



**TECHNICAL AND COMPLIANCE COMMITTEE  
NINTH REGULAR SESSION**

26 September – 1 October 2013  
Pohnpei, Federated States of Micronesia

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**GUIDELINES FOR DETERMINING IMPRACTICABILITY – HIGH SEAS  
TRANSSHIPMENT ACTIVITIES**

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**WCPFC-TCC9-2013-17**

**30 August 2013**

This provides for TCC's consideration information contained in two WCPFC Circulars related to this matter: Circular 2013/52 and Circular 2013/71.

The 2010 report referred to in Circular 2013/71 can be accessed by CCMs through the CCM side of the WCPFC website: <http://www.wcpfc.int/transshipment-authorisations>



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

**Circular No.: 2013/52**  
**Date: 11 July 2013**  
**No. pages: 13**

**WCPFC paper prepared by the Secretariat: Draft Transshipment guidelines.**

Dear All

Please find enclosed a paper developed as instructed by WCPFC as follows:

*At WCPFC6 the Executive Director was tasked in CMM 2009-06 (para 37) and reminded in WCPFC9 to develop draft guidelines for the determination of circumstances where it is impracticable for vessels to transship in port or in waters under national jurisdiction.*

Developing this paper and analyzing supporting information has been somewhat challenging. The Secretariat sent around a circular to try to elicit some suggestions from Members as to what they wanted. The circular was also sent to industry. I would like to thank those few members and companies who took the time to respond. Your thoughts were helpful.

I have broken the paper up into 2 sections. The first is a background paper on transshipment and decisions in the WCPFC and internationally that relate to transshipment practices. The paper also details recorded transshipment activities and locations that the Secretariat is aware of in the WCPO. This information is provided to you so that informed discussion and decisions about potential transshipment guidelines can be taken.

The second part of the paper proposes draft transshipment guidelines.

Should you have any comments or suggestions, please feel free to contact me and if not I look forward to discussion on the utility of allowing transshipment and on these draft guidelines at TCC9.

Many thanks,

Professor Glenn Hurry  
Executive Director

## **Draft Guidelines for Transshipment in the WCPFC**

### **Part 1: Background information**

At WCPFC6 the Executive Director was tasked in CMM 2009-06 (para 37) and reminded in WCPFC9 to develop draft guidelines for the determination of circumstances where it is impracticable for vessels to transship in port or in waters under national jurisdiction. Paragraph 37 of 2009-06 reads as follows:

*37. The Executive Director shall prepare draft guidelines for the determination of circumstances where it is impracticable for certain vessels to transship in port or in waters under national jurisdiction. The Technical and Compliance Committee shall consider these guidelines, amend as necessary, and recommend them to the Commission for adoption in 2012. In the meantime, CCMs shall use the following guidelines when determining the practicability of high seas transshipments*

*a. The prohibition of transshipment in the high seas would cause a significant economic hardship, which would be assessed in terms of the cost that would be incurred to transship or land fish at feasible and allowable locations other than on the high seas, as compared to total operating costs, net revenues, or some other meaningful measure of costs and/or revenues; and*

*b. The vessel would have to make significant and substantial changes to its historical mode of operation as a result of the prohibition of transshipment in the high seas;*

In developing the draft guidelines in accordance with Paragraph 37 of CMM 2009-06 above, consideration will also need to be given to Paragraph 38 in adopting paragraph 37. Paragraph 38 reads as follows:

*38. When adopting the Guidelines referred to in paragraph 37, the Commission shall consider whether to prohibit transshipment in areas of high seas in the Convention Area entirely surrounded by the exclusive economic zones of members of the Commission and Participating Territories. This consideration will include a review of the catch and effort reported for fishing vessels in these areas, the information from Transshipment Declarations in these areas and the role of the areas in supporting IUU activities.*

In preparing these guidelines a questionnaire was sent to members and industry operators to try to gain additional insight into the importance of this issues and how people best thought it might work. While the response to the questionnaire was limited the information provided has been valuable in developing these guidelines.

### **Background**

CMM 2009-06 seems to indicate the intent of the Commission to curtail, as far as possible, all transshipment other than that which occurs in port or in archipelagic waters. Parts (a) and (b) of Paragraph 37 of CMM 2009-06 provide interim guidelines for members to utilize while the draft guidelines are being developed. The tables below on known transshipment activity in the WCPFC convention area provides a guide to transshipment activity since the Secretariat started to gather this information in 2010. What is unknown is whether all transshipment activity is captured and advised to the Secretariat. There is also information to indicate that IATTC transshipment occurs in the WCPFC convention and WCPFC transshipment tin IATTC waters.

Table 1: Number of Offloading Vessels Transshipped by Flag and Year

Flag	June – Dec			Jan – May
	2010	2011	2012	2013
Belize	1	1	1	1
China	56	88	76	41
Chinese Taipei	35	90	70	37
Indonesia	5	6	7	3
Japan	13	29	23	16
Korea (Republic)	19	25	29	28
Philippines	4	5	2	1
Vanuatu	22	38	23	14

Table 2 Number of Transshipment Events done by Offloading Vessels by Flag

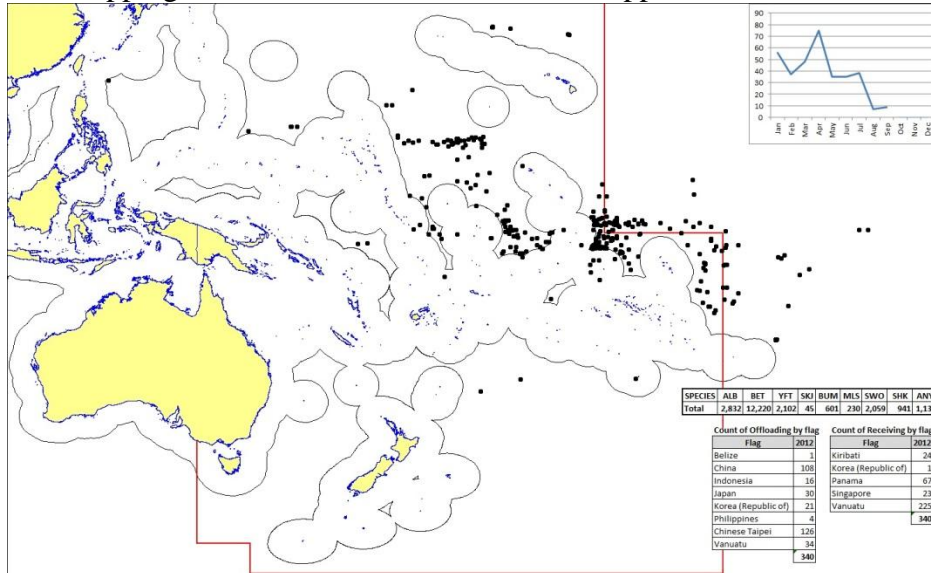
Flag	June – Dec			Jan – May
	2010	2011	2012	2013
Belize	1	3	2	1
China	101	233	153	48
Chinese Taipei	49	274	173	50
Indonesia	7	21	26	5
Japan	14	48	40	19
Korea (Republic)	20	28	34	28
Philippines	5	16	5	1
Vanuatu	35	65	40	16

The purse-seine industry has demonstrated it is possible for all transshipment to occur in port and they have adjusted business practices to accommodate this. A number of large longline operators also conduct all transshipments in port as it allows them to obtain and replace crews, repair vessels etc. The question then is why some non-purse-seine fleets can transship in port and be profitable and others claim that they cannot be profitable without high seas transshipment.

Other important issues surrounding highseas transshipment include the accuracy in reporting and the potential for IUU activity. Discussions in the FAO and in other RFMO's often draw a strong link between IUU fishing and high seas transshipment, including the inability for Members to properly monitor the practice or the subsequent sale of the fish into the world market. The FAO Technical Guidelines for Responsible Fisheries, "Implementation of the IPOA to prevent, Deter and Eliminate IUU fishing" (section 4.4) states as follows: "*Flag States should also closely control the transshipment process. To the greatest extent possible, flag states should prohibit their vessels from engaging in transshipment of fish at sea without prior authorization issued by the flag state. An even more effective approach would be to prohibit transshipment of fish at sea entirely, as some states have already done*".

## Where does transshipment occur in the WCPO?

Analysis of the January – August 2012 declared transshipment information received at the WCPFC has been analyzed and is shown below in map 1. The 2012 declaration and transshipping areas are consistent with those mapped for 2011 and 2010.



**Map 1.** Map plotting reported positions of transshipments of highly migratory fish stocks which occurred from start of 2012 until 19 September, based on reports to WCPFC under CMM 2009-06 para 35 a iv). The graph at top right shows the number of transshipments by month, and the tables at bottom right show the total annual quantities (Mt) of highly migratory fish stocks by species or grouped, with number of transshipments by flag CCM.

This transshipment data is interesting as it shows with the exception of the transshipping under Wake Island most other transshipment occurs against the EEZ boundaries of member countries and not very far from port.

## What do other tuna RFMOs allow?

A search for transshipment practices are adopted by other tRFMOs from their websites shows each RFMO has a transshipment resolution or circular. These can be found as follows; ICCAT 06-11; IOTC 12-05; IATTC C-11-09 and CCSBT Resolution of 2008. All of these measures are consistent and restrict transshipment to all but large scale longliners and then it is the responsibility of the members to decide on whether to allow these vessels to transship under guidelines established in the measures mentioned above. Whether these are good measures and practices are for CCMs to judge. In reading these measures they are similar in content and if members were/are rigorous in implementing the provisions and properly monitoring and reporting the transshipment tonnages and activities they may work.

## Responses from CCMs to CMM 2009-05 para 34 and 35

The TCC8 paper (WCPFC-TCC8-2012-17\_rev2) which reported on High Seas Transshipment activities provided a table summarizing the advice that has been received from CCMs to date, in accordance with paragraphs 34 and 35 of CMM 2009-06, or as part of Annual Report Part 2 2012 submissions (Table 3 below).

## Response to questionnaire

Thanks to Fiji and several industry operators who took the time to respond. The main message from these responses was that better control is established if all transshipment occurs in port and that transshipping is most valued when vessels are fishing a long way from port and the fishing is good as transshipment in port then leads to lost days fishing and expenditure on fuel. Fijian regulations are also useful in that they allow transshipment in their EEZ to Fiji flagged vessels for live or fresh/ chilled fish for the sashimi markets but all other transshipment must occur in port.

## Interim Guidelines

The interim guidelines established by the WCPFC in CMM 2009-06 are as follows:

*37: .....In the meantime, CCMs shall use the following guidelines when determining the practicability of high seas transshipments*

*a. The prohibition of transshipment in the high seas would cause a significant economic hardship, which would be assessed in terms of the cost that would be incurred to transship or land fish at feasible and allowable locations other than on the high seas, as compared to total operating costs, net revenues, or some other meaningful measure of costs and/or revenues; and*

*b. The vessel would have to make significant and substantial changes to its historical mode of operation as a result of the prohibition of transshipment in the high seas;*

In addition to the above under paragraph 35 of that measure, the following is to occur where transshipment occurs:

35. Where transshipment does occur on the high seas:

*a. the CCMs responsible for reporting against both the offloading and receiving vessels shall, as appropriate:*

*i. advise the Commission of its procedures for monitoring and verification of the transshipments;*

*ii. indicate vessels to which the determinations apply.*

*iii. notify the information in Annex III to the Executive Director at least 36 hours prior to each transshipment.*

*iv. provide the Executive Director with a WCPFC Transshipment Declaration within 15 days of completion of each transshipment; and*

*v. Submit to the Commission a plan detailing what steps it is taking to encourage transshipment to occur in port in the future.*

Therefore in order to comply with the interim guidelines above CCMs would need to undertake some analysis of vessel operating environment in order to approve transshipments on the highseas. Whether this has occurred or not is impossible to tell and no CMM tendered any information on how they had done this in responding to the questionnaire.

The US in their response to this issues following on from it being raised at WCPFC9 indicated that they also found it very difficult to firstly gather the information on the economics of their fleet and then to determine how to apply it in a decision making context.

In the context of compliance with 2009/06 it is worth noting the following two points:

- **No CMM has provided advice to the Commission of its procedures for monitoring and verification of transshipments (paragraph 35 a (1)); and**
- **No CMM has provided the Secretariat with a plan detailing steps it has taken to encourage transshipping in port in the future (paragraph 35 a (v)).**

### **Determination of circumstances where it is impracticable for vessels to transship in port or in waters under national jurisdiction.**

To develop draft guidelines the Commission must decide whether there are actually circumstances where it is impractical for certain vessel to transship in port or in waters under national jurisdiction and as such to allow or prohibit the practice. The Commission now requires a 5% coverage by observers on all longline trips and as such coming to port regularly to pick up and exchange observers will be an important change to business.

### **Are there circumstances where it is impractical to transship in port or in waters under national jurisdiction?**

In researching this issue and speaking with officials and industry it is clear that as in most arrangements or institutions someone can always make a case for special treatment or for exemption from certain rules and regulations. However, whether allowing an exemption for a small minority is in the long-term interest of all the members of the institution (in this case the WCPFC) is a point for debate.

It is arguable that there are no cases where it is impractical to transship frozen longline caught product in port. There are situations such as when a longliner is operating a long way from port and the fishing is good it is economically more profitable to transship on the highseas. However, it is interesting that some of the large longline companies always transship in port and this practice would call into question whether it really is impractical to transship in port and a number argue that it gives them far greater control over the fishing operation, a better understanding of the product quality, actual catch amount and control over the cost of the operation.

There is an argument that is often raised that if longliners are not allowed to transship on the highseas they will not be a viable business. If this statement is thought through what we are saying is that in the pacific high seas longlining is such a marginal business and the chance of profit small. If this is the case then history tells us that in fisheries where operators are operating on small margins and concerned about profit and survivability the likelihood of accurate and honest reporting is small and they are more likely to undertake IUU activity than profitable operators. Map 1 above indicates that a lot of transshipment activity actually takes place within

1-200 miles of a port which would raise serious concerns about whether it is impractical to transship in port.

As Fiji has pointed out under their legislation they allow in zone transshipment at sea of fresh sashimi grade product so that it has the best opportunity to arrive at market in the best possible condition. This is one circumstance where it is impractical to transship in port.

In addition to the above the WCPO countries have well established port and transport infrastructure and countries welcome the business associated with port based activities. So there are no perceived barriers in a physical sense to utilizing the Pacific island ports for transshipment.

### **Prohibiting Transshipment**

Paragraph 35a (v)..... v. *Submit to the Commission a plan detailing what steps it is taking to encourage transshipment to occur in port in the future.....* when taken literally indicates that the CMMs view is that transshipment should occur in port.

If the Commission decides to prohibit the practice of allowing the transshipment of frozen longline caught product at sea there would be grounds to support this approach as follows:

- FAO and others have expressed strong concerns about the link between this practice and IUU fishing
- The international purse seine industry has proven that it is possible to change business practices to transship in port.
- In port transshipment of product allows for far stronger monitoring and surveillance activity and greater accountability for monitoring the catch.

### **Are the interim guidelines practical and should they continue?**

The interim guidelines are consistent with approaches that are taken in the other tRFMOs. However, there is no evidence they are being complied with and there is no compliance with the key provisions of paragraph 35 a (i and v). If these interim guidelines were to be allowed to become permanent then they should only be allowed once evidence has been supplied to the Secretariat and circulated to CMMs that support the assessment of economic disadvantage and of compliance with the provisions of paragraph 35. These guidelines and the complete CMM 2009/06 might be strengthened if it included information on how “*significant economic hardship*” should be assessed and then there would be some consistency in how the measure was applied amongst CMMs.

### **Assessing “*significant economic hardship*”**

As mentioned above many longline operators transship product only in port. It is also a serious consideration that if the economics of this industry are so bad that transshipping in port causes “*significant economic hardship*” whether it should be allowed to continue as the potential for IUU activity would be very high. However, if CMMs applied the rules in CMM 2009-06, that action may provide some rigor to the process.



## **Summary**

While CMMs are providing documentation to support known transshipments there appears to be little or no compliance with any of the other provisions of the interim guidelines. No compliance has occurred in respect of the provision of paragraph 35 (a 1 and v).

If transshipment by non-purse seine vessels is allowed to continue in the WCPFC Convention area it must be done under strict conditions and these conditions must be fully complied with. If the conditions are not complied with in full the right to transship should be immediately withdraw from that flag state.

**Table 3.** From TCC8-2012-17\_rev2(27 Oct 2012) Table 1. Summary information available to the Secretariat on affirmative determinations that have been made by CCMs of impracticability to prohibit high seas transshipments and plans detailing steps to encourage transshipment to occur in port in the future, compared to the number of vessels by flag which WCPFC has received high seas transshipment pre-notices and declarations (June 2010 – 19 Sept 2012). **Table 3**

	Count of vessels which has WCPFC received declarations relating to their high seas transshipment activities (June 2010 - Sept 2012)		Advice on determinations that have been made by CCMs of impracticability to prohibit high seas transshipments (para 34 and 35 a. ii)	Plans detailing steps to encourage transshipment to occur in port in the future (para 35 a v)
	Receiving Vessels	Offloading Vessels		
<b>Australia</b>	<b>0</b>	<b>0</b>	AR Pt 2 2012, advises no determinations made to allow high seas transshipments in 2011	n/a
<b>Belize</b>	<b>0</b>	<b>1</b>	AR Pt 2 2012, advises that prior advice on at sea transshipment is currently required from Belize authorities, and compliance with IATTC at-sea transshipment programme.	Currently revisiting requirements for transshipments, which will include consideration of vessel operators views and transshipment requirements of RFMOs
<b>China</b>	<b>0</b>	<b>96</b>	AR Pt 2 2012, provides preliminary information on 111 transshipments by Chinese longline vessels that have taken place at sea since the commencement of the CMM.	Advises that there is no in port transshipment by China L/L vessels
<b>Indonesia</b>	<b>0</b>	<b>7</b>	AR Pt 2 2012, advises of list of vessels which can transship at sea during 2011.	
<b>Japan</b>	<b>1</b>	<b>42</b>	Letter dated July 10 2012, which provides some details of basis for determinations (costs in port vs. high seas transshipment)	

	Count of vessels which has WCPFC received declarations relating to their high seas transshipment activities (June 2010 - Sept 2012)		Advice on determinations that have been made by CCMs of impracticability to prohibit high seas transshipments (para 34 and 35 a. ii)	Plans detailing steps to encourage transshipment to occur in port in the future (para 35 a v)
	Receiving Vessels	Offloading Vessels		
<b>Kiribati</b>	<b>3</b>	<b>0</b>	-carrier activities reported on by Chinese Taipei in AR Pt 2	
<b>Korea (Republic of)</b>	<b>1</b>	<b>50</b>	Letter dated July 22 2010, provided a list of vessels which might be faced with severe difficulties if they cannot transship on the high seas This list has been updated annually.  Additional details provided in AR Pt 2 2012, including list of vessels to which the determination of impracticability applies. Advises that 100% coverage requirement is being met	Some information on steps to encourage in-port transshipment
<b>New Zealand</b>	<b>0</b>	<b>0</b>	AR Pt 2 2012, advises no vessels have transhipped on the high seas to date Prior notification to NZ authorities is required before transshipment in high seas can take place, and requirement to carry an observer. Requirement for monitored unload when vessel returns to port.	Currently no NZ vessels transship on the high seas and no planned transshipments for the future
<b>Panama</b>	<b>5</b>	<b>0</b>	-carrier activities reported on by Chinese Taipei and Korea	
<b>Philippines</b>		<b>5</b>		
<b>Singapore</b>	<b>1</b>	<b>0</b>		

	Count of vessels which has WCPFC received declarations relating to their high seas transshipment activities (June 2010 - Sept 2012)		Advice on determinations that have been made by CCMs of impracticability to prohibit high seas transshipments (para 34 and 35 a. ii)	Plans detailing steps to encourage transshipment to occur in port in the future (para 35 a v)
	Receiving Vessels	Offloading Vessels		
<b>Chinese Taipei</b>	<b>0</b>	<b>96</b>	<p>Advice provided in AR Pt 2 2012, including list of vessels to which determinations of impracticability to prohibit transshipments apply. Summary information on number of notifications and declaration sent to WCPFC in 2011.</p> <p>Prior authorization process if a vessel intends to transship in high seas, including to ensure observer coverage requirements can be met</p>	Some carriers have been restricted to operate in port only.
<b>Vanuatu</b>	<b>16</b>	<b>44</b>	<p>Letter dated 23 May 2012, including list of longline vessels authorized to engage in high seas transshipments. Advises that 100% observer coverage requirement is being met.</p> <p>Updated information provided in AR Pt 2 2012</p>	
<b>United States of America</b>	<b>0</b>	<b>0</b>	<p>Letter dated 11 June 2012. Notifications of interim determinations of impracticability have been advised to WCPFC since June 2010. The US is in the process of conducting more thorough impracticability tests in accordance with para 37 of CMM 2009-06.</p> <p>June 28 2012, provided WCPFC Secretariat with views on the guidelines for</p>	

	Count of vessels which has WCPFC received declarations relating to their high seas transshipment activities (June 2010 - Sept 2012)		Advice on determinations that have been made by CCMs of impracticability to prohibit high seas transshipments (para 34 and 35 a. ii)	Plans detailing steps to encourage transshipment to occur in port in the future (para 35 a v)
	Receiving Vessels	Offloading Vessels		
			impracticability.	
<b>Total</b>	<b>27</b>	<b>341</b>		

**Part 2:Draft Guidelines for the determination of circumstances where it is impracticable for certain vessels to transship in port or in waters under national jurisdiction. (Paragraph 37 CMM 2009/06)**

**Existing guidelines**

The existing draft guidelines for the determination of when it is impractical to transship in port read as follows.

*”In the meantime, CCMs shall use the following guidelines when determining the practicability of high seas transshipments*

*a. The prohibition of transshipment in the high seas would cause a significant economic hardship, which would be assessed in terms of the cost that would be incurred to transship or land fish at feasible and allowable locations other than on the high seas, as compared to total operating costs, net revenues, or some other meaningful measure of costs and/or revenues; and*

*b. The vessel would have to make significant and substantial changes to its historical mode of operation as a result of the prohibition of transshipment in the high seas;”*

**The following guidelines are suggested.**

- a. Transshipment by non-purse seine vessels is only allowed to occur in the highseas of the WCPF Convention area where the transshipment occurs from longline fishing vessel to carrier vessels on which there is 100% observer coverage on both vessels.
- b. Transshipment can only occur where the provisions of paragraph 35 of CMM 2009/06 are fully complied with and in particular point (i and v);

*Where transshipment does occur on the high seas:*

*a. the CCMs responsible for reporting against both the offloading and receiving vessels shall, as appropriate:*

- i. advise the Commission of its procedures for monitoring and verification of the transshipments;*
- ii. indicate vessels to which the determinations apply.*
- iii. notify the information in Annex III to the Executive Director at least 36 hours prior to each transshipment.*
- iv. provide the Executive Director with a WCPFC Transshipment Declaration within 15 days of completion of each transshipment; and*
- v. Submit to the Commission a plan detailing what steps it is taking to encourage transshipment to occur in port in the future.*

- c. Transshipment can only occur after a flag state annually provides documented evidence to the WCPFC Secretariat for circulation to members that it has complied with the following economic assessment, including information on how the assessment was undertaken;
  - *The prohibition of transshipment in the high seas would cause a significant economic hardship, which would be assessed in terms of the cost that would be incurred to transship or land fish at feasible*

*and allowable locations other than on the high seas, as compared to total operating costs, net revenues, or some other meaningful measure of costs and/or revenues; and*

- d. Failure to comply with any of the above provisions would lead to facility to engage in highseas transshipment to be withdrawn from that flag state.

#### **Recommendations**

- 1 That members consider the information in the background paper in the context of whether allowing transshipping from non-Purse seine vessels in the best interest of the Commission**
- 2 Consider the draft guidelines proposed in Part 2; and**
- 3 Consider and decide on paragraph 38 of 2009/06:**

*38. When adopting the Guidelines referred to in paragraph 37, the Commission shall consider whether to prohibit transshipment in areas of high seas in the Convention Area entirely surrounded by the exclusive economic zones of members of the Commission and Participating Territories. This consideration will include a review of the catch and effort reported for fishing vessels in these areas, the information from Transshipment Declarations in these areas and the role of the areas in supporting IUU activities.*



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

**Circular No.: 2013/71  
Date: 8 August 2013  
No. pages: 10**

**Addendum to Circular WCPFC2013-Draft Transshipment Guidelines**

Dear all

Following the posting of the above circular, the US has contacted the Secretariat to advise that they responded to the questionnaire and had also provided a copy of a report into transshipment that they had commissioned through Mike McCoy of Preston Gillett and Associates that they had asked that we post on the website.

I have attached a copy of the US response to this circular, the US letter to the Commission on this process from 2012 and I have now posted the report mentioned above on the Commission website.

The US have made the following important points that will need to be considered in finalizing the transshipment guidelines for the Commission

- 1 Albacore troll fishing activity has been missed by the Secretariat in preparing the potential guidelines for transshipment and consideration need to be given to the impact of any transshipment measure on this activity. This fishery has a long history of transshipping in both the Western and Eastern Pacific Ocean and needs to be fairly considered in this process.
- 2 The US have indicated that they have had difficulty in determining the economic factors to be considered in allowing transshipment and believe that a fairer approach may be to move to compliance based considerations.
- 3 The US notes that they do allow transshipping of their fleet under strict controls and believe that this provides flexibility to their fleet in operations but stress the point that it is fully monitored as an activity.
- 4 The US believes that stopping transshipment entirely will impact on fleet performance and potentially on the economics of the fleet.



These documents and the four points are forwarded for you further consideration on what is a difficult issue.

Thanks

A handwritten signature in black ink, appearing to read 'Glenn Hurry', with a stylized flourish at the end.

Professor Glenn Hurry  
Executive Director



**U.S. DEPARTMENT OF COMMERCE**  
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June 28, 2012

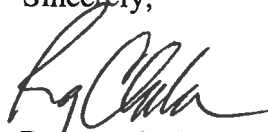
Professor Glenn Hurry, Executive Director  
Western and Central Pacific Fisheries Commission  
PO Box 2356  
Kolonia, Pohnpei State  
Federated States of Micronesia

Dear Professor  Hurry,

The United States appreciates the information paper provided by the Secretariat (WCPFC8-2011/IP08) on paragraph 37 of CMM 2009-06 regarding the guidelines for the determination of circumstances where it is impracticable for certain vessels to transship in port or in waters under national jurisdiction. Please find attached the views of the United States on the guidelines, which we would appreciate you sharing with other CCMs.

We appreciate your consideration of our views, and we look forward to seeing the paper that you prepare for TCC8. If you have any questions about this matter, please contact Mr. Tom Graham at Tom.Graham@noaa.gov or +1 808-944-2219.

Sincerely,



Raymond Clarke  
Fisheries Biologist

Attachment

cc: William Gibbons-Fly



**Attachment. U.S. views on the preparation of draft guidelines for the determination of circumstances where it is impracticable for certain vessels to transship in port or in waters under national jurisdiction**

The United States offers the following views regarding the guidelines for determining whether it would be impracticable for certain vessels to operate without being able to transship on the high seas. We begin with a brief commentary on the U.S. experience implementing the CMM's interim guidelines, which we hope is relevant and useful to the task of preparing draft guidelines for the consideration of the TCC and the Commission. We then offer some specific recommendations for the draft guidelines.

**Implementation of the interim guidelines under CMM 2009-06:**

Under the CMM's interim guidelines, vessels are to be excepted from the prohibition on transshipment on the high seas when the flag CCM determines that: (1) the prohibition of transshipment on the high seas would cause a significant economic hardship, which would be assessed in terms of the cost that would be incurred to transship or land fish at feasible and allowable locations other than on the high seas, as compared to total operating costs, net revenues, or some other meaningful measure of costs and/or revenues; and (2) the vessel would have to make significant and substantial changes to its historical mode of operation as a result of the prohibition of transshipment on the high seas.

Since the Commission's adoption of CMM 2009-06, the United States has been undertaking the analyses necessary to apply the interim guidelines and make the appropriate determinations. We would like to emphasize that given the imprecise and subjective nature of the CMM's interim guidelines, these analyses have been challenging. Even in well-monitored U.S. fisheries, a complete picture of historical transshipment patterns and detailed economic information about fishing operations that engage in transshipments is not available and drawing accurate conclusions is difficult. Furthermore, even if complete information becomes available, we believe it would be difficult to reliably predict the impacts of management actions in terms of operating costs or revenues. We have attempted to fill the information gaps and gain a better understanding of likely economic impacts of a high seas transshipment prohibition on U.S. fleets by issuing an advance notice of proposed rulemaking to solicit information on high seas transshipment activity in the Convention Area by U.S. vessels other than purse seine vessels and the potential effects of implementing a prohibition. Some information was received in response to the notice and we are continuing with the analytical and rulemaking processes.

**Preparing the draft guidelines:**

In the negotiations that led to the adoption of CMM 2009-06, the United States consistently argued that any restrictions on at-sea transshipments should support the objectives of the measure, particularly that of deterring IUU fishing. We maintain this view and recommend that the guidelines provide CCMs with the discretion to allow high seas transshipments when such transshipment activity is adequately monitored and controlled through the provisions of CMM 2009-06 and there is a historical basis for that transshipment activity. Thus, our recommended guidelines would depart from the focus on economic impacts incorporated in the interim

guidelines. In addition, we also suggest that the guidelines clarify that CCMs need not necessarily make the impracticability determinations on a vessel-by-vessel basis, which would be needlessly onerous. We propose that the guidelines should read as follows:

*CCMs shall use the following guidelines to determine whether it is impracticable for certain vessels or fleets (other than purse-seine vessels) for which it is responsible to operate without being able to tranship on the high seas. An affirmative determination shall be made when the following criteria are met:*

- a. The vessel or fleet has historically transhipped on the high seas in the Convention Area; and*
- b. The CCM has fully implemented the notice, reporting, and observer provisions of CMM 2009-06.*



**U.S. DEPARTMENT OF COMMERCE**  
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June 12, 2013

Professor Glenn Hurry  
Executive Director  
Western and Central Pacific Fisheries Commission  
P.O. Box 2356  
Kolonia  
Pohnpei, Federated States of Micronesia

Subject: Circular 2013-27 on high seas transshipment guidelines

Dear Professor Hurry:

We appreciate your efforts to gather information relevant to the task of drafting the guidelines for high seas transshipment. As you know, last year we provided input for your consideration in developing the draft guidelines (attached again separately). We do not have much additional information, but we will try to provide as much information as possible through responses to your questionnaire, below.

Before responding to the questionnaire, we would like to express some concern that the questions are largely limited to longline vessels. We also note from Circular 2013-27 that you have sought responses to the questionnaire from operators in the longline industry, but apparently not from operators in the troll industry or other sectors. Paragraphs 34-35 of CMM 2009-06 are not limited to longline vessels. Troll operations and potentially other vessel types bear the burden of these restrictions and requirements. As the United States has repeatedly argued in the course of negotiating both CMM 2009-06 and Article 29 of the Convention, the troll fishery has very different characteristics from the longline fishery, and needs to be specifically considered with respect to any controls on at-sea transshipment, including high seas transshipment. With that in mind, some of our responses on the following pages pertain to the U.S. troll fishery as well as the U.S. longline fishery, and we urge the Secretariat to take into account all vessel types other than purse seiners when formulating the draft guidelines under paragraph 37.

Sincerely,

Raymond Clarke  
Fisheries Biologist

cc: William Gibbons-Fly, U.S. Department of State  
Ruth Matagi Tofiga, American Samoa Department of Marine and Wildlife Resources  
Arnold Palacios, CNMI Department of Lands and Natural Resources  
Joseph Cameron, Guam Division of Aquatic and Wildlife Resources



**1. Are your non-purse seine fishing vessels fishing in the WCPO engaged in transshipment on the high seas of the WCPFC convention area? Or is the entire catch from your vessels unloaded and processed in port.**

Yes, U.S. troll and longline vessels transship on the high seas in the Convention Area.

**2. If your vessels are not engaged in transshipment on the high seas or in the zone of a member country, what are the positive aspects of this approach?**

NA

**3. Does transshipping in port provide you with greater control over monitoring your catch and controlling its flow on to the market?**

In practice, with the exception of purse seine catch sampling for weight composition purposes, the United States does not monitor or control in-port transshipments by U.S. vessels any differently than it does at-sea transshipments.

To the extent that in-port monitoring of transshipments would offer the potential for enhanced monitoring and control, it is important to note that the United States is only able to monitor its own ports, so any such enhanced monitoring and control would be limited to a subset of all transshipments by U.S. vessels. In contrast, the United States can and does require specific reporting by all U.S. fishing vessels involved in transshipments, both in port and at sea, and we require observer coverage of all transshipments at sea involving U.S. fishing vessels (see response to question 11).

**4. Are there any situations other than force majeure where you consider high seas transshipment to be justified?**

See response to question 8, below.

**5. If you were to move to allow high seas transshipment what rules would you put in place to regulate the activity?**

As indicated in our response to question 11, in 2013 the United States issued regulations that fully implement the notice, reporting, and observer requirements of CMM 2009-06, to regulate in-port and at-sea transshipment activity.

**6. If you are allowing transshipping on the high seas or your vessels are transshipping on the high seas what are the economic considerations you take into account under paragraph 37 (a) of 2009-06 that support this transshipment?**

The fundamental economic consideration is the direction and degree to which prohibiting high seas transshipments would impact U.S. producers and consumers. However, other than determining that the impacts of prohibiting high seas transshipment would indeed be adverse for U.S. fishing businesses, it is very difficult to reliably predict the impacts in terms of operating

costs or revenues. As we indicated in our letter to you of June 28, 2012, that is part of the reason we have suggested that the Commission shift from relying on the economic criterion in the interim guidelines (paragraph 37(a)) to a criterion more closely tied to the CMM's objective of deterring IUU fishing – specifically, whether the flag CCM has fully implemented the notice, reporting, and observer provisions of CMM 2009-06.

**7. Can you share with the Commission the information that you have gathered and considered in approving transshipments under the interim arrangements in paragraph 37 (a) of CMM 2009-06?**

As previously reported to the Commission, the United States has made interim determinations under paragraph 34 and is in the process of making final determinations in accordance with the guidelines in paragraph 37. We are gathering relevant information, and have solicited information from the fishing industry and the public through an advance notice of proposed rulemaking (see <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0001>). To be frank, we have had difficulties in identifying the economic factors that would be needed to apply paragraph 37(a) in a completely satisfactory manner, and partly for that reason, we recommend that the Commission shift from that economic criterion to one related to compliance with the notice, reporting, and observer provisions of CMM 2009-06.

**8. Large scale longline vessels made a significant change to their operation to move from port based to high seas and at sea transshipment. Part of this occurred when vessels were excluded from ports or when operators determined that certain ports were dangerous to operate from. Given that fleet operators are innovative how difficult would it be to change the operation back to port-based transshipment only?**

For U.S. longline vessels, it would not be a matter of shifting “back” to exclusively at-port transshipments. U.S. longline vessels transship at sea only occasionally, and no more frequently than they did in the past. Although at-sea transshipments are not common, U.S. longline fishing businesses find it advantageous to occasionally transship at sea, including on the high seas. As one example, swordfish-targeting vessels based in Hawaii make relatively long trips, freezing their catch. Their incidental catches of tuna, however, can diminish in value in the course of such long trips, so the vessels sometimes transship their bigeye and yellowfin tuna in order to get those fish to market soon. Such transshipments are virtually always made to other longline vessels, not carrier vessels, and our understanding is that they tend to be undertaken opportunistically rather than with a high degree of advance planning.

U.S. troll vessels, particularly the U.S. west coast-based albacore-targeting fleet, transship at sea occasionally, including on the high seas. No at-sea transshipments by the troll fleet have occurred for a number of years, but the ability to do so is, of course, advantageous to fishing operations. At-sea transshipments were more common in the past when the fleet exerted more effort in the WCPO, far from the vessels' home ports. If future environmental and economic conditions are such that the fleet's again shifts substantially to the WCPO, we expect that that the ability to transship on the high seas would become more valuable and such transshipments would occur more frequently.

**9. What would the impact of this change be on your fleet?**

To date, we have not been able to rigorously project the economic impacts on fishing businesses in either the longline or troll sectors, other than to determine that the impacts would be adverse.

**10. Does your country's legislation require monitoring of all fish product entering into you country? If so what level of monitoring occurs?**

Yes: A statistical document is required for each import into the United States of any of the following fish products:

- Pacific bluefin tuna
- Southern bluefin tuna
- Atlantic bluefin tuna
- Bigeye tuna (frozen only)
- Swordfish

For other fish products, the United States monitors imports through its customs laws and procedures – all imports are monitored but not necessarily rigorously recorded with respect to quantities to the species level.

**11. One of the concerns usually expressed about high seas transshipment is that the valuable sharkfin is transferred to the carrier or bunker vessels and therefore avoids any in-port inspection or control. What information can you provide on the effort you take to monitor the movement of sharkfin by the longline fleets?**

At-sea transshipments of HMS to U.S. vessels in the WCPO have been subject to mandatory reporting for many years. According to the reports submitted, between 1993 and 2000, U.S. longline vessels received a number of transshipments of shark fins from foreign-flagged vessels; after the passage of the Shark Finning Prohibition Act in 2000, such transshipments were eliminated.

In 2011 the United States enacted the Shark Conservation Act (Public Law 111-348), which prohibits any person from cutting the fins of a shark at sea and from possessing, transferring or landing shark fins (including the tail) that are not naturally attached to the corresponding carcass. The law also prohibits any person from landing a shark carcass without its fins naturally attached.

In 2013 the United States adopted [regulations](#) that fully implement the notice, reporting, and observer requirements of CMM 2009-06. Thus, all HMS transshipments involving a U.S. fishing vessel – either in the Convention Area or involving HMS caught in the Convention Area – are required to be observed and reported upon, and such transshipments that occur on the high seas are subject advance notification requirements.

U.S. enforcement agencies actively enforce all the above requirements.



**12. Do you have any other information, and in particular economic information that would assist the Commission to make an informed decision on this difficult issue?**

We are glad to share a study commissioned by NOAA Fisheries in 2010, “A review of certain distant water longline fleets and the implications of potential regulation of transshipment at sea in the western and central Pacific Ocean,” by Mike McCoy of Gillett, Preston and Associates Inc (attached separately). The study was commissioned to help inform the positions of the United States with respect to how at-sea transshipments from longline vessels should be regulated under the WCPFC. We note that since the study was completed, the characteristics of some of the longline fleets in the region have changed substantially, so some of the findings are less relevant now.