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U.S. EXPLANATORY NOTE FOR DRAFT RECOMMENDATION BY ICCAT ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING
(a new proposal amending existing measure 12-07, previously discussed but not adopted as IMM_10B)

Proposal submitted by United States

It has been six years since the adoption of the *Recommendation by ICCAT for an ICCAT Scheme for Minimum Standards for Inspection in Port* (Rec. 12-07). Since that time, the FAO Port State Measures Agreement (PSMA) has entered into force and a number of ICCAT CPCs have ratified it. Consistent with recommendation number 67 from the Second ICCAT Performance Review, the United States considers ICCAT's port inspection scheme should be revised and thereby strengthened by making it more consistent with PSMA.

To support discussion of this important issue, the United States proposed revisions to Recommendation 12-07 for consideration at the 2018 meeting of the Working Group on Integrated Monitoring Measures (IMM_10B). Discussions were quite productive and generally supportive of strengthening Recommendation 12-07 although not all questions and comments could not be resolved during the meeting. The United States has revised its proposal taking into account comments received during the IMM and in the intervening period.

The revised U.S. proposal being tabled for consideration at the 2018 ICCAT Annual Meeting would require CPCs to deny entry where they have sufficient proof that the vessel seeking entry to its port has engaged in IUU fishing activity, unless it is being allowed to enter port for the sole purpose of inspection or other enforcement action. In addition, the proposal specifies notification procedures for denial of entry into port, criteria for prioritizing vessels for inspection, and procedures for denial of use of port and port services to vessels determined to have engaged in IUU activity. The measure includes an exception for vessels in port for reasons of Force Majeure or distress. The proposal also revises certain existing provisions of Rec. 12-07 to improve their effectiveness. Taken together, the proposed revisions to Rec. 12-07 would make that measure more consistent with PSMA.

DRAFT RECOMMENDATION BY ICCAT ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING

(a new proposal amending existing measure 12-07, previously discussed but not adopted as IMM 10B)

Proposal submitted by United States

RECOGNIZING that many Contracting Parties, Cooperating non-Contracting Parties, Entities or Fishing Entities (hereinafter referred to as CPCs) currently have port inspection schemes in place;

ACKNOWLEDGING that port State measures provide a powerful and cost effective means of preventing, deterring, and eliminating IUU fishing;

RECALLING Recommendation by ICCAT for a Revised ICCAT Port Inspection Scheme [Rec. 97-10];

ALSO RECALLING the Recommendation by ICCAT further Amending the Recommendation by ICCAT to Establish a List of Vessels Presumed to have carried out Illegal, Unreported and Unregulated Fishing Activities in the ICCAT Convention Area [Rec. 11-18] and the Recommendation by ICCAT Concerning the Ban on Landings and Transshipments of Vessels from non-Contracting Parties Identified as Having Committed a Serious Infraction [Rec. 98-11];

FURTHER RECALLING the 2009 FAO Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated (IUU) Fishing;

EMPHASIZING the importance of ensuring that the challenges faced by developing CPCs in the implementation of port State measures are adequately addressed and maximizing the use of funding established under the Recommendation by ICCAT to Support Effective Implementation of Recommendation 12-07 by ICCAT for an ICCAT Scheme for Minimum Standards for Inspection in Port [14-08] in that regard;

AWARE of the ongoing work of the Port Inspection Expert Group for Capacity Building and Assistance established under the Recommendation by ICCAT to Clarify and Supplement the Process for Seeking Capacity Building Assistance Pursuant to ICCAT Recommendation 14-08 [Rec. 16-18]; and

DESIRING to strengthen ICCAT's monitoring, control, and surveillance regime to promote implementation of and compliance with conservation and management measures;

**THE INTERNATIONAL COMMISSION FOR THE CONSERVATION
OF ATLANTIC TUNAS (ICCAT) RECOMMENDS THAT:**

Definitions

1. For the purposes of this Recommendation:
 - a) "Fishing" means searching for, attracting, locating, catching, taking or harvesting fish or any activity that can be reasonably expected to result in the attracting, locating, catching, taking or harvesting of fish;
 - b) "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 previously been landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;
 - c) "Fishing vessel" refers to 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; and
 - d) "Port" includes offshore terminals and marine areas of the port, and other installations for landing, transshipping, packaging, processing, refueling or resupplying.

Scope

2. Nothing in this Recommendation shall prejudice the rights, jurisdiction and duties of CPCs under international law. In particular, nothing in this Recommendation shall be construed to affect the exercise by CPCs of their authority over their ports in accordance with international law, including their right to deny entry thereto as well as to adopt more stringent measures than those provided for in this Recommendation.

This Recommendation shall be interpreted and applied in conformity with international law, taking into account applicable international rules and standards, including those established through the International Maritime Organization, as well as other international instruments.

CPCs shall fulfill in good faith the obligations assumed pursuant to this Recommendation and shall exercise the rights recognized herein in a manner that would not constitute an abuse of right.

3. With a view to monitor compliance with ICCAT conservation and management measures, each CPC, in its capacity as a port CPC, shall apply this Recommendation for an effective scheme of port inspections in respect of foreign fishing vessels carrying ICCAT-managed species and/or fish products originating from such species that have not been previously landed, hereinafter referred to as "foreign fishing vessels".
4. A CPC may, in its capacity as a port CPC, decide not to apply this Recommendation to foreign fishing vessels chartered by its nationals operating under its authority and returning to its port. Such chartered fishing vessels shall be subject to measures by the chartering CPC which are as effective as measures applied in relation to vessels entitled to fly its flag.
5. Without prejudice to specifically applicable provisions of other ICCAT Recommendations, and except as otherwise provided in this Recommendation, this Recommendation shall apply to foreign fishing vessels equal to or greater than 12 meters in length overall.
6. Each CPC shall subject foreign fishing vessels below 12 meters length overall, foreign fishing vessels operating under charter as referred to under paragraph 4, and fishing vessels entitled to fly its flag to measures that are at least as effective in combating IUU fishing as measures applied to vessels referred to in paragraph 3.
7. CPCs shall take necessary action to inform fishing vessels entitled to fly their flag of this and other relevant ICCAT conservation and management measures.

Points of Contact

8. Each CPC that grants access to its ports to foreign fishing vessels shall designate a point of contact for the purposes of receiving notifications pursuant to paragraph 13 of this Recommendation. Each CPC shall designate a point of contact for the purpose of receiving inspection reports pursuant to paragraph 35(b) of this Recommendation. Each CPC shall transmit the name and contact information for its points of contact to the ICCAT Secretariat no later than 30 days following the entry into force of this Recommendation. Any subsequent changes shall be notified to the ICCAT Secretariat at least 14 days before such changes take effect. The ICCAT Secretariat shall promptly notify CPCs of any such change.
9. The ICCAT Secretariat shall establish and maintain a register of points of contact based on the lists submitted by the CPCs. The register and any subsequent changes shall be published promptly on the ICCAT website.

Designated ports

10. Each CPC that grants access to its ports to foreign fishing vessels shall:
 - a) Designate its ports to which foreign fishing vessels may request entry pursuant to this Recommendation;

- b) Ensure that it has sufficient capacity to conduct inspections in every designated port pursuant to this Recommendation;
 - c) Provide to the ICCAT Secretariat within 30 days from the date of entry into force of this Recommendation a list of designated ports. Any subsequent changes to this list shall be notified to the ICCAT Secretariat at least 14 days before the change takes effect.
11. The ICCAT Secretariat shall establish and maintain a register of designated ports based on the lists submitted by the port CPCs. The register and any subsequent change shall be published promptly on the ICCAT web site.
12. Each CPC that does not grant access to its ports to foreign vessels shall so indicate in its Annual Report submitted under Ref. 12-13. Should it subsequently decide to grant access to its ports to foreign fishing vessels, it shall submit the information required under paragraphs 8 and 9(c) to the Secretariat at least 14 days before the change takes effect.

Advance request for port entry

13. Each port CPC that grants access to its ports to foreign fishing vessels shall require foreign fishing vessels seeking to enter its ports, to provide the following information at least 72 hours before the estimated time of arrival at the port:
- a) Vessel identification (External identification; Name; Flag State; ICCAT Record No., if any; IMO No., if any; and IRCS);
 - b) Name of the designated port, as referred to in the ICCAT register, to which it seeks entry and the purpose of the port call (e.g., resupplying, landing or transshipment);
 - c) Fishing authorization or, where appropriate, any other authorization held by the vessel to support fishing operations on ICCAT 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 of each ICCAT species and/or fish products originating from such species held on board, with associated catch areas. If no ICCAT 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 ICCAT species and/or fish products originating from such species in kilograms to be landed or transshipped, with associated catch areas.

The port CPC may also request other information as it may require to determine whether the vessel has engaged in IUU fishing, or related activities.

14. The port CPC may prescribe a longer or shorter advance notification period than specified in paragraph 13, taking into account, *inter alia*, the type of fishery products landed in its ports, the distance between the fishing grounds and its ports, and its resources and procedures for considering and verifying the information. In such a case, the port CPC shall inform the ICCAT Secretariat of its advance notification period, and the reasons therefor, within 30 days from the date of entry into force of this Recommendation. Any subsequent changes shall be notified to the ICCAT Secretariat at least 14 days before the change takes effect.

Port entry, authorization or denial

15. After receiving the relevant information pursuant to paragraph 13, as well as such other information as it may require to determine whether the foreign fishing vessel requesting entry into its port has engaged in IUU fishing, the port CPC shall decide whether to authorize or deny the entry of the vessel into its port.

16. Without prejudice to paragraph 18, when a CPC has sufficient proof that a foreign fishing vessel seeking entry to its port has engaged in IUU fishing or fishing related activities in support of such fishing the CPC shall deny that vessel entry into its port and shall communicate this decision to the master of the vessel or its representative.
17. In the event that the port CPC decides to deny the entry of the vessel into its port, it shall so notify the vessel or its representative and shall also communicate the decision to the flag State of the vessel, to the ICCAT Secretariat for posting on the secure part of the ICCAT website and, as appropriate and to the extent possible, to relevant coastal States, regional fisheries management organizations or arrangements (RFMO/As) and other inter-governmental organizations (IGOs).
18. Notwithstanding paragraph 15, a port CPC may allow entry to its port of a vessel referred to in that paragraph exclusively for the purpose of inspecting it and taking other appropriate actions in accordance with international law that 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.
19. Where a vessel referred to paragraph 16 is in port for any reason, the port CPC shall deny such vessel the use of its ports for landing, transshipping, packaging, processing and for other port services including, *inter alia*, refueling and resupplying, maintenance and dry docking. Paragraph 21 applies *mutatis mutandis* in such cases. Denial of such use of ports shall be in conformity with international law.

Force majeure or distress

20. Nothing in this Recommendation affects the entry of foreign fishing vessels to port in accordance with international law for reasons of Force Majeure or distress, or prevents a port CPC from permitting entry into port to a vessel exclusively for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

Use of ports

21. Where a foreign fishing vessel has entered one of its ports, the port State CPC shall deny, pursuant to its laws and regulations and consistent with international law, including this Recommendation, that vessel the use of the port for landing, transshipping, packaging, or processing fish that have not been previously landed and for other port services, including, *inter alia*, refueling and resupplying, maintenance and dry docking, if:
 - a) The port CPC finds that the vessel does not have a valid and applicable authorization to engage in fishing and fishing related activities in the ICCAT Convention area;
 - b) The port CPC receives clear evidence that the fish on board was taken in contravention of ICCAT conservation and management measures;
 - c) The flag CPC does not confirm within a reasonable period of time, on the request of the port CPC, that the fish on board was taken in accordance with relevant ICCAT conservation and management measures; or
 - d) The port CPC has reasonable grounds to believe that the vessel otherwise engaged in IUU fishing, or fishing related activities in support of such fishing, in the ICCAT Convention area, including in support of a vessel included in ICCAT's *List of Vessels Presumed to Have Carried Out IUU Fishing Activities in the ICCAT Convention Area and other areas*, unless the vessel can establish:
 - i. that it was acting in a manner consistent with relevant ICCAT conservation and management measures,
 - ii. in the case of provision of personnel, fuel, gear and other supplies at sea to a vessel on ICCAT's IUU list, that the vessel that was provisioned was not, at the time of provisioning, included in the ICCAT IUU list.

22. Notwithstanding paragraph 21, the port CPC 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.
23. Where a port CPC has denied a vessel the use of its ports, it shall promptly notify the vessel or its representative; the flag State of the vessel; the ICCAT Secretariat, for posting on the secure part of the ICCAT website, and, as appropriate and to the extent possible, relevant coastal States, RFMO/As, and other IGOs.
24. A port CPC shall withdraw its denial of the use of its port only if the port CPC is satisfied that there is sufficient proof to show that the grounds on which the use was denied were inadequate or erroneous, or that such grounds no longer apply.
25. Where a port CPC has withdrawn its denial of the use of its port, it shall promptly notify those to whom a notification was issued pursuant to paragraph 23.
26. In case the port CPC decides to authorize the entry of the vessel into its port in accordance with paragraph 18, the provisions set forth in the following section on port inspection shall apply.

Port inspections

27. Inspections shall be carried out by properly qualified inspectors of a competent authority of the port CPC.
28. Each year CPCs shall inspect at least 5% of landing and transshipment operations in their designated ports as are made by foreign fishing vessels.
29. In determining which foreign fishing vessels to inspect, the port CPC shall, in accordance with its domestic law, give priority to:
 - a) a vessel that has failed to provide complete and accurate information as required in paragraph 13;
 - b) a vessel that has been denied port entry by another CPC;
 - c) requests from other CPCs or relevant RFMO/As that a particular vessel be inspected, particularly where such requests are supported by evidence of IUU fishing by the vessel in question;
 - d) other vessels for which clear grounds exist for suspecting that a vessel has engaged in IUU fishing or fishing related activities in support of such fishing, including information derived from inspection reports submitted under this scheme and information from other RFMO/As;

Inspection procedure

30. Each inspector shall carry a document of identity issued by the port CPC. In accordance with domestic laws, port CPC inspectors shall examine all relevant areas, decks and spaces of the fishing vessel, catches processed or otherwise, nets or other fishing gears, equipment both technical and electronic, records of transmissions and any documents, including fishing logbooks, Cargo Manifests and Mates Receipts and landing declarations in case of transshipment, relevant to verifying compliance with the ICCAT conservation and management measures. They may also question the Master, crew members, or any other person on the vessel being inspected. They may take copies of any documents they consider relevant.

31. In case the vessel is landing or transshipping ICCAT species, 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 13 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, to the extent practicable.
32. On completion of the inspection, the port CPC 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 CPC, 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 to contact the competent authority 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.

The port CPC shall transmit a copy of the inspection report to the ICCAT Secretariat no later than 14 days following the date of completion of the inspection. If the inspection report cannot be transmitted within 14 days, the port CPC should notify the ICCAT Secretariat within the 14 day time period the reasons for the delay and when the report will be submitted.

33. Flag CPCs shall take necessary action to ensure that Masters facilitate safe access to the fishing vessel, cooperate with the competent authorities of the port CPC, facilitate the inspection and communication and do not obstruct, intimidate or interfere, or cause other persons to obstruct, intimidate or interfere with port CPC inspectors in the execution of their duties.

Procedure in the event of apparent infringements

34. If the information collected during the inspection provides evidence that a foreign fishing vessel has committed an infringement of the ICCAT conservation and management measures, the inspector shall:
 - a) record the infringement in the inspection report;
 - b) transmit the inspection report to the port CPC competent authority, which shall promptly forward a copy to the ICCAT Secretariat and to the flag State point of contact and, as appropriate, the relevant coastal State;
 - c) to the extent practicable, ensure safekeeping of the evidence pertaining to such infringement, including original documents where appropriate. If the port CPC refers the infringement to the flag State for further action, the port CPC shall promptly provide the evidence collected to the flag State.
35. Nothing in this Recommendation prevents a port CPC from taking actions that are in conformity with international law in addition to those specified in paragraph 34. The port CPC shall promptly notify the action taken to the flag State, the relevant coastal State, as applicable, and the ICCAT Secretariat, which shall promptly publish this information in the secure part of the ICCAT website.
36. Infringements that do not fall within the jurisdiction of the port CPC, and infringements referred to in paragraph 35 for which the port CPC has not taken action, shall be referred to the flag State and, as appropriate, the relevant coastal State. Upon receiving the copy of the inspection report and evidence, the flag CPC shall promptly investigate the infringement and notify the ICCAT Secretariat of the status of the investigation and of any enforcement action that may have been taken within 6 months of such receipt. If the flag CPC cannot notify the ICCAT Secretariat this status report within 6 months of such receipt, the flag CPC should notify the ICCAT Secretariat within the 6 month time period the reasons for the delay and when the status report will be submitted. The ICCAT Secretariat shall promptly publish this information in the secure part of the ICCAT website. CPCs shall include in their Annual Report [Ref. 12-13] information regarding the status of such investigations.

37. Should the inspection provide evidence that the inspected vessel has engaged in IUU activities as referred to in Rec. 11-18, the port CPC shall deny the vessel the use of port in accordance with paragraph 21, promptly report the case to the flag State, and the relevant coastal CPC, as applicable. The port CPC shall also notify as soon as possible the ICCAT Secretariat that the vessel has engaged in IUU fishing or fishing related activities, and provide supporting evidence. The Secretariat shall include the vessel in the draft IUU list.

Requirements of developing CPCs

38. CPCs shall give full recognition to the special requirements of developing CPCs in relation to a port inspection scheme consistent with this Recommendation. CPCs shall, either directly or through the ICCAT Secretariat, provide assistance to developing CPCs in order to, *inter alia*:
- a) Develop their capacity including by providing technical assistance and funding to support and strengthen the development and implementation of an effective system of port inspection at national, regional and international levels and to ensure that a disproportionate burden resulting from the implementation of this recommendation is not unnecessarily transferred to them;
 - b) Facilitate their participation in meetings and/or training programmes of relevant regional and international organizations that promote the effective development and implementation of a system of port inspection, including monitoring, control and surveillance, enforcement and legal proceedings for infractions and dispute settlements pursuant to this Recommendation; and
 - c) Either directly or through the ICCAT Secretariat, assess the special requirements of developing CPCs concerning the implementation of this Recommendation.

General provisions

39. CPCs are encouraged to enter into bilateral or multilateral 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 ICCAT conservation and management measures. Information regarding such programs, including a copy of such agreements or arrangements, should be included in Annual Reports of CPCs [Ref. 12-13].
40. Without prejudice to domestic laws of the port CPC, the flag CPC may, in the case of appropriate bilateral or multilateral agreements or arrangements with the port CPC or at the invitation of that CPC, send its own officials to accompany the inspectors of the port CPC and observe or take part in the inspection of its vessel.
41. Flag CPCs shall consider and act on reports of infringements from inspectors of a port CPC on a similar basis as the reports from their own inspectors, in accordance with their domestic laws. CPCs shall cooperate, in accordance with their domestic laws, in order to facilitate judicial or other proceedings arising from inspection reports as set out in this Recommendation.
42. The Commission shall review this Recommendation no later than its 2020 Annual Meeting and consider revisions to improve its effectiveness.
43. The *Recommendation by ICCAT for an ICCAT Scheme of Minimum Standards for Inspection in Port* [Rec. 12-07] is repealed and replaced by this Recommendation.