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PROPOSED VOLUNTARY GUIDELINES FOR CATCH DOCUMENTATION SCHEMES - A PROPOSAL FROM NORWAY

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Part One--Information Note

Noting the mandate provided by the thirty-first session of the Committee on Fisheries (COFI) in June 2014 and the FAO Report of the Expert Consultation on Catch Documentation Schemes (CDS) held in July 2015, Norway, following contact with the FAO Secretariat, developed an alternative proposal for Voluntary Guidelines for CDS.

The purpose of developing guidelines for CDS is to establish systems that effectively prevent fish stemming from illegal, unreported and unregulated (IUU) fishing from being introduced to markets. At the same time global trade in seafood is increasing, and developing countries account for more than half seafood exports. In elaborating guidelines, it should be ensured that seafood trade is not met with yet another layer of technical barriers to trade.

Our goal is to balance the need for simple, clear and transparent rules with the need to elaborate guidelines that will effectively prevent IUU fish from entering the market. This will be in the interest of importing states that wish to introduce CDS and for exporting states that would need to comply with the requirements of such systems.

This proposal provides guidelines that are simple, clear, transparent and user-friendly, taking into account that the guidelines should be tailored in such a manner that all states are able to implement and comply with their requirements, and at the same time being an effective instrument in preventing IUU fish from entering markets.

The proposal highlights the six overarching basic principles for CDS adopted by COFI (listed in point 3), with key elements building on the premise that such schemes should be risk-based in their design and implementation, as well as ensuring even-handedness and proportionality. Furthermore, the proposal recognizes the primary responsibility of the flag state to prevent, deter and eliminate IUU fishing and that CDS are an important tool to prevent the introduction of IUU fish into markets, keeping in mind that such schemes must be seen in conjunction with other instruments to combat IUU fishing.

The basic structure of this alternative proposal follows the structure of the draft guidelines from the FAO Expert Consultation, and includes various technical elements from the Expert Consultation draft, as well as the special recognition of the needs and requirements of developing countries. In this context, it is important to stress that Norway does not envisage a "state of the art" system without due account being taken of how complicated, costly or resource-demanding such a system can be. Thus, we consider that this proposal strikes a realistic and practicable balance when it comes to developing requirements for CDS.

Part Two—Main Text

1. Scope and Objective

- a) These Guidelines are voluntary and cover Catch Documentation Schemes (CDS) for wild capture fish caught for commercial purposes in marine or fresh water areas, whether processed or not.
- b) These guidelines are elaborated recognizing that all available means in accordance with international law, including port state measures, coastal state measures, market related measures, and other measures, should be used to prevent, deter and eliminate illegal, unreported, and unregulated (IUU) fishing. CDS build on the primary responsibility of the flag state to prevent, deter and eliminate IUU fishing. They also constitute a valuable supplement to port state and other measures.

- c) The objective of these Guidelines is to provide assistance to states, regional fisheries management organisations, regional economic integration and other intergovernmental organisations when developing, implementing, harmonising or reviewing CDS to prevent fish derived from IUU fishing from entering domestic and international markets.
- d) States should give full recognition to the special requirements of developing states when implementing CDS.
- e) States, relevant international organisations, whether governmental or non-governmental, and financial institutions are encouraged, individually or through coordination, to provide assistance and capacity building, including financial and technical assistance, technology transfer and training for developing states in order to achieve the objectives of these Guidelines and to support its effective implementation, especially regarding issuance of electronic catch certificates.

2. Definitions

For the purposes of these Guidelines:

- a) “Catch Documentation Scheme”, means a system with the primary purpose of helping determine whether imported fish originate from catches taken consistent with applicable national, regional and international conservation and management measures, established in accordance with international obligations¹, hereinafter referred to as “CDS”;
- b) “Catch certificate” means a document accompanying an exported consignment that is validated by a competent authority and includes relevant information concerning catch and trade of the product covered by the catch certificate;
- c) “Fish” means all species of wild capture living marine resources as well as freshwater fish, whether processed or not;
- d) “Consignment” means fish which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee;
- e) “Fishing vessel” means any vessel used or intended for use for the purposes of the commercial exploitation of fish, including mother ships and any other vessels directly engaged in such fishing operations;
- f) “Format” means the technical and information requirements relating to the catch certificate;
- g) “Illegal, unreported and unregulated fishing” means the activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, hereinafter referred to as “IUU fishing”; and
- h) “Regional fisheries management organisation” means a subregional, regional or a similar organisation with competence, as recognised under international law, to establish conservation and management measures for living marine resources placed under its responsibility by virtue of the convention or agreement by which it was established, hereinafter referred to as RFMO.

¹ Including, inter alia, the United Nations Convention on the Law of the Sea, the United Nations Fish Stocks Agreement, the FAO Code of Conduct for Responsible Fisheries, the FAO Port State Measures Agreement, the FAO Voluntary Guidelines for Flag State Performance and the FAO International Plan of Action on IUU.

3. Basic principles

The Guidelines are based on the principles that CDS should:

- a) Be in conformity with the provisions of relevant international law;
- b) Not create unnecessary barriers to trade;
- c) Recognize equivalence;
- d) Be risk-based;
- e) Be reliable, simple, clear and transparent; and
- f) Be electronic, if possible.

4. Application of basic principles

The application of the principles set out in paragraph 3 should be guided by the following:

- a) Any measure taken should be consistent with the rights and obligations established by international law, in particular the World Trade Organization agreements, the United Nations Convention on the Law of the Sea, and should take into account the FAO Code of Conduct for Responsible Fisheries;
- b) To avoid unnecessary barriers to trade, a CDS should clearly define its objective and be designed to minimise the burden on those affected by its requirements. The least trade restrictive measure to achieve the objective should be chosen when a measure is introduced;
- c) Measures should be non-discriminatory. In order to ensure even-handedness in the application of a CDS, an explanation should be provided in the notification referred to in paragraph 4 (e) if domestic and imported fish are treated differently;
- d) CDS should be designed and implemented based on risk analysis and be proportionate to the risk that IUU fishing poses on the relevant stocks and markets. A risk assessment should include:
 - i. the systematic identification of risk and the implementation of all measures necessary for limiting exposure to risk. This includes activities such as collecting data and information, analysing and assessing risk, prescribing and taking action, including regular monitoring and review;
 - ii. consideration of the biological status of the fish stock, in particular if it is overfished, overfishing is occurring, or is in danger of being overfished;
 - iii. consideration of the effectiveness of existing conservation and management measures in place, including monitoring, control and surveillance measures;
 - iv. consideration of any IUU fishing activities within, *inter alia*, fish stocks, fleet, geographical area, or fishery that impact negatively on management and control measures, fisher's income and livelihood, markets and other relevant factors; and
 - v. consideration of whether the vessels or fleets in question are flying the flag of a state that has not implemented key international obligations and guidelines²;

² Including, *inter alia*, the United Nations Convention on the Law of the Sea, the United Nations Fish Stocks Agreement, the FAO Code of Conduct for Responsible Fisheries, the FAO Port State Measures Agreement, the FAO Voluntary Guidelines for Flag State Performance and the FAO International Plan of Action on IUU.

- e) Every effort should be made to ensure that CDS are only implemented where they can be an effective means to prevent products derived from IUU fishing from entering trade and markets. Moreover, catch certificates should only contain verifiable information that is relevant, necessary and readily available. The certificate should be user friendly, simple and clear in order to ensure that the correct information is included in the document. A proposed measure should be notified and a reasonable time for comments should be given before the measure is adopted. Adopted measures should be made available on relevant websites³; and
- f) Electronic systems should be used to reduce the risk of falsification. The systems should:
- i. serve as the point of issuance, validation and verification of catch certificates and should function as the repository of catch certificate data;
 - ii. be based on agreed international standards and formats for information exchange and data management, ensuring that its components provide for interoperability;
 - iii. be flexible, user friendly and minimise the burden on users. Functions such as routines for uploading of scanned documents, printing of documents and cancelling documents should be considered;
 - iv. include secure access by use of logins and passwords or by other appropriate means;
 - v. specify which parts, functions and levels of the system the individual user or user group may have access to;
 - vi. facilitate the documentation flow; and
 - vii. provide for greater flexibility in the information requirements.

5. Cooperation and notification

1. Regional or multilateral CDS are preferred over unilateral measures taken by individual importing states, in order to provide a high level of inclusion, consistency, and involvement of relevant parties and to facilitate trade for the operators affected by the measure. To this end, states are urged to seek regional or multilateral arrangements, based on the risk assessment approach and cost-effectiveness considerations, before introducing unilateral measures.
2. The importing state should make every effort to cooperate administratively with the exporting states in the implementation and administration of CDS. Such cooperation should aim to:
 - a) ensure that imports of fish originate from catches made in compliance with applicable legislation;
 - b) facilitate the importation of fish and the verification requirements of catch certificates; and
 - c) provide for the establishment of a framework for the exchange of information.
3. For the purpose of these Guidelines, the acceptance of catch certificates validated by a competent authority shall be subject to the condition that the importing state has received a notification from the exporting state concerned certifying that:
 - a) it has in place national arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures that must be complied with by its fishing vessels;
 - b) its competent authorities are empowered to attest to the veracity of the information contained in catch certificates and to carry out verifications of such certificates on request from the importing

³ For the purpose of these Guidelines, such notifications should, as a minimum, be made available on the website of the State proposing or implementing a measure and on the WTO and FAO websites.

state. The notification should also include the necessary information to identify and contact those authorities; and

- c) if the information provided in the notification is incomplete, the importing state or RFMO should indicate to the state validating the catch certificate, without delay, which elements are missing and request that it provide a new notification as soon as possible.

6. Recommended functions and standards

1. The CDS should be based on a clearly defined objective, enabling determination of the level of traceability and functions required. It should be designed to meet its objective and minimize the burden on users.
2. The CDS should clearly specify to which fish it applies and whether there are product types, such as fishmeal and fish oil, that are exempted.
3. The CDS should define at which levels of the supply chain validation by a competent authority is required. Validation of the information relating to the catch should be done by:
 - a) the competent authority of the flag state; or
 - b) the competent authority of a coastal state that has authorized chartered vessels not flying its flag to operate in areas under its jurisdiction.

Importing states may request verification by the authority validating the catch certificate.

4. The CDS should include requirements for unique, secure document numbers. In the case of split consignments, or processed products, copies of the original certificate should be numbered by supplementing the number of the original certificate with an additional number.
5. When establishing a CDS, due consideration should be given to:
 - a) applicable monitoring, control and surveillance requirements;
 - b) relevant standards for information exchange and data confidentiality;
 - c) the operative languages necessary for the effective functioning of the Scheme. English should be accepted;
 - d) establishing user manuals describing the requirements of the Scheme.

7. Formats

1. Format I catch certificates should be used if an RFMO or an importing state, based on a risk assessment, decides to introduce a CDS.
2. Format I catch certificates should comprise information such as a unique secure document number, catch and landing information, details on the issuing authority, transport details, description of exported product, information on the exporter, flag state validation and import information.⁴
3. Format II catch certificates should be used if more substantive information is needed to ensure the effective implementation of applicable monitoring, control and surveillance requirements as well as the CDS to prevent IUU fish from being introduced into the market.⁵

⁴ To be elaborated in an Annex.

⁵ To be elaborated in an Annex. Format II certificates are certificates such as the International Commission for the Conservation of Atlantic Tunas (ICCAT) Bluefin tuna Catch Document and the Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR) Catch Document for Patagonian toothfish.