is in the instruments of ratification, such as Act 17/1985 (for the UNCLOS,1982} and Act 21/2009 (for the UNIA, 1995). Meanwhile, for the ratification of the WCPF Convention, the GOI has not decided yet. In this case, one may infer that both national policies and international policies, including those embodied in the WCPF Convention should have been combined in the Act 31/2004, which has been amended by Act 45/2009.concerning Fisheries.

3.2. NATIONAL POLICY ON HIGH SEAS FISHERIES

As it is indicated in the abovementioned acts, national policy on the high seas fisheries may be formulated as follows.



1. In the framework of national development, which is based on the Archipelago Principle, the management of fishery resources shall be based on equity and equal utilization, taking into considerations the widening job opportunities and increasing wealth of the fishers and fish farmers including those of stakeholders related to the fishery activities and ensure the sustainability of fishery resources including their environment. (Fisheries Act 31/2004);
2. In protecting biodiversity and maintaining the integrity of marine ecosystem of the Indonesian EEZ and the adjacent high seas, it is imperative to conserve and manage the straddling fish stocks and highly migratory fish stocks (Act 21/2009 concerning the Ratification of the UNIA, 1995).

3.3. LEGISLATIONS ON OFFSHORE FISHERIES

Following the formulation of the management policy with regard to fisheries on the high seas, a number of implementing legislations have been issued, including: acts, government regulations, and ministerial regulations or decisions. Those of the implementing legislations are substantively assessed in a parallel fashion in accordance with the CMMs adopted by the WCPF Commission. This parallelism is intended to get clearer picture on the prospect of implementation of the CMMs with regard to the conservation and management of offshore fisheries in Indonesia.



Chapter 4 REVIEW ON POLICY, NATIONAL LEGISLATION AND ARRANGEMENT FOR THE WCPF CONVENTION - RELATED MATTERS

This part will seek to assess the inter-relation between the WCPF Commission and the Government of Indonesia with regard to the policy and legal arrangements on offshore fisheries. In view of obtaining fair comparison between the GOI and the Commission, one should look into the positions in the legal structure. According to the legal structure, the WCPF Convention is equal to the Fisheries Act in Indonesia, while the Conservation and Management Measure (CMM) is equal to that of Ministerial Decision or Regulation. Therefore, one who is searching for the so called “fisheries policy” then, on the part of the GOI, one may find it in the Fisheries Act 31 of 2004 which has been amended by Act 45 of 2009. On the other hand, the fisheries policy of the Commission may be found in the WCPF Convention’

4.1. OFFSHORE FISHERIES POLICY

With regard to offshore fisheries, however, both the GOI and the Commission share the same source of policy, which is The Agreement for the Implementation of Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management Straddling Fish Stocks and Highly Migratory Fish Stocks (UNIA), 1995.. The UNIA, 1995 derives its mandates from Article 64 of the UNCLOS which states that:

“The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall cooperate to establish such an organization and participate in its work.”



On the part of the GOI, the UNCLOS has been ratified with Act 17 of 1985, and the UNIA 1995 has been ratified with Act 21 of 2009. On the other hand, the UNIA 1995 has been further elaborated into the provisions contained in the WCPF Convention of 5 September, 2000. With regard to the conservation and management of HMS, one may have an inference that the GOI has adopted "offshore fisheries policy" similar to that of adopted by the Commission. This common offshore fisheries policy is stipulated in Article 2 of the UNIA, 1995, which is :

"to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention" (UNCLOS, 1982)

Therefore, at the policy level, both the GOI and the Commission adopt compatible offshore fisheries policy. However, incompatibility may exist in terms of implementing regulations. For example, in the implementation of the CMM as compared to the Ministerial Decision or Regulation with regard to offshore fisheries.

4.2. IMPLEMENTING REGULATIONS

According to the legal structure adopted by the GOI, the term implementing regulations mean regulations adopted to implement the act. Gradually, these include government regulation, presidential decision or regulation, and ministerial decision or regulation. On the part of the Commission, the term implementing regulations mean conservation and management measures (CMM) adopted by the Commission to implement the provisions of the WCPF Convention consist of a number of conservation and management measures. Some of the CMMs which inter-related to the problems confronted by the GOI and are presented in order to find out whether or not they are compatible.

4.2.1. Marking of Fishing Vessel

Ministerial Regulation 03/2009; concerning Fishing and Transporting Fish on the High Seas

Article 9: In the process of application for permit to operate in the Convention Area of the WCPFC, fishing vessel should be marked according to the marking system adopted by the



WCPFC. The vessels should also have been granted with the WCPF Identification Number (WIN).

4.2.2. Vessel Productivity

Ministerial Decision 50/2008 concerning Productivity of Fishing Vessel (Dated 10/9/2008) as the revision to the Decision 38/2003

According to this decision, the productivity of fishing vessel depends on the following considerations:

- a. measurement of the vessel;
- b. vessel type and material used;
- c. horse power of the machinery;
- d. type of the fishing gear;
- e. number of trip in one year;
- f. catching capacity per trip; and
- g. fishing ground.

4.2.3. Fishing Port

Ministerial Regulation 06/2007 concerning the Working Procedures of Fishing Port The main tasks of a fishing port include: provide facilitation on production and processing, supervision on the seaworthiness of fishing vessels, and other services in support of fishing activities (Art.2)

Ministerial Regulation 03/2009; concerning Fishing and Transporting Fish on the High Seas

Article 12: Any fishing vessel and carrier vessel flying Indonesian flag operating on the high seas shall be landing the catch at any landing port as it is indicated in the permit, or at any landing port outside Indonesia in a country member of RFMO.

Article: 13(2): Landing ports for Indonesian fishing vessel and carrier vessel operating on the Pacific Ocean include: Kendari, Bitung, Ternate, Sorong, Biak, and Jayapura.



Article 15 (1): Any fishing vessel or carrier vessel flying Indonesian flag operating on the high seas in the regulatory area of RFMO may be landing its catch in any country member of RFMO.

Article 15 (2): The master of the fishing vessel or carrier vessel operating on the high seas and landed the catch outside Indonesia in a country member of RFMO shall report the landing to the port master indicated on the permit within 48 hours after the landing has been completed.

4.2.4. Fishing Gear

Ministerial Regulation 11/2009 concerning The Use of Fish Net in Indonesian EEZ

According to this regulation, fish-net is defined as a kind of fishing gear formed like a bag and supported by a pair of otter board without bobbin and tickler chain and designed mainly to catch pelagic fish and during the operation it is dredged by single motorized vessel.

Ministerial Regulation 03/2009; concerning Fishing and Transporting Fish on the High Seas

Article 7: Fishing in the regulatory area of any RFMO subject to the regulation on fishing gear adopted by the RFMO concerned

Ministerial Decision 06/2010 concerning Fishing Gear in Fisheries Management Areas of the Republic of Indonesia

This decision allows 10 types of fishing gear allowed to operate in Indonesian waters, consisting of:

1. Surrounding nets (jarring lingkar)
2. Seine nets (pukat tarik)
3. Trawls (pukat hela)
4. Dredges (penggaruk)



5. Lift nets (jaring angkat)
6. Falling gear (alat yang dijatuhkan)
7. Gillnets and entangling nets (jaring insang)
8. Traps (perangkap)
9. Hook and lines (pancing)
10. Grappling and wounding (alat penjepit dan melukai)

4.2.5. Non-target Species

Ministerial Regulation 03/2009; concerning Fishing and Transporting Fish on the High Seas

Article 11(b) : The master of the fishing vessel flying Indonesian flag operating on the high seas is under legal obligation to release sea-turtles, seabirds and other protected marine biota incidentally caught during the fishing operations and shall ensure that they are released safely.

4.2.6. Observer Program and Inspection Procedures

Ministerial Regulation 03/2009; concerning Fishing and Transporting Fish on the High Seas

Article 18 (1) : Any fishing vessel and carrier vessel flying Indonesian flag engage in fishing on the high seas in the regulatory area of RFMO shall accept the dully authorized observer, ensure his safety, and shall provide support to his duties and functions during his presence on board of the vessel.

Article 18 (1) : Any fishing vessel and carrier vessel flying Indonesian flag engage in fishing on the high seas in the regulatory area of RFMO shall accept the dully authorized inspector, ensure his safety, and shall provide support to his duties and functions during his presence on board of the vessel.

Article 18 (1) : The procedures applicable to observer and inspector on board of the vessel shall be conducted in accordance with the procedures adopted by the RFMO concerned.



4.2.7. Vessel Monitoring System

Ministerial Regulation 05/2007 concerning Fishing Vessel Monitoring System (Dated 12/2/2007)

In order to be able to produce report real time, any vessel authorized to fish in Indonesian Fisheries Management Areas shall provide itself with standardized vessel monitoring system.

Ministerial Regulation 03/2009; concerning Fishing and Transporting Fish on the High Seas

Article 19 imposes obligation to provide VMS for vessel engage in fishing and transporting fish on the high seas

4.2.8. IUU Fishing

Ministerial Regulation 03/2009; concerning Fishing and Transporting Fish on the High Seas

Article 5(2)(i) : Application for fishing permit to operate on the high seas shall include declaration from the concerned RFMO that the vessel pursuing fishing permit is not included into the register of fishing vessel presumed to have conducted IUU Fishing.

4.2.9. Authorization to Fish

Act 31/2004 as amended by Act 45/2009 concerning Fisheries

According to this Act, fisheries on the high seas are to be administered in accordance with existing national regulations and those of generally accepted international standards, terms and conditions (Art.5 (2)).



Act 21/2009 concerning Ratification of the UNIA, 1995 (Dated 18/6/2009)

Any vessel flying Indonesian flag engage in fishing for the HMS on the high seas outside Indonesian jurisdiction would subject to the regulations adopted by the concerned RFMO. The GOI would not adopt other rules, regulations and procedures except those related to the duty to carry valid fishing permit on board of the vessel.

Ministerial Regulation 03/2009; concerning Fishing and Transporting Fish on the High Seas

Article 3: Fishing on the high seas requires business permit, fishing permit, and fish transporting permit

Article 10: In the process of application for fishing permit to operate on the high seas, vessel should have acquired call signs of its own.

Act 5/1983 concerning Indonesian EEZ

Authorization to foreign fishing vessel to be able to operate in Indonesian EEZ should be based on prior bilateral agreement between the GOI and the state of the concerned vessel. The bilateral agreement shall adopt enforcement rules and procedures to be applied by the flag state in case of violation occurred.

4.2.10. Fish Aggregating Device

Ministerial Decision 30/2004 concerning the Placement of Fish Aggregating Device (Dated 28/7/2004)

The placement of fish aggregating devices shall not be located in the areas of navigation, conservation or mining concession. The placement shall not be conducted in a manner that may cause obstruction to the migration routes of the fish.



4.2.11. Transshipment

*Ministerial Decision 03/2009 concerning Fishing and Transporting Fish on the High Seas
(Dated on 12/2/2009)*

This decision serves to implement Article 5 (2) of the Fisheries Act 31/2004. Transshipment of catch between fishing vessels under the management of the same fishing company will be considered legal and will be allowed provided that the duty to report promptly to the designated official has been accomplished.

Ministerial Regulation 03/2009; concerning Fishing and Transporting Fish on the High Seas

Article 16: Fishing vessel flying Indonesian flag engage in fishing in the regulatory area of any RFMO may transship the catch to the carrier vessel provided they are operating under the same flag and under the same business management. The master shall report the transshipment to the Port Master. The transshipment shall be conducted in accordance with transshipment regulation adopted by the RFMO concerned.



WCPFC-RELATED MATTERS

No	WCPF COMMISSION			GOVERNMENT OF INDONESIA		
	Policy	CMM	Related Matters	Policy	Acts	Minister Dec/Reg.
	To ensure long-term conservation and sustained use of HMS		Management Objectives	To ensure the sustainability of fishery resources incl. Environment	31/2004; 41/2009; 21/2009	
1	Adopt FAO	2004-03	Vessel Marking	Adopt FAO	31/2004	03-2009
2	Adopt UNIA	2004-04	CMM	Adopt UNIA	31/2004	
3	Adopt IPOA	2005-01	Seabirds(R)	Adopt IPOA	31/2004	
4	Adopt FAO	2005-02	Overcapacity (R)		31/2004	
5	Adopt UNCLOS	2005-03	Non-Target Species (R)	Adopt UNCLOS	Ratification CITES,73	
6	Adopt WCPFC	2006-08	Inspection Proc.	Adopt UNIA	31/2004	03/2009
7	Adopt WCPFC	2007-01	Observer Program	Adopt UNIA	31/2004	03/2009
8	Adopt WCPFC	2007-02	VMS	Adopt UNIA	31/2004	05/2007
9	Adopt WCPFC	2007-03	IUU-fishing	Adopt UNIA	31/2004	03/2009
10	Adopt WCPFC	2007-04	Seabirds	Adopt UNCLOS	31/2004	03/2009
11	Adopt WCPFC	2008-01	Big-eye/ Yellow-fin	Adopt UNIA /UNCLOS		12/2009 03/2009
12	Adopt WCPFC	2008-02	CNM	Adopt UNIA		
13	Adopt WCPFC	2008-03	Turtles	Adopt CITES	31/2004	03/2009
14	Adopt UNGA	2008-04	Drifnet	Adopt UNGA	31/2004	08/2009
15	Adopt WCPFC	2008-05	Swordfish	IPOA/NPOA	31/2004	12/2009
16	Adopt UNGA	2008-06	Large Driftnets	Adopt UNGA	31/2004	08/2009
17	Adopt WCPFC	2009-01	Authorization to fish High Seas	Adopt WCPFC	31/2004	12/2009 03/2009
18	Adopt WCPFC	2009-02	FAD	Adopt UNCLOS	31/3004	30/2004
19	Adopt IPOA	2009-03	Swordfish	IPOA/NPOA	31/2004	
20	Adopt IPOA	2009-04	Sharks	IPOA/NPOA	31/2004	
21	Adopt WMO	2009-05	Buoys	Adopt WMO		
22	Adopt WCPFC		Fishing Gear		31/2004	12/2009 Fish-net
23	Adopt WCPFC		Permit System	Adopt UNIA UNCLOS	31/2004 45/2009	03/2009



Chapter 5

SUMMARIES AND RECOMMENDATION

1. At policy levels, compatibilities exist between the GOI and the WCPF Commission, both in the Indonesian EEZ as well in the adjacent high seas of the Pacific Ocean with regard to the HMS fisheries. The rationale of compatibilities due to the fact that both the GOI and the WCPF Convention adopt similar management principles embodied in the UNIA, 1995. However, the boundary delimitation between Indonesian EEZ and the adjacent Convention Area is still to be solved carefully by the GOI before entering into full participation in the work of the WCPF Convention. According to the WCPF Convention, the Commission shall not include the EEZs of the member states into the Convention Area without expressed consent of the coastal states concerned.
2. With regard to the prospect for full participation with the work of the Commission, most of the issues have been dealt with regulations contained in the Ministerial Regulation 03/2009 concerning Fishing and Transporting Fish on the High Seas. The issues administered by this Ministerial Regulation include: Permit System for fishing on the high seas (Art.3); Deter and Eliminate IUU-Fishing (Art.9); Protection of Non-target species (Art.11(c)); Landing Port (Art.12); Landing Port outside Indonesian Territory (Art.15); Transshipment within Indonesian Territory (Art.16 (1)(2)); Transshipment within the Territory of Member State (Art.16 (3)); Observer and Inspector on Board (Art.18); Vessel Monitoring System (Art.19); and Administrative Penalties for the Violator (Art.21). These issues have been dealt with in conformity with those of CMM adopted by the WCPF Commission
3. As a sovereign coastal states, Indonesia should not allow any of the RFMO to prescribe terms and conditions directly to vessels flying Indonesian flag for fishing in its Regulatory Area. In other words, the GOI should establish rules, regulations, standards and procedures of its own language (Bahasa



Indonesia). Allowing the RFMO to impose its terms and conditions can be meant as surrendering national sovereignty to the authority of the concerned RFMO. In addition, the GOI shall regulate offshore fisheries in accordance with the existing national legal structure. For example, the WCPF Convention may be ratified with Presidential Decision (Keppres). Whereas, each of the CMM may be adopted by Ministerial Regulation/Decision.

4. For the sake of effective implementation, the CMM should be translated into national language. This is extremely important not only to express national sovereignty but also to allow all of the vessel crews comprehend precisely the legal contents of CMMs (rules, regulations, standards, and procedures), which are now have become Indonesian law and available in Bahasa Indonesia. In this regard, one may have an inference that sufficient comprehension on the legal content of the CMM may lead to increasing compliance.
5. Fishery research on the high seas will be costly if it is conducted by individual state. Therefore, it is recommended that the GOI decides to ratify the WCPF Convention and cooperate fully in the work of the Commission. The right of access to the consolidated data collection on the fisheries in the Convention Area is among the benefits that will accrue to Indonesia.. Complying with the policy, regulations, standards and procedures adopted WCPF Commission is one thing, but the most important thing is that Indonesia can get equitable share from the TAC. To this end, the GOI should develop national fishing fleet to share the total allowable catch from the HMS fisheries



Chapter 6

IMPROVEMENTS NEEDED

To improve the implementation of national legislation so as to be in line with that of the WCPF Convention, the GOI may take three possible jurisdictions, either as a flag state, a coastal state or a port state

6.1. FLAG STATES JURISDICTION

1. Adopt compatible requirements in the permit system with that of applied by the WCPF Commission.
2. Penalize unauthorized fishing as a serious violation to the management objectives
3. Ensure valid license available on board of the vessel at all times
4. Prohibit fishing in the jurisdiction of other states
5. Establish national record of fishing vessels
6. Provide access to the information in the national record of fishing vessel, upon request of the concerned states
7. Ensure vessel marking in accordance with agreed regional international system
8. Ensure the timely reporting of vessel position, catch and effort including other information in accordance with regional or global standards
9. Agree with the observer program on catch loading, unloading and transshipment



10. Agree with the inspection scheme on loading, unloading and transshipment of the catch
11. Ensure to provide MCS with satellite transmitter system compatible with regional or global agreed system
12. Ensure to provide access on board of the vessel to duly authorized inspector from other states
13. Ensure to provide access to observer from other states
14. Regulate transshipment of catch on the high seas
15. Minimize catch on non-target species
16. Enforce national regulation irrespective of where the violation occurred
17. Conduct immediate investigation on alleged violation and report promptly to the RFMO
18. Require vessel to give information to investigator
19. Institute proceedings without delay
20. Impose sanctions adequate in severity for serious violations
21. Deprive offender of the benefits accruing from illegal fishing
22. Refuse, withdraw or suspend the authorization to the master or other officials of the vessel allegedly conducted illegal fishing
23. Cooperate with other states in the enforcement of conservation and management regulation
24. Request assistance of other states in cases of serious violation



25. Inform all other states on the progress and outcome of the completed investigation
26. Develop mutual assistance on identifying IUU Fishing
27. Provide evidence to prosecuting authorities in other states
28. Conduct immediate investigation upon the report of illegal fishing, on the request of the concerned coastal states

6.2. COASTAL STATES JURISDICTION

1. Apply conservation and management measures for the HMS in the national waters, EEZ and on the adjacent high seas compatible with regional or global standards
2. Take action to detain violator until appropriate action taken by the flag states
3. Apply conservation and management measures for the HMS compatible with that of adopted by the RFMO
4. Agree on the allocation of the TAC of the HMS
5. Apply international minimum standards for responsible conduct of fishing operation
6. Review the status the stocks of target species and assess the impact of fishing on non-target species
7. Agree on the standards for collection, reporting and exchange of data
8. Compile and disseminate accurate and complete statistical data
9. Promote scientific research and disseminate the results thereof



10. Establish cooperate mechanisms for MCS and enforcement
11. Accommodate the interests of new members
12. Agree on decision making procedures in the adoption of conservation and management measures by RFMO
13. Promote the peaceful settlement of dispute
14. Insure the full cooperation of relevant national agencies and fishing industries
15. Make possible that conservation and management measures established are available to public.

6.3. PORT STATES JURISDICTION

Agree to take action to deter violation until appropriate action taken by the flag states



**WEST PACIFIC EAST ASIA
OCEANIC FISHERIES MANAGEMENT
PROJECT**

WPEA OFMP



**WORKSHOP ON THE REVIEW OF
POLICY AND LEGAL ARRANGEMENTS FOR WCPFC-RELATED MATTERS**

(CHECKLIST OF COMPLIANCE SHORTFALLS)

June 2010



**Directorate of Fisheries Resource Management
Directorate General of Capture Fisheries
Republic of the Indonesia
and
Western and Central Pacific Fisheries Commission**

ACKNOWLEDGEMENTS

The funding support from the Global Environment Facility, and co-finances from the Australian Government Overseas Aid Program, Japan Trust Fund, and WCPFC are gratefully acknowledged.

**WORKSHOP ON THE REVIEW OF
POLICY AND LEGAL ARRANGEMENTS FOR WCPFC-RELATED MATTERS**

CHECKLIST OF COMPLIANCE SHORTFALLS

CMM/-TS	Indonesia Regulations	Address Gaps	
		EEZ	High Sea
<p>1. BE Tuna and YF Tuna (2008-01)</p> <p>-reduction fishing mortality/fe on BE tuna in purse seine fishery (also in member's EEZ)</p> <p>-closed to fishing on FAD's; reduce catch by weight of BE tuna (alternative) on the High Seas</p> <p>-limit the capture of small BE tuna and YF tuna associated with fishing on FAD's on the High Seas</p> <p>-land or tranship all bigeye, skipjack and yellowfin tuna (with exception) on the High Seas</p> <p>-carry ROP on the High Seas</p> <p>-catch limit for BE tuna (LL) on the High Seas and YF for EEZ</p> <p>-monitoring at landing and transshipping ports on the High Seas</p>	<p>-regulated by mesh size (PerMen Alat Tangkap)</p> <p>-SK Dirjen No. 08 tahun 2010 tentang pemberhentian sementara alat tangkap dan Penutupan FAD</p> <p>-</p> <p>terbatas</p>	<p>No regulation specify for BE and YF</p>	

CMM/-TS	Indonesia Regulations	Address Gaps
<p>1. BE Tuna and YF Tuna (2008-01)</p> <p>-reduction fishing mortality/fe on BE tuna in purse seine fishery (also in member's EEZ)</p>	<p>12/2009 Fishing Gear</p>	<p>Lack data relating input control in and catch of the fishery</p> <p>Recommendation CMM/-TS:</p> <ul style="list-style-type: none"> • Improve data collecting system (catch, effort, size)

<p>-closed to fishing on FAD's; reduce catch by weight of BE tuna (alternative) on the High Seas</p> <p>-limit the capture of small BE tuna and YF tuna associated with fishing on FAD's on the High Seas</p> <p>-land or tranship all bigeye, skipjack and yellowfin tuna (with exception) on the High Seas</p> <p>-carry ROP on the High Seas</p> <p>-catch limit for BE tuna (LL) on the High Seas and YF for EEZ</p> <p>-monitoring at landing and transshipping ports on the High Seas</p>	<p>08/2010 (DG Regulation) Temporary Banning of Fishing Gear</p> <p>Indonesia does not join the ROP</p> <p>Minimize discard has already done</p>	<ul style="list-style-type: none"> • Improve FAD regulation to comply the CMM based on domestic nature of FAD fishing • Monitoring and evaluation on the implementation of FAD regulations
---	--	--

CMM/-TS	Indonesia Regulations	Address Gaps
<p>2. South Pacific Alb (2005-02)</p> <p>-not increase number of FV</p> <p>-cooperation and collaboration on reasearch of its stocks</p>	<p>Indonesia does not have SP Albacore fishery</p>	<p>--</p>

CMM/-TS	Indonesia Regulations	Address Gaps
<p>3. North Pacific Alb (2005-03)</p> <p>-not increase fishing effort</p> <p>-data of cacthes and fishing effort</p>	<p>Indonesia does not have NP Alb fishery</p>	<p>--</p>

CMM/-TS	Indonesia Regulations	Address Gaps
<p>4. Pacific BF Tuna (2009-07)</p> <p>-not increase fishing effort</p> <p>-strengthen data collecting system</p>	<p>Indonesia does not have Pacific BF Tuna</p>	<p>--</p>

CMM/-NT	Indonesia Regulations	Address Gaps
5. Seabirds (2007-04) -implement IPOA-Seabirds - NPOA -use at least two mitigation measure for the long line vessel (tori lines; weighted banch lines; blue dyed bait) -release seabirds captured alive during longlining	03/2009 Fishing and Fish Transporting on the High Seas -surviving non target species (Art. 11) Seabird never caught in by longliner in Indonesia waters	--

CMM/-NT	Indonesia Regulations	Address Gaps
6. Swordfish (2009-03) -limiting number of FV -number of FV, catch of swordfish -reduction catch if catch limit has been exceeded	03/2009 Fishing and Fish Transporting on the High Seas -minimize NT species (Art.11) Practically the export activities have been used the TIS IOTC which validated the Administrator (18 Fishing Port) - DGCF Regulation 10/2010	Recommendation: <ul style="list-style-type: none"> • Improving data collection • Implementing log book

CMM/-NT	Indonesia Regulations	Address Gaps
7. Striped Marlin (2006-04) -limiting number of FV- High seas -number of FV, catch of marlin (as target and non-target) – High Seas	03/2009 Fishing and Fish Transporting on the High Seas -minimize NT species (Art.11) Incl Striped marlin DGCF Regulation 08/2010	Recommendation: <ul style="list-style-type: none"> • Improving data collection • Implementing log book

CMM/-NT	Indonesia Regulations	Address Gaps
8. Sharks (2009-04) -implement IPOA-Sharks / NPOA -collection data on retained (key shark species)and discarded of shark catches -release of live sharks (fisheries for tunas)	03/2009 Fishing and Fish Transporting on the High Seas -minimize NT species (Art.11) NPOA-Sharks and Ray (key action: review status, data collecting, research development, institutional strengthening)	Adequate

CMM/-NT	Indonesia Regulations	Address Gaps
---------	-----------------------	--------------

<p>9. Seaturtles (2008-03)</p> <ul style="list-style-type: none"> -implement FAO Guidelines to Reduce Sea Turtle Mortality in Fishing -safe release sea turtle on purse seine and long line fishery -long line for swordfish use large circle hooks, whole finfish for bait 	<p>03/2009 Fishing and Fish Transporting on the High Seas -surviving sea turtles (Art.11)</p> <p>04/2010 (Ministerial Regulation) Procedures of utilization of fish genetic and species (complement of 751/1999)</p>	<p>Adequate (largely in- line with the CMM)</p>
--	--	--

CMM/-Cm	Indonesia Regulations	Address Gaps
<p>10. VMS (2007-02)</p> <ul style="list-style-type: none"> -apply to all FV that fish HMS on the high seas -cooperate for compatibility of national and high seas VMS 	<p>05/2007 VMS -FV 60 GT up, all foreign FV (Art. 11) -FV 30-60 GT transmitter off line (Art. 12)</p> <p>05/2008 Fishing Business -VMS for foreign FV, Indonesia FV 30 GT up (Art.88)</p> <p>03/2009 Fishing and Fish Transporting on the High Seas -VMS requirement (Art. 19)</p> <p>Incl the operating procedures conducted by Bakorkamla and Marine Police as stipulate on the Act</p>	<p>Adequate because applying more than CMM requirement (FV 30-60 GT transmitter off line (Art. 12))</p>

CMM/-Cm	Indonesia Regulations	Address Gaps
<p>11. Regional Observer Program (2007-01) on the High Seas</p> <ul style="list-style-type: none"> -scope of ROP -accept an observer -rights and responsibilities of: observer, vessel operator, captain, crew 	<p>05/2008 Fishing Business -national and foreign FV accept observer (Art. 84)</p> <p>03/2009 Fishing and Fish Transporting on the High Seas -accept observer (Art.18)</p> <p>Indonesia has initiated National observer program.</p> <p>Minister regulation is being finalized</p>	<p>Indonesia has not yet followed the ROP.</p> <p>Recommendation: Review the CMM 2007-01(ROP) and CMM 2009-06 (transshipment)</p>

CMM/-Cm	Indonesia Regulations	Address Gaps
---------	-----------------------	--------------

<p>12. Boarding and Inspection (2006-08) on the high seas</p> <ul style="list-style-type: none"> -vessel carrying member's flag accept boarding and inspection -priority for boarding and inspection (not on the WCPFC record; large scale tuna vessel -without observer -inspection procedures -matters to inspect -history of violation 	<p>05/2007 VMS</p> <ul style="list-style-type: none"> -inspection by fisheries surveillance boat (Art.22) <p>03/2009 Fishing and Fish Transporting on the High Seas</p> <ul style="list-style-type: none"> -accept inspector onboard (Art. 18) <p>Procedures of inspection and boarding in Indonesia waters and EEZ compatibles with the RFMO requirement</p>	<p>Adequate</p> <p>Recommendation</p> <p>The CMM need to be properly socialized to fishing industry /concern stakeholder</p>
---	---	---

CMM/-Cm	Indonesia Regulations	Address Gaps
<p>13. Charter (2009-08) on the high seas</p> <ul style="list-style-type: none"> -information of chartered vessel -eligible vessel for charter 	<p>Indonesia does not apply charter on the high seas</p>	

CMM/-Cm	Indonesia Regulations	Address Gaps
<p>14. Monitor Landing of Purse Seiner (2009-10) for canneries from non member of WCPFC fishing on the Convention Area</p> <ul style="list-style-type: none"> -collection species and size composition data 		<p>No information that canneries import from non member of WCPFC</p>

CMM/-Ef	Indonesia Regulations	Address Gaps
<p>15. IUU Fishing (2007-03)</p> <ul style="list-style-type: none"> -adopt IPOA—IUU Fishing -criteria of IUU activities -IUU vessel list 	<p>03/2009 Fishing and Fish Transporting on the High Seas</p> <ul style="list-style-type: none"> -not include on the RFMO IUU vessel list (Art. 5) <p>NPOA-IUU Fishing</p>	<p>Adequate</p>

CMM/-Ef	Indonesia Regulations	Address Gaps
<p>16. Record of FV and Authorization to Fish (2009-01)</p> <ul style="list-style-type: none"> -member authorize vessels to fish -appropriate license 	<p>05/2008 Fishing Business</p> <ul style="list-style-type: none"> -licensing (Art.19, Art. 20, Art. 21) 	<p>Adequate</p>

-record of FV (fly its flag, authorized to fish) -WCPFC record of FV -WCPFC interim register	-FV 100 GT up on the IEEZ (Art. 82) 03/2009 Fishing and Fish Transporting on the High Seas -FV for high sea registered to RFMO (Art. 9)	
--	---	--

CMM/-Ef	Indonesia Regulations	Address Gaps
17. Transshipment (2009-06) -compatibility laws, designated fishing port -prohibit for PS -transshipment declaration -observer mobilization	03/2009 Fishing and Fish Transporting on the High Seas -transshipment and reporting (Art. 16) -port state measure on landing ports (Art. 17)	Reporting the transship catch to the Commission Recommendation Review the CMM 2007-01(ROP) and CMM 2009-06 (transshipment)

CMM/-Ef	Indonesia Regulations	Address Gaps
18. Vessel without Nationality (2009-09) -reported -without nationality constitute violation	05/2008 Fishing Business -control and surveillance (Art. 78) Indonesia only authorized/fishing license for the Indonesian flag vessel	Adequate

CMM/-FV	Indonesia Regulations	Address Gaps
19. Marking and Identification of FV (2004-03) -International Telecommunication Union Radio Call Signs (IRCS) – WCPFC Identification Number (WIN) -display the WIN on the vessel 's hull as defined	27/2009 Registration and Identification of FV: -FMA, high seas (Art. 2) -FV Book (Art.7) -marking on hull, FG/gear (Art. 9) 03/2009 Fishing and Fish Transporting on the High Seas -require call-sign (Art. 10)	Adequate

CMM/-FV	Indonesia Regulations	Address Gaps
20. Large Scale Driftnet (2008-04) on the high seas - prohibited FG (L 2,500M) -MCS	08/2008 Gillnet on EEZ -dimensions drift gill net, L 10,000M D 30M (Art.4)	Recommendation Revise the regulation and the dimension of drift gillnet

CMM/-FV	Indonesia Regulations	Address Gaps
21. FAD (2009-02) for high seas purse seiner -FAD closure -catch retention (not be retained on board: size, marketability, species composition, unfit for human) -reporting	30/2004 FAD: -area of FAD (Art. 2) -FAD license (Art.3) -deployment requirement (Art. 10) -FAD marking (Art. 11) Indonesia has regulated FAD deployment on national waters including IEEZ and will improve comply with international requirement	Adequate Recommendation Improve FAD regulation to comply the CMM based on domestic nature of FAD fishing

CMM/-Rs	Indonesia Regulations	Address Gaps
22. Data Buoys (2009-05) -prohibit fishing with 1 nm -avoid fishing gear interacting with data buoys	No regulation for data buoys	Inadequate Recommendation Consider to regulate based on domestic interest

CMM/-Co	Indonesia Regulations	Address Gaps
23. CNMs (2009-11) -request for CNM	Beyond Indonesia regulation	