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MEMBERSHIP PROCESS IN WCPFC

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Discussion Paper by United States of America

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Discussion Paper Prepared by the United States of America for the Fourteenth Regular Session of the Western and Central Pacific Fisheries Commission

The prospect of expanding the membership of the WCPFC has prompted considerable debate at recent meetings of the Commission. Several Cooperating Non-Members (CNMs) have expressed an interest in becoming full members, current Members have expressed divergent views about whether the WCPFC membership should be allowed to grow, and the Commission as a whole lacks a shared understanding of the process by which countries would be invited to join. The United States submits this paper to facilitate a more robust discussion of the membership process in WCPFC.

Brief History of Membership Debate at WCPFC

The question of which countries should be eligible for membership in WCPFC has been subject to discussion since the Multilateral High Level Conference (MHLC) and early meetings of the organization.ⁱ In recent years, several CNMs have expressed interest in becoming full members of WCPFC, including Ecuador, El Salvador, Mexico, Panama, and Vietnam at various times. Repeated expressions of interest by several of these CNMs date to at least 2014. In 2016, the governments of Ecuador and El Salvador took the additional step of sending formal letters requesting the WCPFC consider extending invitations for full membership.

Some Members have been unwilling to support requests for full membership. For example, some delegations at WCPFC13 noted they will be in a better position to develop a process for considering new members when “more of a level playing field for SIDS exists in the Commission.” Other delegations expressed a willingness to consider allowing interested and qualified countries to join WCPFC, and a desire to clarify the process by which the Commission would extend such invitations.

The small working groups formed to consider CNM applications at TCC and Commission annual sessions have typically excluded full membership questions from their mandate. Requests by members or CNMs to consider broader membership issues have been rejected, or deferred to future meetings. Some representatives of CNMs have become increasingly frustrated by some delegations’ unwillingness to consider the prospect of new members. WCPFC13 took a small step forward by accepting a TCC12 recommendation to add a column in the CNM application template so CNM applicants could easily indicate their interest in becoming full members of the Commission.

The WCPFC13 meeting report goes on to say that “While WCPFC13 did not reach consensus on accepting the Ecuador and El Salvador applications for full membership of WCPFC, the Chair noted that this did not preclude a CCM starting a process to develop a draft set of criteria for considering requests for membership in 2017.”

The membership issue arose again at TCC13, resulting in the following recommendation: “TCC13 considered the broader issue of membership was beyond the mandate of the group. However, TCC13 recommends that compliance records be considered among any criteria that could be developed for the process of considering applications for full membership. CCMs are encouraged to consult on broader issues related to the membership process prior to WCPFC14.”

Relevant Legal and Institutional Context

The WCPF Convention provides for the potential to invite additional states to accede to the Convention (Article 35, paragraph 2): “After the entry into force of this Convention, the Contracting Parties may, by consensus, invite other States and regional economic integration organizations, whose nationals and fishing vessels wish to conduct fishing for highly migratory fish stocks in the Convention Area to accede to this Convention.” The condition regarding “nationals and fishing vessels [that] wish to conduct fishing” should be read broadly, consistent with the definition of “fishing” and other relevant terms found in Article 1 of the Convention. In granting CNM status, WCPFC has granted participatory rights to CNMs to engage in various forms of fishing, including to provide support activities.ⁱⁱ

Membership in RFMOs should also be considered in the context of other relevant legal instruments. The UN Convention on the Law of the Sea establishes a general obligation to cooperate in the management of highly migratory species.ⁱⁱⁱ The UN Fish Stocks Agreement (UNFSA) further clarifies and expands upon what it refers to as a “duty to cooperate,” and calls upon states to become members of existing RFMOs or agree to apply their management measures.^{iv} UNFSA contains provisions relevant to RFMO membership in Article 8, paragraph 3, including:

“States having a real interest in the fisheries concerned may become members of such organization or participants in such arrangement. The terms of participation in such organization or arrangement shall not preclude such States from membership or participation; nor shall they be applied in a manner which discriminates against any State or group of States having a real interest in the fisheries concerned.”

The UN General Assembly has built upon this legal foundation by encouraging relevant states to consider becoming members of RFMOs, and RFMOs to consider extending invitations of membership. That includes, most recently, the UN General Assembly resolution on sustainable fisheries adopted on December 7, 2016.^v Likewise, countries represented at the UNFSA resumed Review Conference in 2016 emphasized the need to promote participation in RFMOs, including the development of mechanisms to invite states to become members of them.^{vi}

Membership Process in other RFMOs

Other RFMOs have accepted new members after their underlying legal instruments entered into force. The process by which RFMOs accept new members differs by organization. Potentially relevant precedents include:

- The Inter-American Tropical Tuna Commission (IATTC), under its original Convention, required unanimous consent by the High Contracting Parties to allow new members into the organization.^{vii} The Antigua Convention includes various potential conditions for membership.^{viii} Several new members joined the IATTC when the Antigua Convention was open for signature. Several more joined the IATTC under the procedures of the Antigua Convention after it had been closed for signature, including Kiribati.^{ix}
- The Indian Ocean Tuna Commission (IOTC) allows Indian Ocean coastal states or states with vessels engaged in fishing for species covered by the Agreement to become members (with slightly different procedures depending on whether such states are FAO members).^x

- The International Commission for the Conservation of Atlantic Tunas (ICCAT) simply requires new members to deposit their instrument of adherence to the Convention with the appropriate depositary.^{xi}
- The process varies among non-tuna RFMOs. For example, the Northwest Atlantic Fisheries Organization has a relatively open membership process, like ICCAT.^{xii} The North Pacific Fisheries Commission (NPFC) Convention is open for accession by states that participated in the negotiations of the Convention. Contracting Parties may also invite by consensus states whose vessels wish to fish in the area or adjacent coastal states. Vanuatu recently joined the NPFC.

U.S. Views on the Membership Process

The Commission should consider extending membership invitations to interested countries to be consistent with provisions of relevant legal instruments around international fisheries cooperation. A cursory review of the precedents from other RFMOs suggests that WCPFC stands apart – most other RFMOs are relatively open to new members, or at least have a process for, or experience with, inviting new members to join the organization.

WCPFC should not consider itself a closed club as a matter of policy, or become one as a result of inaction. The United States believes that WCPFC should extend other countries the courtesy of at least seriously and carefully considering their interest in joining the organization. This could include developing an objective, rigorous, and transparent process for assessing whether potential new members should be invited to join, and how that would occur. Such steps would not obligate WCPFC to extend any invitations, nor would they prejudge the outcomes of any deliberations around the applications of individual countries.

Without prejudice to future decisions on membership, the United States believes there could be several categories of benefits associated with allowing appropriate countries to join WCPFC, including:

- Organizational – Openness to inviting new members is consistent with UNFSA’s provisions on the duty to cooperate, and the letter and spirit of relevant fisheries instrument provisions promoting cooperation in the management and conservation of highly migratory species.
- Policy – Several CNMs that are interested in becoming full members are also active in IATTC; expanding the membership ranks could improve management coordination across the Pacific.
- Financial – The contributions of new members would be twice as large as the contributions they are asked to commit to pay as CNMs, and would be assessed as mandatory rather than voluntary payments. Full membership would allow certain states to overcome domestic constraints they might have with providing voluntary contributions, while providing additional resources to support Commission priorities.

Possible Criteria or Process for Inviting New Members

The United States believes the process for considering new members should not be overly restrictive. To adequately consider the views of all members, the Commission could hold a plenary discussion or task a working group with clarifying the invitation process. Deliberations could address the following issues and/or potential criteria for membership:

- The nature of any “application” or information that would be expected of interested nonmembers.
- The implementation of language in the Convention related to membership conditions, which stipulates “the Contracting Parties may, by consensus, invite other States and regional economic integration organizations, whose nationals and fishing vessels wish to conduct fishing for highly migratory fish stocks in the Convention Area to accede to this Convention.”
- The criteria WCPFC would use to determine whether to extend an invitation of membership, possibly including:
 - History of compliance with WCPFC measures as a CNM: TCC13 recommended that compliance records be considered among any criteria that could be developed for the process of considering applications for full membership. The United States does not believe it is appropriate to expect complete compliance as a CNM before full membership would be considered, as that would entail a much different standard than is applied to current members. However, the Commission could consider if compliance with certain obligations (such as provision of annual reports) should be treated as prerequisites, or if compliance records will be considered on a more ad-hoc case-by-case basis.
 - History of participation in other RFMOs, compliance with other RFMO measures as a member or nonmember, any relevant alleged IUU fishing activities, and more general considerations related to flag state responsibility.
 - The aspirations of the interested nonmember in terms of participatory rights.
- Any relevant conditions on invitations for membership, such as:
 - The Commission could identify any actions that need to be taken by the interested country before an invitation would be extended (e.g., improved compliance record or data reporting).
 - The Commission could stipulate that an invitation for full membership would not create an automatic entitlement to allocation of new or additional fishing rights.
- Any other relevant considerations for the Commission or CNMs. For example, the Commission could decide formally or informally that the financial benefits associated with inviting new members should be devoted to specific purposes, such as support for developing states consistent with Article 30 of the Convention.
- The process by which the Commission would take a decision by consensus to extend an invitation for full membership, and the format of communicating that decision to interested countries.

ⁱ For example, Belize expressed interest in full membership at WCPFC5.

ⁱⁱ Ecuador’s participatory rights are limited to purse seine fishing. El Salvador’s participatory rights are limited to purse seine fishing (with further limits on days of effort). The participatory rights of Liberia are limited to reefer vessels to engage in transshipment activities, and bunker and supply vessels to support fishing vessels in the Convention area. Panama’s participatory rights are limited to the provision of carrier and bunker vessels. Thailand’s participatory rights are limited to the provision of carrier and bunker vessels only. Vietnam’s participatory rights are limited to the provision of carrier and bunker vessels. Mexico does not currently have active vessels in the Convention Area.

ⁱⁱⁱ Article 64: “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.”

^{iv} Article 8, paragraph 3: “Where a subregional or regional fisheries management organization or arrangement has the competence to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks, States fishing for the stocks on the high seas and relevant coastal States shall give effect to their duty to cooperate by becoming members of such organization or participants in such arrangement, or by agreeing to apply the conservation and management measures established by such organization or arrangement. States having a real interest in the fisheries concerned may become members of such organization or participants in such arrangement. The terms of participation in such organization or arrangement shall not preclude such States from membership or participation; nor shall they be applied in a manner which discriminates against any State or group of States having a real interest in the fisheries concerned.”

^v (A/RES/71/123): “Urges States fishing for straddling fish stocks and highly migratory fish stocks on the high seas, and relevant coastal States, where a subregional or regional fisheries management organization or arrangement has the competence to establish conservation and management measures for such stocks, to give effect to their duty to cooperate by becoming members of such an organization or participants in such an arrangement, or by agreeing to apply the conservation and management measures established by such an organization or arrangement, or to otherwise ensure that no vessel flying their flag is authorized to access the fisheries resources to which regional fisheries management organizations and arrangements or conservation and management measures established by such organizations or arrangements apply; *Invites*, in this regard, subregional and regional fisheries management organizations and arrangements to ensure that all States having a real interest in the fisheries concerned may become members of such organizations or participants in such arrangements, in accordance with the Convention, the Agreement and the Code, provided they have shown their interest in and capacity to comply with the measures adopted by the regional fisheries management organizations and arrangements concerned, including their willingness to effectively exercise flag State control, while recognizing the need to enhance the capacity of developing States in this regard;”

^{vi} “The resumed Review Conference recommended that States and regional economic integration organizations, individually and collectively through regional fisheries management organizations and arrangements...[B.4.] (a) Develop mechanisms through which to invite States with a real interest in the fisheries concerned and commit to providing incentives, where needed, to encourage non-members to join the regional fisheries management organizations, including the sharing of technology and expertise, assistance in the development of appropriate frameworks, and enhancement of enforcement capabilities, recalling that only those States that are members of regional fisheries management organizations or that agree to apply the conservation and management measures established by them shall have access to the fishery resources to which those measures apply. (b) Where appropriate, strengthen efforts to agree on participatory rights and allocation criteria for members, new members and cooperating non-members of RFMO/As, giving due regard to the aspirations of developing States, particularly the least developed among them and small island developing States, and the status of the stocks. (c) Ensure that all States exhibiting a real interest are able to become members of RFMO/As, on the condition that they have demonstrated their interest and capacity to comply with the measures adopted by the RFMO/As concerned, including their willingness to effectively exercise flag State control, while recognizing the need to enhance the capacity of developing States in this regard.”

^{vii} The 1949 Convention text Article V, paragraph 3 states: “Any government, whose nationals participate in the fisheries covered by this Convention, desiring to adhere to the present Convention, shall address a communication to that effect to each of the High Contracting Parties. Upon receiving the unanimous consent of the High Contracting Parties to adherence, such government shall deposit with the Government of the United States of America an instrument of adherence which shall stipulate the effective date thereof.”

^{viii} “This Convention shall remain open to accession by any State or regional economic integration organization: (a) that meets the requirements of Article XXVII of this Convention; or (b) whose vessels fish for fish stocks covered by this Convention, following consultations with the Parties; or (c) that is otherwise invited to accede on the basis of a decision by the Parties.”

^{ix} Countries that joined after the Convention was closed to signature include: Japan, Kiribati, Korea, and Panama. Kiribati was not a party to the 1949 Convention and had not joined at the time the Convention entered into force.

Kiribati formally joined through the deposit of its instrument of adhesion to the Antigua Convention on 29 June 2011, upon which the Convention entered into force for Kiribati on 29 July 2011.

^x The Agreement establishing the Indian Ocean Tuna Commission (IOTC) was signed on November 25th 1993 and entered into force on the accession of the tenth IOTC Contracting Party, referred as Member, on March 27th 1996. There are currently 31 Members of IOTC. The requirements to become a Member of IOTC are established under Article IV of the Agreement. Membership in the Commission is open to Members and Associate Members of the FAO that are coastal states situated wholly or partly within the Convention Area, States whose vessels engage in fishing for covered stocks. The Commission also allows for the admission to membership of states that are not members of FAO but that are members of the UN or its specialized agencies, or the IAEA if they are coastal states within the area or are states fishing for covered stocks, if they received a two-thirds majority vote by existing Members.

^{xi} The Commission for the International Convention for the Conservation of Atlantic Tunas (ICCAT) may be joined by: Any government that is a member of the United Nations (UN); Any government that is a member of a Specialized Agency of the United Nations; Any inter-governmental economic integration organization constituted by States that have transferred to it competence over the matters governed by the ICCAT Convention. There are currently 51 Contracting Parties to ICCAT, which entered into force in 1969.

^{xii} Article XXIII, paragraph 4: "States may join the Convention by submitting a notification in writing to the Depository. Any party which has not signed this Convention may accede thereto by a notification in writing to the Depository. Accessions received by the Depository prior to the date of entry into force of this Convention shall become effective on the date this Convention enters into force. Accessions received by the Depository after the date of entry into force of this Convention shall become effective on the date of receipt by the Depository."