

CHAIRPERSON'S DRAFT AGREEMENT ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING

PREAMBLE

The Parties to this Agreement:

Deeply concerned about the continuation of illegal, unreported and unregulated fishing and its detrimental effect upon fish stocks, marine ecosystems and the livelihoods of legitimate fishers, and the increasing need for food security on a global basis;

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 marine living 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 port State measures, coastal State measures, market related measures and measures to ensure that nationals do not support or engage in illegal, unreported and unregulated fishing;

Recognizing that port State measures 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 regional and interregional levels to combat illegal, unreported and unregulated fishing through port State measures;

Acknowledging the rapidly developing communications technology, databases, networks and global records that support port State measures;

Recognizing the need for assistance to developing countries to adopt and implement port State measures;

Taking note of the calls by the international community through the United Nations System, including the United Nations General Assembly and the Committee on Fisheries of the Food and Agriculture Organization of the United Nations for a binding international instrument on minimum standards for port State measures, based on the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing and the 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing;

Bearing in mind that in the exercise of their sovereignty over ports located in their territory States may adopt more stringent measures, in accordance with international law;

Recalling the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 (the Convention);

Recalling the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December

1995, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 24 November 1993 and the 1995 FAO Code of Conduct for Responsible Fisheries;

Recognizing the need to conclude an international agreement within the framework of the Food and Agriculture Organization of the United Nations (FAO), under Article XIV of the FAO Constitution;

Have agreed as follows:

PART 1

GENERAL PROVISIONS

Article 1 *Use of terms*

For the purposes of this Agreement:

- (a) “conservation and management measures” means measures to conserve and manage living marine resources that are adopted and applied consistently with the relevant rules of international law including those reflected in the Convention;
- (b) “fish” means all species of living marine resources, whether processed or not;
- (c) “fishing” means searching for, 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;
- (d) “fishing related activities” means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipment or transport of fish that have not been previously landed at a port, as well as the provision of personnel, fuel, gear and other supplies at sea;
- (e) “illegal, unreported and unregulated (IUU) fishing” refers to 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;
- (f) “Party” means a State or regional economic integration organization that has consented to be bound by this Agreement and for which this Agreement is in force;
- (g) “port” includes offshore terminals and other installations for landing, transshipping, processing, refuelling or resupplying;
- (h) “regional economic integration organization” means a regional economic integration organization to which its member States have transferred competence over matters covered by this Agreement, including the authority to make decisions binding on its member States in respect of those matters;

- (i) “regional fisheries management organization” means an intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish conservation and management measures; and
- (j) “vessel” means any vessel, ship of another type and boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities.

Article 2 *Objective*

The objective of this Agreement is to prevent, deter and eliminate illegal, unreported and unregulated 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.

Article 3 *Application*

1. Each Party shall, in its capacity as a port State, apply this Agreement in respect of vessels that are not entitled to fly its flag that are seeking entry to its port(s) or are in one of its ports, except for:

- (a) vessels of a neighbouring State that are engaged in artisanal fishing for subsistence provided that the port State and the flag State cooperate to ensure that those vessels do not engage and/or support illegal, unreported and unregulated fishing; and
- (b) 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 those vessels have engaged in illegal, unreported and unregulated fishing related activities.

1 bis A Party in its capacity as a port State may choose not to apply this Agreement to vessels chartered by its nationals exclusively for fishing in areas under its national jurisdiction and operating under its authority therein. Those vessels shall be subject to measures by the Party which are as effective as measures applied in relation to vessels flying its flag.

1 tris This Agreement shall apply to fishing conducted in marine areas that is illegal, unreported or unregulated, as defined in Article 1(e) of this Agreement, and to fishing related activities in support of such fishing.

2. This Agreement shall be applied in a fair, transparent and non-discriminatory manner, consistent with international law.

3. As this Agreement is global in scope and applies to all ports, the Parties shall encourage all other entities to apply measures consistent with its provisions. Those that may not otherwise become Parties to this Agreement may express their commitment to act consistently with its provisions.

Article 4

Relationship with international law and other international instruments

1. Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of Parties under international law. In particular, nothing in this Agreement shall be construed to affect:

- (a) the sovereignty of Parties over their internal, archipelagic and territorial waters or their sovereign rights over their continental shelf and in their exclusive economic zones;
- (b) the exercise by Parties of their sovereignty over ports in their territory in accordance with international law, including their right to deny access thereto as well as to adopt more stringent port State measures than those provided in this Agreement, including pursuant to a decision made by a regional fisheries management organization.

1 bis In applying this Agreement, a Party does not thereby become bound by measures or decisions of, or recognize, any regional fisheries management organization of which it is not a member.

1 ter In no case is a Party obliged under this Agreement to give effect to measures or decisions of a regional fisheries management organization if those measures or decisions have not been adopted in conformity with international law.

2. This Agreement 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.

3. Parties shall fulfil in good faith the obligations assumed pursuant to this Agreement and shall exercise the rights recognized herein in a manner that would not constitute an abuse of right.

Article 5

Integration and coordination at the national level

To the greatest extent possible, Parties shall:

- (a) integrate or coordinate fisheries related port State measures with the broader system of port State controls;
- (b) integrate port State measures with other measures to prevent, deter and eliminate illegal, unreported and unregulated fishing and fishing related activities in support of illegal, unreported and unregulated fishing, taking into account as appropriate the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; and
- (c) take measures to share information among relevant national agencies and to coordinate the activities of such agencies in the implementation of this Agreement.

Article 6
Cooperation and exchange of information

1. In order to promote the effective implementation of this Agreement and with due regard to appropriate confidentiality requirements, Parties shall cooperate and exchange information with relevant States, FAO, other international organizations and regional fisheries management organizations, including on the measures adopted by such regional fisheries management organizations in relation to the objective of this Agreement.
2. To the greatest extent possible, each Party shall take measures in support of conservation and management measures adopted by other States and other relevant international organizations.
3. Parties shall cooperate, at the subregional, regional and global levels, in the effective implementation of this Agreement including, where appropriate, through FAO or regional fisheries management organizations and arrangements.

PART 2

ENTRY INTO PORT

Article 7
Designation of ports

1. Each Party shall designate and publicize the ports to which vessels may request entry pursuant to this Agreement. Each Party shall provide a list of its designated ports to the Depositary, which shall give it due publicity.
2. Each Party shall, to the greatest extent possible, ensure that every port designated and publicized in accordance with paragraph 1 of this Article has sufficient capacity to conduct inspections pursuant to this Agreement.

Article 8
Advance request for port access

1. Each Party shall require, as a minimum standard, the information set out in Annex A to be provided before granting entry to a vessel to its port.
2. Each Party shall require the information referred to in paragraph 1 of this Article to be provided sufficiently in advance to allow adequate time for the port State to examine the required information.

Article 8bis
Port entry, authorization or denial

1. After receiving the relevant information required pursuant to Article 8, as well as such other information as it may require to determine whether the vessel requesting entry into port has engaged in illegal, unreported and unregulated fishing or fishing related activities in support of illegal, unreported and unregulated fishing, each Party shall decide whether to

authorize or deny the entry of the vessel into its port and shall communicate this decision to the vessel or to its representative.

1bis In the case of authorization of entry, the master of the vessel or the vessel's representative shall present the authorization for entry into the port to the competent authorities of the Party upon the vessel's arrival at port.

2. In the case of denial of entry, each Party shall communicate its decision taken pursuant to paragraph (1) to the flag State of the vessel and, as appropriate and to the extent possible, relevant coastal State(s), regional fisheries management organization(s) and other international organizations.

3. Without prejudice to paragraph 1 of this Article, when a Party has sufficient proof that a vessel seeking entry into its port has engaged in illegal, unreported and unregulated fishing or fishing related activities in support of illegal, unreported and unregulated fishing, in particular the inclusion of a vessel on a list of vessels having engaged in such fishing or fishing related activities adopted by a relevant regional fisheries management organization in accordance with the rules and procedures of such organization and in conformity with international law, the Party shall deny that vessel entry into its ports, taking into due account Article 4(1)*bis* and 4(1)*ter*.

4. Notwithstanding paragraphs 2 and 3 of this Article, a Party may allow entry into its ports of a vessel referred to in those paragraphs 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 illegal, unreported and unregulated fishing and fishing related activities in support of illegal, unreported and unregulated fishing.

5. When a vessel referred to in paragraph 3 or 4 of this Article is in port for any reason, the Party shall deny such vessel the use of its ports for landing, transshipping, packaging, or processing of fish or for other port services including, *inter alia*, refuelling and resupplying, maintenance and drydocking. Paragraphs 2 and 3 of Article 9 shall apply in such cases, *mutatis mutandis*. Denial of such use of ports shall be in conformity with international law.

Article 8quat *Force majeure or distress*

Nothing in this Agreement affects the entry of vessels to port in accordance with international law for reasons of force majeure or distress or prevents a port State from permitting entry into port to a vessel, exclusively for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

PART 3

USE OF PORTS

Article 9 *Use of ports*

1. When a vessel has entered one of its ports, a Party shall deny, pursuant to its laws and regulations and consistent with international law, including this Agreement, that vessel the use of the port for landing, transshipping, packaging or processing of fish that have not been previously landed or for other port services, including, *inter alia*, refueling and resupplying, maintenance and drydocking, if:

- (a) the Party finds that the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities required by its flag State;
- (b) the Party finds that the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities required by a coastal State in respect of areas under the national jurisdiction of that coastal State;
- (c) the Party receives 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 coastal State;
- (d) the flag State does not confirm within a reasonable period of time on the request of the port State that the fish on board was taken in accordance with applicable requirements of a relevant regional fisheries management organization taking into account Article 4(1)*bis* and 4(1)*ter*; or
- (e) the Party has reasonable grounds to believe that the vessel was otherwise engaged in IUU fishing or fishing related activities in support of IUU fishing, including in support of a vessel referred to in Article 8*bis*(3), unless the vessel can establish:
 - (i) that it was acting in a manner consistent with relevant conservation and management measures; or
 - (ii) 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 referred to in Article 8*bis*(3).

2. Notwithstanding paragraph 1 of this Article, a Party shall not deny a vessel referred to in that paragraph the use of port services essential to the safety and health of the crew and the safety of the vessel, provided these needs are duly proven, or, where appropriate, for the scrapping of the vessel.

3. Where a Party has denied the use of its ports in accordance with this Article, it shall promptly notify the flag State and, as appropriate, relevant coastal State(s), regional fisheries management organization(s) and other relevant international organizations of its decision.

4. A Party shall withdraw its denial of the use of its port pursuant to paragraph 1 of this Article in respect of a vessel only if there is sufficient proof to show that the grounds on which use was denied were inadequate or erroneous or that such grounds no longer apply.

5. Where a 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.

PART 4

INSPECTIONS AND FOLLOW-UP ACTIONS

Article 11

Levels and priorities for inspection

1. Each Party shall inspect a number of vessels in its ports required to reach an annual level of inspections sufficient to achieve the objective of this Agreement.
2. Parties shall seek to agree on the minimum levels for inspection of vessels through, as appropriate, regional fisheries management organizations, FAO or otherwise.
3. In determining which vessels to inspect, a Party shall give priority to:
 - (a) vessels that have been denied entry or use of a port in accordance with this Agreement;
 - (b) requests from other relevant Parties, States or regional fisheries management organizations that particular vessels be inspected, particularly where such requests are supported by evidence of illegal, unreported or unregulated fishing by the vessel in question; and
 - (c) other vessels for which there are clear grounds for suspecting that they have engaged in or supported illegal, unreported or unregulated fishing.

Article 12

Conduct of inspections

1. Each Party shall ensure that its inspectors carry out the functions set forth in Annex B as a minimum standard.
2. Each Party shall, in carrying out inspections in its ports:
 - (a) ensure that inspections are carried out by properly qualified inspectors authorized for that purpose, having regard in particular to Article 16 of this Agreement;
 - (b) ensure that, prior to an inspection, inspectors are required to present to the master of the vessel an appropriate document identifying the inspectors as such;

- (c) ensure that the inspector examines all relevant areas of the vessel, fish on board, the nets and any other gear, equipment, and any document or record held on board that are relevant to verify compliance with relevant conservation and management measures;
- (d) require the master of the vessel to give the inspector all necessary assistance and information, and present relevant material and documents as may be required, or certified copies thereof;
- (e) in case of appropriate arrangements with the flag State of the vessel, invite the flag State to participate in the inspection;
- (f) make all possible efforts to avoid unduly delaying the vessel to minimize interference and inconvenience, including any unnecessary presence of inspectors on board, and to avoid action that would adversely affect the quality of the fish on board;
- (g) make all possible efforts to facilitate communication with the master or senior crew members of the vessel, or that the inspector is accompanied, where possible and where needed, by an interpreter;
- (h) ensure that inspections are conducted in a fair, transparent and non-discriminatory manner and would not constitute harassment of any vessel; and
- (i) not interfere with the master's ability, in conformity with international law, to communicate with the authorities of the flag State.

Article 13
Results of inspections

Each Party shall, as a minimum standard, include the information set out in Annex C in the written report of the results of each inspection.

Article 14
Transmittal of inspection results

Each Party shall transmit the results of each inspection to the flag State of the inspected vessel and, as appropriate, to:

- (a) relevant Parties and States, including those States for which there is evidence through inspection that the vessel has engaged in illegal, unreported and unregulated fishing and fishing related activities in support of illegal, unreported and unregulated fishing within waters under their national jurisdiction and the State of which the vessel's master is a national.
- (b) relevant regional fisheries management organizations; and
- (c) FAO and other relevant international organizations.

Article 15
Electronic exchange of information

1. To facilitate implementation of this Agreement, each Party shall, where possible, establish a communication mechanism that allows for direct electronic exchange of information, with due regard to appropriate confidentiality requirements.

1bis To the extent possible, and with due regard to appropriate confidentiality requirements, Parties should cooperate to establish an information-sharing mechanism, preferably coordinated by the Depositary, in conjunction with other relevant multilateral and intergovernmental initiatives, and to facilitate the exchange of information with existing databases relevant to this Agreement.

1ter Each Party shall designate an authority that shall act as a contact point for the exchange of information under this Agreement. Each Party shall notify the pertinent designation to the Depositary.

2. Each Party shall handle information to be transmitted through any mechanism established under paragraph 1 consistent with Annex D.

2ter As far as possible, and taking due account of the relevant confidentiality requirements, the Depositary shall request relevant regional fisheries management organisations to provide information concerning the measures or decisions they have adopted and implemented which relate to this Agreement for their integration into the information-sharing mechanism referred to under *1bis* of this Article.

Article 16
Training of inspectors

Each Party shall ensure that its inspectors are properly trained taking into account the guidelines for the training of inspectors in Annex E. Parties shall seek to cooperate in this regard.

Article 17
Port State actions following inspection

1. Where, following an inspection, there are clear grounds for believing that a vessel has engaged in illegal, unreported and unregulated fishing or fishing related activities in support of illegal, unreported and unregulated fishing, the inspecting Party shall:

- (a) promptly notify the flag State and, as appropriate, relevant coastal State(s), regional fisheries management organization(s) and other international organizations and the State of which the vessel's master is national of its findings; and
- (b) deny the vessel the use of its port for landing, transshipping, packaging or processing of fish that have not been previously landed or for other port services, including, *inter alia*, refueling and resupplying, maintenance and drydocking, if these actions have not already been taken in respect of the vessel, in a manner consistent with this Agreement, including Article 4.

2. Notwithstanding paragraph 1 of this Article, a Party shall not deny a vessel referred to in that paragraph the use of port services essential to the safety and health of the crew or the safety of the vessel.

3. Nothing in this Agreement prevents a Party from taking measures that are in conformity with international law in addition to those specified in paragraphs 1 and 2 of this Article, including such measures as the flag State of the vessel has expressly requested or to which it has consented.

Article 18

Information on recourse in the port State

1. A Party shall maintain the relevant information available to the public and provide such information, upon written request, to the owner, operator, master or representative of a vessel with regard to any recourse established in accordance with its national laws and regulations concerning port State measures taken by that Party pursuant to Article 8*bis*, 9, 12 or 17 of this Agreement, including information pertaining to the public services or judicial institutions available for this purpose as well as information on whether there is any right to seek compensation in accordance with its national laws and regulations in the event of any loss or damage suffered as a consequence of any alleged unlawful action by the Party.

2. The Party shall inform the flag State, the owner, operator, master or representative, as appropriate, of the outcome of any such recourse. Where other Parties, States or international organizations have been informed of the prior decision pursuant to Article 8*bis*, 9, 12 or 17, the Party shall inform them of any change in its decision.

PART 5

ROLE OF FLAG STATES

Article 21

Role of flag States

1. Each Party shall require the vessels entitled to fly its flag to cooperate with the port State in inspections carried out pursuant to this Agreement.

2. When a Party has clear grounds to believe that a vessel entitled to fly its flag has engaged in illegal, unreported and unregulated fishing or fishing related activities and is seeking entry to or is in the port of another State, it shall, as appropriate, request that State to inspect the vessel or to take other measures consistent with this Agreement.

3. Each Party shall encourage vessels entitled to fly its flag to land, transship and process fish, and use other port services, in ports of States that are acting in accordance with, or in a manner consistent with this Agreement. Parties are encouraged to develop, including through regional fisheries management organizations and FAO, fair, transparent and non-discriminatory procedures for identifying any States that may not be acting in accordance with, or in a manner consistent with, this Agreement.

3bis Where, following port State inspection, a flag State Party receives an inspection report indicating that there are clear grounds to believe that a vessel entitled to fly its flag has engaged in illegal, unreported and unregulated fishing or fishing related activities, it shall immediately and fully investigate the matter and shall, upon sufficient evidence, take enforcement action without delay in accordance with its laws.

4. Each Party shall, in its capacity as a flag State, report to other Parties, relevant port States and, as appropriate, other relevant States, regional fisheries management organizations and FAO on actions it has taken in respect of vessels entitled to fly its flags that, as a result of port State measures taken under this Agreement, have been determined to have engaged in illegal, unreported and unregulated fishing or fishing related activities.

4bis Each Party shall ensure that measures applied to vessels flying its flag are at least as effective to prevent, deter, and eliminate illegal, unreported, and unregulated fishing as measures applied to vessels referred to in paragraph 1 of Article 3.

PART 6

REQUIREMENTS OF DEVELOPING STATES

Article 22

Requirements of developing States

1. Parties shall give full recognition to the special requirements of developing States Parties in relation to the implementation of port State measures consistent with this Agreement. To this end, Parties shall, either directly or through FAO, other specialized agencies of the United Nations and other appropriate international organizations and bodies, including regional fisheries management organizations, provide assistance to developing States Parties in order to, *inter alia*:

- (a) enhance their ability, in particular the least-developed among them and small island developing States, to develop a legal basis and capacity for the implementation of effective port State measures;
- (b) facilitate their participation in any international organizations that promote the effective development and implementation of port State measures; and
- (c) facilitate technical assistance to strengthen the development and implementation of port State measures by them, in coordination with relevant international mechanisms.

2. Parties shall give due regard to the special requirements of developing port States Parties, in particular the least developed among them and small island developing States to ensure that a disproportionate burden resulting from the implementation of this Agreement is not transferred directly or indirectly onto them. In cases where the transfer of a disproportionate burden has been demonstrated, Parties shall cooperate to facilitate the implementation by the relevant developing States Parties of specific commitments under this Agreement.

3. Parties shall, either directly or through FAO, assess the special requirements of developing States Parties concerning the implementation of this Agreement.

4. Parties shall cooperate to establish appropriate funding mechanisms to assist developing States in the implementation of this Agreement. These mechanisms shall, *inter alia*, be directed specifically towards:

- (a) developing national and international port State measures;
- (b) developing and enhancing capacity, including for monitoring, control and surveillance and for training at the national and regional levels of port managers, inspectors, and enforcement and legal personnel;
- (c) monitoring, control, surveillance and compliance activities relevant to port State measures, including access to technology and equipment; and
- (d) assisting developing States Parties with the costs involved in any proceedings for the settlement of disputes that result from action they have taken pursuant to this Agreement.

5. Cooperation with and among developing States Parties for the purposes set out in this Article may include the provision of technical and financial assistance through bilateral, multilateral and regional channels, including South-South cooperation.

6. Parties shall establish an *ad hoc* working group to periodically report and make recommendations to the Parties on the establishment of funding mechanisms including a scheme for contributions, identification and mobilisation of funds, the development of criteria and procedures to guide implementation, and progress in the implementation of the funding mechanisms. In addition to the considerations provided in this Article, the *ad hoc* working group shall take into account, *inter alia*:

- (a) the assessment of the needs of developing States Parties in particular the least developed among them and small island developing States;
- (b) the availability and timely disbursement of funds;
- (c) transparency of decision-making and management processes concerning fundraising and allocations; and
- (d) accountability of the recipient developing States Parties in the agreed use of funds.

Parties shall take into account the reports and any recommendations of the *ad hoc* working group and take appropriate action.

PART 7

DISPUTE SETTLEMENT

Article 23

Peaceful settlement of disputes

1. Any Party may seek consultations with any other Party or Parties on any dispute with regard to the interpretation or application of the provisions of this Agreement with a view to reaching a mutually satisfactory solution as soon as possible.
2. In the event that the dispute is not resolved through these consultations within a reasonable period of time, the Parties in question shall consult among themselves as soon as possible with a view to having the dispute settled by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.
3. Any dispute of this character not so resolved shall, with the consent of all Parties to the dispute, be referred for settlement to the International Court of Justice, to the International Tribunal for the Law of the Sea or to arbitration. In the case of failure to reach agreement on referral to the International Court of Justice, to the International Tribunal for the Law of the Sea or to arbitration, the Parties shall continue to consult and cooperate with a view to reaching settlement of the dispute in accordance with the rules of international law relating to the conservation of living marine resources.

PART 8

NON-PARTIES

Article 24

Non-Parties to this Agreement

1. Parties shall encourage non-Parties to this Agreement to become Parties thereto and/or to adopt laws and regulations and implement measures consistent with its provisions.
2. Parties shall take fair, non-discriminatory and transparent measures consistent with this Agreement and other applicable international law to deter the activities of non-Parties which undermine the effective implementation of this Agreement.

PART 9

MONITORING, REVIEW AND ASSESSMENT

Article 25

Monitoring, review and assessment

1. Parties shall, within the framework of FAO and its relevant Bodies, ensure the regular and systematic monitoring and review of the implementation of this Agreement and the assessment of the progress made towards achieving its objective.

2. Four years after the entry into force of this Agreement, the Depositary shall convene a meeting of the Parties to review and assess the effectiveness of this Agreement in achieving its objective. The Parties shall decide on further such meetings as necessary.

PART 10

FINAL PROVISIONS

Article 26 *Signature*

This Agreement shall be open for signature at ** from ** until **, by all States and regional economic integration organizations.

Article 27 *Ratification, acceptance or approval*

1. This Agreement shall be subject to ratification, acceptance or approval by the signatories.
2. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

Article 28 *Accession*

1. After the period in which this Agreement is open for signature, it shall be open for accession by any State or regional economic integration organization.
2. Instruments of accession shall be deposited with the Depositary.

Article 29 *Participation by Regional Economic Integration Organizations*

1. In cases where a regional economic integration organization that is an international organization referred to in Annex IX, Article 1, of the Convention does not have competence over all the matters governed by this Agreement, Annex IX to the Convention shall apply *mutatis mutandis* to participation by such regional economic integration organization in this Agreement, except that the following provisions of that Annex shall not apply:

- (a) Article 2, first sentence; and
- (b) Article 3, paragraph 1.

2. In cases where a regional economic integration organization that is an international organization referred to in Annex IX, Article 1, of the Convention has competence over all the matters governed by this Agreement, the following provisions shall apply to participation by the regional economic integration organization in this Agreement:

- (a) at the time of signature or accession, such organization shall make a declaration stating:
 - (i) that it has competence over all the matters governed by this Agreement;
 - (ii) that, for this reason, its member States shall not become States Parties, except in respect of their territories for which the organization has no responsibility; and
 - (iii) that it accepts the rights and obligations of States under this Agreement;
- (b) participation of such an organization shall in no case confer any rights under this Agreement on member States of the organization;
- (c) in the event of a conflict between the obligations of such organization under this Agreement and its obligations under the Agreement establishing the organization or any acts relating to it, the obligations under this Agreement shall prevail.

Article 30

Entry into force

1. This Agreement shall enter into force thirty days after the date of deposit with the Depositary of the twenty-fifth instrument of ratification, acceptance, approval or accession in accordance with Article 27 or 28.
2. For each signatory which ratifies, accepts or approves this Agreement after entry into force, this Agreement shall enter into force thirty days after the date of the deposit of its instrument of ratification, acceptance or approval.
3. For each State or regional economic integration organization which accedes to this Agreement after its entry into force, this Agreement shall enter into force thirty days after the date of the deposit of its instrument of accession.
4. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by its Member States.

Article 31

Reservations and exceptions

No reservations or exceptions may be made to this Agreement.

Article 32

Declarations and statements

Article 31 does not preclude a State or regional economic integration organization, when signing, ratifying, accepting, approving or acceding to this Agreement, from making a declaration or statement, however phrased or named, with a view to, *inter alia*, the harmonization of its laws and regulations with the provisions of this Agreement, provided that such declaration or statement does not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that State or regional economic integration organization.

Article 33
Provisional application

1. This Agreement shall be applied provisionally by States or regional economic integration organizations which consent to its provisional application by so notifying the Depositary in writing. Such provisional application shall become effective from the date of receipt of the notification.
2. Provisional application by a State or regional economic integration organization shall terminate upon the entry into force of this Agreement for that State or regional economic integration organization or upon notification by that State or regional economic integration organization to the Depositary in writing of its intention to terminate provisional application.

Article 34
Amendments

1. Amendments to this Agreement may be proposed by any Party after the expiry of a period of two years from the date of entry into force of this Agreement.
2. Any proposed amendment to this Agreement shall be transmitted by written communication to the Depositary along with a request for the convening of a meeting of the Parties to consider it. The Depositary shall circulate such communication to all Parties as well as all replies received from Parties to the request. Unless within six months from the date of circulation of the communication one half of the Parties object to the request, the Depositary shall convene a meeting of the Parties to consider the proposed amendment.
3. Subject to Article 35, any amendment to this Agreement shall only be adopted by consensus of the Parties present at the meeting at which it is proposed for adoption.
4. Subject to Article 35, any amendment adopted by the meeting of the Parties shall come into force among the Parties having ratified, accepted or approved it on the ninetieth day after the deposit of instruments of ratification, acceptance or approval by two-thirds of the Parties to this Agreement based on the number of Parties on the date of adoption of the amendment. Thereafter the amendment shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, acceptance or approval of the amendment.
5. For the purpose of this Article, an instrument deposited by a Member Organization of FAO shall not be counted as additional to those deposited by member States of such an organization.

Article 35
Annexes

1. The Annexes form an integral part of this Agreement, and a reference to this Agreement shall constitute a reference to the Annexes.
2. An amendment to an Annex to this Agreement may be adopted by two-thirds of the Parties to this Agreement present at a meeting at which a proposed Annex amendment is considered. Every effort shall however be made to reach agreement on any amendment to an Annex by way of consensus. An amendment to an Annex shall be incorporated in this

Agreement and enter into force for those Parties that have signified their acceptance from the date at which the Depositary receives notification of acceptance from one-third of the Parties to this Agreement, based on the number of Parties on the date of adoption of the amendment. The amendment shall thereafter enter into force for each remaining Party upon receipt by the Depositary of its acceptance.

Article 36
Withdrawal

Any Party may withdraw from this Agreement at any time after the expiry of one year from the date upon which the Agreement entered into force with respect to that Party, by giving written notice of such withdrawal to the Depositary. Withdrawal shall become effective one year after receipt of the notice of withdrawal by the Depositary.

Article 37
The Depositary

The Director-General of the Food and Agriculture Organization of the United Nations shall be the Depositary of this Agreement. The Depositary shall:

- (a) transmit certified copies of this Agreement to each signatory and Party;
- (b) register this Agreement, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;
- (c) promptly inform all signatories of and Parties to this Agreement of all:
 - (i) signatures and instruments of ratification, acceptance, approval and accession deposited under Articles 26, 27 and 28;
 - (ii) the date of entry into force of this Agreement in accordance with Article 30;
 - (iii) proposals for amendment to this Agreement and their adoption and entry into force in accordance with Article 34;
 - (iv) proposals for amendment to the Annexes and their adoption and entry into force in accordance with Article 35; and
 - (v) withdrawals from this Agreement in accordance with Article 36.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, having been duly authorized by their respective Governments, have signed this Agreement.

DONE at **, on this ** day of **, 200*, in Arabic, Chinese, English, French, Russian and Spanish.

ANNEX A

Information to be provided in advance by vessels requesting port entry

1. Intended port of call																																		
2. Port State																																		
3. Estimated date and time of arrival																																		
4. Purpose(s)																																		
5. Port and date of last port call																																		
6. Name of the vessel																																		
7. Flag State																																		
8. Type of vessel																																		
9. International Radio Call Sign																																		
10. Vessel contact information																																		
10bis Vessel owner(s)																																		
11. Certificate of registry ID																																		
12. IMO ship ID, if available																																		
13. External ID, if available																																		
14. RFMO ID, if applicable																																		
14 bis. VMS					No					Yes: National					Yes: RFMO(s)					Type:														
14 tris. Vessel dimensions					Length										Beam										Draft									
15. Vessel master name and nationality																																		
16. Relevant fishing authorization(s)																																		
<i>Identifier</i>				<i>Issued by</i>				<i>Validity</i>				<i>Fishing area(s)</i>				<i>Species</i>				<i>Gear</i>														
17. Relevant transshipment authorization(s)																																		
<i>Identifier</i>								<i>Issued by</i>								<i>Validity</i>																		
<i>Identifier</i>								<i>Issued by</i>								<i>Validity</i>																		
18. Transshipment information concerning donor vessels																																		
<i>Date</i>	<i>Location</i>	<i>Name</i>	<i>Flag State</i>	<i>ID number</i>	<i>Species</i>	<i>Product form</i>	<i>Catch area</i>	<i>Quantity</i>																										
19. Total catch onboard										20. Catch to be offloaded																								
<i>Species</i>		<i>Product form</i>		<i>Catch area</i>		<i>Quantity</i>				<i>Quantity</i>																								

Port State inspection procedures

The inspector(s) shall:

- a) verify, to the extent possible, that the vessel identification documentation onboard and information relating to the vessel owner 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 ship identification number, international radio call sign and other markings, main dimensions) are consistent with information contained in the documentation;
- c) verify, to the extent possible, that the authorization(s) for fishing and fishing related activities is/are true, complete and correct and consistent with the information provided in accordance with Annex A;
- d) review all other relevant documentation and records held onboard, including, to the extent possible, those in electronic format and VMS data from the flag State or relevant regional fisheries management organizations (RFMOs). Relevant documentation may include logbooks, catch, transshipment 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;
- e) examine, to the extent possible, all relevant fishing gear onboard, including any gear stowed out of sight as well as related devices, and to the extent possible, verify that they are in conformity with the conditions of the authorization(s). The fishing gear shall, to the extent possible, also be checked to ensure that features such as the mesh and twine size(s), 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, to the extent possible, whether the fish on board was harvested in accordance with the applicable authorization(s);
- g) examine the fish to determine its quantity and composition, including by sampling. In doing so, the inspector(s) 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;
- h) evaluate whether there is clear evidence for believing that a vessel has engaged in illegal, unreported and unregulated fishing or fishing related activities;

- i) provide the report containing the result of the inspection to the master of the vessel including possible measures that could be taken, to be signed by the inspector and the master. The master's signature of 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.
- j) arrange, where necessary and possible, for a translation of relevant documentation.

Report of the results of the inspection

1. Inspection report no		2. Port State		
3. Inspecting Authority				
4. Name of Principal Inspector		ID		
5. Port of inspection				
6. Commencement of inspection		<i>YYYY</i>	<i>MM DD HH</i>	
7. Completion of inspection		<i>YYYY</i>	<i>MM DD HH</i>	
8. Advanced notification received		<i>Yes</i>	<i>No</i>	
9. Purpose(s)	<i>LAN</i>	<i>TRX</i>	<i>PRO</i> <i>OTH (specify)</i>	
10. Port and State and date of last port call			<i>YYYY MM DD</i>	
11. Vessel name				
12. Flag State				
13. Type of vessel				
14. International Radio Call Sign				
15. Certificate of registry ID				
16. IMO ship ID, if available				
17. External ID , if available				
18. Port of registry				
19. Vessel owner(s)				
20. Vessel beneficial owner(s), if known and different from vessel owner				
21. Vessel operator(s), if different from vessel owner				
22. Vessel master name and nationality				
23. Fishing master name and nationality				
24. Vessel agent				
25. VMS	<i>No</i>	<i>Yes: National</i>	<i>Yes: RFMOs</i> <i>Type:</i>	
26. Status in RFMO areas where fishing or fishing related activities have been undertaken, including any IUU vessel listing				
<i>Vessel identifier</i>	<i>RFMO</i>	<i>Flag State status</i>	<i>Vessel on authorized vessel list</i>	<i>Vessel on IUU vessel list</i>
27. Relevant fishing authorization(s)				
<i>Identifier</i>	<i>Issued by</i>	<i>Validity</i>	<i>Fishing area(s)</i>	<i>Species</i> <i>Gear</i>
28. Relevant Transshipment authorization(s)				
<i>Identifier</i>		<i>Issued by</i>	<i>Validity</i>	
<i>Identifier</i>		<i>Issued by</i>	<i>Validity</i>	
29. Transshipment information concerning donor vessels				

Name	Flag State	ID no.	Species	Product form	Catch area(s)	Quantity
30. Evaluation of offloaded catch (quantity)						
Species	Product form	Catch area(s)	Quantity declared	Quantity offloaded	Difference between quantity declared and quantity determined, if any	
31. Catch retained onboard (quantity)						
Species	Product form	Catch area(s)	Quantity declared	Quantity retained	Difference between quantity declared and quantity determined, if any	
32. Examination of logbook(s) and other documentation				Yes	No	Comments
33. Compliance with applicable catch documentation scheme(s)				Yes	No	Comments
34. Compliance with applicable trade information scheme(s)				Yes	No	Comments
35. Type of gear used						
36. Gear examined in accordance with paragraph e) of Annex B			Yes	No	Comments	
37. Findings by inspector(s)						
38. Apparent infringement(s) noted including reference to relevant legal instrument(s)						
39. Comments by the master						
40. Action taken						
41. Master signature						
42. Inspector signature						

Information systems on port State measures

In implementing this Agreement, each Party shall:

- a) seek to establish computerized communication in accordance with Article X, paragraph X and Article X of this Agreement;
- b) establish, to the extent possible, websites to publicize the list of ports designated in accordance with Article X of this Agreement and the actions taken in accordance with Article X of this Agreement;
- c) identify, to the greatest extent possible, each inspection report by a unique reference number starting with 3-alpha code of the port State and identification of the issuing agency;
- d) utilize, to the extent possible, the international coding system below in Annexes A and C and translate any other coding system into the international system.

countries/territories:	ISO-3166 3-alpha Country Code
species:	ASFIS 3-alpha code (known as FAO 3-alpha code)
vessel types:	ISSCFV code (known as FAO alpha code)
gear types:	ISSCFG code (known as FAO alpha code)

Guidelines for the training of inspectors

Elements of a training programme for port State inspectors should include at least the following areas:

1. Ethics;
2. Health, safety and security issues;
3. Applicable national laws and regulations, areas of competence and conservation and management measures of relevant regional fisheries management organizations, and applicable international law;
4. Collection, evaluation and preservation of evidence;
5. General inspection procedures such as report writing and interview techniques;
6. Analysis of information, such as logbooks, electronic documentation and vessel history (name, ownership and flag), required for the validation of information given by the master of the vessel;
7. Vessel boarding and inspection, including hold inspections and calculation of vessel hold volumes;
8. Verification and validation of information related to landings, transshipments, processing and catch remaining onboard, including utilizing conversion factors for the various species and products;
9. Identification of fish species and the measurement of length and other biological parameters;
10. Identification of vessels and gear and techniques for the inspection and measurement of gear;
11. Equipment and operation of VMS and other electronic tracking systems;
12. Actions to be taken following an inspection.