

**MARSHALL ISLANDS**

***Article 10: Withdrawal of denial of use of port***

No comment

**PART 4: INSPECTIONS AND FOLLOW-UP ACTIONS**

***Article 11: Levels and priorities for inspection***

This article as written is too simplistic and would appear to limit the scope for a state to exercise its sovereignty as a port state, and its sovereign rights, as a coastal state, to determine the priority for use of the scarce resources available for inspection purposes. Any state may wish to conduct more intensive inspections of vessels involved in fisheries known to have a greater risk of IUU fishing, and a coastal state may wish to have different priorities for inspection of vessels in different fisheries, depending on the economic risks associated with the vessels, or of different flags, depending for example on whether it has government to government agreements in place with flag states relating to compliance.

The simplest way to address this is to include an “inter alia”, para 2 as follows:

2. *In determining which vessels to inspect, a Party shall give priority, inter alia, to: etc*

If not, then the additional details will need to be included

***Article 12: Conduct of inspections***

Para 1: The standards in Annex B need to be reviewed bearing in mind the option of alternative standards being adopted by the WCPFC and possibly other RFMOs.

Para 2: The general aim which should be supported and not undermined, is to establish minimum standards for inspections. However, there are three elements of the paragraph that limit the exercise of port state sovereignty: They are:

Subparagraph (e) requiring an invitation for flag state participation in inspections, which would be completely unacceptable for inspections of licensed vessels

Subparagraph (g) on communications, where the burden should be on the vessel to be able to communicate, not the port state; and

Subparagraph (i) where it is a common practice to have the master sign off on the inspection report, but which some FFA Members have opposed because of the risk of intimidation

Two broad approaches to paragraph 2 are:

- either leave the wording as is provided the Article 3 and 4 amendments proposed above are in place meaning that these procedures can be varied for licensed vessels;

- or try to fix each of the three subparagraphs that need attention, which could be done by separating these three subparagraphs and not having them apply to licensed vessels.

***Article 13: Results of inspections***

Annex C needs reviewing by technical personnel

**Article 14: Transmittal of results by Party**

We propose the following simple amendment which would remove the requirement to send inspection reports to the flag state if that was appropriate.

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

- (a) the flag State of the inspected vessel
- (b) other relevant States;
- (c) relevant regional fisheries management organizations; and
- (d) FAO and other relevant international organizations.

**Article 15: Electronic exchange of information**

No comment

**Article 16: Training of inspectors**

No comment

**Article 17: Port State actions following inspection**

This article is an extension of paragraph 59 of the IPOA-IUU, which says:

*59. If, in the course of an inspection, it is found that there are reasonable grounds to suspect that the vessel has engaged in or supported IUU fishing in areas beyond the jurisdiction of the port State, the port State should, in addition to any other actions it may take consistent with international law, immediately report the matter to the flag State of the vessel and, where appropriate, the relevant coastal States and regional fisheries management organization. The port State may take other action with the consent of, or upon the request of, the flag State.*

The Article as written has the serious problems that it requires the port state as follow up on inspections providing evidence of IUU fishing to notify the flag state, stop port use and also requires flag state consent for additional action. We do not think this is the intention, at least for IUU fishing in the EEZ of the port state. A simple solution would be to reinsert the words used in the IPO-IUU as follows:

1. *When, following an inspection, there is reasonable evidence for believing that a vessel has engaged in, or supported, illegal, unreported and unregulated fishing in areas beyond the jurisdiction of the port State which can include, but is not limited to, the following:*

**Article 18: Appeals concerning actions by the port State**

Legal redress for enforcement action is already a given under many jurisdictions, and therefore need not necessarily be provided for in the Agreement.

**Article 19: Compensation**

We do not think this is reasonable for a vessel licensed in the EEZ

**Article 20: Force majeure or distress**

No comment

## **PART 5: ROLE OF FLAG STATES**

We consider that the obligations under this Article are relatively light. The draft Agreement proposes to place burdens on port states such as communication, non-harassment, efficient conduct of inspections.

### ***Article 21: Role of flag States***

Para 1: A small point, the word “relevant” seems redundant in paragraph 1, since it is not applied to port States, RFMOs and other international organizations

*1. Each Party shall, in its capacity as a flag State, cooperate with port States and ~~relevant~~ coastal States, regional fisheries management organizations and other international organizations in the implementation of this Agreement.*

Para 2: No comment

Para 3: This paragraph is strangely worded, but the intention is clear; flag states should not allow their vessels to use the ports of states that are identified as not acting in accordance with this Agreement.

*3. Each Party shall ensure that vessels entitled to fly its flag 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, through regional fisheries management organizations, fair, transparent and non-discriminatory procedures for identifying States that are not acting in accordance with, or in a manner consistent with, this Agreement.*

4. No comment.

## **PART 6: REQUIREMENTS OF DEVELOPING STATES**

### ***Article 22: Requirements of developing States***

No comments

## **PART 7: DISPUTE SETTLEMENT**

### ***Article 23: Peaceful settlement of disputes***

No comments

## **PART 8: NON-PARTIES**

### ***Article 24: Non-Parties to this Agreement***

No comments

## **PART 9: MONITORING AND REVIEW**

*Article 25: Monitoring and review*

No comments

**PART 10 :**

**FINAL PROVISIONS**

No comments

*Article 26: Signature*

*Article 27: Ratification, acceptance or approval*

*Article 28: Accession*

*Article 29: Regional Economic Integration Organizations*

*Article 30: Entry into force*

*Article 31: Reservations and exceptions*

*Article 32: Declarations and statements*

*Article 33: Provisional application*

*Article 34: Amendments*

*Article 35: Annexes*

*Article 36: Withdrawal*

*Article 37: The Depositary*

*Article 38: Authentic texts*