

Draft ANNEX

**CONDITIONS FOR THE PURSUIT OF FISHING ACTIVITIES BY EUROPEAN UNION VESSELS
UNDER THE PROTOCOL SETTING OUT THE FISHING OPPORTUNITIES AND THE
FINANCIAL CONTRIBUTION PROVIDED FOR BY THE SUSTAINABLE FISHERIES
PARTNERSHIP AGREEMENT BETWEEN THE EUROPEAN UNION AND THE COOK ISLANDS**

CHAPTER I – GENERAL PROVISIONS

***Section 1
Definitions***

1. "Competent authority" means:
 - a. for the European Union (hereafter the Union): European Commission;
 - b. for the Cook Islands: Ministry of Marine Resources.

The contact details of the respective competent authorities are in Appendix 1.

2. "Fishing authorisation" means a valid entitlement or license to engage in fishing activities, for specific species, using specific gears, within the specified fishing areas in accordance with the terms provided under this Annex.
3. "Delegation" means the Delegation of the European Union in Suva, Fiji.
4. "Force Majeure" means the loss or prolonged immobilisation of a vessel due to a serious technical failure.

***Section 2
Fishing areas***

1. Union vessels in possession of a fishing authorisation issued by the Cook Islands under the Agreement shall be authorised to engage in fishing activities in the Cook Islands' fishing areas, meaning the Cook Islands' fishery waters except protected or prohibited areas. The coordinates of the Cook Islands' fishery waters and of protected areas or closed fishing areas shall be communicated by the Cooks Islands to the Union prior to the start of provisional application of the Agreement.
2. The Cook Islands shall communicate to the Union any modification to the said areas in line with the provisions of Article 11 of the Agreement.

***Section 3
Vessel agent***

All Union vessels applying for a fishing authorisation may be represented by an agent (company or individual) resident in the Cook Islands, duly notified to the Cook Islands' competent authority.

Section 4
Eligible Union vessels

For a Union vessel to be eligible to obtain a fishing authorisation, neither the owner, the master nor the vessel itself must be prohibited from fishing in the Cook Islands' fishery waters. They must be in order with the laws of the Cook Islands and they must have fulfilled all prior obligations arising from their fishing activities in the Cook Islands under fisheries agreements concluded with the Union. Moreover, they shall comply with the relevant Union legislation regarding fishing authorisations, be on the WCPFC Record of fishing vessels, be on the FFA Good standing register and not be on a RFMO IUU vessels list.

CHAPTER II - MANAGEMENT OF FISHING AUTHORISATIONS

Section 1
Period of validity of the fishing authorisation

1. The fishing authorisation issued under the Protocol shall be valid for a 12-months period and be renewable. In order to establish the start of the period of validity, annual period shall mean:
 - a. for the year during which the Protocol enters into provisional application, the period between the date of its entry into provisional application and 31 December of the same year;
 - b. then, each complete calendar year;
 - c. for the year during which the Protocol expires, the period between 1 January and the date of expiry of the Protocol.
2. For the first and for the last annual period the payment due by shipowners under Section 5, paragraph 2 should be calculated on the prorata temporis basis.

Section 2
Application for fishing authorisation

1. Only eligible Union vessels, as defined in chapter I, section 4 of this Annex, may obtain a fishing authorisation.
2. The Union competent authority shall submit electronically to the competent authority of the Cook Islands, with a copy to the Delegation, a fishing authorisation application for each vessel wishing to fish under the Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands (hereafter the Agreement) at least 20 working days before the start of the annual period of validity of the fishing authorisation as specified in Section 1 of this Chapter.
3. Where a fishing authorisation application has not been submitted prior to the start of the annual period of validity, the shipowner may still do so no later than 20 working days before the requested start of fishing activities. In such cases, the fishing authorisation will be valid

only until the end of the annual period during which it has been requested. The shipowners shall pay the advance fees due for the full validity period of the fishing authorisation.

4. For each initial application for a fishing authorisation, or following a major technical change to the vessel concerned, the application shall be submitted by e-mail by the Union to the competent authority of the Cook Islands using the form in Appendix 2 and shall be accompanied by the following documents:
 - a. proof of payment of the advance fee for the period of validity of the fishing authorisation;
 - b. recent (12 months or less) date-stamped digital colour photographs of the vessel of a resolution 72dpi, 1400x1050 pic. showing a lateral view of the vessel including the vessel's name in ISO basic Latin alphabet;
 - c. copy of the safety equipment certificate of the vessel;
 - d. copy of the registration certificate of the vessel;
 - e. copy of the ship sanitation control certificate;
 - f. copy of Certificate of registration under the FFA Good standing register
 - g. stowage plan.
5. For the renewal of the fishing authorisation of a vessel whose technical specifications have not been modified, the renewal application shall only be accompanied by the proof of payment of the advance fee, current certificate of registration under the FFA Good standing register and copies of any renewed certificates as listed in points c, d and e.
6. The advance fee shall be paid into the bank account provided by the Cook Islands authorities. The inherent costs linked to bank transfers shall be borne by shipowners.
7. Payments shall include all national and local charges except for port taxes and service charges.
8. Should an application happen to be incomplete or otherwise does not satisfy the conditions under points 4, 5, 6 and 7 above, the Cook Islands authorities shall, within 7 working days of receipt of the electronic application, notify the competent authority of the Union, with a copy to the Delegation, of the reasons for the application to be considered incomplete or otherwise not satisfying the conditions under points 4, 5, 6 and 7.

Section 3
Issue of fishing authorisation

1. The fishing authorisation shall be issued by the Cook Islands within 15 working days of receipt of the complete application by e-mail.
2. The fishing authorisation shall be transmitted without delay by electronic means by the competent authority of the Cook Islands to the shipowner and to the competent authority of the Union with a copy to the Delegation. At the same time, a fishing authorisation in paper form shall be sent to the shipowner.

3. Upon issuing the fishing authorisation, the Cook Islands' competent authority shall include the vessel on a list of Union vessels authorised to fish in the Cook Islands' fishing areas. This list shall be made available to all relevant monitoring, control and surveillance entities of the Cook Islands and to the Union competent authority with a copy to the Delegation.
4. The electronic form of the fishing authorisation will be replaced by a paper form at the earliest opportunity.
5. A fishing authorisation shall be issued for a specific vessel and shall not be transferable except in cases of force majeure, as outlined in Section 4 below.
6. The fishing authorisation (in electronic or paper form when available) must be kept on board the vessel at all times.

Section 4

Transfer of fishing authorisation

1. Where *force majeure* is proven and at the request of the Union, a vessel's fishing authorisation may be transferred, for the remaining period of its validity, to another eligible vessel with similar characteristics, without payment of a new advance payment.
2. Should the Cook Islands' competent authority authorise the transfer, the shipowner of the first vessel, or the vessel agent, shall return its fishing authorisation to the competent authority of the Cook Islands and inform the Union authority and the Delegation.
3. The new fishing authorisation shall take effect on the day the fishing licence of the vessel affected by force majeure is received by the competent authority of the Cook Islands. The returned authorisation shall be considered cancelled. The Union authority and the Delegation shall be informed by the Cook Islands' authority of the fishing authorisation transfer.

Section 5

Fishing authorisation conditions – fees and advance payments

1. The fees to be paid by shipowners shall be calculated on the basis of the following rate per tonne of fish caught:

For the first year of application of the Protocol, EUR fifty five (55) per tonne;
For the second year of application of the Protocol, EUR sixty five (65) per tonne;
For subsequent years of application of the Protocol, EUR seventy (70) per tonne;

2. The fishing authorisations shall be issued once the following amounts have been paid by shipowners to the Cook Islands:

A) an annual advance payment fee:

- a. for the first year of application of the Protocol, the advance payment shall be EUR twenty-two thousand (22,000), which is the equivalent of EUR fifty-five (55) per tonne for four hundred (400) tonnes of tuna and tuna like species caught within the Cook Islands fishing areas.

- b. for the second year of application of the Protocol, the advance payment shall be EUR twenty-six thousand (26,000), which is the equivalent of EUR sixty-five (65) per tonne for four hundred (400) tonnes of tuna and tuna like species caught within the Cook Islands fishing areas.
- c. for subsequent years of application of the Protocol, the advance payment shall be EUR twenty-eight thousand (28,000), which is the equivalent of EUR seventy (70) per tonne for four hundred (400) tonnes of tuna and tuna like species caught within Cook Islands fishing areas.

B) a special annual contribution for fishing authorisation of the amount of EUR 38 500 per Union vessel.

The first year of application of the Protocol means the period from the starting date of its provisional application until 31 December of that year. The final year is the period between 1 January and the anniversary date of the provisional application. For the first and the final year the shipowners' contribution shall be calculated on a pro rata temporis basis.

Section 6

Final statement of fees

1. The Cook Islands authority shall draw up a statement of fees due in respect of the previous calendar year on the basis of catch declarations submitted by Union vessels.
2. The statement shall be sent to the Union authority with a copy to the Delegation before 31 March of the current year. The Union authority shall transmit it before 15 April simultaneously to shipowners and national authorities of the concerned Member States.
3. Where the shipowners do not agree with the statement submitted by the Cook Islands' authority, they may request the Union authority to consult the scientific institutes competent for verifying catch statistics such as the IRD (Institut de Recherche pour le Développement), the IEO (Instituto Español de Oceanografía) and IPIMAR (Instituto de Investigação das Pescas e do Mar), and thereafter discuss together with the Cook Islands' authority, and keep informed the Union authority and the Delegation thereof, to establish the final statement before 31 May of the current year. In the absence of observations by the shipowners at that date, the statement submitted by the Cook Islands' authority shall be considered as the final one. Where the final statement is less than the advance payment referred to in Section 5 paragraph 2, the balance shall not be recoverable by the shipowner.

CHAPTER III – MONITORING

Section 1

Catch recording and reporting

1. The Union vessels authorised to fish in the Cook Islands' fishing areas under the Agreement shall communicate their catches to the competent authority of the Cook Islands in the following manner, until such time as an Electronic catch Reporting System, referred to as ERS, is implemented by both Parties.

2. The Union vessels authorised to fish in Cook Islands' fishing areas shall fill in a fishing logbook sheet as set out in Appendix 3 for each day of presence in the Cook Islands' fishing areas. In the absence of catches or when the vessel is only transiting, the form shall still be filled in. The form shall be filled in legibly and signed by the master of the vessel or his representative.
3. While in the Cook Islands' fishing areas, Union vessels shall report to the competent authority of the Cook Islands every seven days a summary of the fishing logbook under point 2 using the Template N°3 of Appendix 4.
4. As far as the submission of the fishing logbook sheets referred to in point 2 is concerned, the Union vessels shall:
 - a. in the case they call into a Cook islands' Port of entry (Avarua, Avatui, Arutanga, Tuanganui, Omoka, Tauhunu, Tukao, Yato), submit the completed form to the respective Cook Islands authority within five (5) days of arrival, or in any event before they leave port, whichever occurs first. The Cook Islands' authority shall deliver a written receipt;
 - b. when leaving the Cook Islands' fishing areas without first passing through a Cook Islands' Port of Entry, copies of logbook sheets shall be sent within a period of fifteen (15) working days after leaving the Cook Islands' fishing areas by the following means ;
 - i. by e-mail, to the e-mail address of the Cook Islands' competent authority; or
 - ii. by fax, to the number given by the Cook Islands' competent authority.

The original of each fishing logbook should be sent within a period of seven (7) working days following the first call in a port after leaving the Cook Islands' fishing areas.

5. Copies of these fishing logbook sheets must simultaneously be sent to the scientific institutes referred to in Chapter II, Section 6, point 3, within the same time frame as provided in point 4 above.
6. The words "Cook Islands' fishing areas" shall be entered in the abovementioned logbook sheets in respect of periods during which the vessel is in the Cook Islands' fishing areas.
7. The two Parties will endeavour to implement an ERS related to the fishing activities of the Union vessels in Cook Islands' fishing areas, subject to a common agreement on guidelines for the management and implementation of an ERS.
8. Once the electronic system of catch declaration is implemented it will fully replace the recording provisions outlined in points 2 to 4 above, except in case of technical problems or malfunction, where declarations of catches shall be made pursuant to points 2 to 4 above.

Section 2

Communication on entering and leaving the Cook Islands' fishery waters

1. Without prejudice to the obligations in Section 1 of this Chapter, Union vessels authorised to fish under the Agreement shall notify the Cook Islands' authority at least 24 hours in advance of their intention to enter or exit the Cook Islands' fishing areas.

2. When notifying entry/exit, vessels shall also communicate the volume and species in catches kept on board. The vessel shall also communicate its estimated position at the time of estimated entry/exit. These communications shall be made in the format set out in Appendix 4, Templates N°1 and N°2, by fax or e-mail, to the contacts provided therein.
3. Union fishing vessels found to be fishing without the prior notification of entry under point 2 of this Section, shall be deemed as vessels without a fishing authorisation. The sanctions referred to in Chapter V will be applicable in such cases.

Section 3
Landing

1. The designated ports for landing activities in the Cook Islands are the Ports of Avatui and Omoka.
2. Union vessels in possession of a Cook Islands' fishing authorisation wishing to land catches in the Cook Islands' designated ports shall notify the following information to the competent authority of the Cook Islands at least 72 hours in advance:
 - a. the landing port;
 - b. the name and IRCS of the landing fishing vessel;
 - c. the date and time of landing;
 - d. the quantity in Kg, rounded to the nearest 100Kg, by species to be landed;
 - e. the product presentation.
3. Vessels must submit their Landing Declarations to the competent authority of the Cook Islands, no later than 48 hours after completion of the landing, or in any event, before the vessel leaves port, whichever occurs first.

Section 4
Transshipment

1. Union vessels in possession of a Cook Islands' fishing authorisation wishing to tranship catches in the Cook Islands' fishery waters shall do so only within the Cook Islands' designated ports as stated in Chapter III section 1 paragraph 4(a). Transshipment at sea outside ports is prohibited and any person infringing this provision shall be liable to the penalties provided for by the Cook Islands' law.
2. The shipowner or the vessel agent must notify the following information to the competent authority of the Cook Islands at least 72 hours in advance:
 - a. the transshipment port where the operation will occur;
 - b. the name and IRCS of the donor fishing vessel;
 - c. the name and IRCS of the receiving fishing vessel;
 - d. the date and time of transshipment;

- e. the quantity in Kg, rounded to the nearest 100Kg, by species to be transhipped;
 - f. the product form presentation.
3. Vessels shall submit their transhipment declarations to the competent authorities of the Cook Islands, no later than 48 hours after completion of the transhipment, or in any event, before the donor vessel leaves port, whichever occurs first.

Section 5
Vessel Monitoring System (VMS)

Without prejudice to the competence of the Flag State and the obligations of Union vessels towards their Flag State Fishing Monitoring Centre, each Union vessel shall comply with the FFA Vessel Monitoring System (FFA VMS) currently applicable in the Cook Islands' fishing areas.

Section 6
Observers

1. Union fishing vessels in possession of a Cook Islands' fishing authorisation, while operating in the Cook Islands' fishing areas shall ensure observer coverage in accordance with the relevant WCPFC conservation and management measures and the relevant Cook Islands' legislation.
2. Union vessels shall carry on board an authorised observer from the WCPFC Regional Observer Programme or an IATTC observer authorised through the Memorandum of Understanding agreed between the WCPFC and IATTC on the cross-endorsement of observers.

CHAPTER IV - CONTROL

1. Union vessels shall comply with the relevant provisions of the national legislation of the Cook Islands regarding fishing activities, as well as with the conservation and management measures adopted by the WCPFC.
2. Control procedures:
 - a. Masters of Union vessels engaged in fishing activities in the Cook Islands' fishing areas shall cooperate with any Cook Islands authorised and duly identified officer carrying out inspection and control of fishing activities.
 - b. Without prejudice to the provisions of the national legislation of the Cook Islands, boarding should be conducted in such a way that the inspection platform and the inspectors can be identified as a Cook Islands authorised officers.
 - c. The Cook Islands shall make available to the Union competent authority the list of all inspection platforms used for sea inspections. This list should contain at least:
 - i. Fisheries Patrol Vessels (FPV) names;

- ii. FPV Vessel details;
 - iii. FPV photography.
- d. The Cook Islands may, on the request of the Union or a body designated by it, allow Union inspectors to observe the activities of Union vessels, including transshipments, during onshore based controls.
 - e. Once an inspection has been completed and the inspection report signed by the inspector, the report shall be made available for signature and comments, if any, by the master. This signature shall not prejudice the rights of the Parties in the context of alleged infringement procedures. A copy of the inspection report shall be given to the master of the vessel before the inspector leaves the vessel.
 - f. Inspectors shall not remain on board for longer than is necessary for the discharge of their duties.
3. Masters of Union vessels engaged in landing or transshipment operations in a port of the Cook Islands shall allow and facilitate the inspection of such operations by the Cook Islands' authorised officers.
4. Where the provisions set out in this Chapter are not complied with, the Cook Islands' authority reserves the right to suspend the fishing authorisation of the offending vessel until formalities have been completed and to apply the penalty laid down in existing Cook Islands' legislation. The flag Member State and the Union competent authority shall be immediately informed.

CHAPTER V- ENFORCEMENT

1. Sanctions

- a. Failure to observe any one of the provisions of the above chapters, of the conservation and management measures adopted by relevant regional fisheries management organisations, or of the Cook Islands' national law, shall be subject to penalties as laid down by the Cook Islands' national law.
- b. The flag Member State and the Union competent authority shall be immediately and fully informed of any sanction and of all relevant facts related thereto.
- c. Where a sanction takes the form of suspension or revocation of a fishing authorisation, during the remaining period for which the authorisation has been granted, the Union competent authority may request another fishing authorisation which would have otherwise been applicable, for a vessel from another shipowner.

2. Arrest and detention of fishing vessels

- a. The Cook Islands shall inform immediately the Union and the flag Member State of the arrest and/or detention of any fishing vessel in possession of a fishing authorisation under the Agreement.
 - b. The Cook Islands shall transmit a copy of the inspection report, detailing the circumstances and reasons of the arrest and/or detention within twelve (12) hours to the Union and the flag Member State.
3. Information exchange procedure in the event of arrest and/or detention
- a. Whilst respecting the deadlines and legal proceedings as provided for by the national laws of the Cook Islands relating to arrest and/or detention, a consultation meeting shall be held, upon receipt of the above information, between representatives of the Union and the Cook Islands, possibly attended by a representative of the Member State concerned.
 - b. At the meeting, the Parties shall exchange any relevant documentation or information helping to clarify the facts. The shipowner or its agent shall be informed of the outcome of the meeting and of any measure resulting from the arrest and/or detention.
4. Settlement of arrest and/or detention
- a. An attempt shall be made to resolve the presumed infringement amicably. This procedure shall be completed no later than three (3) working days after the arrest and/or detention, in conformity with the national legislation of the Cook Islands.
 - b. In the event of an amicable settlement, the amount to be paid shall be determined by referring to the national legislation of the Cook Islands. If such an amicable settlement is not possible, the legal proceedings shall take its course.
 - c. The vessel shall be released and its master discharged as soon as the obligations arising under the amicable settlement have been fulfilled or the legal bail has been paid.
5. The Union authority and the Delegation shall be kept informed of any proceedings initiated and penalties imposed.

CHAPTER VI – COOPERATION IN FIGHTING IUU FISHING

1. In order to strengthen the monitoring of fisheries and the fight against IUU fishing, captains of Union fishing vessels will endeavour to signal the presence in the Cook Islands' fishery waters of any other fishing vessel.
2. When the captain of a Union fishing vessel observes a fishing vessel engaged in activities that may constitute IUU fishing, he will gather as much information as possible about the vessel and its activity at the time it was sighted. Observation reports are sent without delay to the competent authority of the Cook Islands with a copy to the Flag State FMC.

3. The Cook Islands authority will submit as soon as possible to the Union any observation report in their possession relating to fishing vessels engaged in activities that may constitute IUU activity in the fishery waters of Cook Islands.