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**COMMENTS ON THE DRAFT AGREEMENT ON PORT STATE MEASURES TO PREVENT, DETER
AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING**

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Greenpeace strongly welcomes measures to eradicate the scourge of illegal, unreported and unregulated (IUU) fishing, including ports of convenience. The development of a legally binding agreement on port states measures will be a significant step forward in ensuring that port states, as well as flag states, assume an active role in ensuring the closing down of avenues through which IUU vessels can gain access to the marketplace, as well as ensure support for their vessels.

The draft legally-binding agreement provides a solid basis; however there are a number of elements which Greenpeace believes should be strengthened in order to ensure that a real change will be made on the ground. In particular, port states should have the ability to deny IUU vessels the use of ports for not only transshipment, but also access to port services such as refueling and resupplying (article 17). The provision of funds to developing states to ensure that they will be able to effectively and fully implement all measures that are included in the agreement in their countries will also be essential.

The threat of IUU fishing spans all corners of the globe. Unless there is much greater cooperation and coordination, it will be a near-impossible task to ensure unscrupulous operators are no longer out at sea. Information sharing will be a vital element of this coordination. Currently there is no centralised communication hub to exchange information between enforcement agencies and other relevant organisations. A central information system will be a valuable tool in ensuring the effective implementation of the Port states measures agreement, whereby vessels could be identified over time irrespective of changes in the name, ownership and flag, hopefully combating the practice where vessel owners reflagged with the intention of avoiding compliance with international conservation and management measures.

Therefore, in the development of a new agreement on port state measures it is important to recognise the need for a central depository of all relevant information on fishing vessels to aid enforcement agencies in their activities. Without the systems in place to share and access information, it will be impossible to effectively enforce such an agreement. This comprehensive global online record of fishing vessels, including refrigerated supply vessels, should contain information such as the IMO number and previous vessel name(s) and flag(s), current and previous owner(s) and beneficial owner(s), country of ownership, call sign, history of compliance/non-compliance, movements, photos, captains, companies providing banking, insurance and other services, as well as flag state authorisation to fish, status of vessels on RFMOs registers, information on any previous blacklisting by RFMOs and coastal states, or reports of national convictions, fines, inspections or detentions. In particular it needs to be up-to-date and reliable, reflecting real-time development, and should be publicly accessible.

Please find below Greenpeace's suggested amendments to the current draft text from article 11 onwards:

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 necessary to achieve the objective of this Agreement.
2. In determining which vessels to inspect, a Party shall give priority to:
 - (a) vessels that have been denied the use of a port in accordance with Articles 9 or 17 of this Agreement; and
 - (b) requests from other relevant States or regional fisheries management organizations that particular vessels be inspected;
 - (c) vessels flying the flag of a State and/or belonging to operators or owners whose vessels have appeared on lists of IUU vessels by regional fisheries management organizations and national governments;
 - (d) vessels lacking tamper proof VMS, or vessels that are unable to provide VMS data for any part of their voyage;
 - (e) any other vessels where there are reasonable grounds for believing that they have engaged in or supported IUU fishing, including not conforming with relevant conservation and management measures;
 - (f) any vessel that cannot show verification from its flag state authorities that the volume of fish products being landed have been caught in accordance to quota and relevant management and conservation measures;
 - (g) any fish carrier or refrigerated cargo vessel known or likely to have been engaged in at-sea transshipment of fish, including such vessels calling in port to resupply or refuel only.

Article 14

Transmittal of results by Party

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) other relevant States;
- (b) relevant regional fisheries management organizations; and
- (c) FAO and other relevant international organizations.

And make this information publicly available.

Article 15

Electronic exchange of information

1. To facilitate implementation of this Part of the Agreement, each Party shall, where possible, establish a publicly available communication mechanism that allows for direct electronic exchange and sharing of information between relevant States, entities and institutions, with due regard to appropriate confidentiality requirements.
2. Each Party shall handle information to be transmitted through any mechanism established under paragraph 1 in a standardized form consistent with Annex D.

Article 17
Port State actions following inspection

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

- (a) fishing without a valid licence, authorization or permit issued by the flag State or the relevant coastal State;
- (b) serious failure to maintain accurate records of catch and catch-related data;
- (c) serious misreporting of catch;
- (d) fishing in a closed area, during a closed season or contrary to applicable effort or quota requirements;
- (e) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;
- (f) using fishing gear that is significantly inconsistent with authorized gear or in a manner that is inconsistent with relevant conservation and management measures;
- (g) falsifying or concealing the markings, identity or registration of the vessel;
- (h) concealing, tampering with or disposing of evidence relating to an investigation;
- (i) serious failure to comply with requirements for vessel monitoring systems (hereafter VMS);
- (j) taking or landing significant amounts of undersized fish in contravention of relevant conservation and management measures; or
- (k) committing multiple violations which together constitute a serious disregard of relevant conservation and management measures,

the Party shall promptly notify the flag State of the vessel and, as appropriate, other relevant States and regional fisheries management organizations and other relevant organizations, via an online publicly available information sharing system, and shall deny use of its port to the vessel for landing, transshipping or processing of fish as well as other port services such as refueling and resupplying, if these measures have not already been taken in respect of the vessel.

2. A Party shall, in appropriate situations, deny a vessel referred to in paragraph 1 of this Article, access to port services, including, *inter alia*, refuelling and resupplying but not including services essential to the safety, health and welfare of the crew.

3. A Party may take measures in addition to those specified in paragraphs 1 and 2 of this Article that are consistent with international law where there is evidence that a vessel has engaged in one or more of the activities set forth in paragraph 1, provided that:

- (a) the measures are provided for in its national laws and regulations;
- (b) the flag State of the vessel has consented to the taking of such measures or requested such measures to be taken, or a relevant coastal State or RFMO has requested the taking of such measures in respect of a violation that has occurred in an area under its national jurisdiction;
- (b) the flag State has not responded to requests by the port State for the information necessary to determine whether the vessel has been in compliance with the flag States' authorization to fish and/or

applicable conservation and management measures established by relevant regional fishery management organisations and/or coastal States;

(c) the vessel is without nationality; or

(d) the additional measures gives effect to a decision of a regional fisheries management organization or is taken pursuant to other international agreements.

The Party shall promptly notify via an electronic mechanism, as established pursuant to Article 15, Parties to this agreement and other relevant States, regional fisheries management organizations and other relevant organizations of any additional measures taken and of all relevant information necessary to enable other Port States to identify and take appropriate action with respect to the vessel.

PART 6

REQUIREMENTS OF DEVELOPING STATES

Article 22

Requirements of developing States

3. Parties shall cooperate to establish special funds to assist developing States Parties in the implementation of this Agreement. These funds shall be directed specifically towards:

(a) developing national, regional and international port State measures;

(b) developing human capacity, including for fisheries managers, inspectors, customs officials, monitoring, control and surveillance and legal personnel, including training and capacity-building at national and regional levels;

(c) monitoring, control, surveillance and compliance activities relevant to port State measures;

(d) assisting developing States Parties to meet the costs involved in any proceedings for the settlement of disputes that results from action they have taken pursuant to this Agreement;

(e) assistance in developing national and regional legal regulations in order to conform to port State measures.

Article 25

Monitoring and review

Bis Parties shall establish a global record of port calls, inspections, detentions, denials of port services or port access to vessels, and all other information gathered and actions taken by Parties pursuant to this Agreement, including all information obtained from flag States and information gathered on the basis of the procedures outlined in the Annexes to the Agreement. Parties shall transmit this information in a timely manner to allow for real time access to the information by all Parties and relevant organizations. The record shall be made publicly accessible and available.