



**The Intersessional Meeting to Progress
the Draft Bridging Measure for Tropical Tunas**

Hilton Hawaiian Village Beach Resort & Spa

Honolulu, Hawaii

22 – 24 August, 2017

**MCS AND OTHER PROVISIONS OF CMM 2016-01 IN THE DRAFT BRIDGING MEASURE ON
TROPICAL TUNAS**

WCPFC-SS2-2017-04

1 May 2017

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**TO ALL COMMISSION MEMBERS, COOPERATING NON-MEMBERS,
PARTICIPATING TERRITORIES AND OBSERVERS**

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Treatment of MCS and other Provisions of the CMM 2016-01 in the Draft Bridging Measure on Tropical Tunas

Dear All,

You will recall that the Commission Chair in her Consultative Draft of the draft Bridging Measure on Tropical Tunas (Rev3, Feb 2017), which was circulated by Circular no: 2017/07 dated 10th February, 2017, proposed that issues relating to charters, non-parties, VMS, ROP, and data provisions would be taken up through and moving them to existing and relevant CMMs and other more appropriate Commission requirements.

Please find enclosed a paper prepared by the Secretariat assessing those MCS and other provisions of CMM 2016-01 and proposing where those provisions may be moved to and how to accommodate such movements. The paper explains the approach that underpin this exercise and provides explanatory notes on the proposals in the paper.

The proposals in the paper are intended to be considered for finalization at the end of the year at the WCPFC14 in conjunction with the Commission's consideration of the draft Bridging Measure on Tropical Tunas. Leading up to WCPFC14, the proposals in the paper will be reviewed and discussed at the intersessional meeting to progress the draft Bridging Measure in Honolulu, Hawaii on 22 to 24th August, 2017 and possibly at the annual TCC13 from 27th September to 3rd October, 2017.

For the meantime, this work will be progressed electronically and it will be appreciated if comments on the paper and the proposals in it could be submitted to the Secretariat addressed directly to Commission Legal Adviser, Dr Penny Ridings at pennyridings@yahoo.com by no later than **Friday 30th June, 2017**.

The enclosed paper is submitted for your review and consideration.

Yours sincerely,

**Feleti Penitala Teo, OBE
EXECUTIVE DIRECTOR**

Draft Bridging Measure: MCS and other provisions of CMM 2016-01

Explanatory Note

The Chair proposed in her Consultative Draft of the draft Bridging Measure on Tropical Tunas (Rev3, Feb 2017), that issues relating to charters, non-parties, VMS, ROP, and data provisions would be taken up through existing and relevant measures and requirements. This paper considers the existing provisions of CMM 2016-01 which could be more suitable for placement within existing CMMs and requirements.

The approach used is to undertake a neutral transfer of the existing obligations in CMM 2016-01 to the most appropriate other CMM or requirement. No attempt has been made to adjust the paragraphs in light of CCM's comments on the draft Tropical Tuna Bridging Measure. While some consideration has been given to whether a paragraph is redundant, CCMs may wish to consider the continued applicability of these paragraphs and any need for rationalisation.

Comments have been included to summarise the existing provision and to explain the rationale for the proposed placement and any changes proposed. Where possible, the exact language of CMM 2016-01 has been used, with any necessary adjustment in view of its placement. Deletions are in strike through, additions are in underlining.

Attribution of Charter Arrangements: Paragraph 5 of CMM 2016-01

Comment: Paragraph 5 of CMM 2016-01 provides that for purposes of certain paragraphs of the CMM, attribution of catch and effort is to the flag State, except in the case of vessels notified as chartered under CMM 2011-05, in which case attribution is to the chartering Member, or Participating Territory. Attribution is also to be without prejudice to attribution for the purposes of establishing rights and obligations. CMM 2016-05 (Charter Notification Scheme) already provides in the case of notified chartered vessels for catch and effort to be attributed to the chartering Member or Participating Territory. This suggests that paragraph 5 could be incorporated into paragraph 7 of CMM 2016-05.

Proposal: Remove paragraph 5 of CMM 2016-01 and replace paragraph 7 of CMM 2016-05 with the following:

Unless specifically provided in other CMMs, catches and effort of vessels notified as chartered under this Measure shall be attributed to the chartering Member, or Participating Territory. Attribution is without prejudice to attribution for the purposes of establishing rights and allocation. Unless specifically provided in other CMMs, the chartering Member or Participating Territory shall report annually to the Executive Director catch and effort of chartered vessels in the previous year.

Non-Parties: Paragraph 6 of CMM 2016-01

Comment: The first sentence of paragraph 6 of CMM 2016-01 requires the Commission to provide information on the stock status of the tropical tunas to non-parties wishing to apply for CNM status. CMM 2009-11 sets out the application process for CNM status. According to paragraph 2 of that CMM, “a non-member seeking the status of CNM shall include with its request ... a commitment to cooperate fully in the implementation of conservation and management measures adopted by the Commission”. The first sentence of paragraph 6 of CMM 2016-01 therefore does not appear necessary since the non-member must be fully aware of the CMMs adopted by the Commission. The second sentence of paragraph 6 of CMM 2016-01, which provides for the limits that apply to CNMs to be determined in accordance with CMM 2009-11, appears redundant as this is covered by paragraph 12 of CMM 2009-11.

Proposal: Remove paragraph 6 of CMM 2016-01 and make no change to CMM 2009-11.

Overlap area: Paragraph 13 of CMM 2016-01

Comment: Paragraph 13 sets out how certain catch and effort limits in the CMM are calculated from historical catch levels in the Convention Area, except for catches of vessels notified as fishing in accordance with IATTC conservation and management measures in the overlap area. It may not be necessary to specify in a CMM how the catch limits in that CMM are determined. However, the final sentence of paragraph 13 also provides that notwithstanding decisions on catch and/or effort limits, all other provisions of CMM 2016-01 apply to all vessels fishing in the overlap area.

This paragraph also must be read in conjunction with the decision in paragraph 80 of WCPFC9 Summary Report, which provides for Members, in the case of vessels on the Record of Fishing Vessels of both WCPFC and IATTC, to notify which conservation and management measures it will apply in the overlap area. CMM 2013-10 (WCPFC Record of Fishing Vessels and Authorizations to Fish) deals with authorizations to fish and the establishment of the WCPFC Record of Fishing Vessels and would appear to be an appropriate CMM in which to place the overlap obligations, and remove any inconsistencies.

Proposal: Remove paragraph 13 from CMM 2016-01 and include the relevant parts of the paragraph and the decision in paragraph 80 of WCPFC9 as a standard alone Section (Overlap Area) in CMM 2013-10 (WCPFC Record of Fishing Vessels and Authorizations to Fish) as follows:

Overlap Area

- i. Vessels listed exclusively in the WCPFC record of Fishing Vessels shall apply the conservation and management measures of the WCPFC when fishing in the overlap area;
- ii. Vessels listed exclusively in the IATTC register shall apply the conservation and management measures of the IATTC when fishing in the overlap areas;

- iii. In the case of vessels listed in the record/register of both organizations, the corresponding flag Member shall decide and notify to both Commissions under which of the two commissions those vessels shall operate when fishing in the overlap area, as regards the application, for a period of not less than three years, of the conservation and management measures of that Commission.
- iv. In the case of vessels listed in the record/register of both organizations, the vessels of a Cooperating Non-Member shall apply the conservation and management measures of the Commission of which it is a member, when fishing in the overlap area.
- v. The historical catch and effort of vessels, notified by the flag Member as operating when fishing in the overlap area under the conservation and management measures of the IATTC, shall not be included in calculations to determine that Member's limits for the WCPFC Convention Area (excluding the overlap area).
- vi. Notwithstanding paragraphs iii and iv above, all vessels fishing in the overlap area shall comply with CMM 2017-01, or its successor measure, in the Convention Area.

Catch retention: Paragraphs 30-31 of CMM 2016-01

Comment: Paragraph 30 sets out the requirements relating to retention of catches of bigeye, skipjack and yellowfin tuna on purse seine vessels fishing in EEZs and on the high seas. CMM 2009-02 sets out the Commission's rules for high seas FAD closures and catch retention where purse seine vessels fish on the high seas. CMM 2009-02 is to be read together with CMM 2016-01. Given the complementary nature of the requirement of CMM 2009-02 and paragraph 30 of CMM 2016-01, it would appear sensible to place paragraph 30 within CMM 2009-02, even though it applies more broadly than on the high seas. Small amendments to CMM 2009-02 would also be appropriate if the successor to CMM 2016-01 does not include provisions regarding catch retention.

Proposal: Remove paragraphs 30 and 31 from CMM 2016-01 and revise CMM 2009-02 as follows:

Amend paragraph 2 of CMM 2009-02 as follows:

Each CCM shall take the necessary measures to ensure that purse seine vessels flying its flag on the high seas comply with these rules in the application of the provisions of CMM ~~2008-01~~ 2017-01 or its successor measure relating to a FAD closure ~~and catch retention~~.

Add a new section and paragraphs at the end of CMM 2009-02, drawing on paragraphs 30 and 31 of CMM 2016-01, as follows:

Catch retention when fishing in EEZs and on the high seas

13. Further to paragraphs 8-12 above which set out the rules for catch retention in the high seas, CCMs shall require their purse seine vessels fishing in EEZs and on the high seas within the area bounded by 20°N and 20°S to retain on board and then land or tranship at port all bigeye, skipjack, and yellowfin tuna, subject only to the following exceptions:

- a) when, in the final set of a trip, there is insufficient good space to accommodate all fish caught in that set, noting that excess fish taken in the last set may be transferred to and retained on board another purse seine vessel provided this is not prohibited under applicable national law; or
- b) when the fish are unfit for human consumption for reasons other than size; or
- c) when serious malfunction of equipment occurs.

14. Nothing in paragraph 13 shall affect the sovereign right of coastal States to apply additional or more stringent measures in their waters.

Monitoring and control: VMS: paragraphs 32 and 36

Comment: These paragraphs set out vessel reporting requirements during FAD closures. Assuming CMM 2017-01 includes FAD closures and given the existing provisions of CMM 2014-02 and the standards, specifications and procedures for the WCPFC vessel monitoring system, it would be appropriate to include these paragraphs in the updated VMS SSPs, as contained in Attachment R to the WCPFC13 Summary Report.

Proposal: Remove paragraphs 32 and 36 of CMM 2016-01 and include new paragraphs in the VMS SSP, Section 5 (vessel reporting, including position frequencies reporting) as follows:

5bis Notwithstanding the provisions of these SSP, a purse seine vessel shall not operate under manual reporting during the FADs closure periods set out in CMM 2017-01 or its successor measure, but the vessel will not be directed to return to port until the WCPFC Secretariat has exhausted all reasonable steps to re-establish normal automatic reception of VMS positions in accordance with these SSPs. The flag State shall be notified when VMS data is not received by the Secretariat at the interval specified in paragraph 5ter.

5ter VMS polling frequency shall be increased to every 30 minutes during the FAD closure periods set out in CMM 2017-01 or its successor measure. The flag State shall be notified when VMS data is not received by the Secretariat at the interval specified in this paragraph. The increased costs associated with the implementation of this paragraph will be borne by the Commission.

Monitoring and control: ROP: paragraphs 33-35

Comment: Paragraph 33 requires 100% ROP observer coverage on purse seine vessels fishing between 20°N and 20°S in the high seas and in waters of two or more coastal States. CMM 2007-01 sets out the requirements for the Regional Observer Scheme and includes an implementation schedule in Annex C to that CMM. Issues related to the level of ROP observer coverage are included in paragraphs 6 - 8 of Annex C. It would therefore seem most appropriate to include ROP coverage in CMM 2007-01.

Paragraph 34, relating to observer coverage in national waters, does not fit neatly within CMM 2007-01, given the scope of the Commission ROP in paragraph 5 of that measure. However, since it does not appropriately fit within other CMMs, it has been included in the proposed amendments to CMM 2007-01, Annex C. Paragraph 35 appears redundant, and a decision could be taken to remove it.

Proposal: Remove paragraphs 33-35 of CMM 2016-01 and amend CMM 2007-01, Annex C, by inserting the following paragraphs:

8bis CCMs shall ensure that purse seine vessels entitled to fly their flags and fishing within the area bounded by 20°N and 20°S exclusively on the high seas on the high seas and in waters under the jurisdiction of one or more coastal States, or vessels fishing in waters under the jurisdiction of two or more coastal States, shall carry an observer from the Commission's Regional Observer Program.

8ter Each CCM shall ensure that all purse seine vessels fishing solely within its national jurisdiction within the area bounded by 20°N and 20°S carry an observer. These CCMs are encouraged to provide the data gathered by the observers for use in the various analyses conducted by the Commission, including stock assessments, in such a manner that protects the ownership and confidentiality of the data.

Data provision requirements: paragraphs 56-60

Comment: Paragraphs 56-60 of CMM 2016-01 apply to China, Indonesia, Japan, Korea, Philippines and Chinese Taipei and require the provision of operational level catch and effort data except where CCMs have a practical or legal difficulty in providing such data. While CMM 2013-05 (on Daily Catch and Effort Reporting) has some relevance for these obligations, the paragraphs relate more closely to the "Scientific Data to be Provided to the Commission", as amended and adopted at WCPFC13. However, discussion on this at WCPFC13 (see paras 108-128 of the WCPFC13 Summary Report), suggests that the redundant elements of paragraphs 56-60 could be removed and the remainder streamlined with the provisions on "Scientific Data to be Provided to the Commission". The Commission may wish to give consideration to this in the longer term.

Proposal: In the interim, it is proposed that paragraphs 56-60 be removed from CMM 2016-01 and inserted in Section 3 (operational level catch and effort data) of the “Scientific Data to be Provided to the Commission”.