

INTER-AMERICAN TROPICAL TUNA COMMISSION

93<sup>RD</sup> MEETING

San Diego, California (USA)

24, 27 – 30 August 2018

PROPOSAL IATTC-93 D-1

SUBMITTED BY THE EUROPEAN UNION

IATTC RESOLUTION FOR AN IATTC SCHEME FOR MINIMUM  
STANDARDS FOR INSPECTION IN PORT

EXPLANATORY MEMORANDUM

The current EU proposal aims to fight against IUU fishing and contribute to the long-term conservation and sustainable use of living marine resources in the IATTC Convention Area through minimum standards for port inspections. Port inspection closes an important loophole against IUU fishing.

The central elements of the EU proposal are the establishment of a minimum percentage of inspection for foreign vessels (5%), the designation of ports by port States, a compulsory prior notification for port access and the reporting of possible infringements detected in the inspection.

In addition to that, it will be the first ever port inspection measure adopted by IATTC. Therefore it will ensure consistency with management measures taken in other RFMOs and improve the results of the measures aimed towards conservation of tuna and tuna-like species in the Eastern Pacific Ocean. This will contribute to a more responsible and effective management of the stocks covered by the Antigua Convention.

This proposal incorporates comments made by Delegations during the 90<sup>th</sup>, 91<sup>st</sup> and 92<sup>nd</sup> IATTC Meetings. It takes into consideration comments received from developing coastal CPC, including a number of simplified provisions in order to facilitate consensus at the IATTC. The track changes in the text show the amendments made to last year's proposal following suggestions received at the 92<sup>nd</sup> IATTC Meeting.

*The Inter-American Tropical Tuna Commission (IATTC)*

**DEEPLY CONCERNED** that illegal, unreported and unregulated fishing has a detrimental effect upon fish stocks, marine ecosystems and the livelihoods of legitimate fishers in particular in developing States,

**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,

**RECALLING** that under the 1995 FAO Code of Conduct for Responsible Fisheries, the right to fish carries with it the obligation to do so in a responsible manner so as to ensure effective conservation and management of living aquatic 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 minimum standards for inspection in port, coastal State measures, and measures to ensure that nationals do not support or engage in illegal, unreported and unregulated fishing,

**RECOGNIZING** that **the definition of** minimum standards for inspections in port 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 minimum standards for inspection in port, and

*RECALLING* the relevant provisions of the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 24 November 1993, the 1995 FAO Code of Conduct for Responsible Fisheries, and other relevant international law,

*Agrees as follows:*

### **Assessment in Anticipation of Implementation**

1. Following the adoption of this Resolution, the IATTC Secretariat will identify the needs of developing CPCs related to the implementation of this Resolution; to present options and facilities for capacity building for those CPCs that might require and desire such assistance; to identify and assess any other barriers to effective full implementation; and to develop solutions to any such barriers.
2. This assessment will be accomplished through consultations, through questionnaires sent to all developing CPCs as set forth in Annex 2, and through any other available information.
3. Within 60 days following the deadline for receipt of the completed questionnaires, the Secretariat shall provide all CPCs with a report summarizing the responses, identifying any developing CPCs that may not have responded, and providing a detailed description of identified barriers to implementation.
4. The Commission, at its annual meeting in 2018, shall review the assessment report of the Secretariat and any individual reports from developing CPCs, as provided in paragraph 32.

### **Scope**

5. Nothing in this Resolution shall prejudice the rights, jurisdiction and duties of Members and Cooperating Non-Members of the Commission (hereinafter referred to as “CPCs”) under international law. In particular, nothing in this Resolution 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 Resolution.

This Resolution 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 any obligations ultimately assumed pursuant to this Resolution and shall exercise the rights recognized herein in a manner that would not constitute an abuse of right.

6. With a view to monitoring compliance with IATTC Resolutions, each CPC, in its capacity as a port CPC, shall apply this Resolution for an effective scheme of port inspections in respect of foreign fishing vessels carrying IATTC-managed species caught in the IATTC Convention Area (Convention Area) and/or fish products originating from such species caught in the Convention Area that have not been previously landed or transhipped at port, hereinafter referred to as "foreign fishing vessels".
7. A CPC may, in its capacity as a port CPC, decide not to apply this Resolution to foreign fishing vessels chartered by its nationals operating under its authority and returning to its ports. Such chartered fishing vessels shall be subject to measures by the CPC which are as effective as measures applied in relation to vessels entitled to fly its flag.
8. Without prejudice to specifically applicable provisions of other IATTC Resolutions, and except as otherwise provided in this Resolution, this Resolution shall apply to **all transhipments undertaken by foreign fishing vessels and to** foreign fishing vessels equal to or greater than 20 meters in length overall.
9. Each CPC shall **gradually** subject foreign fishing vessels below 20 meters length overall, foreign fishing vessels operating under charter as referred to under paragraph 7, and fishing vessels entitled to fly its flag to measures that are at least as effective in combating Illegal, Unreported and Unregulated (IUU)<sup>1</sup> fishing as measures applied to vessels referred to in paragraph 8. **In the application of these measures**

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<sup>1</sup> IUU fishing refers to illegal, unreported or unregulated fishing activities as defined in Annex 1.

CPCs may take into consideration the characteristics of the different fleets. CPCs shall inform the IATTC Director of the application and scope of the measures set out in this paragraph.

10. CPCs shall take necessary action to inform vessel owners, operators and vessel masters of fishing vessels entitled to fly their flag of this and other relevant IATTC Resolutions as well as the representatives of foreign fishing vessels seeking access to their ports.

#### **Points of Contact**

11. Each CPC wishing to grant access to its ports to foreign fishing vessels shall designate a point of contact for the purposes of receiving notifications pursuant to paragraph 17. Each CPC shall designate a point of contact for the purpose of receiving inspection reports pursuant to paragraph 28(b) of this Resolution. It shall transmit the name and contact information for its points of contact to the IATTC Director no later than 30 days following the entry into force of this Resolution. Any subsequent changes shall be immediately notified to the IATTC Director and at least 7 days before such changes take effect. The IATTC Director shall promptly notify CPCs of any such change.
12. The IATTC Director 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 IATTC website.

#### **Designated ports**

13. Each CPC wishing to grant access to its ports to foreign fishing vessels shall designate its ports to which foreign fishing vessels may request entry pursuant to this Resolution.
14. Each CPC wishing to grant access to its ports to foreign fishing vessels shall ensure that it has sufficient capacity to conduct inspections in every designated port pursuant to this Resolution to the greatest extent possible.
15. Each CPC wishing to grant access to its ports to foreign fishing vessels shall provide to the IATTC Director within 30 days from the date of entry into force of this Resolution a list of designated ports. Any subsequent changes to this list shall be notified to the IATTC Director at least 14 days before the change takes effect.
16. The IATTC Director 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 IATTC website.

#### **Prior notification**

17. Each port CPC wishing to grant access to its ports to foreign fishing vessels shall, except as provided under paragraph 18 of this Resolution, require foreign fishing vessels seeking to use its ports for the purpose of landing and/or transshipment to provide, at least 48 hours before the estimated time of arrival at the port, the following information:
  - a) Vessel identification (External identification, Name, Flag CPC, IMO No, if any, and IRCS);
  - b) Name of the designated port, as referred to in the IATTC register, to which it seeks entry and the purpose of the port call (landing and/or transshipment);
  - c) Fishing authorization or, where appropriate, any other authorization held by the vessel to support fishing operations on IATTC-managed 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 IATTC-managed species and/or fish products originating from such species held on board, with associated catch areas. If no IATTC 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 IATTC-managed 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.

18. The port CPC may prescribe a longer or shorter notification period than specified in paragraph 17, taking into account, inter alia, the type of fishery product, the distance between the fishing grounds and its ports. In such a case, the port CPC shall inform the IATTC Director, who shall publish the information promptly on the IATTC website.
19. After receiving the relevant information pursuant to paragraph 17, 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. In case the port CPC decides to authorize the entry of the vessel into its port, the following provisions on port inspection shall apply.

### **Port inspections**

20. Inspections shall be carried out by the competent authority of the port CPC.
21. Each year CPCs shall inspect at least 5% of landing and transshipment operations in their designated ports as are made by foreign fishing vessels.
22. The Port CPC shall, in accordance with its domestic law, take the following, inter alia, into account when determining which foreign vessels to inspect:
  - a) Whether a vessel has failed to provide complete information as required in paragraph 17;
  - b) Requests from other CPCs or relevant regional fisheries management organizations (RFMOs) that a particular vessel be inspected, particularly where such requests are supported by evidence of IUU fishing by the vessel in question;
  - c) Whether clear grounds exist for suspecting that a vessel has engaged in IUU fishing, including information derived from RFMOs.

### **Inspection procedure**

23. Each inspector shall carry a document of identity issued by the port CPC. In accordance with domestic laws, port CPC inspectors may examine all relevant areas, decks and rooms of the fishing vessel, catches processed or otherwise, nets or other fishing gears, equipment both technical and electronic, records of transmissions and any relevant documents, including fishing logbooks, Cargo Manifests and Mates Receipts and landing declarations in case of transshipment, which they deem necessary to ensure compliance with the IATTC Resolutions. They may take copies of any documents considered relevant, and they may also question the Master and any other person on the vessel being inspected.
24. 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 17 and the quantities which are landed, transhipped or held on board by the vessels. 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.
25. 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 competent authority of the CPC. The inspector shall sign the report. The Master shall be given the opportunity to add any comments or objection to the report, to contact the competent authority of the flag CPC. A copy of the report shall be provided to the Master.
26. The port CPC shall transmit a copy of the inspection report electronically or by other means to the flag CPC point of contact and the IATTC Director 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 IATTC Director within the 14 day time period the reasons for the delay and when the report will be submitted.

27. Flag CPCs shall take necessary action to ensure that Masters facilitate safe access to the fishing vessel, cooperate with the competent authority of the port CPC, facilitate the inspection and communication and 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 infringements**

28. If the information collected during the inspection provides evidence that a foreign fishing vessel has committed an infringement of the IATTC Resolutions, 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 IATTC Director and to the flag CPC point of contact;
  - c) to the extent practicable, ensure safekeeping of the evidence pertaining to such alleged infringement.
29. If the infringement falls within the legal jurisdiction of the port CPC, the port CPC may take action in accordance with its domestic laws. The port CPC shall promptly notify the action taken to the competent authority of the flag CPC and to the IATTC Director, who shall promptly publish this information in a secured part of the IATTC website.
30. Infringements that do not fall within the jurisdiction of the port CPC, and infringements referred to in paragraph 29 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, the flag CPC shall promptly investigate the alleged infringement and notify the IATTC Director 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 provide the IATTC Director this status report within 6 months of such receipt, the flag CPC should notify the IATTC within the 6 month time period the reasons for the delay and when the status report will be submitted. The IATTC Director shall promptly publish this information in a secured part of the IATTC website. CPCs shall include in their Compliance questionnaire information regarding the status of such investigations.
31. Should the inspection provide evidence that the inspected vessel has engaged in IUU activities as referred to in Resolution C-05-07, the port CPC shall promptly report the case to the flag CPC and notify as soon as possible the IATTC Director, along with its supporting evidence.

#### **Requirements of developing CPCs**

32. On the basis of the outcome of the assessment exercise set forth in Annex 2 and in paragraphs 1 to3, developing CPCs requiring assistance shall submit a plan of action for the implementation of this Resolution. CPCs shall give full recognition to the special requirements of developing CPCs in relation to a port inspection scheme consistent with this Resolution. As of 1 January 2019, and following the result of the assessment of needs, the Special Sustainable Development Fund established by Resolution C-14-03, either directly or through supplementary voluntary contributions from CPCs, shall provide assistance to developing CPCs in order to, *inter alia*:
  - a) Develop their capacity including by providing technical assistance and establishing an appropriate funding mechanism to support and strengthen the development and implementation of an effective system of port inspection at national, regional or international levels and to ensure that a disproportionate burden resulting from the implementation of this Resolution is not unnecessarily transferred to them and

- 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 Resolution.

### **General provisions**

- 33. CPCs are encouraged to enter into bilateral agreements/arrangements that allow for an inspector exchange program designed to promote cooperation, share information, and educate each party's inspectors on inspection strategies and methodologies which promote compliance with IATTC Resolutions. A description of such programs should be provided to the IATTC Director which should publish it on the IATTC website.
- 34. Without prejudice to the domestic laws of the port CPC, the flag CPC may, in the case of appropriate bilateral 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.
- 35. 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 Resolution.
- 36. The IATTC Director shall develop model formats for prior notification reports and inspection reports required under this Resolution, taking into account forms adopted in other relevant instruments, such as international organisations and other RFMOs, for consideration at the 2018 Annual Meeting of the Commission.
- 37. The Commission shall review this Resolution no later than its 2020 Annual Meeting and, if appropriate, taking into account developments in other RFMOs and/or international for a and consider revisions to improve its effectiveness. The Secretariat will report annually on the implementation of this measure.
- 38. This Resolution shall enter into force on January 1, 2020.

## ANNEX 1

As defined by FAO in the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, IUU fishing means:

**Illegal fishing** refers to fishing activities:

- (1) conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;
- (2) conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or
- (3) in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

**Unreported fishing** refers to fishing activities:

- (1) which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or
- (2) undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.

**Unregulated fishing** refers to fishing activities:

- (1) in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or
- (2) in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

## ANNEX 2

### Assessment of Capacity to Implement

The Secretariat shall, within 30 days following adoption of this Resolution, transmit to all developing CPCs an assessment questionnaire designed to assess, for each obligation anticipated under this resolution, the extent to which each CPC:

1. Is already applying a particular obligation within laws and/or regulations;
2. For each obligation not already applied, the capacity of each CPC to implement it and the approximate time that will be required to do so;
3. For each obligation that a CPC deems inapplicable or unimplementable, request that the CPC provide the reasons for that determination.

The assessment questionnaire shall include the following obligations envisioned in this Resolution, *inter alia*:

1. The ability of the CPC to designate specific port(s) which foreign vessels may enter;
2. The capacity of the CPC to inspect at least 5% of foreign vessels entering the designated ports;
3. The capacity of the CPC to designate and empower a competent national authority to receive and process “Prior Notification” information as required in paragraph 18 from inbound foreign vessels;
4. The capacity under national laws of a CPC to empower inspectors to execute the “Inspection Procedures” in paragraphs 23 to 27;
5. The capacity of the CPC to implement the “Procedure in the event of infringement” set forth in paragraphs 28 to 31;
6. The specific needs identified by the CPC for assistance in the areas of capacity building;
7. Any other areas where capacity building needs have been identified in order to ensure the effective implementation of this Resolution.

Developing CPCs shall respond in full to the Assessment Questionnaire to the Secretariat within 90 days of receipt.

Within 60 days following the deadline for receipt of the completed questionnaires, the Secretariat shall provide all CPCs with a report summarizing the responses, identifying any developing CPCs that may not have responded, and providing a detailed description of identified barriers to implementation.