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IOTC – 2015 – RPSM09a –PSM regulation template EN

**PSM REGULATION TEMPLATE**

### RESOLUTION 10/11 ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING

**Proposed Legislative Framework**

**PORT STATE MEASURES**

**Interpretation**

1. For the purposes of this section:
	1. [“fish”, in addition to any other definition given in this [legislation] means all species of living marine resources, whether processed or not, [and for purposes of application to the IOTC area of competence, means all species of highly migratory fish stocks covered by the IOTC Agreement];]
	2. “fishing” means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;
	3. “fishing related activities” means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transhipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;
	4. “illegal, unreported and unregulated fishing” includes the activities described in an applicable international agreement or conservation and management measure [including paragraph 1 of IOTC Resolution 09/03, superseded by Resolution 11/03];
	5. “port” includes offshore terminals and other installations for landing, transhipping, packaging, processing, refuelling or resupplying;
	6. “use of port” means use for landing, transhipping, packaging, or processing of fish or for other port services including, inter alia, refuelling and resupplying, maintenance and dry docking; and
	7. “vessel” means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities.

**Objective**

1. The objective of this section is to prevent, deter and eliminate IUU fishing through the implementation of effective port State measures and thereby to ensure the long-term conservation and sustainable use of living marine resources and marine ecosystems.

**Application**

1. This section applies to:
	1. vessels not entitled to fly the flag of [country] that are seeking entry to a port or are in a port of [country], except for:
		1. vessels of a neighbouring State that are engaged in artisanal fishing for subsistence, provided that there is cooperation between [country] and such neighbouring State to ensure that such vessels do not engage in IUU fishing or fishing related activities in support of such fishing ; and
		2. container vessels that are not carrying fish or, if carrying fish, only fish that have been previously landed, provided that there are no clear grounds for suspecting that such vessels have engaged in fishing related activities in support of IUU fishing.
	2. persons, vessels, vehicles, aircraft, export facilities or other craft or place engaged in or otherwise connected with any activity falling within the scope of this legislation;
	3. All fishing and fishing related activities in support of such fishing:
		1. in areas over which [country] exercises jurisdiction or sovereign rights;
		2. in areas beyond national jurisdiction:
			1. by [country] nationals, including vessels and persons and all persons on board such vessels or dealing with them or having any relevant relationship to them or to persons on them, to the extent that it does not conflict with the jurisdiction of another State;
			2. as required pursuant to this [legislation], international agreement or conservation and management measures;
			3. otherwise in relation to illegal, unreported and unregulated fishing and fishing related activities in support of such fishing consistent with international law.
2. This section shall be applied in a fair, transparent and non-discriminatory manner, consistent with international law.

**Designation of ports**

1. The [Minister] shall:
	1. designate and publicise the port or ports to which vessels may request entry; and
	2. provide a list of each port designated pursuant to paragraph (a) to FAO and to any RFMO pursuant to an applicable conservation and management measure.

**Prerequisites for entry or use of port**

1. The operator of a vessel shall not enter or use a port in [country] unless:
	1. where ports have been designated and publicised in accordance with subsection (5), such port has been so designated and publicised;
	2. the operator has requested entry into port and provided the information in [Annex \*\* of the legislation, which should incorporate Annex 1 of the Resolution]:
		1. at least 24 hours before entering into port; or
		2. immediately after the end of the fishing operations, if the time distance to the port is less than 24 hours [and the time of submission is provided to, the [official] [at least [XX] hours before entering into port]; and
	3. the [senior operational fisheries official] has authorized entry of such vessel into port and communicated such authorization to the master of the vessel and any lawful representative of the vessel in [country]; and
	4. Upon the vessel’s arrival at port, the master of the vessel or the vessel’s representative has presented the authorization for entry into the port to [official].

**Denial of entry into port and use of port**

1. The [official], where there is sufficient proof that a vessel seeking entry into a port of [country] has engaged in IUU fishing or fishing related activities in support of such fishing, in particular where it is an IUU listed vessel:
	1. shall not authorise such vessel to enter port, and shall deny entry to such vessel; or
	2. notwithstanding paragraph (a), may allow such vessel to enter a port exclusively for the purpose of inspecting it and taking other appropriate actions in conformity with international law which are at least as effective as denial of port entry in preventing, deterring and eliminating IUU fishing and fishing related activities in support of such fishing; and
	3. shall communicate any decision taken pursuant to paragraphs (a) or (b) to the vessel or its representative.
2. Where a vessel has been allowed entry pursuant to subsection (7)(b), it shall not use, or be authorized to use the port.
3. The [official] may deny entry into and use of a port to any vessel that the [official] has reasonable grounds to believe has violated this [legislation].
4. Where entry is denied under subsection (7)(a), (8) or (9), the [official] shall notify the decision to the flag State of the vessel and, as appropriate, to each relevant coastal State, RFMO and other international organization.

***Force majeure* or distress**

1. Nothing in this [legislation] affects the entry of a vessel to port in accordance with the laws of [country] for reasons of *force majeure* or distress, providing:
	1. a claim of *force majeure* or distress shall not apply where:
		1. it is contrived, untrue or otherwise intentionally created; or
		2. its objective is to avoid liability,

and any person who makes an inapplicable claim commits an offence;

* 1. the burden of proof that a claim of *force majeure* or distress is valid and does not fall within prohibitions in paragraph (a) shall be on the vessel operator;
	2. an [official – e.g. authorized officer] may board and inspect the vessel at any time for the purpose of verifying the claim of *force majeure* or distress; and
	3. a vessel that claims *force majeure* or distress shall be subject to the direction of [official].
1. The [relevant official, and if not a fisheries official then in consultation with a designated fisheries official] may grant a vessel that falls within the scope of this [legislation] entry into port for reasons of *force majeure* or distress, provided that:
2. the vessel may enter port under its claim of *force majeure* or distress for such period of time necessary to remedy such claim; and
3. the vessel is permitted entry exclusively for the purpose of rendering assistance to persons or vessels in danger or distress.

**Denial of use of port after entry**

1. Where a vessel that has been authorized to enter port pursuant to subsection 6(c) has entered a port, the [official] shall deny such vessel the use of port if:
	1. the vessel does not have a valid and applicable authorisation to engage in fishing or fishing related activities required by:
		1. its flag State; or
		2. a coastal State in respect of areas under its national jurisdiction;
	2. there is clear evidence that the fish on board was taken in contravention of applicable requirements of a coastal State in respect of areas under the national jurisdiction of that State;
	3. the flag State does not confirm within a reasonable period of time, on the request of the [senior operational fisheries official], that the fish on board was taken in accordance with applicable requirements of a relevant regional fisheries management organization; or
	4. there are reasonable grounds to believe that the vessel was otherwise engaged in IUU fishing or fishing related activities in support of IUU fishing unless the operator or charterer of the vessel can establish:
		1. that it was acting in a manner consistent with relevant conservation and management measures, including IOTC conservation and management measures; or
		2. in the case of provision of personnel, fuel, gear and other supplies at sea, that the vessel that was provisioned was not, at the time of provisioning, a vessel that had engaged in IUU fishing as described in subsection (6).

1. Notwithstanding subsection (13), the [official] shall:
	1. not deny a vessel the use of port services:
		1. where such services are essential to the safety and health of the crew or the safety of the vessel, provided these needs are duly proven; or
		2. as appropriate, for the scrapping of the vessel; and
	2. where the use of port has been denied, notify the decision to the flag State of the vessel and, as appropriate, to each relevant coastal State, RFMO and other international organization.
2. Where the use of port has been denied pursuant to subsection (13), such denial may be withdrawn [by – identify consultative process as appropriate, e.g. [official] on the advice of Attorney General) shall:
	1. withdraw such denial 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; and
	2. promptly notify the withdrawal to each person that was notified pursuant to subsection 14(b).

**Conduct of inspections of vessels in port**

1. The [official(s) responsible for the lead agency/agencies that will be conducting inspections] shall conduct vessel inspections as necessary for the purposes of this [legislation].
2. The [official] shall prioritize vessel inspections based on:
	1. vessels that have been denied entry or use of a port in accordance with the Agreement and/or an applicable conservation and management measure;
	2. a request from another State or RFMO to inspect a certain vessel, particularly where the request is supported by evidence of IUU fishing or fishing-related activities in support of IUU fishing by the vessel in question; and
	3. whether there are clear grounds for suspecting that a vessel has engaged in IUU fishing or fishing related activities in support of such fishing.
3. The [official] shall, to the extent possible, ensure inspection of a level of vessels as may be required by an applicable conservation and management measure.
4. During inspections of a vessel in port, inspectors shall carry out inspection in conformity with such procedures as may be determined, and complete a written report of the inspection in the form provided in [Annex \*\* of the legislation, or otherwise refer to the requirements of Annex III of the Resolution] and submit it to [official].
5. The master of the vessel shall, in relation to inspection of the vessel, give inspectors all necessary assistance and information, and present relevant material and documents as may be required, or certified copies thereof.
6. The [official] shall transmit the results of an inspection under this [legislation] to:
7. the flag State of the inspected vessel;
8. as appropriate, [relevant Party to the Agreement];
9. relevant coastal State and the State of which the vessel master is a national;
10. relevant RFMO(s); and
11. FAO and other relevant international organizations.

**Denial of use of port after inspection**

1. Where, following an inspection, there are clear grounds for believing that a vessel has engaged in IUU fishing or fishing related activities in support of such fishing, the [official] shall:
	1. promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other international organizations, and the State of which the vessel’s master is a national of the findings; and
	2. deny the vessel the use of its port, if these actions have not already been taken in respect of the vessel.
2. Notwithstanding paragraph 22(b), the [official] shall not deny a vessel the use of port services, where such services are essential to the safety and health of the crew or the safety of the vessel, provided these needs are duly proven.

**Prohibited to use or assist, etc in the use of port in absence of authorization or after denial**

1. Where a vessel:
	1. is in port in contravention of:
		1. the requirements in subsection 6;
		2. an applicable denial of authorization to enter port pursuant to subsection 7(a);
	2. has been permitted to enter port exclusively for the purpose of:
		1. inspection pursuant to subsection 7(b);
		2. rendering assistance to persons or vessels in danger or distress pursuant to subsection11;\*\* or
	3. has been denied the use of port pursuant to subsection 13 or 22(b);

no person, including the operator or crew member of such vessel or any person that is acting directly or indirectly in relation to the vessel, shall:

* 1. engage in the use of such port or cause such port to be used; or
	2. allow or assist , directly or indirectly, the use of port by such vessel,

unless the [official] permits in writing services to be used for the safety or health of the crew or the safety of the vessel in accordance with this [legislation] and port is used exclusively for such purposes.

**Requirements for [country] vessels**

1. The operator of each [country] vessel shall:
	1. cooperate fully with inspections carried out in the ports of other States in accordance with their laws and procedures; and
	2. not land, transship, package and process fish, and use other port services, in a port State identified by a relevant RFMO as not acting in accordance with, or in a manner consistent with, applicable international or regional instruments relating to port State measures.
2. Where there are clear grounds to believe that a [country] vessel has engaged in IUU fishing or fishing related activities in support of such fishing and is seeking entry to or is in the port of another State, [official] shall, as appropriate request such State to inspect the vessel or take other measures consistent with applicable international or regional instruments.

1. Where, following port State inspection, there are clear grounds to believe that a [country] vessel has engaged in IUU fishing or fishing related activities in support of such fishing, [official] shall cause the matter to be immediately and fully investigated and, upon sufficient evidence enforcement action to be taken without delay in accordance with [legislation].