

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 (FAO) 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;

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” [has the meaning set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing;] [refers to activities in marine areas and involves one or more of the following:
 - (i) “illegal fishing” refers to activities:
 - (i.1) conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;
 - (i.2) conducted by vessels flying the flag of States that are contracting parties to a relevant regional fisheries management organization, but which operate in contravention of the conservation and management measures adopted by that organization and by which those States are bound, or of relevant provisions of the applicable international law; or

- (i.3) in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.
- (ii) “unreported fishing” refers to fishing activities:
 - (ii.1) which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or
 - (ii.2) undertaken in the area of competence of a relevant regional fisheries management organisation and have not been reported, or have been misreported, in contravention of the reporting procedures of that organization.
- (iii) “unregulated fishing” refers to fishing activities:
 - (iii.1) in the area of application of a relevant regional fisheries management organization that are conducted by fishing vessels without nationality, or by those flying the flag of a State not party to that organization or, by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or
 - (iii.2) [in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law;
- (iv) notwithstanding paragraph (iii), certain unregulated fishing may take place in a manner which is not in violation of applicable international law, and may not require the application of measures envisaged under this Agreement;]]
- (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 one or more of the following activities in marine areas, including activities in support of:

- (a) “illegal fishing” referring to activities:
 - (i) conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;
 - (ii) conducted by vessels flying the flag of States that are contracting parties to a relevant regional fisheries management organization, but which operate in contravention of the conservation and management measures adopted by

- that organization and by which those States are bound, or of relevant provisions of the applicable international law; or
- (iii) in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.
- (b) “unreported fishing” referring to fishing activities:
- (i) which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or
 - (ii) undertaken in the area of competence of a relevant regional fisheries management organisation and have not been reported, or have been misreported, in contravention of the reporting procedures of that organization.
- (c) “unregulated fishing” referring to fishing activities:
- (i) in the area of application of a relevant regional fisheries management organization that are conducted by fishing vessels without nationality, or by those flying the flag of a State not party to that organization or, by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or
 - [(ii) in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.]
- (d) notwithstanding paragraph (c), certain unregulated fishing may take place in a manner which is not in violation of applicable international law, and may not require the application of measures envisaged under this Agreement.]]

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

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*] Nothing in this Agreement will mean acceptance or recognition by a State of any kind of commitment to ensure compliance by a port State with measures or decisions adopted by a regional fisheries management organization in which it is not a member.] [Nevertheless such State shall contribute to the extent possible in accordance with its laws and regulations to rendering effective the measures taken by such regional fisheries management organization.]

or

[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 the measures adopted by such regional fisheries management organizations in relation to the objectives 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.
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 prohibition*

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 to authorize or to prohibit the entry into its port by the vessel in question and to communicate this decision to the vessel or to its representative.
2. In the case of prohibition 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. 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.

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 account Article 4(1bis)].

4. Notwithstanding paragraphs 1 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 the obligation to permit entry into port to a vessel 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] [fails to] 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; or

or

[the fish on board was not taken in accordance with applicable requirements of a relevant regional fisheries management organization, after the flag State discharges its duty to confirm this, at the request of the port State within a reasonable time; or]

or

[the Party does not obtain confirmation from the flag State, upon the request of that Party, within a reasonable period of time, that the fish on board was taken in accordance with applicable requirements of relevant regional fisheries management organizations; or];

or

[the fish on board was not taken in accordance with applicable requirements of relevant regional fisheries management organizations if this is confirmed by the port State after the flag State in compliance with its responsibilities has confirmed it within a reasonable period of time; 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 the 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, 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.

*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
Recourse in the port State*

1. A Party shall inform the owner, operator, master or representative of a vessel that has been the subject of port State measures taken by that Party pursuant to Article 8bis, 9, 12 or 17 of this Agreement of any recourse in the port State.

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 8bis, 9, 12 or 17, the Party shall inform them of any change in its decision.

*[Article 19
Compensation*

Each Party, in its capacity as a port State, shall inform the owner, operator, master or representative of a vessel of any right to seek compensation [in accordance with its national laws and regulations] for any loss or damage suffered as a consequence of any [wrongful] [unlawful] action by the Party in that capacity.

or

[Each Party shall ensure that the owner or operator of a vessel may have recourse to judicial processes in its tribunal to determine responsibilities for any loss or damage suffered as a consequence of undue delay.]

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, tranship 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 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 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 AND REVIEW

*Article 25
Monitoring and review*

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

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*

Where the Agreement is concluded outside FAO and FAO acts as a Depositary.

- [1. This Agreement may be amended by a [two-thirds majority of the Parties].
2. Any Party may propose an amendment to the Agreement by providing to the Depositary the text of a proposed amendment.
3. Amendments to this Agreement shall enter into force [ninety (90)] days after notification of acceptance or approval to the Depositary by [two-thirds] of the Parties.
4. States or regional economic integration organizations that become Parties after the entry into force of amendments to this Agreement shall be considered to be Party to the Agreement as amended.]

or

*Where the Agreement is concluded under Art. XIV of the FAO Constitution
using the FAO Compliance Agreement as precedent.*

- [1 Any proposal by a Party for the amendment of this Agreement shall be communicated to the Director General.
- 2 Any proposed amendment of this Agreement received by the Director General from a Party shall be presented to a regular or special session of the Conference for approval and, if the amendment involves important technical changes or imposes additional obligations on the Parties, it shall be considered by an advisory committee of specialists convened by FAO prior to the Conference.
- 3 Notice of any proposed amendment of this Agreement shall be transmitted to the Parties by the Director General not later than the time when the agenda of the session of the Conference at which the matter is to be considered is dispatched.
- 4 Any such proposed amendment of this Agreement shall require the approval of the Conference and shall come into force as from the thirtieth day after acceptance by two thirds of the Parties. Amendments involving new obligations for Parties, however, shall come into force in respect of each Party only on acceptance by it and as from the thirtieth day after such

acceptance. Any amendment shall be deemed to involve new obligations for Parties unless the Conference, in approving the amendment, decides otherwise by consensus.

5. The instruments of acceptance of amendments involving new obligations shall be deposited with the Director General, who shall inform all Parties of the receipt of acceptance and the entry into force of amendments.

6. For the purpose of this Article, an instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by Member States of such an organization.]

or

*Where the Agreement is concluded under Art. XIV of the FAO Constitution
using the FAO International Treaty on Plant Genetic Resources as precedent*

[1. Amendments to this Agreement may be proposed by any Party.

2. Amendments to this Agreement shall be adopted at a meeting of the Parties. The text of any proposed amendment shall be communicated to Contracting Parties by the Depositary at least six months before the meeting at which it is proposed for adoption.

3. Any amendment to this Agreement shall only be made by consensus of the Parties present at the meeting at which it is proposed for adoption.

4. 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. 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.

Where the Agreement is concluded outside FAO and FAO acts as a Depositary.

[2. The Annexes may be revised from time to time by Parties. Notwithstanding the provisions of Article 34, if a revision to an Annex is adopted by consensus at a meeting of Parties, it shall be incorporated in this Agreement and shall take effect from the date of its adoption or from such other date as may be specified in the revision. If a revision to an Annex is not adopted by consensus, the amendment procedures set out in Article 34 shall apply.]

[2. An Annex may be amended or a new Annex may be added from time to time by consensus of the Parties. An amendment to an Annex or addition of a new Annex shall be incorporated in this Agreement and shall from the date at which the Depositary receives notification of acceptance from one third of the Parties enter into force for those Parties that have signified their acceptance. The amendment or new Annex 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 entry into force in accordance with Article 34;
 - (iv) proposals for amendment to the Annexes 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)								
Identifier	Issued by	Validity	Fishing area(s)	Species	Gear			
17. Relevant transhipment authorization(s)								
Identifier		Issued by		Validity				
Identifier		Issued by		Validity				
18. Transhipment information concerning donor vessels								
Date	Location	Name	Flag State	ID number	Species	Product form	Catch area	Quantity
19. Total catch onboard					20. Catch to be offloaded			
Species	Product form	Catch area	Quantity		Quantity			

ANNEX B**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.

ANNEX C**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</i>	<i>DD</i>	<i>HH</i>
7. Completion of inspection	<i>YYYY</i>	<i>MM</i>	<i>DD</i>	<i>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</i>	<i>MM</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</i>	<i>Vessel on authorized vessel</i>	<i>Vessel on IUU vessel list</i>
		<i>status</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					
<i>Name</i>	<i>Flag State</i>	<i>ID no.</i>	<i>Species</i>	<i>Product form</i>	<i>Catch area(s)</i>

30. Evaluation of offloaded catch (quantity)					
<i>Species</i>	<i>Product form</i>	<i>Catch area(s)</i>	<i>Quantity declared</i>	<i>Quantity offloaded</i>	<i>Difference between quantity declared and quantity offloaded, if any</i>
31. Catch retained onboard (quantity)					
<i>Species</i>	<i>Product form</i>	<i>Catch area(s)</i>	<i>Quantity declared</i>	<i>Quantity retained</i>	<i>Difference between quantity declared and quantity retained, if any</i>
32. Examination of logbook(s) and other documentation Yes No <i>Comments</i>					
33. Compliance with applicable catch documentation scheme(s) Yes No <i>Comments</i>					
34. Compliance with applicable trade information scheme(s) Yes No <i>Comments</i>					
35. Type of gear used					
36. Gear examined in accordance with paragraph e) of Annex B Yes No <i>Comments</i>					
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					

ANNEX D**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)

ANNEX E**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.