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Recommendation to amend the Scheme of Control and Enforcement in order to be aligned with the FAO Port State Measures Agreement

As proposed by Denmark (in respect of the Faroe Islands and Greenland), the EU, Iceland, Norway and the Russian Federation, the Commission hereby adopts the following Recommendation pursuant to Article 8 of the Convention:

CHAPTER I – General Provisions

Article 1 - Definitions

The order of the following paragraphs has been reorganised;
e. becomes f.
f. becomes g.
g. becomes h.
h. becomes e.

Article 1.e – second line, the words ‘fish or fish products’ are replaced with ‘fisheries resources or products thereof’ and ‘in preparation for or related to fishing’ is replaced by ‘in preparation for, or related to, fishing; including inter alia, packaging, transporting, refuelling or re-supplying’.

Article 1.h – replace ‘any fishing vessel not.’ with ‘any vessel engaged in fishing activities that is not’

Article 1.k – add ‘on shore’ after ‘any place’ and add ‘or for the provision of services in relation to, or in support of, fishing activities’ after ‘landing’ and add ‘on or’ after ‘place’

Article 1.l – delete ‘the term’

CHAPTER V – Port State Control of foreign fishing vessels

Article 20 – Scope

First paragraph, replace ‘apply to landings or transhipments in ports’ with ‘apply to the use of ports’. Delete ‘frozen’ from second line.

A new Article 20bis is added, as follows:

Article 20bis – Application of the FAO Agreement on Port State Measures

1. The provisions of the 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (hereafter referred to as the FAO PSMA) shall apply mutatis mutandis as a minimum standard for the Port

1 This Article is effective only 30 days upon the ratification, acceptance, approval or accession of the FAO PSMA by all NEAFC Contracting Parties.
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State Control of foreign fishing vessels, without prejudice to additional provisions contained in Articles 21 to 27.

2. Contracting Parties shall cooperate in the effective implementation of the FAO PSMA and in the exchange of information relevant to the implementation of the Scheme.

3. When Contracting Parties have adopted and implemented measures consistent with the provisions of the FAO PSMA, they shall transmit to the Secretary a statement of the actions they have taken in this respect. The Secretary shall circulate these statements to all Contracting Parties.

Article 21 - Designated ports

Insert ‘and provisions of port services’ after ‘operations’

Delete ‘before 1 February 2007’ and insert ‘and any’ before ‘subsequent’. Change ‘the list’ to ‘this list’.

Article 22 - Prior notice of entry into port

1. Insert ‘catch product type or the’ after ‘inter alia’

2a Replace ‘landing’ with ‘carrying’

Article 23

Change heading to ‘Landing or transhipment and other use of ports’

1. Insert (2a) and 2b) after ‘Article 22 paragraph’

Insert new 23.4

Landing, transhipment and other use of ports shall not be authorised if the port State receives clear evidence that the catch on board was taken in contravention of applicable requirements of a Contracting Party in respect of areas under its national jurisdiction.

23.4 becomes 23.5:

Replace ‘or transhipment’ with ‘transhipment and other use of ports to the master of the vessel or his representative, to the flag Contracting Party’

Article 24 - Inspectors

3. Delete text after ‘inspection’

Article 25 - Inspections

New 25.1
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1. Each Contracting Party shall carry out inspections of at least 5% of landings or transhipments of fresh fish and at least 7.5% of frozen fish in its ports during each reporting year, on the basis of risk management that takes into consideration the general guidelines outlined in Annex XVII. The minimum levels for inspection shall be reviewed three years after entry into force of this provision, or earlier if a Contracting Party so requests.

Replace 25.2 with

2. Inspections shall be conducted in a fair, transparent and non-discriminatory manner and shall not constitute harassment of any vessel.

New 25.3 and 25.4 as follows:

3. Each Contracting Party shall ensure that inspectors examine all relevant areas of the vessel in order to verify compliance with relevant conservation and management measures. Inspections shall be conducted in accordance with the procedures laid down in Annex XVIII.

4. Each Contracting Party shall 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.

25.3 now becomes 25.5

New 25.6

6. Inspectors shall not interfere with the master’s ability to communicate with the authorities of the flag State.

CHAPTER VI – Infringements

Article 28 - Infringement procedures

2. Insert at end of para ‘Where appropriate, the inspecting Contracting Party shall also communicate the findings of such inspection to the Contracting Party in waters under whose national jurisdiction the infringement took place and the State of which the vessel’s master is a national’.

CHAPTER VII – Measures to promote compliance by non-Contracting Party fishing vessels

Insert new Article 38bis - Application of the FAO Agreement on Port State Measures

2 This Article is effective only 30 days upon the ratification, acceptance, approval or accession of the FAO PSMA by all NEAFC Contracting Parties.
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The provisions of the FAO PSMA shall apply mutatis mutandis as a minimum standard for the Port State Control of non-Contracting Party vessels, without prejudice to additional provisions contained in Articles 39 to 46.

Article 39 - Entry into port

1. Delete ‘to the Secretary and’ after ‘vessel,’ and add ‘and to the Secretary, who shall put it on the NEAFC website’.

2. Replace ‘landing’ with ‘entry’.

New 39.3

3. Prohibition to enter port shall be communicated without delay by the port State to the master of the vessel or his representative, to the flag State of the vessel, to the relevant Contracting Parties and to the Secretary, who shall put it on the NEAFC website.

Article 40 - Inspections in port

1. Insert after ‘inspected’ ‘in accordance with the provisions of Article 25 (2) to 25 (6)’

Article 41

Change heading to ‘Landings, transhipments and use of port’

Replace 41.1-5 as follows:

1. When a non-Contracting Party vessel has entered port, a Contracting Party shall deny that vessel landing, transhipping, processing and packaging of fisheries resources and other port services, including, inter alia, refuelling and resupplying, maintenance and drydocking, if:

   a) The vessel has been inspected pursuant to Article 40, and the inspection reveals that the vessel has species on board which are subject to Recommendations established under the Convention unless the master of the vessel provides satisfactory evidence to the competent authorities proving that the fish were caught outside the Regulatory Area or in compliance with all relevant Recommendations established under the Convention, or

   b) The flag State of the vessel, or the flag State or States of donor vessels where the vessel has engaged in transhipment operations, does not provide the confirmation in accordance with the provisions of Article 23, or

   c) The master of the vessel has failed to fulfil any one of the obligations as set down in Article 19 (a) to (e), or

   d) The Contracting Party has received clear evidence that the fisheries resources on board were taken in the waters under the jurisdiction of a Contracting Party
in contravention of applicable regulations, or

e) The Contracting Party has sufficient proof that the vessel has otherwise been engaged in IUU fishing activities in the Convention Area or in support of such fishing activities.

2. In the case of denial under paragraph 1, a non-Contracting Party vessel shall be prohibited from transhipping in the waters under the jurisdiction of Contracting Parties.

3. In the case of denial under paragraph 1, a Contracting Party shall communicate its decision to the master of the vessel or to his representative and to the Secretary. The Secretary shall without delay notify the flag State in accordance with Article 44 (1), notify all Contracting Parties, and put this information on the NEAFC website.

4. A Contracting Party shall withdraw its denial of the use of its port 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 Contracting Party 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.

**Article 42 - Notification of presumed IUU activities**

1. At end of paragraph insert ‘Where appropriate, this information shall also be communicated to the State of which the vessel's master is a national’.

**Article 44 - IUU vessel lists**

1. Delete ‘their’ and replace with ‘its’ in first sentence. Insert ‘a’ after ‘Article 34,’ change ‘have’ to ‘has, change ‘are’ to ‘is’ after Convention Area. Insert new penultimate sentence:

   The same shall apply in the case of information required under Article 41 not being provided by its flag State.

   Last sentence, add ‘a’ after ‘such’ and insert at end ‘and promptly inform its flag State accordingly’.

   Insert new 44.8 as follows:

   8. The Secretary shall notify without delay the relevant flag State of the change of status of any of its IUU-listed vessels.

**Article 45 - Follow-up action**

Article 45.1.b, insert ‘their ports or to tranship in’ after ‘tranship in’
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Article 45.1.d, change ‘supply’ to ‘supplied’

Article 45.2.a insert ‘and communicate such prohibition in accordance with Article 39 (3)’ after ‘vessels’

ANNEX XV PORT STATE CONTROL FORMS

A – PSC1
Column 1, delete ‘Port of Landing or Transhipment:’

Add new row 7 as follows

<table>
<thead>
<tr>
<th>Vessel master’s name</th>
<th>Vessel master’s nationality</th>
<th>Vessel owner</th>
<th>Certificate of Registry ID</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vessel dimension</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Port State:</td>
<td></td>
<td>Port of Landing or Transhipment:</td>
<td></td>
</tr>
<tr>
<td>Last port of call:</td>
<td>Date:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Add new text in row after ‘Estimated time of arrival’ as follows:

‘Frozen products only’  ‘Fresh products only’  ‘Fresh and frozen products’

B – PSC2

Add new row 4 as follows:

<table>
<thead>
<tr>
<th>Vessel master’s name</th>
<th>Vessel master’s nationality</th>
<th>Vessel owner</th>
<th>Certificate of Registry ID</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vessel dimension</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Port State:</td>
<td></td>
<td>Port of Landing or Transhipment:</td>
<td></td>
</tr>
<tr>
<td>Last port of call:</td>
<td>Date:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Row 5 delete ‘Port of Landing or Transhipment:’

Add new text in row 6 as follows:

‘Date and location of transhipment’  ‘Transhipment authorisation if relevant’
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Add new text in row 8 as follows:

‘Frozen products only     Fresh products only     Fresh and frozen products’

PSC 3

Insert ‘Inspection report number’ before A.

First row, last column, insert ‘Other reason for port entry’

New row after ‘time’ with the following text:

‘Vessel type     Certification of Registry ID     Port of Registry     VMS
Vessel master’s name     Vessel master’s nationality     Fishing master’s name
Fishing master’s nationality
Vessel’s owner/operator     Vessel’s beneficial owner 2, 4     Vessel’s agent
Last port of call     Date:

New footnote 2 – ‘if known and if different from vessel’s owner’

Section B2, new row 3 ‘Relevant Transhipment Authorisation’

Section C1, new row 3 ‘Status in other RFMO areas where fishing or fishing related activities have been undertaken, including any IUU vessel listing.

RFMO     Vessel identifier     Flag State status     Vessel on authorised vessel list
Vessel on IUU list vessel list

Next row ‘Observation’

Section C2 after ‘in port’ add ‘(in accordance with Annex XVIII(e))’

Section C2, second row, replace ‘NAFO Seal Details’ with ‘seal details’

Section C2B, delete ‘NAFO’

Section E, penultimate row add ‘/agency’ after ‘authority’

Section E2. Insert “Inspector’s” before observations
Section E2. Insert new row with the words “Action taken”.

A new Annex XVII is added as follows:
ANNEX XVII - General guidelines for risk management in relation to Port State Control

Risk management means the systematic identification of risks and the implementation of all measures necessary for limiting the occurrence of these risks. This includes activities such as collecting data and information, analysing and assessing risks, preparing and taking action and regular monitoring and review of the process and its outcomes.

On the basis of its risk assessment, each port State defines its risk management strategy to facilitate compliance with the Scheme. Such strategy should encompass the identification, description and allocation of appropriate cost-effective control instruments and inspection means, in relation to the nature and the estimated level of each risk, and the achievement of target benchmarks.

Risk assessment and management criteria are laid down for checking, inspection and verification activities in order to allow timely risk analyses and general assessments of relevant control and inspection information.

Individual fishing vessels, groups of fishing vessels, operators, and/or fishing activity, on different species and in different parts of the Convention Area are subject to control and inspections according to the level of risk attributed, using inter alia the following general assumptions of risk levels criteria in relation to the Port State Control of landings and transhipments in port:

- Catches taken by a non-Contracting Party vessel;
- Frozen catches;
- Catches of a large volume;
- Catches previously transhipped at sea;
- Catches taken outside the waters under the jurisdiction of Contracting Parties, i.e. in the Regulatory Area;
- Catches taken both inside and outside the Convention Area;
- Catches of high value species;
- Catches from fisheries resources where there are particularly limited fishing opportunities;
- Number of inspections previously carried out and number of detected infringements for a vessel and/or operator.

A new Annex XVIII is added, as follows:

ANNEX XVIII - Port State inspection procedures

Inspectors shall:

a) Verify 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 that the authorizations for fishing and fishing related activities are true, complete, correct and consistent with the information provided in accordance with Article 22;

d) review all other relevant documentation and records held onboard, including those in electronic format and vessel monitoring system (VMS) data from the flag State or relevant Regional Fisheries Management Organizations. Relevant documentation may include logbooks, catch, transhipment 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 (CITES);

e) examine all relevant fishing gear onboard, including any gear stowed out of sight as well as related devices, and verify that they are in conformity with the conditions of the authorizations. The fishing gear shall 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 whether the fish on board was harvested in accordance with the applicable authorizations;

g) monitor the entire discharge or transhipment and cross-check between the quantities by species recorded in the prior notice of landing and the quantities by species landed or transhipped;

h) 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;

i) when the landing or transhipment is completed, verify and note the quantities by species of fish remaining on board;

j) 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;

k) 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
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I) arrange, where necessary and possible, for translation of relevant documentation.

II

This Recommendation enters into force from 1 July 2015.