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**EU Proposal for a CMM on WCPFC Scheme for Minimum Standards for Inspection in Port**

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## **EU PROPOSAL FOR A CONSERVATION AND MANAGEMENT MEASURE ON WCPFC SCHEME FOR MINIMUM STANDARDS FOR INSPECTION IN PORT**

The Western and Central Pacific Fisheries Commission (WCPFC):

*Deeply concerned* about the continuation of illegal, unreported and unregulated fishing in the WCPFC Area and its detrimental effect upon fish stocks, marine ecosystems and the livelihoods of legitimate fishers in particular in Small Island Developing States, and the increasing need for food security in the region,

*Recalling* Article 27 of the WCPFC Convention on measures taken by a port State,

*Recognizing* the need for assistance to developing countries, in particular Small Island Developing States and Territories to adopt and implement port State measures and thereby noting the requirements laid down in Article 30 of the WCPFC Convention, in particular paragraph 2 c) thereof, and the existence of a WCPFC Special Requirements Fund,

*Bearing in mind* that, in the exercise of their sovereignty over ports located in their territory, CCMs may adopt more stringent measures, in accordance with international law,

*Recalling* the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December 1995, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 24 November 1993 and the 1995 FAO Code of Conduct for Responsible Fisheries,

*Taking note of* the binding Agreement on port State measures to combat IUU fishing which was adopted and opened for signature within the framework of FAO in November 2009, and desiring to implement this Agreement in an efficient manner in the WCPFC Area,

*Agrees* to adopt the following Conservation and management measure in conformity of Article 10 of the WCPFC Convention:

### **Scope**

1. In the exercise of their sovereignty over ports located in their territory, CCMs may adopt more stringent measures in accordance with international law.
2. With a view to monitor compliance with WCPFC conservation measures, each port CCM shall apply this CMM in respect of foreign fishing vessels carrying WCPFC-managed species and/or fish products originating from such species that have not been previously landed or transhipped at port, hereinafter referred to as "foreign fishing vessels".
3. Without prejudice to specifically applicable provisions of other WCPFC CMMs, this CMM shall apply to foreign fishing vessels equal to or greater than 12 meters in length.
4. A port CCM may decide not to apply this CMM to foreign fishing vessels chartered by its nationals exclusively for fishing in areas under its national jurisdiction and operating under its authority therein. Such vessels shall be the subject to measures by the port CCM which are as effective as measures applied in relation to vessels entitled to fly its flag.

5. Each CCM shall subject foreign fishing vessels below 12 meters length overall and fishing vessels entitled to fly its flag to a comparable port inspection program to be designed and implemented by that CCM..

6. Nothing in this CMM shall prejudice the rights, jurisdiction and duties of CCMs under international law. In particular, nothing in this CMM shall be construed to affect:

- (a) the sovereignty of CCMs over their internal, archipelagic and territorial waters or their sovereign rights over their continental shelf and in their exclusive economic zones;
- (b) the exercise by port CCMs of their sovereignty over ports in their territory in accordance with international law, including their right to deny entry thereto.

### **Requirements of small island developing states and territories**

7. CCMs shall give full recognition to the special requirements of CCMs small island developing States and territories in relation to the implementation of this CMM. To this end, WCPFC should provide assistance to CCMs SIDS in order to, *inter alia*:

- a) enhance their ability to develop a legal basis and capacity for the implementation of effective port State measures;
- b) facilitate their participation in any international organizations that promote the effective development and implementation of port State measures; and
- c) facilitate technical assistance to strengthen the development and implementation of port State measures by them, in coordination with relevant international mechanisms.

8. CCMs shall give due regard to the special requirements of developing CCMs port States, in particular the least-developed among them and small island developing States, to ensure that a disproportionate burden resulting from the implementation of this CMM is not transferred directly or indirectly to them. In cases where the transfer of a disproportionate burden has been demonstrated, CCMs shall cooperate to facilitate the implementation by the relevant CCMs developing States of specific obligations under this CMM.

9. CCMs shall assess the special requirements of CCMs developing States concerning the implementation of this CMM.

10. WCPFC CCMs shall cooperate to establish appropriate funding mechanisms to assist CCMs small island developing States and territories in the implementation of this CMM. These mechanisms shall, *inter alia*, be directed specifically towards:

- a) developing national and international port State measures;
- b) developing and enhancing capacity, including for monitoring, control and surveillance and for training at the national and regional levels of port managers, inspectors, and enforcement and legal personnel;
- c) monitoring, control, surveillance and compliance activities relevant to port State measures, including access to technology and equipment; and
- d) assisting CCMs small island developing States and territories with the costs involved in any proceedings for the settlement of disputes that result from actions they have taken pursuant to this CMM.

11. Cooperation with and among developing States CCMs in implementing this CMM may include the provision of technical and financial assistance through bilateral, multilateral, and regional channels.

### **Competent authorities**

12. Each port State CCM, shall designate the competent authority to serve as contact point for the purposes of receiving notifications and issuing authorizations pursuant to this CMM. It shall transmit the name and contact information for its competent authority to the WCPFC Executive Director no later than [30] days after the entry into force of this CMM. Any subsequent changes shall be notified to the WCPFC Executive Director at least [15] days before such change takes effect. This is without prejudice to the right of port State CCMs to designate as competent authorities under this CMM entities that are already competent authorities under other CMMs. The WCPFC Executive Director shall promptly notify CCMs of any such change.

13. The WCPFC Executive Director shall establish and maintain a register of competent authorities based on the lists submitted by the CCMs. The register and subsequent changes shall be published promptly on the WCPFC website.

### **Designation of ports**

14. Each port CCM shall designate any of its ports to which vessels may request entry pursuant to this CMM.

15. Each CCM shall, to the greatest extent possible, ensure that every designated port has sufficient capacity to conduct inspections pursuant to this CMM.

16. Each CCM shall provide a list of its designated ports to the WCPFC Executive Director within [2] months from the date of entry into force of this CMM. Any subsequent changes to this list shall be notified to the WCPFC Executive Director at least 15 days before the change takes effect.

17. The WCPFC Secretariat shall establish and maintain a register of designated ports based on the lists submitted by the port state CCMs. The register and any subsequent changes shall be posted promptly on the WCPFC website.

### **Prior notification**

18. Each CCM flag State shall take necessary action to ensure that the fishing vessels entitled to fly its flag or their representatives notify the competent authority of the port State CCM whose designated port they wish to use for the purpose of landing and/or transshipment at least [72 hours] before the estimated time of arrival at the port of the following information:

- a) Vessel identification (External identification, Name, IMO No, if any, and IRCS);
- b) Name of the designated port, as referred to in the WCPFC register, to which it seeks entry and the purpose of the port call (landing and/or transshipment);
- c) Fishing authorization or, where appropriate, any other authorization held by the vessel to support fishing operations on WCPFC species and/or fish

products originating from such species, or to transship related fishery products;

d) Estimated date and time of arrival in port;

e) The estimated quantities in kilograms live weight of each WCPFC species and/or fish products originating from such species held on board, with associated catch areas. If no WCPFC species and/or fish products originating from such species are held on board, a 'nil' report shall be transmitted;

f) The estimated quantities for each WCPFC species and/or fish products originating from such species in kilograms live weight to be landed or transshipped, with associated catch areas. The port CCM may also request other information as it may require to determine whether the vessel has engaged in IUU fishing, or related activities.

19. The port CCM may prescribe a longer or shorter notification period, taking into account, *inter alia*, the type of fishery product and the distance between the fishing grounds and its ports. In such a case, the port State CCM concerned shall inform the WCPFC Executive Director, which shall publish promptly the information on the WCPFC website.

#### **Use of port by foreign fishing vessels as authorized by the port CCM**

20. Landing or transshipment operations shall be subject to verification by the competent authority of the port CCM to determine the completeness of the information submitted as prescribed in paragraph 18 and to carry out an inspection in accordance with paragraph 22 below, if required.

21. Notwithstanding paragraph 20, the port CCM may authorize all or part of a landing or transshipment in cases where the information set out in paragraph 18 is incomplete or verification is pending. In such cases, the fishery products concerned shall be kept in storage. The fishery products shall only be released once the information set out in paragraph 18 and the verification have been completed. If this information is not complied with within 14 days of the commencement of the landing or transshipment, the port CCM may seize and dispose of the fishery products in accordance with its domestic laws. The cost of storage shall be borne by the operators, [or supported] in accordance with the domestic laws of the port CCM.

#### **Port inspections**

22. Inspections shall be carried out by the competent authority of the port State CCM.

23. Each year CCMs shall inspect at least [5%] of landings and transshipment operations in their designated ports as are made by foreign fishing vessels.

24. In determining which vessels to inspect, the port State CCM shall give priority to:

a) requests from other CCMs or regional fisheries management organizations that particular vessels be inspected, particularly where such requests are supported by evidence of IUU fishing, by the vessel in question; and

b) other vessels for which there are clear grounds for suspecting that they have engaged in IUU fishing

c) vessels included on the WCPFC list of IUU vessels.

## **Inspection procedure**

25. Each inspector shall carry a document of identity issued by the port CCM. In accordance with domestic laws, port CCM inspectors may examine all relevant areas, decks and rooms of the fishing vessel, catches processed or otherwise, nets or other fishing gears, equipment both technical and electronic, records of transmissions and any relevant documents, including fishing logbooks, Cargo manifests and Mates Receipts and landing declarations in case of transshipment, which they deem necessary to ensure compliance with WCPFC CMMs. They may take copy of any documents considered relevant, and they may also question the Master and any other person on the vessel being inspected.

26. Inspections shall involve the monitoring of the landing or transshipment and include a cross-check between the quantities by species notified in the prior notification message in paragraph 18 above and held on board. Inspections shall be carried out in such a way that the fishing vessel suffers the minimum interference and inconvenience, and that degradation of the quality of the catch is avoided.

27. On completion of the inspection, the port CCM inspector shall provide the Master of the foreign fishing vessel with the inspection report containing the findings of the inspection, including possible subsequent measures that could be taken by the port State competent authority. The Master shall be given the opportunity to add any comments or objection to the report and to contact the competent authority of the flag State. The inspector and the Master shall sign the report and a copy of the report shall be provided to the Master. The Master's signature shall serve only as acknowledgement of the receipt of a copy of the report.

28. The port CCM shall transmit a copy of the inspection report to the WCPFC Secretariat no later than [14] days following the date of completion of the inspection.

29. CCMs shall take necessary action to ensure that Masters facilitate safe access to the fishing vessel, cooperate with the competent authority of the port CCM, facilitate the inspection and communication and not obstruct, intimidate or interfere, or cause other persons to obstruct, intimidate or interfere with port CCM inspectors in the execution of their duties.

## **Procedure in the event of infringements**

30. If the information collected during the inspection provides evidence that a foreign fishing vessel has committed an infringement of the WCPFC CMMs, the inspector shall:

- a) record the infringement in the inspection report;
- b) transmit the inspection report to the port CCM competent authority, which shall promptly forward a copy to the WCPFC Secretariat and, if the vessel fly the flag of another CCM, to the competent authority of the flag CCM;
- c) if possible, take all necessary action to ensure safekeeping of the evidence pertaining to such alleged infringement.

31. If the infringement falls within the legal jurisdiction of the port CCM, the port CCM may take action in accordance with its domestic laws. The port CCM shall promptly notify the action taken to the competent authority of the flag CCM and to the WCPFC Executive Director, which shall promptly publish this information in a secured part of the WCPFC website.

32. Other infringements shall be referred to the flag CCM. Upon receiving the copy of the inspection report, the flag CCM shall promptly investigate the alleged infringement and notify the WCPFC Executive Director of the status of the investigation and of any enforcement action that may have been taken within 6 months of such receipt. The WCPFC Executive Director shall promptly publish this information in a secured part of the WCPFC website. CCMs shall include in their Annual Report Part 2 information regarding the status of such investigations.

33. Should the inspection provide evidence that the inspected vessel has engaged in IUU activities as referred to in CMM 2010-06, the port CCM shall promptly report the case to the flag State and notify as soon as possible the WCPFC Executive Director, along with its supporting evidence, for the purpose of inclusion of the vessel in the draft IUU list.

### **General provisions**

34. CCMs are encouraged to enter into bilateral agreements/arrangements that allow for an inspector exchange program designed to promote cooperation, share information, and educate each party's inspectors on inspection strategies and methodologies which promote compliance with WCPFC CMMs. A description of such programs should be provided to the WCPFC Executive Director which should publish it on the WCPFC website.

35. Without prejudice to domestic laws of the port CCM, the flag CCM may send its own officials to accompany the inspectors of the port CCM and observe the inspection of its vessel, having previously received an invitation from the competent authority of the port CCM. Officials from the flag CCM shall not exercise any enforcement powers in the port CCM.

36. Flag CCMs shall consider and act on reports of infringements from inspectors of a port CCM on a similar basis as the reports from their own inspectors, in accordance with their domestic laws. CCMs shall collaborate, in accordance with their domestic laws, in order to facilitate judicial or other proceedings arising from inspection reports as set out in this CMM.

## Explanatory Memorandum

### **EUROPEAN UNION PROPOSAL FOR A**

### **CMM on WCPFC SCHEME FOR MINIMUM STANDARDS FOR INSPECTION IN PORT**

**Goal:** this CMM would contribute to the long-term conservation and sustainable use of living marine resources, and in particular of highly migratory stocks, in the WCPFC Convention Area through strengthened, harmonized and transparent minimum standards for inspections in port to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing.

**New elements:** as compared with the EU proposal submitted in 2010 and 2011 this simplified proposal abandons the fully-fledge FAO Port State Measures approach in favour of a step-by-step approach. This proposal represents a first step with a focus on the most essential elements of port inspections: designation of ports, prior notifications, inspections and infringements. It is better aligned with the requests from small island developing coastal CCMs as it also includes a number of simplified provisions taking into account the limitations of small administrations.

**Rationale:** in coherence with the role of port States in the adoption of effective measures to promote the sustainable use and the long term conservation of living marine resources, this CMM foresees the agreement by CCMs on a list of minimum standards for port inspections including designated ports to which vessels may request entry, a system of prior notification, the verification of landings and transshipments, port inspections, and inspection and infringement procedures.

In addition, a port inspection measure adopted by WCPFC will improve the results of the measures aimed towards conservation of tuna and tuna-like species in the Western and Central Pacific Ocean and ensure consistency with management measures taken in other RFMOs. This will contribute to more responsible management of the stocks under WCPFC mandate.