



**TECHNICAL AND COMPLIANCE COMMITTEE**

**Tenth Regular Session**

25 - 30 September 2014

Pohnpei, Federated States of Micronesia

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**FFA PROPOSAL: CONSERVATION AND MANAGEMENT MEASURE ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING**

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**WCPFC-TCC10-2014-DP01 rev1**

**30 September 2014**

**Paper submitted by FFA**

There are two parts to this paper:

- Explanatory note for the FFA Port State Measures Proposal
- Proposal for CMM on Port State Measures to prevent, deter and eliminate illegal, unreported and unregulated fishing

## FFA proposal on port State measures

Reference document: *WCPFC-TCC10-2014-DP01*

The Commission has attempted to adopt a Conservation and Management Measure (CMM) for port State measures for several years to no avail. Lack of endorsement by all CCMs has been due to conflicting views on the manner in which such measures be introduced to the region, inadequate consideration of the Special Requirements of Small Island Developing States, and protection of sovereignty in relation to previous proposals.

FFA members submitted a proposal on port State measures to WCPFC10 (WCPFC10-2013-DP11 Rev 3) to introduce and build port State measures into the existing WCPFC MCS framework. Although the final revision of the proposal was not adopted, it is the result of significant consultation and agreement among a majority of CCMs.

The proposal focuses on the establishment of port inspection requests among CCMs, identification and information sharing on vessels of interest, and targeted inspections on vessels not on the WCPFC Record of Fishing Vessels and IUU fishing listed vessels. These are areas that would complement existing national and regional MCS tools and networks.

The proposal includes a specific section on the Special Requirements of Small Island Developing States and Participating Territories to address the capacity development, technical and financial assistance, and fishery participation. However in accordance with CMM2013-06 *Conservation and Management Measure on the criteria for the consideration of Conservation and Management proposals* the following assessment has been undertaken. As a result a new paragraph 26 bis has been added to address transfers of disproportionate burden. It should be noted that these inclusions to the proposal and the following assessment were undertaken by the FFA Secretariat.

Components	Response
Who is required to implement the proposal?	<p>The proposal makes specific reference to port State CCMs, flag State CCMs, and the Secretariat, however CCMs in general can implement components of the proposed measure particularly in relation to CCMs making requests for port inspections and addressing the Special Requirements of Small Island Developing States and Participating Territories.</p> <p>The busiest ports in the fishery area are located in SIDS, meaning that a large proportion of inspections and subsequent reporting will need to be undertaken by SIDS</p>
Which CCMs would this proposal impact and in what way(s) and what proportion?	<p>The proposal provides flexibility for implementation in that CCMs choose which, if any <i>designated ports for fisheries inspection</i> they will notify to WCPFC, and will subsequently come under the provisions of the CMM. CCMs that are able to immediately implement the measure can do so, whilst others are able to assess and determine whether the application of the measure is appropriate. The largest impact would be to port States within the WCPF-CA who decide to implement this measure and designate ports for fisheries inspections, however the impact would depend</p>

	<p>upon the level of use of the port, and the number of requests received to undertake inspections.</p> <p>Again though it cannot be overstated that busiest ports in the fishery area are located in SIDS, meaning that a large proportion of inspections and subsequent reporting will need to be undertaken by SIDS if full coverage is to be achieved.</p>
<p>c. Are there linkages with other proposals or instruments in other regional fisheries management organizations or international organizations that reduce the burden of implementation?</p>	<p>FAO has commenced development of a SIDS assistance fund under the PSMA. As yet though, no assistance is available and FFA members are concerned that such assistance would only be available <i>after</i> they ratify and become bound by the PSMA, whereas assistance is actually needed beforehand, such as to develop systems and procedures and to recruit and train inspectors.</p> <p>The proposal takes in to account port State measures adopted through international legal instruments, as well as the sovereignty of CCMs and national laws, and is therefore sufficiently flexible to recognise the various port State measures implemented by different CCMs. Furthermore, the proposal requires the publication of port State measures implemented by CCMs, which promotes transparency and an understanding of what different CCMs are implementing. This measure proposes to complement existing arrangements by encouraging greater cooperation and sharing of MCS information and resources amongst CCMs.</p>
<p>d. Does the proposal affect development opportunities for SIDS?</p>	<p>The overall aim of the measure is to strengthen overall port controls and thereby reduce IUU fishing. From that perspective the proposal actively supports development opportunities for SIDS by reducing the impact of IUU fishing on the stocks.</p> <p>In terms of development aspirations, paragraph 26 encourages the promotion and use of SIDS ports; with the assumption that the use of designated ports would stimulate socio-economic benefits, noting also though that the potential increase in inspection measures may also deter vessels from frequenting these ports.</p> <p>Overall, impacts on <i>development opportunities</i> are expected to be positive, but will be better assessed at each review period and the identification of potential issues affecting development opportunities.</p>
<p>e. Does the proposal affect SIDS domestic access to resources and development aspirations?</p>	<p>As per the response above, detection and deterrence of IUU fishing in the region supports those SIDS that have aspirations to develop their own fleets by protecting the resource.</p> <p>The implementation of port State measures is not a high priority for most SIDS in the context of other competing national priorities and resourcing requirements, however the proposal should not affect domestic access to resources.</p>
<p>f. What resources, including financial and human capacity, are needed by SIDS to</p>	<p>Specific areas of assistance to implement this measure are listed in paragraphs 23 through 25 of the proposal. However, it is envisaged that additional human and financial resources will be needed in</p>

implement the proposal?	<p>particular, to undertake and report on port inspections.</p> <p>The difficulty for SIDS is that this assistance is required before SIDS can agree to become bound by some of the provisions in the measure – otherwise they are agreeing to requirements that they do not have the capacity to deliver against.</p>
g. What mitigation measures are included in the proposal?	<p>The option for each CCM to decide which, if any, of its ports to designate under paragraph 6 is the largest mitigation of disproportionate burden in the proposal.</p> <p>This is well supported through the exploration of assistance mechanisms in paragraphs 23 to 26 and the addition of paragraph 26 bis.</p> <p>In summary, paragraphs 6 and 26bis work together as an “opt-in/opt-out” mechanism, and it will be incumbent on developed CCMs and the Commission at large to facilitate the assistance in paragraphs 23 to 26 in order to incentivise SIDS participation.</p>
h. What assistance mechanisms and associated timeframe, including training and financial support, are included in the proposal to avoid a disproportionate burden on SIDS?	<p>Although the proposal makes specific references to the areas where assistance would be required, the actual operationalisation is a task the Commission must address. It is suggested that TCC consider this issue and how best to address this.</p> <p>Until this is addressed through Commission processes, and noting that the majority of ports in the WCPF-CA are based in the jurisdiction of SIDS, paragraphs 6 and 26 bis remain imperative to avoid a disproportionate burden on SIDS.</p>



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FFA Proposal Port State Measure

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**WCPFC-TCC10-2014-DP-01rev1**

**30 Sept 2014**

**08:45:**



**ELEVENTH REGULAR SESSION**

Apia, Samoa

1-5 December 2014

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

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**Conservation and Management Measure 2014-XX**

*The Western and Central Pacific Fisheries Commission (WCPFC):*

*Deeply concerned* about the continuation of illegal, unreported and unregulated (IUU) 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 Participating Territories, and the increasing need for food security in the region;

*Recalling* that Article 27 of the WCPF Convention affirms that a port State has the right and the duty to take measures to promote the effectiveness of subregional, regional and global conservation and management measures;

*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 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, inter alia, port State measures,

*Recognizing* the special requirements of developing countries, in particular Small Island Developing States and Participating Territories provided for in Article 30 of the WCPFC Convention, including the importance of port operations in the domestic economies of many Small Island Developing States and Participating Territories, the need to ensure that port State measures do not result in transferring a disproportionate burden of conservation action onto developing CCMs, and the need for assistance to developing countries, in particular Small Island Developing States and Participating Territories to adopt and implement port State measures;

*Noting* the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported, Unregulated Fishing which was approved and opened for signature within the framework of the Food and Agriculture Organization of the United Nations (FAO) in November 2009;

*Bearing in mind* that, CCMs exercise sovereignty over ports in their territory in accordance with international law;

*Recognizing* the importance in the Western and Central Pacific Ocean (WCPO) of measures applied by sub-regional fisheries management arrangements and organisations;

*Recalling* the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, hereinafter referred to as the 1982 Convention;

*Further 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;

*Noting* the Plan of Action adopted in Kobe in January 2007 by the Joint Tuna RFMOs Meeting and the overall Kobe process;

*Adopts the following conservation and management measure in accordance with Article 10 of the WCPFC Convention:*

1. In addition to those measures able to be taken by a port State in Article 27 of the WCPFC Convention, port State CCMs are encouraged to take measures, in accordance with international law, for port State control of foreign fishing vessels in order to prevent, deter and eliminate IUU fishing. Such measures shall be implemented in a fair, transparent and non-discriminatory manner, consistent with international law.
2. In taking measures referred to in paragraph 1, port State CCMs are encouraged to have regard to the provisions and standards of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.
3. Port State CCMs that take measures referred to in paragraph 1 shall publicise those measures in an appropriate manner and shall advise the Commission of such measures to facilitate wider distribution. The Commission shall post the information on the WCPFC website.
4. 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 the internal, archipelagic and territorial waters or their sovereign rights over their continental shelf and in the 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.
5. Nothing in this 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.
6. Each port State CCM shall provide a list of its *designated ports for fisheries inspection* ('*designated ports*') to the WCPFC Executive Director within 6 months from the date of entry into force of this CMM. Any subsequent designation of ports or changes to this list shall be notified to the WCPFC Executive Director at least 30 days before the change takes effect.

7. Port State CCMs shall ensure that fisheries inspections are undertaken by Government authorised inspectors. Each inspector shall carry a document of identity issued by the port State CCM.

8. Where a port State CCM implements port State measures provided for in the WCPFC Convention, this CMM or other international agreements or arrangements, each flag State CCM shall require its flagged vessels to cooperate with the port State CCM in the implementation of those port State measures.

### **Vessel inspection procedures**

9. When a CCM has grounds to believe that a vessel has engaged in IUU fishing or fishing related activities in support of IUU fishing<sup>1</sup>, and is seeking entry in to, or is in the *designated port* of another CCM, it shall, as appropriate, request that CCM to inspect the vessel or to take other measures consistent with that CCM's port State measures.

10. CCMs shall ensure that requests for inspections, as per paragraph 9, include information on the nature and grounds for suspicion of IUU fishing or fishing related activities. Port States shall acknowledge the receipt of the request for an inspection, and advise whether an inspection can be undertaken based on an assessment of the information provided, availability of resources, and their capacity to do so at the time of the request.

11. If an inspection, as per paragraph 9, is undertaken by the port State CCM, a report on the outcome shall be provided to the member making the request, to the flag State as appropriate and to the Commission as soon as practicable, and in any case within 15 days of such request.

12. On completion of an inspection, the port inspector shall provide to the vessel master prior to leaving the vessel, a copy of an interim report on the vessel inspection.

13. Where, following a port State CCM inspection, a flag State CCM receives an inspection report, as referred to in paragraph 11, indicating that there are clear grounds to believe that its flagged vessel has engaged in IUU fishing or fishing related activities in support of such fishing, it shall immediately and fully investigate the matter in accordance with *Article 25 of the Convention*.

14. In the event a port State cannot carry out an inspection, referred to in paragraph 9, the requesting CCM may advise the Secretariat to include the vessel on a list of Vessels of Interest (VOI) which shall be maintained by the Executive Director on the secure site of the WCPFC website. The VOI shall include the information on the nature and grounds for suspicion of IUU fishing or fishing related activities, referred to in paragraph 9. Using surveillance information the Secretariat shall advise the requesting CCM of which designated port the vessel may next enter. The CCM may then request that port State to undertake an inspection on the vessel.

15. The Executive Director shall advise flag States of the VOI listing of any of its vessels. In addition, the requesting CMM may request that the flag State investigate the suspected IUU fishing activity in accordance with Article 25 of the Convention.

16. When a CCM submits an inspection report to the Secretariat, they shall advise whether the vessel in question is to be removed from the VOI list. If the CCM makes no reference to retaining the

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<sup>1</sup>This may include vessels that have been denied entry in to or use of port



vessel on the VOI, the Secretariat shall remove the vessel from the VOI list. The Secretariat shall maintain a database of all VOI listings.

17. ~~A flag State may request the removal of a vessel from the VOI list if~~ within 6 months of ~~VOI~~ ~~the vessel being listed if:~~

- ~~a) listing no inspection has been carried out on a vessel, and~~ the flag States ~~have~~ completed an investigation on the suspected IUU activity and have provided the reported it to the Commission, and the CCM that ~~VOI~~ listed the vessel; ~~or;~~
- ~~a)b) no inspection has been carried out on the vessel pursuant to this CMM, and no request to undertake an investigation has been made to the flag State. the flag State may then request the removal of the vessel from the VOI list.~~

### General

17-18. In order to promote the effective implementation of this CMM and pursuant to the Commission's confidentiality and data protection requirements, and in accordance with national laws, CCMs shall cooperate and exchange information with relevant CCMs, the WCPFC Secretariat, other regional organisations and relevant international organisations to further the objectives of this CMM.

18-19. Port State CCMs shall carry out inspections:

- a) on any foreign longline, purse seine and carrier fishing vessel that enters their *designated port* and is not listed on the WCPFC Record of Fishing Vessels, as practicable; and
- b) vessels that appear on the WCPFC IUU list.

A report on the outcome of the inspection undertaken by the port State CCM shall be provided to the flag State and to the Commission as soon as practicable, and in any case within fifteen days of the date of inspection.

19-20. To facilitate, coordinate and support compliance and/or enforcement action where port inspections have not been carried out, CCMs may request that port States within the Convention Area deny all access and entry to their ports, to vessels suspected of IUU fishing activity and where port inspections have not been carried out in accordance with this measure. The denial of port entry, shall be reported to the Executive Director, and shall only be used where all other options provided in this CMM, to inspect the vessel, have been exhausted.

20-21. A port State CCM shall give particular consideration to inspecting vessels suspected of undertaking IUU fishing activities, ~~as including if~~ identified by non-CCMs or other regional fisheries management organisations, particularly where evidence of IUU fishing or fishing related activities in support of IUU fishing, is provided by the Executive Director to that CCM.

21-22. Each port State CCM shall notify the Commission of a contact point for the purposes of this measure. Port State CCMs shall transmit this information to the Executive Director within 6 months from the date of entry in to force of this CMM. Any subsequent changes shall be notified to the Executive Director at least 15 days before such change takes effect. The Executive Director shall establish and maintain a register of port State contacts and shall be published on the WCPFC website.

### Special Requirements of Small Island Developing States and Participating Territories

~~22-23.~~ CCMs shall give full recognition to the Special Requirements of CCMs Small Island Developing States and Participating Territories in relation to the implementation of this CMM. To this end, WCPFC shall ~~ouid~~ 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.

~~23-24.~~ WCPFC CCMs shall cooperate to establish appropriate mechanisms to assist CCMs Small Island Developing States and Participating Territories in the implementation of this CMM, including appropriate funding mechanisms.

~~24-25.~~ These mechanisms shall, inter alia, be directed specifically towards:

- developing national and international port State measures;
- 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;
- monitoring, control, surveillance and compliance activities relevant to port State measures, including access to technology and equipment; and
- assisting CCMs Small Island Developing States and Participating Territories with the costs involved in any proceedings for the settlement of disputes that result from actions they have taken pursuant to this CMM.

~~25-26.~~ CCMs shall ~~encourage~~~~promote~~ the use of ports in the territory of Small Island Developing States and Participating Territories in order to increase the participation of Small Island Developing States and Participating Territories in fisheries for WCPO tuna stocks.

~~*26.bis CCMs shall give due regard to the special requirements of developing CCM port States, in particular to ensure that a disproportionate burden resulting from the implementation of this CMM is not transferred directly or indirectly to Small Island Developing States or Participating Territories. In cases where a Small Island Developing State or Participating Territory CCM port State has determined and demonstrated that the application of a particular provision of this CMM would transfer a disproportionate burden onto it, and attempted to identify key capacity or resource needs to address disproportionate burden, that CCM port state shall advise the Commission that it will not be applying those provisions, until such time when CCMs cooperate to address and nullify the issues associated with the transfer of disproportionate burden.*~~

~~*27. In implementing any obligation of this CMM, where the transfer of a disproportionate burden has been demonstrated by a SIDS or territory, that SIDS or territory shall identify mechanisms required to mitigate the burden of implementation, which may include key capacity or resource assistance and those mechanisms set out in CMM 2013-06, paragraph 4.*~~

~~*CCMs shall cooperate with that SIDS or territory to adopt or obtain those mechanisms in order to assist that SIDS or territory to implement that obligation.*~~

**Periodic review**

[26-28.](#) The Commission shall review this measure within ~~threewe~~ years of its entry in to force, which shall include but not be limited to an evaluation of its effectiveness, and any financial and administrative burdens associated with its implementation.