

Report of the

**TECHNICAL CONSULTATION TO DRAFT A LEGALLY-BINDING
INSTRUMENT ON PORT STATE MEASURES TO PREVENT, DETER
AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED
FISHING**

**Rome, 23–27 June 2008, 26–30 January 2009, 4–8 May 2009 and
24–28 August 2009**



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PREPARATION OF THIS DOCUMENT

This is the final version of the report of the Technical Consultation to Draft a Legally-binding Instrument on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. The Technical Consultation was held at FAO Headquarters, Rome, Italy, from 23 to 27 June 2008 and resumed from 26 to 30 January 2009, 4 to 8 May 2009 and 24 to 28 August 2009.

FAO.

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ABSTRACT

This document contains the report of the Technical Consultation to draft a legally-binding instrument on port State measures to prevent, deter and eliminate illegal, unreported and unregulated fishing. The Consultation was held in four sessions at FAO headquarters, Rome, from 23–27 June 2008, 26–30 January 2009, 4–8 May 2009 and 24–28 August 2009. The Consultation was convened by the Director General of the Food and Agriculture of the United Nations upon the recommendation of the twenty-seventh session of the FAO Committee on Fisheries. The Technical Consultation finalized the draft Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing on 28 August 2009. The Consultation was funded by the Governments of Australia, Canada, New Zealand, Norway and United States of America.

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OPENING OF THE TECHNICAL CONSULTATION

1. On the recommendation of the FAO Committee on Fisheries (COFI) at its Twenty-seventh session, the Director-General of the Food and Agriculture Organization of the United Nations (FAO), Mr Jacques Diouf, convened a Technical Consultation to Draft a Legally-binding Instrument on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. The Technical Consultation was held at FAO Headquarters, Rome, Italy, from 23 to 27 June 2008 and resumed from 26 to 30 January 2009, from 4 to 8 May 2009 and from 24 to 28 August 2009. The Consultation was funded by the Governments of Australia, Canada, New Zealand, Norway and United States of America.

2. The Consultation was attended by 92 FAO Members, one FAO Associate Member, representatives from three specialized agencies of the United Nations, and observers from 20 intergovernmental and international non-governmental organizations. The list of delegates and observers is in Appendix B. The documents that were placed before the Consultation are listed in Appendix C.

3. Referring to the grave concern caused by illegal, unreported and unregulated (IUU) fishing, Mr Ichiro Nomura, Assistant Director-General, FAO Fisheries and Aquaculture Department, in his opening statement on behalf of the Director General, referred to the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate IUU fishing (IPOA–IUU) as a catalyst to consolidate efforts to combat the continuing threat to fish stocks caused by IUU fishing. He added that the IPOA–IUU also reflected the increasing recognition of the international community of the value of port State measures. Global awareness expanded rapidly, as illustrated by COFI’s endorsement of the 2005 FAO Model Scheme on Port State Measures to Combat IUU Fishing (FAO Model Scheme), followed almost immediately by a call by the international community for a legally-binding instrument to be developed, based on the IPOA–IUU and the FAO Model Scheme. Mr Nomura noted that in 2007, COFI had endorsed a timetable for the negotiations of the legally-binding instrument, acknowledging the urgent need for a comprehensive suite of port State measures. He referred to the FAO Expert Consultation held in Washington D.C., USA in September 2007 to prepare the draft Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing (draft Agreement) and the Technical Consultation that was authorized to finalize the draft Agreement. He acknowledged the cooperation of other international organizations in developing the draft Agreement. Mr Nomura also mentioned that FAO had recognized the need for human capacity development to underpin both the development and implementation of the international instruments on port State measures, as well as the need for the optimization of linkages between port State measures and other compliance tools such as those promoting better flag State performance. In this regard, he described the series of FAO regional capacity-development workshops on port State measures to combat IUU fishing. Mr Nomura’s statement is attached as Appendix D.

4. The Twenty-eighth session of COFI in March 2009 reviewed progress with the development of the draft Agreement. Members reiterated their commitment to a successful outcome of the negotiation process and stressed the importance that the resulting instrument should be effective and accepted widely.

ELECTION OF THE CHAIRPERSON

5. Professor Fabio Hazin, Director of the Department of Fisheries and Aquaculture, Federal Rural University of Pernambuco, Recife, Brazil, was elected Chairperson of the Consultation. In assuming the Chair he expressed his thanks to the Consultation for its confidence in electing him to the position. The Consultation agreed with the Chairperson's proposal that all discussion would be held in Plenary, although informal open-ended working groups could be established, as required, to address specific issues.

ADOPTION OF THE AGENDA AND ARRANGEMENTS FOR THE TECHNICAL CONSULTATION

6. The Consultation adopted the Agenda as given in Appendix A. The Chairperson then outlined the timetable of work for the Consultation, noting that a degree of flexibility would be required to make best use of the resources available to the meeting.

ELECTION OF VICE-CHAIRPERSONS AND DESIGNATION OF RAPPORTEUR

7. Mr David Balton (United States of America), Mr Dame Mboup (Senegal) and Mr Terje Lobach (Norway) were elected First, Second and Third Vice-Chairpersons respectively, and Mr Morley Knight (Canada) was elected Rapporteur.

CONSIDERATION AND REVIEW OF THE DRAFT AGREEMENT ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING

8. Delegations were invited to make initial statements on the draft Agreement. Many of them expressed the view that the draft Agreement provided an excellent starting point for the Consultation's work and expressed gratitude to the Experts who had participated in the FAO Expert Consultation to Draft a Legally-binding Instrument on Port State Measures that was held in Washington D.C., USA, from 4 to 8 September 2007.

9. Commencing with the Preamble, the Technical Consultation agreed with the Chairperson's proposal to consider the draft Agreement on an article-by-article basis. Text considered by the Consultation was then presented as the Chairperson's draft Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. Revised versions of the Chairperson's draft Agreement were issued at the end of each session of the Consultation and posted on the FAO Web site.

10. At the initial session from 23 to 27 June 2008, the Technical Consultation reviewed the Preamble and Articles from 1 to 10 of the draft Agreement.

11. At the request of the Chairperson, an Informal Open-ended Technical Meeting to Review the Annexes to the Draft Agreement was convened at FAO Headquarters, Rome, Italy, from 25 to 27 November 2008. The meeting was chaired by Mr Terje Lobach. It was attended by 13 FAO Members and representatives from two regional fishery management organizations or arrangements (RFMOs). The purpose of the meeting was to streamline the five Annexes to the Agreement.

12. The Technical Consultation resumed on 26 January 2009. The Chairperson, after inviting Mr Lobach to report on the Informal Open-ended Technical Meeting to Review the Annexes to the Draft Agreement and hearing some general statements, moved to consider Article 11 of the draft Agreement. The Chairperson indicated that following the initial reading of the remaining Articles of the draft Agreement and revised Annexes, the Consultation would commence a second reading of the text with a view to finalizing it.

13. When it resumed on 4 May 2009 the Technical Consultation proceeded to review bracketed text in the draft Agreement, starting with Article 1. The Chairperson stressed the need to work efficiently and cooperatively as a means of completing the negotiation of the Agreement at that session. He thanked delegations that had held consultations during the intersessional period in an attempt to enhance drafting and narrow differences as a means of facilitating agreement on the text.

14. The European Community informed the Technical Consultation that it had recently adopted a comprehensive Regulation to combat IUU fishing. The European Community understood that the objective of this Agreement was to set minimum standards and therefore reserved its right to apply stricter measures than those in this Agreement, in particular in relation to the definition of IUU fishing.

15. At the opening of the resumed session of the Technical Consultation on 24 August 2009 the Chairman welcomed delegates and expressed his wish that this would be the Consultation's last session. He advised the meeting that he would move to those articles with bracketed text in an attempt to secure consensus prior to discussing other outstanding issues. He stated that he was optimistic that speedy progress could be made in deliberations.

16. The Chilean delegation advised the Technical Consultation that the present Agreement constituted an important step in the fight against IUU fishing activities, a subject that Chile had been pursuing for many years.

17. Japan advised the Technical Consultation that in its process, there was a general understanding that in implementing the Agreement, in the absence of clear guidelines, a port State had the responsibility to interpret certain provisions. For example, Japan believed that it was the responsibility of port States to determine "sufficient proof", "clear evidence", "reasonable grounds" and "clear grounds" in implementing Articles 9.4, 11.1(c), 11.1(e) and 18.1 of the Agreement.

18. The Latin American and Caribbean Group (GRULAC) thanked the Chairperson for the revised draft of the Agreement. GRULAC recognized that since the May 2009 session of the Technical Consultation good progress was being made in the struggle against IUU fishing by Latin American and Caribbean countries. GRULAC reminded the Consultation that it reserved its right to reopen the text in future.

19. With reference to the third paragraph of the Preamble, Brazil stated its strong concern that market measures should not be applied as a means to combat IUU fishing given that they might act as barriers to trade. Brazil stated that, given the scope of the Agreement, no market measures should, in any way, create commercial impact that contradicts commitments of countries, as agreed in the World Trade Organization (WTO) and other relevant commercial agreements.

20. Chile informed the Technical Consultation that, as expressed in the Preamble and especially in Article 4 of the Agreement, this is an Agreement of minimum standards, a condition that Chile considered significant in order to approve the Agreement, which is, that the coastal State may establish other norms either of a higher or equal hierarchy to those set forth in this Agreement. On the other hand, Chile also considered that the declaration of Article 4 in this Agreement was essential, particularly with regard to the fact that nothing in the Agreement shall prejudice the rights, jurisdiction and sovereignty over its territory, its internal, archipelagic and territorial waters or its rights over the continental shelf and in its exclusive economic zones.

21. With respect to Article 1(e) of the Agreement, Australia, Canada, European Community, Cook Islands, Iceland, Japan, the Republic of Korea, New Zealand, Norway, Russian Federation and United States of America expressed the view that the definition of IUU fishing in the IPOA-IUU, in particular the definition of unregulated fishing, required some amendment to reduce its ambiguity and to make it more appropriate for the context of this Agreement.

22. With respect to the definition of IUU fishing in Article 1(e) of the Agreement, Canada recalled that there had been a lengthy discussion on the best way to approach the definition of IUU fishing. It was pointed out that while the Canadian delegation would have preferred that this Technical Consultation had negotiated a definition appropriate to a legally-binding instrument, time constraints and the strongly held desire of some Members to maintain the earlier IPOA-IUU negotiated text did not permit the Consultation to do so. Like several other delegations, Canada considered that aspects of the definition were not as clear in their scope as they might have been. However, Canada considered that this afforded those Parties that wished to take a robust approach to deter IUU fishing the opportunity to do so, particularly when it came to vessels engaged in fishing in high seas areas not regulated by a RFMO. It was noted that such Parties may wish to consider various factors in determining whether to permit such vessels to enter and use their ports. Among the factors could be whether the vessel was operating pursuant to a valid licence issued by its flag State and whether that flag State, in conferring the licence, applied appropriate precautionary considerations consistent with international law including the 1982 UN Convention on the Law of the Sea (1982 UN Convention) and the 1995 UN Fish Stocks Agreement.

23. With reference to Article 1(e) of the Agreement, the Russian Federation expressed its concern with regard to the absence in the Chairperson's draft text of the definition of IUU fishing. While understanding the necessity for the prompt adoption of a global instrument aimed at preventing, deterring and eliminating IUU fishing, the Russian Federation regretted that the non existence of the term in the draft text of a binding instrument of what constituted IUU fishing could be considered as a legal imperfection for the future Agreement.

24. Concerning Article 1(e) of the Agreement, Japan advised the Technical Consultation that, in its view, the reference to the 2001 FAO International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing for the definition of IUU fishing introduced legal uncertainty to the Agreement because the IPOA-IUU was a legally non-binding document and, theoretically, subject to change in the future through "less legal" process. Japan believed that a common understanding was that there would be a process to consult among Parties in case modifications were made to the IPOA-IUU in order to address the issue.

25. The Mexican delegation presented the following text to the Technical Consultation to substitute Article 1(e) of the Agreement.

- (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:
 - (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.

26. The Technical Consultation did not accept the proposal made by the Mexican delegation.

27. With respect to Article 1(j) of the Agreement, Japan advised the Technical Consultation that, in its view, under this paragraph a port State may decide on whether the vessel, seeking entry into its port, is “intended” to be used for fishing or fishing related activities.

28. The United States of America informed the Technical Consultation that it understood the phrase in Article 3.5 that this Agreement “applies to all ports” to mean that the port State measures set forth in this Agreement are capable of being applied in all ports.

29. Pacific Island countries present at the Technical Consultation expressed a reservation on Article 3.5 of the Agreement noting the need to include “fishing entities” in order to meet the objective of the Agreement in the Pacific Island region. It was pointed out that this consideration could affect decisions by Pacific Island countries to become Parties to the Agreement.

30. With respect to Article 3.5 of the Agreement, Kiribati expressed serious concerns on the absence of adequate mechanisms in the draft Agreement to support the meaningful participation of “fishing entities” and indicated that the option for non Parties to express their commitments was the only mechanism. Other provisions such as Article 24 of the draft Agreement were limiting in that only Parties could participate in meetings to monitor, review and assess implementation.

31. The Russian Federation advised the Technical Consultation that with regard to Article 3.5 of the Chairperson’s draft text, the Russian Federation understood its wording to mean the extent to which it is consistent with international law.

32. Argentina and People’s Republic of China advised the Technical Consultation that it interpreted the term “entities” used in Article 3.5 of the draft Agreement drafted in the Consultation to refer to “entities” mentioned in Article 305 of the 1982 UN Convention.

33. In relation to Article 3.5 of the draft Agreement, the European Community expressed its understanding that the Agreement would apply to all ports across the globe and that it would provide for an opportunity for all actors, including entities and fishing entities, to apply the Agreement and that it would have no limitation in terms of its geographical application and its substantive participation.

34. With respect to Article 4.4 of the Agreement, Canada and the European Community advised the Technical Consultation that they considered the determination of whether a measure or decision of a RFMO was adopted in conformity with international law could not be left exclusively to be made by any individual port State. In their views, such determination must result from procedures for the peaceful settlement of disputes consistent with international law.

35. The Republic of Korea, Japan, New Zealand and the United States of America informed the Technical Consultation that Article 4.4 of the Agreement applied throughout the whole Agreement and the term “international law” included IMO-related agreements and WTO/GATT/GATS Agreements.

36. Chile and Uruguay advised the meeting that the inclusion of Article 9 in this Agreement, which made it possible to deny the entry of foreign vessels to the port when a Party had sufficient elements to determine that the vessel seeking entry to the port had engaged in IUU fishing activities or fishing related activities in support of IUU fishing, was considered essential by Chile and Uruguay. In this regard, Chile and Uruguay understood that, in accordance with Article 9, the vessel and its flag State were required to prove that it had not participated in IUU fishing activities.

37. Japan and the Republic of Korea advised the Technical Consultation that with respect to Article 9.4 of the Agreement, the primary target of this paragraph was a vessel on a list of vessels having engaged in IUU fishing or fishing related activities adopted by a relevant RFMO.

38. Japan and the Republic of Korea advised the Technical Consultation that, in their view, Article 9 involved the denial of landing of fish, which could be both previously landed and not landed in a port, in conformity with international laws. Articles 11 and 18, on the other hand, only involved the denial of landing of fish that had not been previously landed. Articles 11 and 18 applied when the vessels came to port directly from the ocean where they had engaged in fishing or fishing related activities. Furthermore, Japan expressed the view that requiring vessels to leave ports could constitute denial of the use of ports pursuant to Articles 11 and 18

39. Bangladesh, Japan, the Republic of Korea and the United States of America agreed that “clear grounds” in Article 18.1 of the Agreement shall not be interpreted in a way to include cases of minor and inadvertent misreporting.

40. The European Community and the Republic of Korea, with reference to Article 18.1 of the Agreement, expressed their understanding that inspectors, when carrying out their duties, will take due account of the gravity of the violation concerned.

41. Chile, India, Guatemala, Guinea, Morocco and Namibia expressed their reservations with respect to Article 19 of the Agreement concerning information on recourse in the port State. Their reservations referred particularly to the use of the terms “compensation” and “alleged unlawful action by the Party”.

42. Angola, Chile, Guinea, Namibia, Uruguay and Venezuela informed the Technical Consultation that they supported the consensus reached on Article 19 of the Agreement. However the delegations held the view that the position on compensation to the vessel owner should be omitted from the Chairperson’s draft text. This opinion was based on the fact that this provision did not provide incentives and could weaken the effectiveness of a number of developing countries, including Angola, Chile, Guinea, Namibia, Uruguay and Venezuela, to take appropriate action on vessels suspected to have been involved in IUU fishing. For this purpose, the Angolan, Chilean, Guinean, Namibian, Uruguayan and Venezuelan delegations believed that any compensation and the magnitude to the vessel owner should be determined

by the competent court of law within the port State were such action to take place, in accordance with their national laws and regulations.

43. Bangladesh and Turkey expressed their reservation on Article 19 of the Agreement.

44. In relation to Article 19 of the Agreement, the European Community expressed its disappointment that the Technical Consultation was unable to agree on more comprehensive rules for the protection of the rights of operators when it came to unlawful action by port States.

45. During the Consultation the Republic of Korea expressed a strong preference for retaining the original Article 19 of the Chairperson's draft Agreement with some amendments as follows: "Each Party shall ensure that the owner or operator of a vessel is entitled to compensation for any loss or damage suffered as a consequence of unlawful action. In any instance of unlawful action, the burden of proof lies with the owner or operator of the vessel."

46. The African Group and the Pacific Island countries present at the Technical Consultation advised the Consultation that in order to permit the rapid implementation of the provisions of the Agreement and to ensure it becomes operational for developing countries as soon as it enters into force, they proposed that the ad hoc working groups referred to in Article 21.6 of the Agreement should be put in place as soon as the text was adopted. This would enable concrete recommendations to be made on the financial mechanisms to support developing countries to implement the Agreement.

47. The delegations of Colombia, the Bolivarian Republic of Venezuela, Ecuador and Mexico made a statement in relation to the Agreement and the process for its adoption. It is in Appendix E.

48. Canada observed that, as this Agreement established minimum standards and that there was a desire for an effective Agreement, an overwhelming number of delegations supported strongly Article 30, which provided that there be no reservations or exceptions to this Agreement.

49. As a point of clarification the Technical Consultation noted that with respect to the adoption of new Annexes, Article 33 of the Agreement would apply. Subsequent amendment of the Annexes, if any, would be subject to Article 34.

50. The importance that the agreed binding instrument be governed by the provisions of Article XIV of FAO Constitution was recognized. At the same time, it was understood that the competent bodies of FAO, and COFI in particular, must participate actively in the process of monitoring and review of the Agreement.

51. The Bolivarian Republic of Venezuela advised the Technical Consultation that it was not a Party to the 1982 UN Convention and that the reasons behind its non-subscription to the Convention remained valid. Venezuela reasserted that the 1982 UN Convention was not the only legitimate body in legal matters of the sea and that other legal instruments regulating the utilization of the oceans were also available. Venezuela reminded the Consultation that the 1982 UN Convention was not an instrument with global scope as many States had not subscribed as Parties to the Convention. Therefore, the Bolivarian Republic of Venezuela reasserted that, given that it was not a Party to the 1982 UN Convention nor to the 1995 UN

Fish Stocks Agreement, references to these instruments in the present Agreement did not presuppose the position of any State with respect to the approval, ratification or adhesion to these instruments.

52. For the Republic of Argentina, references to the 1995 UN Fish Stocks Agreement were not applicable to States that were not Parties to this Agreement.

53. Colombia informed the Technical Consultation that since it was not a Party to the 1982 UN Convention nor to the 1995 UN Fish Stocks Agreement, the Republic of Colombia declared that the references to those instruments in the legally-binding instrument on port State measures to prevent, deter and eliminate IUU fishing, did not prejudice the position of any State with regard to the signature, ratification or accession to those instrument.

54. Pacific Island countries present at the Technical Consultation informed the Consultation that they intended to exercise their discretion in applying the Agreement to foreign fishing vessels licensed to fish within their national waters if measures already in place were as effective as those provided in the Agreement. They indicated that in asserting their sovereignty over their ports and applying sovereign rights they had in place regional and sub-regional arrangements to support monitoring, control and surveillance of their fisheries including port State measures applicable to all vessels conducting fishing or fishing related activities in their national waters. The countries stated further that each licensed foreign fishing vessel was subject to stringent conditions including the requirement to install and operate a mobile transceiver unit, accommodate an observer if required and submit to port and other inspections. In their view, the Pacific Island countries that had already equivalent or stronger measures to combat IUU fishing should not be required to apply the Agreement to licensed foreign fishing vessels unless deemed necessary.

55. Canada advised the Technical Consultation that its interpretation coincided with that of Pacific Island countries in that coastal States need not apply this Agreement to foreign fishing vessels they had licensed to fish in waters under their national jurisdiction.

56. Pew Environment Group, an observer at the Technical Consultation, welcomed the finalization of the text of this important international Agreement and hoped that this treaty could be ratified by all countries without reservations and implemented rapidly in the very important efforts to combat IUU fishing. Pew encouraged the provisional application of this Agreement and that States begin the collection and dissemination of information in accordance with the requirements established in Annexes A and C. Pew hoped that the interpretation of the provisions of this Agreement would be done in a manner that most vigorously led to the elimination of IUU fishing and be accompanied, before the treaty entered into force, by guidelines that could assist States in their application of this Agreement.

57. Greenpeace and World Wide Fund for Nature (WWF), observers at the Technical Consultation, welcomed the adoption of this binding Agreement on port State control and wished to stress their appreciation for the efforts of delegations attending these negotiations. Greenpeace and WWF wished to remind States that the pace at which the international community was responding to the impacts of IUU fishing was far from satisfactory. Fourteen years had passed since the adoption of the last binding global agreement. Therefore, they called on States who had negotiated this Agreement to ratify it as soon as possible as well as to encourage all other port States that had not engaged in this process to become Parties. Regardless of when the Agreement entered into force they called on all responsible port States

to implement its provisions immediately. Finally, they noted that it was the view of Greenpeace and WWF that unregulated activities on the high seas were still not properly dealt with by the current definition of IUU fishing contained in IPOA-IUU and that, with minor exceptions, fishing on the high seas in areas or for stocks for which there were no regional management and conservation measures in place should be regarded as IUU fishing.

58. The Technical Consultation finalized the drafting of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing on 28 August 2009. The Agreement is in Appendix F.

OTHER MATTERS

59. Australia, Canada, European Community, Iceland, Indonesia, Japan, New Zealand, Norway, Thailand and United States of America were of the view that the Agreement should be opened for signature during the 2009 FAO Conference and that it should remain open for signature for a period of one year.

ADOPTION OF THE REPORT

60. The report of the Technical Consultation was adopted on 28 August 2009 at 19.00 hours.

AGENDA

1. Opening of the session
2. Election of Chairperson
3. Adoption of the agenda and arrangements for the Technical Consultation
4. Election of Vice-Chairpersons and designation of Rapporteur
5. Consideration and review of the draft Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
6. Other matters
7. Adoption of the report

APPENDIX B**List of delegates and observers****MEMBERS/MEMBRES/MIEMBROS****ALGERIA - ALGÉRIE - ARGELIA**

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List of documents

TC PSM/2008/1	Agenda and Timetable
TC PSM/2008/2	Draft Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
TC PSM/2008/Inf.1	List of documents
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TC PSM/2008/Inf.3	Statement by the Assistant-Director General for Fisheries and Aquaculture
TC PSM/2008/Inf.4	Report of the Expert Consultation to Draft a Legally-binding Instrument on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Washington D.C., USA, 4 – 8 September 2007
TCP SM/2008/Inf.5	Statement of Competence and Voting Rights submitted by the European Community (EC) and its Members States

Opening Statement
by
Ichiro Nomura
Assistant Director-General
Fisheries and Aquaculture Department
FAO
Rome, Italy

Good morning, ladies and gentlemen:

On behalf of the Director-General of FAO, Mr Jacques Diouf, it gives me much pleasure to welcome you to FAO and to Rome for this Technical Consultation.

Illegal, unreported and unregulated (IUU) fishing is an issue of grave concern for us all. IUU fishing undermines efforts to conserve and manage fish stocks in a sustainable manner and inhibits the achievement of responsible fisheries. In 2001, FAO Members developed within the framework of the 1995 FAO Code of Conduct for Responsible Fisheries, an International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU). The IPOA-IUU has served as a catalyst to consolidate efforts at all levels to combat the continuing destruction caused by IUU fishing.

The IPOA-IUU adopted a holistic approach, and in so doing, elaborated actions and measures to be taken by all States, flag States, coastal States and, importantly, port States. This marked only the fourth time that port State measures had been agreed in an international instrument as a means of monitoring and controlling fishing activities. The three previous instruments had been concluded in less than a decade and reflected the increasing recognition of the international community of the value of port State measures. They were the 1993 FAO Compliance Agreement, the 1995 UN Fish Stocks Agreement and the 1995 FAO Code of Conduct on Responsible Fisheries. Each instrument provided a more comprehensive elaboration of port State measures than the last, with the UN Fish Stocks Agreement referring to the “right and duty” of a port State to take such measures.

The IPOA-IUU served as the threshold of a new era. Global awareness of the potential effectiveness of strengthened and harmonized port State measures expanded rapidly, together with an appreciation of their cost-effectiveness and their central role in reinforcing other tools for combating IUU fishing such as those relating to international trade and flag State responsibility.

As a result, only four years after the endorsement of the IPOA-IUU, the FAO Committee on Fisheries (COFI) endorsed the 2005 FAO Model Scheme on Port State Measures to Combat IUU Fishing. It was the outcome of a 2002 FAO Expert Consultation and a 2004 FAO Technical Consultation. As a comprehensive voluntary instrument, it provided a minimum standard for harmonized actions and measures to be taken by port States in respect of foreign fishing vessels, and has already served as the basis for national measures and for schemes of some regional fishery management organizations.

The international community clearly and unambiguously welcomed the FAO Model Scheme, but almost immediately called for a legally-binding instrument to be developed, based on the IPOA-IUU and the FAO Model Scheme. This sentiment was expressed in many fora within and outside the UN system, including through the UN General Assembly Resolutions on Sustainable Fisheries of 2005 and 2006.

In 2007, at its Twenty-seventh Session, COFI acknowledged the urgent need for a comprehensive suite of port State measures and took note of the strong support for the Norwegian proposal to develop a new legally binding instrument. A timetable was endorsed, consisting of an Expert Consultation which was held in Washington D.C., USA, in September 2007 to prepare the draft Agreement, and this Technical Consultation to finalize the instrument's text.

Development of a legally-binding instrument cannot be a stand-alone activity; its objective and provisions must be well-understood and effectively implemented at all levels. In this regard, FAO has recognized the need for human capacity development to underpin both the development and implementation of the international instruments on port State measures, as well as the need for the optimization of linkages between port State measures and other compliance tools such as flag State responsibility.

To address this situation, FAO has coordinated a series of regional capacity-development workshops on port State measures to combat IUU fishing. Five such workshops have been held with partner regional bodies since 2006. Outcomes have directly contributed to regional cooperation to implement port State measures and linked compliance tools. In one case a regional scheme on port State measures that was developed during the workshop was later adopted by the Commission. Subject to further extra-budgetary funding support additional workshops will be held.

The purpose of the Technical Consultation is clear and urgent: to finalize the text of the draft Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing. I urge you all to work hard this week to ensure that this goal is achieved.

Before concluding, I would like to acknowledge the cooperation of the International Maritime Organization and the International Labour Organization in developing the draft Agreement. Technical assistance provided by the North East Atlantic Fisheries Commission is also acknowledged.

In conclusion I would like to note that the outcome of the Technical Consultation will be presented to the Twenty-eighth Session of COFI in March 2009. I am confident that COFI will take much interest in the report of the meeting and provide guidance for appropriate follow-up action.

I hope you will have spirited and fruitful discussions during this Consultation. If my colleagues or I can be of assistance over the next five days please do not hesitate to contact us.

Thank you very much.

**Statement of the delegations of Colombia, the Bolivarian Republic of Venezuela,
Ecuador and Mexico**

The technical delegations of Colombia, the Bolivarian Republic of Venezuela, Ecuador and Mexico, reiterate their firm commitment to promote the sustainable use and long-term conservation of marine living resources. To that effect, they have contributed in a constructive and transparent manner with a view to the elaboration of a text that may be considered by the FAO Member States for the adoption, subscription and effective implementation of a legally-binding instrument of effective minimum norms to prevent, deter and eliminate illegal, unreported and unregulated fishing, which complements the primary responsibility of the flag State.

Because of its nature we understand that this instrument does not pretend to regulate the exercise by a State of its sovereignty over its ports and that its provisions are adjusted to the principles of international law, especially those of the law of treaties, which recognize the faculty that a State has to make reservations to a legally-binding agreement. Nevertheless, we are ready to submit for the consideration of our Governments the text which is attached to this report, including article 30, on the understanding that it will be possible to object to it, to reopen the debate, to negotiate the text and to include reservations if necessary, on behalf of any State.

On the other hand, without prejudice to the mandate that was given to us by COFI, for the sake of facilitating the prompt adoption and entry into force of the instrument that we are considering, we accept to proceed to the Council at its 137th session, for the Council to transmit it to the General Committee of the 36th Conference of the FAO, and for the General Committee to mandate the corresponding General Commission, where all States Members of the organization are represented, with its consideration and review.

Rome, 27 August 2009

**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 living marine 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 the 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, hereinafter referred to as “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, hereinafter referred to as “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 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, attracting, locating, 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, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;
- (e) “illegal, unreported and unregulated 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, hereinafter referred to as “IUU 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, packaging, processing, refueling 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 or 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 IUU 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 not entitled to fly its flag that are seeking entry to its ports 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 such vessels do not engage in IUU fishing or fishing related activities in support of such 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 such vessels have engaged in fishing related activities in support of IUU fishing.
2. A Party may, in its capacity as a port State, decide 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. Such vessels shall be subject to measures by the Party which are as effective as measures applied in relation to vessels entitled to fly its flag.
3. 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.
4. This Agreement shall be applied in a fair, transparent and non-discriminatory manner, consistent with international law.

5. 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 entry thereto as well as to adopt more stringent port State measures than those provided for in this Agreement, including such measures adopted pursuant to a decision of a regional fisheries management organization.

2. 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.

3. 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.

4. 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.

5. 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

Each Party shall, to the greatest extent possible:

- (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 IUU fishing and fishing related activities in support of such 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 exchange 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. Each Party shall, to the greatest extent possible, 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 FAO, 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 entry

1. Each Party shall require, as a minimum standard, the information requested 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 such information.

Article 9
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 its port has engaged in IUU fishing or fishing related activities in support of such 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.
2. In the case of authorization of entry, the master of the vessel or the vessel's representative shall be required to present the authorization for entry to the competent authorities of the Party upon the vessel's arrival at port.
3. In the case of denial of entry, each Party shall communicate its decision taken pursuant to paragraph 1 of this Article to the flag State of the vessel and, as appropriate and to the extent possible, relevant coastal States, regional fisheries management organizations and other international organizations.
4. 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 IUU fishing or fishing related activities in support of such 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 paragraphs 2 and 3 of Article 4.
5. Notwithstanding paragraphs 3 and 4 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 IUU fishing and fishing related activities in support of such fishing.
6. Where a vessel referred to in paragraph 4 or 5 of this Article is in port for any reason, a Party shall deny such vessel the use of its ports for landing, transshipping, packaging, and processing of fish and for other port services including, *inter alia*, refueling and resupplying, maintenance and drydocking. Paragraphs 2 and 3 of Article 11 apply *mutatis mutandis* in such cases. Denial of such use of ports shall be in conformity with international law.

Article 10
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 11*
Use of ports

1. Where 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 and processing of fish that have not been previously landed and 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 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 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 due account paragraphs 2 and 3 of Article 4; 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 such fishing, including in support of a vessel referred to in paragraph 4 of Article 9, 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 paragraph 4 of Article 9.

2. Notwithstanding paragraph 1 of this Article, a Party shall not deny a vessel referred to in that paragraph the use of port services:

- (a) essential to the safety or health of the crew or the safety of the vessel, provided these needs are duly proven, or
- (b) where appropriate, for the scrapping of the vessel.

3. Where a Party has denied the use of its port in accordance with this Article, it shall promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations 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 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 12

Levels and priorities for inspection

1. Each Party shall inspect the 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 IUU fishing or fishing related activities in support of such fishing by the vessel in question; and
- (c) other vessels for which there are clear grounds for suspecting that they have engaged in IUU fishing or fishing related activities in support of such fishing.

Article 13

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 17;

- (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 inspectors examine all relevant areas of the vessel, the fish on board, the nets and any other gear, equipment, and any document or record on board that is relevant to verifying compliance with relevant conservation and management measures;
- (d) require the master of the vessel to give inspectors all necessary assistance and information, and to 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 that 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, including where possible and where needed that the inspector is accompanied 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 14
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 15
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:
 - (i) those States for which there is evidence through inspection that the vessel has engaged in IUU fishing or fishing related activities in support of such fishing within waters under their national jurisdiction; and
 - (ii) 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 16
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.
2. To the extent possible and with due regard to appropriate confidentiality requirements, Parties should cooperate to establish an information-sharing mechanism, preferably coordinated by FAO, in conjunction with other relevant multilateral and intergovernmental initiatives, and to facilitate the exchange of information with existing databases relevant to this Agreement.
3. 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 FAO.
4. Each Party shall handle information to be transmitted through any mechanism established under paragraph 1 of this Article consistent with Annex D.
5. FAO shall request relevant regional fisheries management organizations to provide information concerning the measures or decisions they have adopted and implemented which relate to this Agreement for their integration, to the extent possible and taking due account of the appropriate confidentiality requirements, into the information-sharing mechanism referred to in paragraph 2 of this Article.

Article 17
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 18
Port State actions following inspection

1. Where, following an inspection, there are clear grounds for believing that a vessel has engaged IUU fishing or fishing related activities in support of such fishing, the inspecting Party shall:
 - (a) promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other international organizations, and the State of which the vessel's master is a national of its findings; and
 - (b) deny the vessel the use of its port for landing, transshipping, packaging and processing of fish that have not been previously landed and 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 for the safety or 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 19

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 9, 11, 13 or 18, 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 9, 11, 13 or 18, the Party shall inform them of any change in its decision.

PART 5

ROLE OF FLAG STATES

Article 20

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 IUU fishing or fishing related activities in support of such fishing 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, package 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 State that may not be acting in accordance with, or in a manner consistent with, this Agreement.

4. 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 IUU fishing or fishing related activities in support of such fishing, it shall immediately and fully investigate the matter and shall, upon sufficient evidence, take enforcement action without delay in accordance with its laws and regulations.

5. 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 flag that, as a result of port State measures taken pursuant to this Agreement, have been determined to have engaged in IUU fishing or fishing related activities in support of such fishing.

6. Each Party shall ensure that measures applied to vessels entitled to fly its flag are at least as effective in preventing, deterring, and eliminating IUU fishing and fishing related activities in support of such fishing as measures applied to vessels referred to in paragraph 1 of Article 3.

PART 6

REQUIREMENTS OF DEVELOPING STATES

Article 21

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 or 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 to 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 obligations 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 actions 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 22**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 23**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 24**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 as well as the assessment of progress made towards achieving its objective.

2. Four years after the entry into force of this Agreement, FAO 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 25

Signature

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

Article 26

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 27

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 28

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 29
Entry into force

1. This Agreement shall enter into force thirty days after the date of deposit with the Depository of the twenty-fifth instrument of ratification, acceptance, approval or accession in accordance with Article 26 or 27.
2. For each signatory which ratifies, accepts or approves 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 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 30
Reservations and exceptions

No reservations or exceptions may be made to this Agreement.

Article 31
Declarations and statements

Article 30 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 32
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 33
Amendments

1. Any Party may propose amendments to this Agreement 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 to all Parties such communication as well as all replies to the request received from Parties. 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 34, 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 34, 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 purposes of this Article, an instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by its Member States.

Article 34
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 where the proposed amendment to the Annex 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 expressed their acceptance from the date on 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 35
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 36
The Depositary

The Director-General of the FAO 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 each signatory and Party to this Agreement of all:
 - (i) signatures and instruments of ratification, acceptance, approval and accession deposited under Articles 25, 26 and 27;
 - (ii) the date of entry into force of this Agreement in accordance with Article 29;
 - (iii) proposals for amendment to this Agreement and their adoption and entry into force in accordance with Article 33;
 - (iv) proposals for amendment to the Annexes and their adoption and entry into force in accordance with Article 34; and
 - (v) withdrawals from this Agreement in accordance with Article 35.

Article 37
Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized, have signed this Agreement.

DONE at **, on this ** day of **, 200*.

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											
11. Vessel owner(s)											
12. Certificate of registry ID											
13. IMO/ ship ID, if available											
14. External ID, if available											
15. RFMO ID, if applicable											
16. VMS		No		Yes: National		Yes: RFMO(s)		Type:			
17. Vessel dimensions		Length		Beam		Draft					
18. Vessel master name and nationality											
19. 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>						
20. Relevant transshipment authorization(s)											
<i>Identifier</i>		<i>Issued by</i>		<i>Validity</i>							
<i>Identifier</i>		<i>Issued by</i>		<i>Validity</i>							
21. 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>			
22. Total catch onboard							23. 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

Inspectors shall:

- a) verify, to the extent possible, that the vessel identification documentation onboard and information relating to the owner of the vessel 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 (IMO) 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 authorizations for fishing and fishing related activities are true, complete, 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 vessel monitoring system (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 authorizations. The fishing gear shall, to the extent possible, also be checked to ensure that features such as the mesh and twine size, 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 authorizations;
- g) examine the fish, including by sampling, to determine its quantity and composition. In doing so, inspectors 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 IUU fishing or fishing related activities in support of such fishing;

- i) provide the master of the vessel with the report containing the result of the inspection, including possible measures that could be taken, to be signed by the inspector and the master. The master's signature on 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; and
- j) arrange, where necessary and possible, for 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</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>	<i>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>	Type:	
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					

<i>Name</i>	<i>Flag State</i>	<i>ID no.</i>	<i>Species</i>	<i>Product form</i>	<i>Catch area(s)</i>	<i>Quantity</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 determined, 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 determined, if any</i>	
32. Examination of logbook(s) and other documentation				<i>Yes</i>	<i>No</i>	<i>Comments</i>
33. Compliance with applicable catch documentation scheme(s)				<i>Yes</i>	<i>No</i>	<i>Comments</i>
34. Compliance with applicable trade information scheme(s)				<i>Yes</i>	<i>No</i>	<i>Comments</i>
35. Type of gear used						
36. Gear examined in accordance with paragraph e) of Annex B			<i>Yes</i>	<i>No</i>	<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's signature						
42. Inspector's signature						

Information systems on port State measures

In implementing this Agreement, each Party shall:

- a) seek to establish computerized communication in accordance with Article 16;
- b) establish, to the extent possible, websites to publicize the list of ports designated in accordance with Article 7 and the actions taken in accordance with the relevant provisions 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 RFMOs, 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 State), 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 fish 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; and
12. Actions to be taken following an inspection.

This document contains the report of the Technical Consultation to draft a legally-binding instrument on port State measures to prevent, deter and eliminate illegal, unreported and unregulated fishing. The Consultation was held in four sessions at FAO headquarters, Rome, from 23–27 June 2008, 26–30 January 2009, 4–8 May 2009 and 24–28 August 2009. The Consultation was convened by the Director General of the Food and Agriculture of the United Nations upon the recommendation of the twenty-seventh session of the FAO Committee on Fisheries. The Technical Consultation finalized the draft Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing on 28 August 2009. The Consultation was funded by the Governments of Australia, Canada, New Zealand, Norway and United States of America.

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