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**EU PROPOSAL FOR A CONSERVATION AND MANAGEMENT MEASURE ON
PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL,
UNREPORTED AND UNREGULATED FISHING**

WCPFC6-2009/DP19
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Submitted by the EU

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,

Conscious of the role of the port State in the adoption of effective measures to promote the sustainable use and the long-term conservation of living marine resources,

Recognizing that measures to combat illegal, unreported and unregulated fishing should build on the primary responsibility of flag States and use all available jurisdiction in accordance with international law, including port State measures, coastal State measures, market related measures and measures to ensure that nationals do not support or engage in illegal, unreported and unregulated fishing,

Recognizing that port State measures provide a powerful and cost-effective means of preventing, deterring and eliminating illegal, unreported and unregulated fishing,

Aware of the need for increasing coordination at the regional and interregional levels to combat illegal, unreported and unregulated fishing through port State measures,

Recognizing the need for assistance to developing countries, in particular Small Island Developing States 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,

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, ,

Bearing in mind that, in the exercise of their sovereignty over ports located in their territory, CCM:s 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, hereinafter referred to as the Convention,

Recalling 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,

Having regard to Article 27 of the WCPFC Convention,

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

GENERAL PROVISIONS

Article 1

Use of terms

For the purposes of this Conservation and management measure:

- (a) “fish” means all species of highly migratory fish stocks covered by the WCPFC Convention;
- (b) “fishing” means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;
- (c) “fishing related activities” means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;
- (d) “illegal, unreported and unregulated fishing” refers to the activities set out in paragraph 3 of Conservation and management measure 2007/03;
- (e) “port” includes offshore terminals and other installations for landing, transshipping, packaging, processing, refueling or resupplying; and
- (f) “vessel” means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities.

Article 2

Objective

The objective of this Conservation and management measure is to prevent, deter and eliminate IUU fishing through the implementation of effective port State measures to control the harvest of fish caught in the WCPFC Area, and thereby to ensure the long-term conservation and sustainable use of these resources and marine ecosystems.

Article 3

Application

1. Each CCM shall, in its capacity as a port State, apply this Conservation and management measure in respect of vessels not entitled to fly its flag that are seeking entry to its ports or are in one of its ports, except for:

- a) vessels of a neighbouring State that are engaged in artisanal fishing for subsistence, provided that the port State and the flag State cooperate to ensure that such vessels do not engage in IUU fishing or fishing related activities in support of such fishing ; and
- b) container vessels that are not carrying fish or, if carrying fish, only fish that have been previously landed, provided that there are no clear grounds for suspecting that such vessels have engaged in fishing related activities in support of IUU fishing.

2. This Conservation and management measure shall be applied in a fair, transparent and non-discriminatory manner, consistent with international law.

Article 4

Integration and coordination at the national level

Each CCM shall, to the greatest extent possible:

- a) integrate or coordinate fisheries related port State measures with the broader system of port State controls;
- b) integrate port State measures with other measures to prevent, deter and eliminate IUU fishing and fishing related activities in support of such fishing, taking into account as appropriate the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; and
- c) take measures to exchange information among relevant national agencies and to coordinate the activities of such agencies in the implementation of this Conservation and management measure.

PART 2

ENTRY INTO PORT

Article 5

Designation of ports

1. Each CCM shall designate and publicize the ports to which vessels may request entry pursuant to this Conservation and Management measure. Each CCM shall provide a list of its designated ports to WCPFC Secretariat before 30 June 2010, which shall give it due publicity on the WCPFC website.
2. Each CCM shall, to the greatest extent possible, ensure that every port designated and publicized in accordance with paragraph 1 of this Article has sufficient capacity to conduct inspections pursuant to this Conservation and management measure.

Article 6

Advance request for port entry

1. Each CCM shall require the information requested in Annex 1 to be provided before granting entry to a vessel to its port.
2. Each CCM shall require the information referred to in paragraph 1 of this Article to be provided at least 72 hours in advance to allow adequate time for the port State to examine such information.

Article 7

Port entry, authorization or denial

1. After receiving the relevant information required pursuant to Article 6, as well as such other information as it may require to determine whether the vessel requesting entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing, each CCM shall decide whether to authorize or deny the entry of the vessel into its port and shall communicate this decision to the vessel or to its representative.
2. In the case of authorization of entry, the master of the vessel or the vessel's representative shall be required to present the authorization for entry to the competent authorities of the CCM upon the vessel's arrival at port.
3. In the case of denial of entry, each CCM shall communicate its decision taken pursuant to paragraph 1 of this Article to the flag State of the vessel and, as appropriate and to the extent possible, relevant coastal States and WCPFC Secretariat. The WCPFC Secretariat may, if deemed appropriate to combat IUU fishing at global level, communicate this decision to Secretariats of other RFMOs.

4. Without prejudice to paragraph 1 of this Article, when a CCM has sufficient proof that a vessel seeking entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing, in particular the inclusion of a vessel on a list of vessels having engaged in such fishing or fishing related activities adopted by a regional fisheries management organization in accordance with the rules and procedures of such organization and in conformity with international law, the CCM shall deny that vessel entry into its ports.

5. Notwithstanding paragraphs 3 and 4 of this Article, a CCM may allow entry into its ports of a vessel referred to in those paragraphs exclusively for the purpose of inspecting it and taking other appropriate actions in conformity with international law which are at least as effective as denial of port entry in preventing, deterring and eliminating IUU fishing and fishing related activities in support of such fishing.

6. Where a vessel referred to in paragraph 4 or 5 of this Article is in port for any reason, a CCM shall deny such vessel the use of its ports for landing, transshipping, packaging, and processing of fish and for other port services including, *inter alia*, refueling and resupplying, maintenance and drydocking. Paragraphs 2 and 3 of Article 9 apply *mutatis mutandis* in such cases. Denial of such use of ports shall be in conformity with international law.

Article 8

Force majeure or distress

Nothing in this Conservation and management measure affects the entry of vessels to port in accordance with international law for reasons of force majeure or distress, or prevents a port State from permitting entry into port to a vessel exclusively for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

PART 3

USE OF PORTS

Article 9

Use of ports

1. Where a vessel has entered one of its ports, a CCM shall deny, pursuant to its laws and regulations and consistent with international law, including this Conservation and management measure, that vessel the use of the port for landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including, *inter alia*, refueling and resupplying, maintenance and drydocking, if:

- a) the CCM finds that the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities required by its flag State;
- b) the CCM finds that the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities required by a coastal State in respect of areas under the national jurisdiction of that State;

- c) the CCM receives clear evidence that the fish on board was taken in contravention of applicable requirements of a coastal State in respect of areas under the national jurisdiction of that State;
 - d) the flag State does not confirm within a reasonable period of time, on the request of the port State, that the fish on board was taken in accordance with applicable requirements of a relevant regional fisheries management organization; or
 - e) the CCM has reasonable grounds to believe that the vessel was otherwise engaged in IUU fishing or fishing related activities in support of such fishing, including in support of a vessel referred to in paragraph 4 of Article 7, unless the vessel can establish:
 - i) that it was acting in a manner consistent with relevant conservation and management measures; or
 - ii) in the case of provision of personnel, fuel, gear and other supplies at sea, that the vessel that was provisioned was not, at the time of provisioning, a vessel referred to in paragraph 4 of Article 7.
2. Notwithstanding paragraph 1 of this Article, a CCM shall not deny a vessel referred to in that paragraph the use of port services:
- a) essential to the safety or health of the crew or the safety of the vessel, provided these needs are duly proven, or
 - b) where appropriate, for the scrapping of the vessel.
3. Where a CCM has denied the use of its port in accordance with this Article, it shall promptly notify the flag State and, as appropriate, relevant coastal States, WCPFC or other regional fisheries management organizations and other relevant international organizations of its decision.
4. A CCM shall withdraw its denial of the use of its port pursuant to paragraph 1 of this Article in respect of a vessel only if there is sufficient proof that the grounds on which use was denied were inadequate or erroneous or that such grounds no longer apply.
5. Where a CCM has withdrawn its denial pursuant to paragraph 4 of this Article, it shall promptly notify those to whom a notification was issued pursuant to paragraph 3 of this Article.

PART 4

INSPECTIONS AND FOLLOW-UP ACTIONS

Article 10

Levels and priorities for inspection

1- Each CCM shall carry out inspections of at least 10% of landings or transshipments in its ports during each reporting year.

2- Inspections shall involve the monitoring of the entire discharge or transshipment and include a cross-check between the quantities by species recorded in the prior notice of landing and the quantities by species landed or transhipped. When the landing or transshipment is completed, the inspector shall verify and note the quantities by species of fish remaining on board.

3- National inspectors shall make all possible efforts to avoid unduly delaying a vessel and ensure that the vessel suffers the minimum interference and inconvenience and that degradation of the quality of the fish is avoided.

4- The port CCM may invite inspectors of other CCM to accompany their own inspectors and observe the inspection of landings or transshipment operations of fishery resources caught by fishing vessels flying the flag of another CCM.

Article 11

Conduct of inspections

1. Each CCM shall ensure that its inspectors carry out the functions set forth in Annex 2 as a minimum standard.

2. Each CCM shall, in carrying out inspections in its ports:

- a) ensure that inspections are carried out by properly qualified inspectors authorized for that purpose, having regard in particular to Article 14;
- b) ensure that, prior to an inspection, inspectors are required to present to the master of the vessel an appropriate document identifying the inspectors as such;
- c) ensure that inspectors examine all relevant areas of the vessel, the fish on board, the nets and any other gear, equipment, and any document or record on board that is relevant to verifying compliance with relevant conservation and management measures;
- d) require the master of the vessel to give inspectors all necessary assistance and information, and to present relevant material and documents as may be required, or certified copies thereof;
- e) in case of appropriate arrangements with the flag State of the vessel, invite the flag State to participate in the inspection;
- f) make all possible efforts to avoid unduly delaying the vessel to minimize interference and inconvenience, including any unnecessary presence of inspectors on board, and to avoid action that would adversely affect the quality of the fish on board;

- g) make all possible efforts to facilitate communication with the master or senior crew members of the vessel, including where possible and where needed that the inspector is accompanied by an interpreter;
- h) ensure that inspections are conducted in a fair, transparent and non-discriminatory manner and would not constitute harassment of any vessel; and
- i) not interfere with the master's ability, in conformity with international law, to communicate with the authorities of the flag State.

Article 12

Results of inspections

Each CCM shall, as a minimum standard, include the information set out in Annex 3 in the written report of the results of each inspection.

Article 13

Transmittal of inspection results

Each CCM shall transmit the results of each inspection to the flag State of the inspected vessel, the WCPFC Secretariat and, as appropriate, to:

:

(i) those States for which there is evidence through inspection that the vessel has engaged in IUU fishing or fishing related activities in support of such fishing within waters under their national jurisdiction; and

(ii) the State of which the vessel's master is a national.

Article 14

Training of inspectors

Each CCM shall ensure that its inspectors are properly trained taking into account the guidelines for the training of inspectors in Annex 5. CCM shall seek to cooperate in this regard.

Article 15

Port State actions following inspection

1. Where, following an inspection, there are clear grounds for believing that a vessel has engaged IUU fishing or fishing related activities in support of such fishing, the inspecting CCM shall:

- a) promptly notify the flag State, the WCPFC Secretariat and, as appropriate, relevant coastal States, and other regional fisheries management organizations, and the State of which the vessel's master is a national of its findings; and

- b) deny the vessel the use of its port for landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including, *inter alia*, refueling and resupplying, maintenance and drydocking, if these actions have not already been taken in respect of the vessel, in a manner consistent with this Conservation and management measure.
2. Notwithstanding paragraph 1 of this Article, a CCM shall not deny a vessel referred to in that paragraph the use of port services essential for the safety or health of the crew or the safety of the vessel.
3. Nothing in this Conservation and management measure prevents a CCM from taking measures that are in conformity with international law in addition to those specified in paragraphs 1 and 2 of this Article, including such measures as the flag State of the vessel has expressly requested or to which it has consented.

Article 16

Information on recourse in the port State

1. A CCM shall maintain the relevant information available to the public and provide such information, upon written request, to the owner, operator, master or representative of a vessel with regard to any recourse established in accordance with its national laws and regulations concerning port State measures taken by that CCM pursuant to Article 7, 9, 11 or 15, including information pertaining to the public services or judicial institutions available for this purpose, as well as information on whether there is any right to seek compensation in accordance with its national laws and regulations in the event of any loss or damage suffered as a consequence of any alleged unlawful action by the CCM.
2. The CCM shall inform the flag State, the owner, operator, master or representative, as appropriate, of the outcome of any such recourse. Where other Parties, States or international organizations have been informed of the prior decision pursuant to Article 7, 9, 11 or 15, the CCM shall inform them of any change in its decision.

ANNEX 1

Information to be provided in advance by vessels requesting port entry

1. Intended port of call											
2. Port State											
3. Estimated date and time of arrival											
4. Purpose(s)											
5. Port and date of last port call											
6. Name of the vessel											
7. Flag State											
8. Type of vessel											
9. International Radio Call Sign											
10. Vessel contact information											
11. Vessel owner(s)											
12. Certificate of registry ID											
13. IMO ship ID, if available											
14. External ID, if available											
15. WCPFC ID											
16. VMS		No		Yes: National		Yes: RFMO(s)		Type:			
17. Vessel dimensions			Length		Beam		Draft				
18. Vessel master name and nationality											
19. Relevant fishing authorization(s)											
<i>Identifier</i>		<i>Issued by</i>		<i>Validity</i>		<i>Fishing area(s)</i>		<i>Species</i>		<i>Gear</i>	
20. Relevant transshipment authorization(s)											
<i>Identifier</i>		<i>Issued by</i>		<i>Validity</i>							
<i>Identifier</i>		<i>Issued by</i>		<i>Validity</i>							
21. Transshipment information concerning donor vessels											
<i>Date</i>	<i>Location</i>	<i>Name</i>	<i>Flag State</i>	<i>ID number</i>	<i>Species</i>	<i>Product form</i>	<i>Catch area</i>	<i>Quantity</i>			
22. Total catch onboard								23. Catch to be offloaded			
<i>Species</i>		<i>Product form</i>		<i>Catch area</i>		<i>Quantity</i>		<i>Quantity</i>			

ANNEX 2
Port State inspection procedures

Inspectors shall:

- a) verify, to the extent possible, that the vessel identification documentation onboard and information relating to the owner of the vessel is true, complete and correct, including through appropriate contacts with the flag State or international records of vessels if necessary;
- b) verify that the vessel's flag and markings (e.g. name, external registration number, International Maritime Organization (IMO) ship identification number, international radio call sign and other markings, main dimensions) are consistent with information contained in the documentation;
- c) verify, to the extent possible, that the authorizations for fishing and fishing related activities are true, complete, correct and consistent with the information provided in accordance with Annex 1;
- d) review all other relevant documentation and records held onboard, including, to the extent possible, those in electronic format and vessel monitoring system (VMS) data from the flag State or WCPFC Secretariat or other relevant regional fisheries management organizations (RFMOs). Relevant documentation may include logbooks, catch, transshipment and trade documents, crew lists, stowage plans and drawings, descriptions of fish holds, and documents required pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- e) examine, to the extent possible, all relevant fishing gear onboard, including any gear stowed out of sight as well as related devices, and to the extent possible, verify that they are in conformity with the conditions of the authorizations. The fishing gear shall, to the extent possible, also be checked to ensure that features such as the mesh and twine size, devices and attachments, dimensions and configuration of nets, pots, dredges, hook sizes and numbers are in conformity with applicable regulations and that the markings correspond to those authorized for the vessel;
- f) determine, to the extent possible, whether the fish on board was harvested in accordance with the applicable authorizations;
- g) examine the fish, including by sampling, to determine its quantity and composition. In doing so, inspectors may open containers where the fish has been pre-packed and move the catch or containers to ascertain the integrity of fish holds. Such examination may include inspections of product type and determination of nominal weight;
- h) evaluate whether there is clear evidence for believing that a vessel has engaged in IUU fishing or fishing related activities in support of such fishing;
- i) provide the master of the vessel with the report containing the result of the inspection, including possible measures that could be taken, to be signed by the inspector and the master. The master's signature on the report shall serve only as acknowledgment of the receipt of a copy of the report. The master shall be given the opportunity to add any comments or objection to the report, and, as appropriate, to contact the relevant authorities of the flag State in particular where the master has serious difficulties in understanding the content of the report. A copy of the report shall be provided to the master; and
- j) arrange, where necessary and possible, for translation of relevant documentation.

ANNEX 3

WCPFC Port inspection report form

1. Inspection report no				2. Port State			
3. Inspecting authority							
4. Name of principal inspector						ID	
5. Port of inspection							
6. Commencement of inspection		<i>YYYY</i>		<i>MM</i>		<i>DD</i>	
7. Completion of inspection		<i>YYYY</i>		<i>MM</i>		<i>DD</i>	
8. Advanced notification received				<i>Yes</i>		<i>No</i>	
9. Purpose(s)		<i>LAN</i>		<i>TRX</i>		<i>PRO</i>	
		<i>OTH (specify)</i>					
10. Port and State and date of last port call				<i>YYYY</i>		<i>MM</i>	
						<i>DD</i>	
11. Vessel name							
12. Flag State							
13. Type of vessel							
14. International Radio Call Sign							
15. Certificate of registry ID							
16. IMO ship ID, if available							
17. External ID, if available							
18. Port of registry							
19. Vessel owner(s)							
20. Vessel beneficial owner(s), if known and different from vessel owner							
21. Vessel operator(s), if different from vessel owner							
22. Vessel master name and nationality							
23. Fishing master name and nationality							
24. Vessel agent							
25. VMS		<i>No</i>		<i>Yes: National</i>		<i>Yes: RFMOs</i>	
		Type:					
26. Status in WCPFC, including any IUU vessel listing							
<i>Vessel identifier</i>		<i>RFMO</i>		<i>Flag State status</i>		<i>Vessel on authorized vessel list</i>	
						<i>Vessel on IUU vessel list</i>	
27. Relevant fishing authorization(s)							
<i>Identifier</i>		<i>Issued by</i>		<i>Validity</i>		<i>Fishing area(s)</i>	
						<i>Species</i>	
						<i>Gear</i>	
28. Relevant transshipment authorization(s)							
<i>Identifier</i>				<i>Issued by</i>		<i>Validity</i>	
<i>Identifier</i>				<i>Issued by</i>		<i>Validity</i>	
29. Transshipment information concerning donor vessels							
<i>Name</i>		<i>Flag State</i>		<i>ID no</i>		<i>Species</i>	
						<i>Product</i>	
						<i>Catch</i>	
						<i>Quantity</i>	

					<i>form</i>	<i>area(s)</i>	
30. Evaluation of offloaded catch (quantity)							
<i>Species</i>	<i>Product form</i>	<i>Catch area(s)</i>	<i>Quantity declared</i>	<i>Quantity offloaded</i>	<i>Difference between quantity declared and quantity determined, if any</i>		
31. Catch retained onboard (quantity)							
<i>Species</i>	<i>Product form</i>	<i>Catch area(s)</i>	<i>Quantity declared</i>	<i>Quantity retained</i>	<i>Difference between quantity declared and quantity determined, if any</i>		
32. Examination of logbook(s) and other documentation				<i>Yes</i>	<i>No</i>	<i>Comments</i>	
33. Compliance with applicable catch documentation scheme(s)				<i>Yes</i>	<i>No</i>	<i>Comments</i>	
34. Compliance with applicable trade information scheme(s)				<i>Yes</i>	<i>No</i>	<i>Comments</i>	
35. Type of gear used							
36. Gear examined in accordance with paragraph e) of Annex 2			<i>Yes</i>	<i>No</i>	<i>Comments</i>		
37. Findings by inspector(s)							
38. Apparent infringement(s) noted including reference to relevant legal instrument(s)							
39. Comments by the master							
40. Action taken							
41. Master's signature							
42. Inspector's signature							

ANNEX 4

Information systems on port State measures

In implementing this Conservation and management measure, each CCM shall:

- a) seek to establish computerized communication;
- b) establish, to the extent possible, websites to publicize the list of ports designated in accordance with Article 5 and the actions taken in accordance with the relevant provisions of this Conservation and management measure;
- c) identify, to the greatest extent possible, each inspection report by a unique reference number starting with 3-alpha code of the port State and identification of the issuing agency;
- d) utilize, to the extent possible, the international coding system below in Annexes 1 and 3 and translate any other coding system into the international system.

countries/territories:	ISO-3166 3-alpha Country Code
species:	ASFIS 3-alpha code (known as FAO 3-alpha code)
vessel types:	ISSCFV code (known as FAO alpha code)
gear types:	ISSCFG code (known as FAO alpha code)

ANNEX 5

Guidelines for the training of inspectors

Elements of a training programme for port State inspectors should include at least the following areas:

1. Ethics;
2. Health, safety and security issues;
3. Applicable national laws and regulations, areas of competence and conservation and management measures of the WCPFC, and applicable international law;
4. Collection, evaluation and preservation of evidence;
5. General inspection procedures such as report writing and interview techniques;
6. Analysis of information, such as logbooks, electronic documentation and vessel history (name, ownership and flag State), required for the validation of information given by the master of the vessel;
7. Vessel boarding and inspection, including hold inspections and calculation of vessel hold volumes;
8. Verification and validation of information related to landings, transshipments, processing and fish remaining onboard, including utilizing conversion factors for the various species and products;
9. Identification of fish species, and the measurement of length and other biological parameters;
10. Identification of vessels and gear, and techniques for the inspection and measurement of gear;
11. Equipment and operation of VMS and other electronic tracking systems; and
12. Actions to be taken following an inspection.