



Food and Agriculture  
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# IMPLEMENTATION OF PORT STATE MEASURES

LEGISLATIVE TEMPLATE  
FRAMEWORK FOR PROCEDURES  
ROLE OF REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS



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Photograph on page 152 by IOTC Regional Observer Programme to Monitor Transshipment at Sea

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FRAMEWORK FOR PROCEDURES  
ROLE OF REGIONAL FISHERIES  
MANAGEMENT ORGANIZATIONS**

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## PREPARATION OF THIS DOCUMENT

Port State measures are the front line of attack against illegal, unreported and unregulated (IUU) fishing, whether it occurs in waters under national jurisdiction or the high seas. Implementation of these measures by all port States, using minimum standards agreed at global and regional levels, is of vital importance for the sustainability of the tuna and other fisheries resources occurring in all marine areas.

The entry into force of the FAO Agreement on port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) Fishing on 5 June 2016 reflected the successful culmination of global efforts to combat IUU fishing by setting harmonized minimum standards for measures to be taken at port. It targets IUU fishing and fishing related activities in support of such fishing, and its reach extends to areas within and beyond national jurisdiction. Many regional fishery management organizations (RFMOs) and some countries have been active in preparing for entry into force, but the development and adoption of national implementing legislation has become imperative.

This document provides a legislative template and related information for use by port States and, as appropriate, to facilitate those initial steps. The document was developed in the framework of the Common Oceans ABNJ Tuna Project funded by the Global Environment Facility and implemented by the FAO.

The Common Oceans ABNJ Tuna Project harnesses the efforts of a large and diverse array of partners, including the five tuna RFMOs, governments, inter-governmental organizations, non-governmental organizations and private sector.

The Project aims to achieve responsible, efficient and sustainable tuna production and biodiversity conservation in the ABNJ focusing on three thematic areas including:

- Improving management
- Combatting IUU fishing
- Protecting biodiversity

Under the second thematic area, the Project supports the implementation of port State measures, as well as other actions to empower States in their fight against IUU fishing.

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## ACKNOWLEDGEMENTS

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## ACRONYMS

ABNJ	Areas beyond national jurisdiction
AREP	Advance request for entry to port
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCM	Member and Cooperating non-Member and Participating Territory (WCPFC)
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CDS	Catch documentation scheme
CMMs	Conservation and management measures adopted by RFMOs
CNMs	Cooperating Non-Members (CCSBT)
COFI	FAO Committee on Fisheries
CPCs	Members and Cooperating non-Contracting Parties of IOTC
FAO	Food and Agriculture Organization of the United Nations
FAO Agreement, or FAOA	2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
FFA	Pacific Islands Forum Fisheries Agency
GFCM	General Fisheries Commission for the Mediterranean
IATTC	Inter-American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tuna
IMO	International Maritime Organization
IOTC	Indian Ocean Tuna Commission
IOTC Resolution, or IOTCR	Resolution 10/11 on Port State measures to prevent, deter and eliminate illegal, unreported and unregulated fishing
IUU	Illegal, unreported and unregulated
LSTLFVS	List of longline fishing vessels over 24 meters
MCS	Monitoring, control and surveillance
MOU	Memorandum of Understanding
NAFO	Northwest Atlantic Fisheries Organization
NEAFC	North East Atlantic Fisheries Commission
PSC	Port State control
RFMO	Regional fisheries management organization
SBT	Southern Bluefin Tuna
SEAFO	South East Atlantic Fisheries Organization
SOPs	Standard Operating Procedures

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UNFSA

United Nations Fish Stocks Agreement

WCPFC

Western and Central Pacific Fisheries Commission

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## EXECUTIVE SUMMARY

The entry into force of the FAO Agreement on port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) Fishing on 5 June 2016 reflected the successful culmination of global efforts to combat IUU fishing by setting harmonized minimum standards for measures to be taken at port. It targets IUU fishing and fishing related activities in support of such fishing, and its reach extends to areas within and beyond national jurisdiction. Many RFMOs and some countries have been active in preparing for entry into force, but the development and adoption of national implementing legislation has become imperative.

At regional level, several RFMOs have adopted various requirements and minimum standards of the FAO Agreement in conservation and management measures (CMMs) that are legally binding on their members. In 2010, the Indian Ocean Tuna Commission (IOTC) adopted Resolution 10/11 on port State measures that is almost identical to the FAO Agreement. Other RFMO CMMs vary in the extent of implementation of its requirements, as described in this document. There is ongoing review and strengthening of the CMMs relating to port State measures within many RFMOs, in part encouraged by their performance reviews.

This document focuses on the implementation of two legal instruments - the FAO Agreement and IOTC Resolution – which, as noted above, are almost identical. Together, they are legally binding on a wide range of countries.

At national level, the process of preparing for entry into force of the FAO Agreement, as well as implementation of relevant RFMO CMMs, has been challenging for many countries. The objective of this document is twofold: to meet those challenges by providing generic legislative templates for the development of national legislation; and to explain broader context of port State measures.

Legislative templates are provided for implementing the core and supporting provisions respectively; they are generic, and can be adapted to different legal systems, institutions and instruments. The core provisions are those implemented directly from the FAO Agreement, and as appropriate the IOTC Resolution, and the supporting provisions are those that relate to areas such as enforcement information and evidence. The latter reflect best practices and are important for backstopping aspects of the core provisions; they may already be in national fisheries legislation or may be used for strengthening existing provisions. Explanatory notes are given for each core and supporting provision.

In order that the broader context of port State measures can be better understood as national legislation is developed, this document also describes the development of port State measures, a framework for national procedures and the role of RFMOs.



## 1 INTRODUCTION AND BACKGROUND

### 1.1 Port State measures

Port State measures are the front line of attack against illegal, unreported and unregulated (IUU) fishing, whether it occurs in waters under national jurisdiction or the high seas. Implementation of these measures by all port States, using minimum standards agreed at global and regional levels, is of vital importance for the sustainability of the tuna and other fisheries resources occurring in all marine areas.

Port State measures are considered to be among the most robust and cost-effective tools in the global arsenal to combat IUU fishing. They impose major sanctions, including denial of entry into port or use of port and could lead to further investigation, prosecution, license revocation and inclusion on an RFMO IUU vessel list, as well as market-related measures.

By making it more difficult to market fish, the economic incentive to engage in IUU fishing is reduced. In addition, many countries have decided to prohibit trade with countries that do not have port State measures in place. By reducing financial gains from IUU fishing the international community was of the view that the incentive to engage in such fishing would be reduced. Used in combination with other tools, port State measures should reduce the level of IUU fishing globally.

The measures integrate other monitoring, control and surveillance (MCS) tools such as catch documentation schemes (CDS), consolidated vessel lists and electronic monitoring systems, and encourage integration among all national agencies responsible for port inspections. They call for the exchange of information with - and among – RFMOs, coastal States, flag States and international organizations, leading to more effective fisheries conservation and management and conservation on a global basis.

Port State measures are based on agreed minimum legal and operational standards and criteria. For example, they set out requirements for denial of entry into, or use of port by vessels that may have been involved in IUU fishing or related activities such as transshipment or supply. Implementation of the minimum standards in national legislation, based on international and regional agreement, is essential for the success of the measures.

Operational matters, such as decisionmaking, reporting, assessment of reports, inspections and communications, may be elaborated in agreed procedures; however, the procedures must have a firm basis in national legislation for matters such as vessel reporting, authorities of fisheries inspectors and evidence. Even properly trained inspectors can only operate effectively when they have the relevant legal authority.

The global governance framework for the legislative template is the 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (FAO

Agreement, or FAOA), in ANNEX 1.<sup>1</sup> It was developed through FAO processes spanning nearly a decade, described in Table 1 below, and entered into force on 5 June 2016.<sup>2</sup>

**Table 1**

**Development and implementation of the FAO Agreement<sup>3</sup>**

The FAO Agreement was a culmination of a process begun at FAO in 2002 with the initial steps to develop a voluntary instrument, the 2005 FAO Model Scheme on Port State Measures (FAO Model Scheme).<sup>4</sup> In 2006, calls were made in the UN system<sup>5</sup> for a legally binding agreement and in 2007 the FAO Committee on Fisheries (COFI) called for such an agreement to be developed by 2009.

The process to develop the Agreement was underpinned by a series of FAO regional capacity-development workshops, commencing in 2006, to promote regional coordination, implement relevant tools in international fisheries instruments (including the FAO Model Scheme) and contribute to the development of the FAO Agreement.<sup>6</sup>

Since its adoption by the FAO Conference in 2009,<sup>7</sup> a wide range of activities have taken place to prepare for the entry into force and implementation of the FAO Agreement and to implement the IOTC Resolution which is already binding on its Members. They include FAO ongoing regional capacity-development workshops<sup>8</sup> and IOTC assistance to implement the legislative template in this document<sup>9</sup> as well as regional training courses for inspectors and development of resource materials.

At regional level, RFMOs play a key role in implementing port State measures through adopting legally binding CMMs, as described in section 6 below. At the time the FAO Agreement entered into force in June, 2016, a wide range of RFMOs had adopted CMMs addressing various aspects of port State measures, while a few were still seeking to agree on a CMM. Several RFMOs had initiated or carried out reviews to update and align their CMMs with the minimum standards and scope of the FAO Agreement, in part encouraged by their performance reviews. Although significant progress had been

<sup>1</sup> [http://www.fao.org/fileadmin/user\\_upload/legal/docs/1\\_037t-e.pdf](http://www.fao.org/fileadmin/user_upload/legal/docs/1_037t-e.pdf), and <http://www.fao.org/fishery/topic/166283/en#Implementing>.

<sup>2</sup> Parties at that time included Australia, Barbados, Chile, Costa Rica, Cuba, Dominican Republic, European Union – FAO Member Organization, Gabon, Guinea Bissau, Guyana, Iceland, Mauritius, Mozambique, Myanmar, New Zealand, Norway, Oman, Palau, Republic of Korea, Saint Kitts and Nevis, Seychelles, Somalia, South Africa, Sri Lanka, Sudan, Thailand, Tonga, United States of America, Uruguay, and Vanuatu.

<sup>3</sup> For further details, see <http://www.fao.org/fishery/topic/166283/en>.

<sup>4</sup> 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing.

<http://www.fao.org/docrep/010/a0985t/a0985t00.htm>.

<sup>5</sup> Including the 2006 session of the 1995 UN Fish Stocks Agreement Review Conference and General Assembly Resolution 61/105 on Sustainable Fisheries, paragraphs 39, 42 and 43.

<sup>6</sup> See Doulman, D.J. and Swan, J., *A guide to the background and implementation of the 2009 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*. FAO Fisheries and Aquaculture Circular No. 1074, Rome, FAO, 2012. 165 pp. Appendix 2. Other international fisheries instruments that formed the basis of the FAO Agreement include the 1982 UN Convention on the Law of the Sea (1982 Convention), the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement), the 1995 FAO Code of Conduct for Responsible Fisheries (FAO Code of Conduct), the 1995 UN 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 Stocks (UN Fish Stocks Agreement).

<sup>7</sup> FAO Conference Resolution 12/2009 approving the 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

<sup>8</sup> The workshops fall within FAO's global programme to combat IUU fishing which includes various initiatives that aim to strengthen governance, promote implementation of international instruments and guidelines, strengthen MCS, and promote the implementation of trade/market-related measures.

<sup>9</sup> It is part of a broader project to review fisheries law and regulations of ten IOTC Members and Cooperating non-Contracting Parties (CPCs) to ensure that the legal framework is adequate to allow IOTC Members to implement IOTC Resolutions, described at <http://www.iotc.org/compliance/capacity-building-compliance>. For a report on the proposed legislative framework see: <http://www.iotc.org/compliance/port-state-measures>.

made, many RFMOs had yet to implement in their CMMs the full range of minimum standards in the FAO Agreement. To some extent, this is attributable to the different mandates and objectives of the various Commissions and aims of their members, as well as their regional orientation.

An exemplary step was taken in 2010 by the IOTC through adoption of Resolution 10/11 on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IOTC Resolution or IOTCR),<sup>10</sup> in ANNEX II. The IOTC Resolution is almost identical to the FAO Agreement and is legally binding on the 32 IOTC Members. Because the FAO Agreement and IOTC Resolution (“the instruments”) have the broadest, and almost identical scope, they form the basis for the legislative template and are elaborated in this document.

Another exemplary step was taken in the 2016 NEAFC Scheme of Control and Enforcement which applied the FAO Agreement, *mutatis mutandis*, as a minimum standard for port State control of foreign fishing vessels and non-Contracting Party vessels.<sup>11</sup> It requires Contracting Parties to cooperate in its effective implementation of the FAO Agreement and will take effect when all NEAFC NEAFC Contracting Parties become party to the FAO Agreement.

Nationally, a number of countries have adopted or initiated legislation to implement port State measures in general, as described in section 2.3 of this document. However, most of the existing legislation takes a piecemeal approach to port State measures and does not contain the range of minimum standards required under the instruments.

Capacity development initiatives to promote implementation of the FAO have been ongoing. In this regard, COFI, in June, 2014, expressed its appreciation of FAO’s efforts in conducting the global series of regional capacity-development workshops to prepare for the entry into force of the Agreement, described in Table 1.<sup>12</sup> The workshops were held in collaboration with relevant regional and international organizations to assist developing States in strengthening and harmonizing port State measures and becoming Party. The aim was to bring the FAOA into force as soon as possible and ensure that it gained the widest possible international acceptance.<sup>13</sup>

There is a clear need for comprehensive harmonized legislation that implements all relevant aspects of the FAO Agreement or, as applicable, the IOTC Resolution. The objective of this document is to inform and facilitate the legislative reviews and strengthening in order that countries are prepared to discharge their legal obligations under the FAO Agreement and applicable RFMO CMMs.

To achieve this objective, the following are presented in six sections in this document:

- an *introduction and background* to legislative implementation, noting challenges and checklists and potential support for developing countries (this section);
- an *overview of the FAO Agreement and IOTC Resolution*, which explains the framework and trends in national implementing legislation (section 2);

<sup>10</sup> Available at <http://www.iotc.org/cmm/resolution-1011-port-state-measures-prevent-deter-and-eliminate-illegal-unreported-and>.

<sup>11</sup> Available at <http://neafc.org/mcs/scheme>, Articles 2obis and 38bis. The application of the FAO Agreement is without prejudice to additional specified provisions in the Scheme.

<sup>12</sup> FAO. 2015. Report of the Thirty-first Session of the Committee on Fisheries. Rome, 9–13 June 2014, para. 38. <http://www.fao.org/3/a-i4634e.pdf>.

<sup>13</sup> The workshops also aimed to contribute to the development of national capacity to maximize the benefits available through the effective use of the FAOA and promote bilateral, subregional and/or regional coordination. The FAO guide to the background and implementation of the FAOA served as a principal resource document during the workshops.

- a *legislative template for implementing the core provisions* of the FAO Agreement and IOTC Resolution that allows the template to be tailored to countries' legal system, together with explanatory notes (section 3);
- a *legislative template for implementing supporting provisions* – those relevant to the core provisions that may not already be included in national legislation and fall within areas such as fisheries management, information, MCS, evidence, jurisdiction and compliance – together with explanatory notes (section 4);
- a *framework of standard operating procedures*, necessary to support the legislation (section 5); and
- the *role of RFMOs*, including information on relevant requirements of the tuna-RFMOs and five other select RFMOs with mandates that include high seas areas (section 6).

## 1.2 Legislative implementation of port State measures

As noted above, the international community acted strongly and with determination to establish minimum standards for port State measures in a legally binding instrument, in recognition of their value, cost-effectiveness and powerful impact on IUU fishing. Countries that are party to legally binding international or regional instruments – including the FAO Agreement and RFMO Conventions – are legally bound to implement their requirements through national legislation. Even if a country is not party to any instrument, it may still move forward with national implementation.

Key challenges to legislative implementation facing some countries could include a need for human capacity or expertise and an already-overloaded agenda for law reform. Some trends in the implementation of the FAO Agreement, described in section 2.3 below, show that five years after it was adopted, very few countries surveyed had comprehensively implemented its standards in national legislation, or had begun processes to do so.

However, with the entry into force of the Agreement in 2016 and increasing adoption or updating of applicable CMMs by RFMOs, and taking into account potential support for implementation described in section 1.4 below, there is a renewed focus on the need for robust national implementing legislation.

The objective of this document is therefore to provide a comprehensive basis which can be used by countries as a starting point for the development and preparation of national legislation, as well as an explanation of the broader aspects of port State measures. This will facilitate integration of the legislation with other compliance tools, the wider national system of port State measures and relevant RFMO measures.

The legislative template was designed to serve as a generic basis for reviewing and developing national legislation relating to port State measures. It may be used in different legal systems and each country can adapt it to national circumstances. To facilitate this approach, certain generic terms or designations are shown in square brackets so they may be adapted to national requirements, as described in section 3.1 below.

Countries may identify the most appropriate approach and form of legislation, mindful that the terms “legislative” and “legislation” are applicable to all instruments having the force of law, such as acts, regulations and orders. Approaches could include development or amendment of legislation, or a



combination of both. The legislative template may be used in any way that is most robust and expeditious for each country.

The level and type of fines, penalties and sanctions are not recommended but may be determined at national level, mindful of regional and international best practices and the objective to prevent, deter and eliminate IUU fishing.

As described above, any country may enact legislation to implement port State measures, whether or not it has taken steps to become party to the FAO Agreement or is legally bound by requirements of an RFMO. The aim is to ensure the broadest possible application of measures that serve to devastate and ultimately eliminate IUU fishing activities.

However, countries that are legally bound by international or regional instruments must have in place legislation and standard operating procedures to support their obligations – ideally, before the instruments become binding. Legislation and procedures are both needed and are synergistic in that each feeds into the other; procedures require a legal basis and the law requires procedures for implementation and enforcement.

The primary role of legislative implementation is to clearly set out the:

- port State's rights, requirements and authorities relating to entry and use of port by vessels;
- duties and liabilities of the vessel operators (owner, master, charterer etc) and agents/representatives;
- authorities of port State personnel, including inspectors, and duties of the master and crew towards such personnel;
- information, reporting and communication requirements; and
- consequences of using a port where it has been denied.

The legislative templates provide model provisions and explanatory notes for the ambit of activities described above, including:

- the *core* areas of legislation directly relevant to port State measures needed to implement the minimum standard requirements in the FAO Agreement and IOTC Resolution, such as reporting, information and communications, denial of entry into and use of port and the conduct of inspections; and
- robust *supporting* legislation which may or may not already be in national legislation, such as relevant authorities of inspectors, duties of operators, information requirements, reporting, evidence and compliance.

As noted above, the "core" and "supporting" legislative provisions are elaborated below in sections 3 and 4 respectively.

The primary aim of the procedures is to assist in detecting and communicating evidence, proof and determination of IUU fishing, but without robust legal underpinning their impact could be negligible and they could be easily challenged by fishing vessel operators to the detriment of the port State. National procedures to support legislation are elaborated in section 5 below, and include a framework of procedures, and interagency cooperation and communications as an important component.

### 1.3 Challenges and checklists for the development of national legislation

The legislative template is a tool that can be adapted to a wide range of circumstances. As noted above, it is generic and was prepared mindful of the variations from country to country in legal systems, their fisheries laws and policies, institutional arrangements, human capacity and political systems. The annotations in the template assist in facilitating the adaption of the provisions to different national circumstances.

The development of legislation cannot be left only to the lawyers. For maximum effect, it should be integrated into the broader system of governance. The legislative templates were designed to facilitate the legal process, but various challenges should be addressed in the process.

Typical *challenges* in introducing or amending any national legislation include:

- identifying new, or strengthened, provisions and procedures and why they are needed;
- identifying a process for development of the legislation;
- facilitating integration or consistency of the proposed legislation into the broader national system of governance including all relevant national legislation, procedures, interagency cooperation and institutional arrangements and judicial/administrative systems;
- taking into account circumstances such as human and institutional capacity for administration and enforcement; and
- ensuring understanding and support among stakeholders, including relevant agencies and the political level.

To address these challenges in an efficient and straightforward manner, the following steps – ABC - are presented. They involve drawing up simple *checklists* and address the need for integration of the legislation into the broader national system of governance and circumstances (including human and institutional capacity, administrative and judicial systems).

#### Step A – Review national fisheries legislation

1. Review relevant national legislation together with the legislative templates and prepare a checklist of:
  - the core and supporting provisions relating to port State measures that are:
    - fully included in national fisheries legislation;
    - not included in national fisheries legislation;
    - included in national fisheries legislation, but should be strengthened; and
  - any conflicting provisions between the legislative templates and national laws.
2. Based on the checklist and national system/circumstances, recommend:
  - proposed legislation to amending existing legislation; and/or
  - as applicable, new legal instrument(s) (e.g. Regulations); and
  - a process for developing legislation/amendments (e.g., responsibilities, consultations).

### Step B – Review national procedures

1. Review the framework for procedures in section 5 of this document and relevant national procedures in fisheries agencies and prepare a checklist of:
  - procedures for port State measures that are, in the fisheries agency:
    - fully implemented;
    - partly implemented;
    - not implemented;
    - in conflict with procedures in the framework; and
  - procedures in the framework that the country may prefer to include in legislation.
2. Based on the checklist and national system/circumstances, recommend:
  - existing procedures that should be strengthened or developed;
  - new procedures;
  - as appropriate, procedures that should be included in legislation; and
  - a process for developing and adopting the procedures.

### Step C – Review other related national legislation and procedures

1. Review the framework for procedures in relevant agencies (e.g. ports authorities, customs and immigration, veterinary, health, enforcement agencies) and establish a checklist where there may be gaps, cooperation, coordination or inconsistencies with the legal and procedural requirements for port State measures.
2. Based on the review and the national system of governance, recommend legal or procedural mechanism(s) to promote consistency, coordination and cooperation for implementing port State measures, e.g. an interagency agreement or memorandum of understanding.

The above steps will assist in the use of the legislative template and its adaption and integration to national circumstances.

## 1.4 Potential support for implementation

There is a wide range of potential support to assist the development of legislation on port State measures and to strengthen human capacity for implementation. Examples of initiatives that could be used to support implementation are shown below.

Requirements of developing States are addressed in the FAO Agreement<sup>14</sup> and some RFMO CMMs, including the IOTC Resolution.<sup>15</sup> so they are not faced with a disproportionate burden in implementation. When the Agreement enters into force, and at any time under existing relevant CMMs, developing States Parties may seek assistance, including for purposes of:

- enhancing 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;

<sup>14</sup> Article 21.

<sup>15</sup> Section 18.

- facilitating their participation in any international organizations that promote the effective development and implementation of port State measures; and
- facilitating technical assistance to strengthen the development and implementation of port State measures by them, in coordination with relevant international mechanisms.

Funding mechanisms to be established are to 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 the Agreement.

A series of FAO capacity-development workshops has been delivered as noted in section 1.1, and in Table 1 above.

Complementary projects are being coordinated under the FAO/GEF Common Oceans Program, such as the project "Sustainable Management of Tuna Fisheries and Biodiversity Conservation" which aims at facilitating improvements in tuna fisheries management. As one of its activities, the project will be proposing options for objectives, traceability standards and best practices for CDS systems. A potential objective is the ability to monitor quota usage near-time monitoring of transshipments and landings, which could complement port State measures.

Several civil society organizations have also focused on port State measures, including Pew Charitable Trusts, Stop Illegal Fishing and WWF. They are encouraging States to become party to the FAO Agreement and implement its measures.

## 2. THE FAO AGREEMENT AND IOTC RESOLUTION

### 2.1 Introduction to the FAO Agreement and IOTC Resolution

The FAO Agreement and IOTC Resolution provide minimum standards for port State measures, with the aim of combating IUU fishing and ensuring long-term conservation and sustainable use of fisheries resources and marine ecosystems. They underpin coordination and communications at national, regional and interregional levels and provide for assistance to developing countries.

Importantly, they take aim at the IUU fishers to cause them economic loss, legal action, fines, penalties and other sanctions, loss of fishing opportunities, loss of markets, IUU Vessel listing and even decommissioning of the vessel.

As noted above, the instruments are almost identical. In essence, the IOTC Resolution comprehensively adopts the key standards and elements of the FAO Agreement. It introduces greater detail regarding operational matters (e.g. in advance requests for port entry and levels and priorities for inspection and transmittal of inspection results) and provides a clear role for the Secretariat.<sup>16</sup> It also has a dedicated section on Duties of the IOTC Secretariat.<sup>17</sup>

A summary comparison of provisions in the FAO Agreement and IOTC Resolution is in Table 2 below.

**Table 2**  
Summary comparison of the FAO Agreement and IOTC Resolution

Both instruments have identical provisions for:

- Integration and coordination at the national level
- *Force majeure* or distress
- Use of ports
- Results of inspections
- Training of inspectors
- Information on recourse in the port State

There are some minor differences between the instruments in the following provisions, mainly where the IOTC Resolution reflects specific RFMO institutional and legal requirements<sup>18</sup> and provides operational details.

- Use of terms
- Objective
- Application of the instrument
- Designation of ports
- Advance request for port entry
- Port entry, authorization or denial

<sup>16</sup> The role of IOTC/Secretariat is stated in relation to the designation of ports, port entry, authorization or denial, transmittal of inspection results, port State action following notification and requirements of developing States.

<sup>17</sup> IOTCR, Section 19.

<sup>18</sup> e.g., the role of the Secretariat, duties of CPCs and integration with other CMMs.

Table 2 *continued...*

- Levels and priorities for inspection
- Conduct of inspections
- Transmittal of inspection reports
- Port State actions following inspections
- Role of flag States
- Requirements of developing States

Only the FAO Agreement has Articles on the:

- Relationship with international law and other international instruments
- Cooperation and exchange of information
- Electronic exchange of information<sup>19</sup>

Only the IOTC Resolution has a Section on Duties of the IOTC Secretariat.

The IOTC Resolution may be useful as precedent for other RFMOs in addressing port State measures, although it is expected that the unique needs of different RFMOs and their members would result in some differences in approaches. The FAO Agreement is adaptable to such differences, but the key is to ensure the integrity of the minimum standards agreed by the international community.

Both instruments have a broad scope, and define fishing, fishing related activities and vessels as:

- *fishing* – 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.
- *fishing related activities* - 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 provisioning of personnel, fuel, gear and other supplies at sea.

*(The instruments properly refer throughout to "IUU fishing and fishing related activities in support of such fishing"; however for convenience, reference in the text of this document to "IUU fishing and related activities" has the same meaning.)*

- *vessel* means any vessel, ship of another type of boat used for, equipped to be used for, or intended to be used for, *fishing and fishing related activities*.

The term *use of port* is not defined in either instrument reiterated throughout as use "for landing, transshipping, packaging and processing of fish and for other port services including, *inter alia*, refueling and resupplying, maintenance and drydocking".<sup>20</sup> This may therefore be understood as a definition and it is recommended as such in the legislative template.

<sup>19</sup> The FAO Agreement requires information to be transmitted through mechanisms consistent with Annex D; the IOTC Resolution does not have a corresponding section but does attach Annex IV (same as Annex D). It would seem that Annex IV is superfluous and has no legal effect.

<sup>20</sup> e.g., Articles 9 (6), 11(1) and 18 (1) (b), FAOA.

It is clear from the definitions that the scope of the instruments foreshadows a need for robust legislation, procedures and interagency cooperation in order to address a wide range of activities and types of vessels. It will be essential for national legislation and procedures to reflect the ambit of this scope, but the sovereignty of States over their ports will also allow the adoption of more stringent legislation, procedures and other measures.

## 2.2 Framework of the FAO Agreement and IOTC Resolution

The FAO Agreement is comprised of 21 substantive Articles presented in six Parts,<sup>21</sup> and five Annexes. The IOTC Resolution is comprised of 19 Sections, presented in seven Parts including “Duties of the IOTC Secretariat”, and five Annexes. As noted above, titles of the common Sections/Articles and Parts, are identical. The five Annexes are also identical, except that the text of the IOTC Resolution does not refer to Annex IV of the Resolution on information systems, so the Annex may be regarded as superfluous and having no legal effect.

The instruments first address general issues such as use of terms, objective and the scope of application of their provisions. The core port State measures are then presented to reflect the sequence of events from the time a vessel requests entry into port, to its entry, inspection and follow-up actions by the port State. States are required to deny a vessel the entry into port and use of port – even without inspection – under certain circumstances. The role of flag States and assistance to developing States are also identified.

An overview of the requirements in the FAO Agreement and IOTC Resolution is given below. It reflects the need for both legislation and procedures to implement the instrument, bearing in mind the need to entrench certain obligations in the law, and at the same time to adopt operating procedures. The procedures must be consistent with the basic obligations in the instruments and national law, should be applicable to all relevant agencies and may be more easily amended and strengthened from time to time.

To facilitate understanding of the appropriate mechanism for implementation (i.e. legislation and/or procedures), the overview below presents, for each Part of the instrument, provisions that must be implemented by legislation, those that have legislative and procedural implications and those that may be implemented by procedures. These categories are generic and for guidance and adaptation to different countries’ legal systems. It is recognized that national legal systems may vary and require other approaches.

The overview refers primarily to the FAO Agreement as the global instrument; where there are differences in the IOTC Resolution, these are summarized in footnotes.

Comprehensive reviews of the Agreement and its legal/procedural requirements are provided in other studies.<sup>22</sup>

<sup>21</sup> The FAO Agreement has an additional 16 Articles in four Parts that are not addressed here because they are not directly relevant to port State measures, but implement international law requirements.

<sup>22</sup> For example, Doulman and Swan, *op. cit.* n. 6, section 3. It contains a synopsis highlighting the evolution of port State measures throughout previous international instruments including the 1993 FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement. This information could be useful for any review of national legislation that was based on those instruments.

**Part 1 – General provisions**, contains Articles of a broad introductory nature that provide a foundation for the entire Agreement and are vital for its interpretation and application.

The following requirements must be implemented in ***national legislation***.

- **Definitions of terms used.**<sup>23</sup> The definitions are fundamental for interpretation and application of the terms used in the legislation. National law should define the terms in a consistent manner and with at least the same scope as definitions in the Agreement.
- **Objective.**<sup>24</sup> Although it is not necessary for national law to incorporate the objective of the Agreement, there should not be any inconsistency in a stated objective of the national legislation with the objective of the Agreement.
- **Application.**<sup>25</sup> The provisions must apply at least to vessels that do not fly the flag of the port State, with certain exceptions,<sup>26</sup> and to IUU fishing and related activities. The FAO Agreement also allows countries to decide not to apply the requirements to vessels chartered by its nationals and fishing in areas under its jurisdiction.

Countries are otherwise not obligated to apply the measures to their flag vessels because of their sovereignty, but may wish to do so. For example, they could apply to specified categories based on the size of vessels or areas fished (e.g. industrial vessels beyond national jurisdiction or in areas of designated RFMOs).

The FAO Agreement applies to all IUU fishing and related activities marine areas, while the IOTC Agreement refers instead under a different Article (“Objective”) to controlling the harvest of fish caught in the IOTC Area, which covers all areas under national jurisdiction.

It is recommended that the application should be specified as areas under national jurisdiction, the country’s nationals (vessels and persons, legal and natural) in areas beyond national jurisdiction and requirements of CMMs relating to IUU fishing of RFMOs to which the country is CPC, as well as other activities consistent with international law.

The following requirements may be implemented in ***national legislation and/or procedures***.

- **Integration and coordination at the national level.**<sup>27</sup> This involves integration, “to the greatest extent possible”, of port State measures within the broader system of port State controls and other measures to combat IUU fishing. It may effectively be achieved through an interagency agreement, but existing legislation should be reviewed to ensure there is no block to the specified actions and measures (integration, coordination, cooperation and exchange of information).
- **Cooperation and exchange of information.**<sup>28</sup> Parties must cooperate and exchange information with relevant States, FAO, other international organizations and RFMOs, including on RFMO measures relating to the objective of the FAO Agreement. They must also take measures to support CMMs adopted by other States and relevant international organization, and cooperate at all levels in the implementation of the Agreement.

<sup>23</sup> Article 1 FAOA; Section 1 IOTCR has some minor differences.

<sup>24</sup> Article 2 FAOA: “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.” Similar language in Section 2 IOTCR, also includes “to control the harvest of fish caught in the IOTC Area”.

<sup>25</sup> Article 3, paragraphs (1) – (3) FAOA; Section 3.1 (a)-(b) IOTCR. Some provisions appear only in FAOA.

<sup>26</sup> The FAOA/IOTCR provide as exceptions: artisanal vessels of neighbouring States engaged in subsistence fishing provided that the port State and neighbouring State cooperate to ensure there is no IUU fishing or related activities; and container vessels carrying no fish or fish that have been previously landed, if there are no clear grounds for suspecting IUU fishing or related activities.

<sup>27</sup> Article 5 FAOA; Section 4 IOTCR.

<sup>28</sup> Article 6 FAOA; No corresponding provision IOTCR.



The following requirements should be governed by **procedures**.

Application.<sup>29</sup> The instrument should be applied in a fair, transparent and non-discriminatory manner consistent with international law.<sup>30</sup>

There are no legislative or procedural implications for the following Article.

- Relationship with international law and other international instruments.<sup>31</sup> There is no need for legislation to implement the provision on the relationship of the FAO Agreement with international law and other international instruments because it addresses international law only.

**Part 2 – Entry into port**, covers the process of port entry, including designation of ports, request and authorization for port entry and *force majeure* or distress.

The following requirements must be implemented in **national legislation**.

- Designation of ports.<sup>32</sup> Vessels to which the legislation applies may only enter designated ports. Designation of ports may be a procedural matter, to provide flexibility to designate different ports at different times, but there should be a legal mechanism for designation, such as by Ministerial Notice. Legislation should empower the Minister to designate ports and prohibit the use of other ports. A designated port should have sufficient capacity to conduct inspections.
- Advance request for port entry.<sup>33</sup> Vessels requesting entry must provide required information and at a specified time prior to entry sufficient to allow an examination of the information. Responsibility should be designated for receiving the request for port entry and the required information (e.g. the Director of Fisheries, who should also have the power of delegation).
- Port entry, authorization or denial.<sup>34</sup> Responsibility for the decision to authorize or deny entry into port should be designated. Where entry into port is authorized, the vessel or its representative must be required to present the authorization upon its arrival in port.

Where there is sufficient proof of IUU fishing or related activities, denial of entry must be required except for purposes of inspection and taking other action at least as effective as denial of entry; in such cases, port use must also be denied.

The following requirements may be implemented in **national legislation and/or procedures**.

- Force majeure or distress.<sup>35</sup> A vessel's entry into port for reasons of *force majeure* or distress is not to be affected by the foregoing requirements. However, it is the decision of the port State whether to allow a vessel entry to port for reasons of *force majeure* or distress<sup>36</sup> – the vessel has no automatic right of entry because the rights of sovereignty and self-defense of the port State prevail.

<sup>29</sup> Article 3, paragraphs (1) – (3) FAOA; Section 3.1 (a)-(b) IOTCR. Some provisions appear only in FAOA.

<sup>30</sup> Article 3, paragraph (4) FAOA; Section 3.2 IOTCR.

<sup>31</sup> Article 4 FAOA; No corresponding provision IOTCR.

<sup>32</sup> Article 7 FAOA; Section 5 IOTCR.

<sup>33</sup> Article 8 FAOA and Annex A; Section 6 IOTCR (also provides for 24 hours advance notice and related requirements) and Annex I.

<sup>34</sup> Article 9 FAOA, Section 7 IOTCR.

<sup>35</sup> Article 10 FAOA; Section 8 IOTCR.

<sup>36</sup> There is no commonly agreed definition in international law of *force majeure* or distress, but the burden of proof that the vessel has a valid claim rests with the vessel, its master and owner. A claim is supported only by the existence of overwhelming conditions or forces of such magnitude (e.g. severe storm, fire, disablement or mutiny) that they threaten the loss of the vessel, crew or cargo unless immediate action is taken.

It would be useful to designate in legislation and procedures the decision-making responsibility and relevant process (including verification) to allow entry into port for *force majeure* or distress and protect the port. False or contrived claims of *force majeure* or distress should be prohibited and its violation should be considered an offence in national law. The burden of proof that the vessel has a valid claim should rest with the vessel, its master and owner.

The following should be governed by **procedures**.

- Advance request for port entry.<sup>37</sup> Responsibilities for evaluating the information submitted with the advance request for entry into port (AREP) and providing it to the decisionmaking authority. Procedures for a risk assessment could be built in.
- Port entry, authorization or denial.<sup>38</sup> As applicable, providing the authorization to enter port to the vessel and its representative or communicating the decision to deny entry to the vessel, its representative, other government agencies, the flag State, a relevant coastal State and RFMOs as appropriate.

**Part 3 – Use of ports**, sets out criteria that require Parties to deny the use of its ports to vessels that have already entered port, with certain exceptions, and to notify promptly others of its decision.

The following requirements must be implemented in **national legislation**.

- Use of ports.<sup>39</sup> Denial of the use of port should be non-negotiable and apply in the following circumstances, whether or not the vessel has been inspected (the Party could base its action on findings independent of inspections, for example communications with the flag State or an RFMO) and decisionmaking authority should be designated:
  - the vessel does not have an authorization for fishing or related activities required by its flag State or a coastal State for areas under its national jurisdiction;
  - there is clear evidence that the fish was taken in contravention of applicable requirements of a coastal State in areas under its national jurisdiction;
  - the flag State does not confirm within a reasonable time, at the request of the port State, that the fish on board was taken in accordance with the requirements of an RFMO; or
  - the port State has reasonable grounds to believe that the vessel was otherwise engaged in IUU fishing or related activities, unless it can establish that it was acting consistently with relevant CMMs, or in the case of provisioning at sea, the vessel provisioned was not on an RFMO IUU vessel list.

The above would not apply where port services are essential to the safety or health of the crew or the safety of the vessel, providing these were duly proven, or for scrapping the vessel.

The following requirement may be implemented in **national legislation and/or procedures**.

Use of ports.<sup>40</sup> Communicating the denial of use of port to the flag State, relevant coastal States, RFMOs and relevant international organizations.

<sup>37</sup> Article 8 FAOA; Section 6 IOTCR.

<sup>38</sup> Article 9 FAOA; Section 7 IOTCR also provides for communication to Secretariat.

<sup>39</sup> Article 11 FAOA; Section 9 IOTCR.

<sup>40</sup> Article 11(3) FAOA; Section 9(3) IOTCR.

**Part 4 – Inspections and follow-up actions**, addresses various aspects of inspections, training and port State actions to be taken following inspections.

The following requirements must be implemented in ***national legislation***.

- Results of inspections.<sup>41</sup> The minimum information to be included in the written report of the results of each inspection (Annex C of the FAO Agreement) should be included in a subsidiary legal instrument.
- Port State actions following inspection.<sup>42</sup> Where there are clear grounds for believing that a vessel has engaged in IUU fishing or related activities, the vessel must be denied use of port except for port services essential for the safety or health of the crew or the safety of the vessel. The authority for deciding on the denial of port use should be stated.

The following requirements may be implemented in ***national legislation and/or procedures***.

- Levels and priorities for inspection.<sup>43</sup> Legislation and/or procedures should identify a process to set levels and priorities for inspection, guided by any relevant RFMO requirements (e.g. IOTC requires a level of inspection at 5 percent of landings and transshipments in port for the reporting year and sets out inspection procedures).

Procedures should set out priorities for inspection as required in the FAO Agreement: vessels already denied port entry or use of port; requests for vessel inspection from other States or RFMOs; and vessels for which there are clear grounds to suspect IUU fishing or related activities.

- Conduct of inspections.<sup>44</sup> The inspection procedures elaborated in the Agreement should be incorporated in national procedures. Among other things, the FAO Agreement requires inspectors to verify compliance with relevant conservation and management measures, and the IOTC Resolution requires verification of compliance with its Resolutions.
- Transmittal of inspection results.<sup>45</sup> Procedures should identify addressees for transmittal of inspection results, and implement any timelines or other requirements of RFMOs.
- Electronic exchange of information.<sup>46</sup> Procedures may provide for the establishment and operation of a communication mechanism that allows for direct electronic exchange of information, but this is not required. The FAO Agreement refers to the possibility of FAO coordinating an information-sharing mechanism, and requesting information from RFMOs. It also requires Parties to designate a contact point for the exchange of information under the Agreement, and notify the designation to FAO.
- Training of inspectors.<sup>47</sup> The guidelines for training inspectors may be incorporated, as appropriate, as standards for appointment of inspectors.
- Port State actions following inspection.<sup>48</sup> Procedures should address the notifications required, and the notifying authority, when it is found that there are clear grounds for believing that a vessel has engaged in IUU fishing or related activities.

<sup>41</sup> Article 14 and Annex C FAOA; Section 12 and Annex III IOTCR.

<sup>42</sup> Article 18 FAOA; Section 15 IOTCR (also requires notification to the Secretariat).

<sup>43</sup> Article 12 FAOA; Section 10 IOTCR (also details levels and procedures for inspections as well as inviting inspectors of other CPCs to observe, but omits priorities).

<sup>44</sup> Article 13 and Annex B FAOA; Section 11 and Annex II IOTCR (also requires verification with IOTC CMMs).

<sup>45</sup> Article 15 FAOA; Section 13 IOTCR (also requires timelines and means of transmission, and some different addressees).

<sup>46</sup> Article 16 FAOA; IOTCR no corresponding provision.

<sup>47</sup> Article 17 and Annex E FAOA; Section 14 and Annex V IOTCR.

- Information on recourse in the port State.<sup>49</sup> Procedures should identify the authority responsible for informing the various interested parties of legal recourse and right to compensation in case of unlawful action by the port State, and the outcome of any such recourse.

**Part 5 – Role of flag States**, requires Parties also in their capacity as flag States to play a significant role in the implementation of the FAO Agreement.

The following requirements must be implemented in *national legislation*.

- Role of flag States.<sup>50</sup> Flag vessels should be required to cooperate with port inspections in other States. Where an RFMO identifies any State that is not acting in accordance or consistently with the instruments, based on procedures adopted in accordance with the Agreement, flag vessels should be required not to use its ports. An authority should be designated to determine whether there are clear grounds to believe that a flag vessel that is seeking entry to, or is in the port of another State, has engaged in IUU fishing or related activities.

Effective measures should be provided for application to flag vessels determined, as a result of port State measures, to have engaged in IUU fishing or related activities.

The following should be governed by *procedures*.

- Role of flag States.<sup>51</sup> Procedures should identify responsibility for:
  - monitoring cooperation by its flag vessels with port inspections in other States;
  - requesting another port State to inspect a flag vessel (except this should be mandatory, as appropriate, where there are clear grounds to believe that its flag vessel has engaged in IUU fishing and is seeking entry to or is in the port of another State), liaising during the inspection process and receiving the inspection reports;
  - encouraging vessels to use ports in States that are acting in accordance or consistently with the instruments;
  - authority and procedures for immediately and fully investigating an inspection report indicating that there are clear grounds to believe that a flag vessel has engaged in IUU fishing or related activities and taking necessary enforcement action;
  - reporting on actions taken in respect of its flag vessels that, as a result of port State measures, have been determined to have engaged in IUU fishing or related activities;
  - ensuring that effective measures are applied to flag vessels determined to have engaged in IUU fishing or related activities.

**Part 6 – Requirements of developing States.** Both instruments require Parties to provide assistance to developing States Parties/CPCs and establish appropriate funding mechanisms. Assistance is to be given for specified purposes.<sup>52</sup> These steps are being taken through FAO and IOTC, and no legal implementation is required. Consideration should instead be given to include this requirement in

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<sup>48</sup> Article 18 FAOA; Section 15 IOTCR also requires notification to the Secretariat.

<sup>49</sup> Article 19 FAOA; Section 16 IOTCR.

<sup>50</sup> Article 20 FAOA; Section 17 IOTCR.

<sup>51</sup> *Ibid.*

<sup>52</sup> Article 21 FAOA; Section 18 IOTCR also designates responsibilities of the IOTC Secretariat.

development assistance plans and policies of donor/developing countries that are Parties to the FAO Agreement or are IOTC CPCs.

### 2.3 Summary of trends in national implementing legislation

Some countries have made progress in adopting legislation to implement the FAO Agreement, including Canada<sup>53</sup> and the United States of America<sup>54</sup>, and the EU 2008 Council Regulation on IUU fishing incorporated some relevant requirements.<sup>55</sup>

However, an assessment of trends in national legislation of some other countries shows a clear and compelling need for legislation to implement the standards in the FAO Agreement. For example, a 2012 study of fisheries legislation in eight countries in the South West Indian Ocean region<sup>56</sup> indicates that of 51 relevant core and supporting legislative provisions, 15, or 30 percent, were not enacted by any country. An additional 9 provisions, or 18 percent, were enacted by only one of the eight countries. This indicates no, or exceptionally weak, implementation for almost half of the provisions.

In the Western and Central Pacific region, a separate study was done in 2013 of legislation in 15 countries to indicate the extent of implementation of six model port State measures provisions in national laws.<sup>57</sup> Of a total of 90 possibilities (15 countries x 6 provisions), 56, or 62 percent were not enacted by any country and 4, or .04 percent were fully implemented but only in a Fisheries Bill in one country. The remainder, which touched on the subject matter of the provisions to some extent, were slightly (16 percent) or more fully (18 percent) implemented by countries. In this region, which focused on core provisions only, it could be considered that there was no, or exceptionally weak, implementation of over three-quarters of the provisions.

The main concern in the South West Indian Ocean countries was the need to implement the IOTC Resolution, which was legally binding at the time of the study. Progress in achieving implementation has been supported under a broader project to review fisheries legislation in several IOTC Members to ensure that the legal framework is adequate to allow the Members to implement IOTC Resolutions.<sup>58</sup> The legislative template in this study forms the basis for the component on port State measures.

<sup>53</sup> The Port State Measures Agreement Implementation Act S.C. 2015, c. 18 was assented to on 18 June 2015. [http://laws-lois.justice.gc.ca/PDF/2015\\_18.pdf](http://laws-lois.justice.gc.ca/PDF/2015_18.pdf). The objective of the Bill was to make some amendments to align the Coastal Fisheries Protection Act with the FAOA, namely in relation to amending definitions (including expanding the definition of "fishing vessel"), expanding inspection authorities, strengthening import prohibitions, and improving information-sharing authorities.

<sup>54</sup> The Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 became Public Law No: 114-81 on 5 November 2015. It implements the FAOA in Title III, "Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing". <https://www.congress.gov/bill/114th-congress/house-bill/774/text>.

<sup>55</sup> At the time of writing, Council Regulation No. 1005/2008 (establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing) addressed conditions for access to port by third country fishing vessels and port inspections in Chapter II - Inspections of Third Country Fishing Vessels in Member States Ports.

<sup>56</sup> South West Indian Ocean Fisheries Project. 2012. Swan J. Consultancy For The Harmonization of Fisheries Legislation and Assessment of the Implementation of Fisheries Management Plans and Rights Based Management in the South West Indian Ocean. <http://www.swiofp.net/publications/component-reports/component-6/the-harmonisation-of-fisheries-legislation-and-assessment-of-fisheries-management-plan-and-right-based-management>.

<sup>57</sup> ACP Fish II Project. 2013. Final Report Technical Assistance for a Regional Port State Measures Training Workshop PAC-2.2-B12 Western and Central Pacific Ocean. [http://acpfish2-eu.org/uploads/projects/id223/FTR\\_new.pdf](http://acpfish2-eu.org/uploads/projects/id223/FTR_new.pdf). Annex 1. The provisions related to: definitions, requirements for port entry and use, denial of port entry, denial of port use after entry, inspection procedures, results and transmittal of inspection results.

<sup>58</sup> The 2014-2016 project (COI/AO/2014/018), supported by the World Bank through the Global Partnership for Oceans, was being executed in respect of 10 IOTC Members through the Indian Ocean Commission and IOTC.

The situation in the Western and Central Pacific was different. Although the Western and Central Pacific Fisheries Commission (WCPFC), in which all surveyed countries were Members, had considered over several years many different proposals for a resolution on port State measures, none was adopted by 2016, as described in section 6.6.1 of this document. The “work in progress” status of proposed national legislation in some countries, together with the studies on national legislation in the above regions, are indicative of a clear need for robust implementation of the FAO Agreement and applicable RFMO CMMs. The need will intensify as many RFMOs continue to adopt or strengthen their CMMs on port State measures as described in section 6 of this document, and the anticipated entry into force of the FAO Agreement draws nearer. The legislative template will support the process and provide guidance to ensure robust national laws.

### 3. LEGISLATIVE TEMPLATE FOR IMPLEMENTATION OF PORT STATE MEASURES – CORE PROVISIONS

#### 3.1 Introduction

The core provisions of the legislative template are shown below. The aim is to recommend provisions that comprehensively implement requirements of the FAO Agreement and, as appropriate, the IOTC Resolution. Explanatory notes (in shaded boxes) and a legal framework are given for each provision. In addition, some language – not found in the instruments - is added and explained to facilitate implementation.

The core provisions are complemented by the supporting provisions, in section 4 of this document. The supporting provisions may already be in broader national fisheries legislation and focus on areas such as fisheries management, information, MCS, evidence, jurisdiction and compliance. They take into account the need to provide a broader process to underpin Port State measures, and are based on current relevant international law and best practices of national fisheries legislation. As appropriate, they may be used to strengthen existing legislation.

As noted above in section 1.2 of this document, the legislative template is designed to be global and generic to the extent possible, so it may be easily applied by countries with different legal systems and constitutions.

It is based primarily on the FAO Agreement in order to have the broadest possible application. In addition, information is given for IOTC CPCs on the minor differences between the Agreement and IOTC Resolution in the explanatory notes and footnotes.

#### 3.2 Approach to evidentiary standards

National evidentiary rules and legislation may differ from the various standards required in the instruments, which use a range of evidentiary standards throughout as a basis for actions such as denying the use of port. For example, in the FAO Agreement:

##### “Sufficient proof”

- Port entry must be denied where there is “sufficient proof” that a vessel seeking port entry has engaged in IUU fishing or related activities.<sup>59</sup>
- Withdrawal of denial of use of port may occur only if there is “sufficient proof” that the grounds were inadequate, erroneous or no longer apply.<sup>60</sup>

##### “Clear evidence”

- The use of port may be denied without inspection where there is “clear evidence” that the fish on board was taken in contravention of the requirements of a coastal State.<sup>61</sup>

<sup>59</sup> Article 9(4).

<sup>60</sup> Article 11(4).

<sup>61</sup> Article 11(1)(c).

**“Reasonable grounds to believe”**

- The use of port may be denied without inspection where there are “reasonable grounds to believe” that a vessel was engaged in IUU fishing or related activities.<sup>62</sup>

**“Clear grounds for believing”**

- After port inspection, the use of port may be denied where there are “clear grounds for believing” that a vessel has engaged in IUU fishing or related activities.<sup>63</sup>
- A flag State must, where there are “clear grounds to believe” that a flag vessel has engaged in IUU fishing or fishing related activities:
  - request another port State to inspect the vessel or take other measures;<sup>64</sup>
  - immediately and fully investigate the matter and take enforcement action.<sup>65</sup>

National jurisprudence may or may not use the above evidentiary standards or may use them only in certain contexts, e.g. for civil or criminal law, but not both. They are applied subjectively in relation to the case at hand, and there is often not a body of practice that either defines them, indicates whether one standard is higher than another or even clearly describes elements of the standard.

For example, “clear and convincing proof” can mean that the evidence must be substantially more probable to be true than not, and a greater degree of believability must be met than the common standard of proof in civil actions (i.e. preponderance of the evidence) where the facts more likely than not would prove the issue. This is relative and may differ from country to country. There is no clearly defined distinction in international usage or elsewhere between “clear and convincing proof”, “clear evidence” and “clear grounds for believing”, or other standards used in the Agreement.

Rather than dwell on the various possibilities, relativities and nuances, it is recommended that applicable national evidentiary standards may be used as long as they are consistent with those in the instrument. For example, the standard “reasonable grounds to believe” is widely used and could be applied to all circumstances if it is normally understood as a robust national standard that would require the existence of clear evidence, sufficient proof or clear grounds for believing that a vessel had engaged in IUU fishing or related activities.

The template incorporates the various evidentiary standards of the FAO Agreement, but it is suggested in explanatory notes (by reference to this section) that they may be reviewed and compared with well-defined standards in national law. Where appropriate, it may be better to use national evidentiary standards that are well-defined in national jurisprudence and consistent with the standards in the FAO Agreement.

For example, if “reasonable grounds to believe” is well understood, forms best practices in a country, is broad enough to incorporate standards such as “clear evidence”, “sufficient proof” and others, and is consistent with the aim of the relevant Article, it may be used consistently to replace the various standards used in the FAO Agreement.

<sup>62</sup> Article 11(1)(e).

<sup>63</sup> Article 18(1).

<sup>64</sup> Article 20(2).

<sup>65</sup> Article 20(4).



### 3.3 Legislative template – core provisions

In order that the template can be tailored to the law and practice of each country, **[square brackets]** are used around generic terms or phrases to be replaced in each country by appropriate national references, **double asterisks \*\*** show that relevant national legislation must be referenced and **cross references**, which refer to a section in the legislative template, should be replaced by the reference in the national legislation. This is elaborated in Table 3 below. In addition, references to relevant provisions in the FAO Agreement and IOTC Resolution are given.

**Table 3**

#### Guide to using the legislative template

**[country]** The name of the country implementing the legislation should replace the generic term “country”.

**[legislation]** The *form* of national legislation in which it may be implemented is left open. Countries may take a range of approaches in this regard, for example by creating a new statute, such as a Law, Act or Decree, or amending existing statutes, or taking similar action with respect to other subsidiary legal instruments such as regulations. The generic term “legislation” was used to refer to any such instrument, and should be replaced with the proper designation of the legal instrument. *For example*, Law, Act, Decree, Regulation or other.

**[Minister]** and **[official]** National legislation usually designates the Minister, senior official or other person with responsibility and authority for undertaking certain measures and actions, but this depends on constitutional and institutional arrangements in each country. The template suggests Ministerial level responsibility for some actions, and official level for others, but it is up to each country to decide or to use any other reference. *For example*, Minister, Director of Fisheries or other.

**Authorized officer** and **Inspector** are used in the legislative templates to indicate personnel who have MCS functions and authorities that may include enforcement (for authorized officers) and/or inspection and reporting (for inspectors). The practice among countries differs, and the appropriate term should be used.

A **double asterisk [\*\*]** means that the country must complete the reference in the context of national obligations and its legislation. *For example*, a vessel must request entry into port at least **[\*\*]** hours before entering port.

**[specific general information to be included]** means that the FAOA and/or IOTCR provides a general obligation but each country must give specific means for implementing it. *For example*, where a national vessel has been found to have engaged in IUU fishing, the vessel operator shall be liable to **[state measures at least as effective as denial of port use]**

**Cross-references** to other sections refer to the sections in the template, and should be reviewed and amended as appropriate where the provisions are implemented in national legislation.

## USE OF TERMS

This section incorporates the terms as defined in the instruments. National legislation should, in addition, provide definitions for other key terms consistently with their use in the instruments and in accordance with best practices. This will facilitate clear understanding and implementation.

National legislation may already provide definitions for many of these terms; if so, they should be reviewed for consistency.

The definitions for the following terms are given in the instruments and incorporated in this section.

“conservation and management measures”	“illegal, unreported and unregulated fishing”
“fish”	“port”
“fishing”	“regional fisheries management organization”
“fishing related activities”	“vessel”

The following terms are not defined in the instruments but for clarity should be defined in the legislation. They are included in this section and best practices definitions are given.

“container vessel”	“landing”
“[country] vessel”	“master”
“FAO”	“operator”
“fish product”	“person”
“foreign vessel”	“previously landed”
“inspector”	“processing”
“international agreement”	“transhipment”
“IUU listed vessel”	“use of port”

The authority for the appointment of Ministers, officials, inspectors and other persons given responsibility under the legislation should be defined in accordance with national law and practice, e.g.:

“Minister” means the Minister responsible for Fisheries;

“Secretary” means the Secretary of the Ministry responsible for Fisheries;

“Authorized officer”, “Inspector” [or other designation for persons who exercise enforcement, inspection or other functions] means a person appointed pursuant to [applicable legislation]

*References* Article 1 FAOA; Section 1 IOTCR.

### 1. Use of terms

“conservation and management measures” means legally binding measures to conserve and manage living marine resources adopted by a regional fisheries management organization;<sup>66</sup>

<sup>66</sup> This term only appears in the FAOA.

“container vessel” means self-propelled ocean-going vessel constructed or adapted primarily to carry ocean freight containers;

“[country] vessel” means any vessel that is entitled to fly the flag of [country];

“FAO” means the Food and Agriculture Organization of the United Nations;

“fish” means all species of living marine resources, whether processed or not;<sup>67</sup>

“fish product” means any product or part thereof (including oil) obtained by fish processing;

“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;

“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; (*Note: The instruments properly refer throughout to “IUU fishing and fishing related activities in support of such fishing”; however for convenience, reference in the text of this document to “IUU fishing and related activities” has the same meaning.*)

“foreign vessel” means any vessel that is not a [country] vessel;

“illegal, unreported and unregulated fishing”, or IUU fishing, refers to the activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing;<sup>68</sup>

“international agreement” includes any treaty or other instrument that is legally binding on [country] in accordance with international law, including bilateral or multilateral instruments;

“IUU listed vessel” means a vessel that is included in a list of vessels, adopted by a regional fisheries management organization, that have engaged in IUU fishing or fishing-related activities in support of such fishing;

“landing” means to begin to offload fish or to offload fish from any vessel in port or at a dock, berth, beach seawall or ramp, but does not include transshipment;

<sup>67</sup> The IOTCR defines “fish” as “all species of highly migratory fish stocks covered by the IOTC Agreement”.

<sup>68</sup> The IOTCR definition refers to the activities set out in paragraph 1 of Resolution 09/03, superseded by Resolution 11/03. If the country prefers to incorporate a definition in the text, the following is consistent with international law and can be used or drawn upon.

The term illegal, unreported, and unregulated fishing or IUU fishing means any activity conducted:

by a national or foreign vessel in waters under the jurisdiction of a nation without the permission of that nation, or in contravention of its laws and regulations, including an activity that has not been reported or has been misreported to the relevant national authority of that nation in contravention of its laws and regulations;

by a vessel flying the flag of a nation that is a member of an RFMO in contravention of the conservation and management measures adopted by the RFMO and by which that nation is bound, including an activity that has not been reported or has been misreported in contravention of the reporting requirements of that RFMO;

by a vessel flying the flag of a nation that is a cooperating non-member of an RFMO that is inconsistent with the commitments undertaken by that nation as a cooperating non-member of that RFMO, including an activity that has not been reported or has been misreported in a manner that is inconsistent with those commitments; or

in the area of application of an RFMO by a vessel without nationality, or by a vessel flying the flag of a nation that is not a member nor a cooperating non-member of that RFMO and that undermines the effectiveness of the conservation and management measures of that RFMO.

“master” in relation to a vessel means the person in command or in charge or apparently in command of the vessel, but does not include a pilot on board a vessel solely for the purpose of navigation;

“operator” means any person who is in charge of, responsible for the operations of, directs or controls a vessel, including the owner, charterer and master and includes the beneficiary of the economic or financial benefit of the vessel’s operations;

“person” means any individual whether or not a citizen or national of [country], corporation, partnership, association or other entity whether or not organized or existing under the laws of any State and any government of or in [country] or foreign government or any entity of any government;

“port” includes offshore terminals and other installations for landing, transshipping, packaging, processing, refuelling or resupplying;

“previously landed” means landed in a port or at a dock, berth, beach seawall or ramp and subsequently loaded onto a container or other carrier vessel;

“processing” in relation to fish means the preparation or packaging of fish to render the fish suitable for, *inter alia*, human consumption, retail sale, industrial uses, export or long-term storage, and includes cutting up, cleaning, dismembering, sorting, cooking, canning, smoking, salting, drying, filleting, packaging, icing, freezing or rendering into meal or oil, or any other action taken to alter the shape, appearance or form of fish from that when first taken from its natural habitat;

“regional fisheries management organization”, or RFMO, means an intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish conservation and management measures;<sup>69</sup>

“transshipment” means the transfer of fish or fish products to or from any vessel, and may include the transfer of fish or fish products from a vessel to a land-based facility exclusively for purposes of promptly unloading to another vessel, without being subject to importation into the country where the land-based facility is located;

“use of port” means use for landing, transshipping, packaging, or processing of fish or for other port services including, *inter alia*, refuelling and resupplying, maintenance and dry docking;<sup>70</sup> and

“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.

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<sup>69</sup> This term only appears in the FAOA.

<sup>70</sup> Although this term is not defined in the Interpretation section of either instrument, it is used consistently throughout the instrument as defined here. The advantage of including it as a definition is to promote consistency throughout the legislation where it may be clearer simply to refer to “use of port” without listing all the purposes.

## OBJECTIVE

The objective of the instruments is focused on combating IUU fishing through the implementation of effective port State measures, with the ultimate goal of ensuring long-term conservation and sustainable use of living marine resources and marine ecosystems.

The objective may be implemented in national legislation, especially where it is dedicated solely to port State measures. Otherwise the objective of any existing legislation being amended should be reviewed for consistency with the objective elaborated in this section.

*References* Article 2 FAOA; Section 2 IOTCR.

## 2. Objective

The objective of this [legislation] 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.

## APPLICATION

National legislation should apply expressly to non-flag vessels (with certain possible exceptions), IUU fishing and related activities, and flag vessels and nationals of the port State in areas beyond national jurisdiction.

The FAO Agreement sets out circumstances which are to be excepted from application of the Agreement, and they appear in subparagraphs (a) (i) – (ii) below.

Where nationals of the port State charter foreign flagged vessels under circumstances described in subparagraph (a)(iii), the Agreement provides that countries may decide *not* to apply the legislation in such cases. However, the country is under an obligation to apply measures as effective as those applied to its flag vessels.

The FAO Agreement applies to all IUU fishing and related activities in marine areas, while the IOTC Agreement refers instead under a different Article (“Objective”) to controlling the harvest of fish caught in the IOTC Area. Paragraph (c) addresses both circumstances and is consistent with international law.

Countries are not obligated to apply these port State measures to their own flag vessels because of their sovereignty under international law, but may wish to do so for specific categories of vessel – e.g. those that fish beyond areas of national jurisdiction or in areas of competence of stated RFMOs. Language for such circumstances is not provided.

The legislation proposed below is necessarily more thorough than corresponding requirements in the FAOA and IOTCR in order that the obligations in the instruments have a sound legal foundation. National legislation should clearly describe application both within and beyond areas under national jurisdiction.

**APPLICATION (continued...)**

National fisheries legislation should – but often does not – provide for comprehensive application, including to all persons, vessels, etc engaged in or connected with activities under the scope of the legislation (paragraph (b)) and to nationals and national vessels undertaking activities in areas beyond national jurisdiction where it does not conflict with the jurisdiction of another State.

Application of the legislation beyond national jurisdiction to allow fulfilment of obligations under RFMO CMMs is catered for under (c) (ii)(2) and to combat IUU fishing generally, and consistently with international law, is described under (c) (ii)(3).

Where a country implements the provisions in the template as a separate instrument, a review of the general fisheries legislation should take place to ensure its relevant supporting provisions, including MCS and those relating to flag State roles, apply in a similar broad manner as stated here.

*References* Article 3, paragraphs (1) – (3) FAOA; Sections 2 and 3.1 (a)-(b) IOTCR.

**3. Application**

This [legislation] applies to:

- a) foreign vessels that are seeking entry to a port or are in a port of [country], except for:
  - i. vessels of a neighbouring State that are engaged in artisanal fishing for subsistence, provided that there is cooperation between [country] and such neighbouring State to ensure that such vessels do not engage in IUU fishing or fishing related activities in support of such fishing;
  - ii. 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; and
  - iii. where so decided by the [Minister], vessels chartered by nationals of [country] exclusively for fishing within areas under national jurisdiction and operating under the authority of [country], provided that such vessels shall be subject to measures that are as effective as those applied to [country] vessels;
- b) persons, vessels, vehicles, aircraft, export facilities or other craft or place engaged in or otherwise connected with any activity falling within the scope of this legislation;
- c) All fishing and fishing related activities in support of such fishing:
  - i. in areas over which [country] exercises jurisdiction or sovereign rights;
  - ii. in areas beyond national jurisdiction:
    1. by [country] nationals, including vessels and persons and all persons on board such vessels or dealing with them or having any relevant relationship to them or to persons on them, to the extent that it does not conflict with the jurisdiction of another State;
    2. as required pursuant to this [legislation], international agreement or conservation and management measures;

3. otherwise in relation to illegal, unreported and unregulated fishing and fishing related activities in support of such fishing consistent with international law.

### DESIGNATION OF PORTS

Responsibility is given for designating and publicizing ports to which entry may be requested.

It is standard in many countries for the Minister responsible for fisheries to be given this duty, but this may not always be the case. If not, another Minister or senior official may be specified or a cooperative interagency mechanism could be designated, for example the Minister in consultation with the Ports Authority, Coast Guard and/or others.

Designation of ports should be effected in an official instrument, such as a Ministerial Notice, in accordance with the law and practice of each country.

Publicity should be given at least through official notices and channels, including relevant RFMOs.

*References* Article 7 FAOA; Section 5 IOTCR also requires CPCs to submit a list of their designated ports to the Secretariat.

#### 4. *Designation of ports*

- 1) The [Minister] shall designate and publicize the port or ports to which vessels may request entry.
- 2) The [Minister] shall provide a list of each port designated pursuant to paragraph (1) to FAO and to any RFMO pursuant to an applicable conservation and management measure.

### PREREQUISITES FOR ENTRY OR USE OF PORT

The vessel operator is required to:

- use a designated port;
- request entry into port;
- provide information;
- receive authorization to enter port;
- present the authorization on arrival.

The request for entry must be made prior to a designated time and include information that incorporates, as a minimum standard, the requirements in the Annexes of the instruments (see *References* below), as required in paragraph (b) of this section.

RFMOs have adopted various requirements for entry-into-port information and the time by which it must be given. Where applicable, such information should be reviewed and included in legislation, particularly where it meets or exceeds the minimum standards of the instruments.

Otherwise, as appropriate the information may be incorporated by reference to the relevant instrument, e.g. “information in Annex A of the FAOA unless otherwise specified”. This formula would allow for more stringent national requirements to be included at any time.

Procedures should be agreed among relevant government agencies, and reflected in the legislation to the extent possible, that provide for consultations, communications and responsibility for:

- receiving the advance request for entry;
- denying entry;
- authorizing entry;
- authorizing entry for *force majeure* (under section 7 below);
- communicating authorization or denial to the vessel in accordance with agreed procedures;
- receipt of authorization in port.

*References* Article 8, and 9(1) and (2), Annex A FAOA; Section 6 and 7(1) and (2), Annex I IOTCR. Both Annexes are identical, and in addition Section 6.2 IOTCR provides for 24 hours advance notice and related requirements.<sup>71</sup>

## 5. Prerequisites for entry or use of port

The operator of a vessel shall not enter or use a port in [country] unless:

- a. where ports have been designated and publicised in accordance with section 4, such port has been so designated and publicised;
- b. the operator has requested entry into port and provided the information in [Annex <sup>\*\*72</sup> of this [legislation] or in a separate legal instrument] to [official];
  - i. at least [24 hours]<sup>73</sup> before entering into port; or

<sup>71</sup> “6.2 Each CPC shall require the information referred to in point 6.1 to be provided at least 24 hours before entering into port or immediately after the end of the fishing operations, if the time distance to the port is less than 24 hours. For the latter, the port State must have enough time to examine the above mentioned information.”

<sup>72</sup> The information in the following annexes should be used as a minimum standard: Annex A FAOA; Annex 1 IOTCR. They are identical.



- ii. immediately after the end of the fishing operations, if the time distance to the port is less than [24 hours] [and the time of submission is provided to the [official] [at least [ \*\* ] hours before entering into port];
- c. the [official] has authorized entry of such vessel into port and communicated such authorization to the master of the vessel and any lawful representative of the vessel in [country]; and
- d. upon arrival at port, the master of the vessel or the vessel's representative has presented the authorization for entry into the port to [official].

### DENIAL OF ENTRY INTO PORT AND USE OF PORT

Conditions and responsibility for denying entry into port and the use of port are stated.

Where there is sufficient proof that a vessel has engaged in IUU fishing or fishing related activities, especially if it is included on an RFMO IUU vessel list, it must be denied entry into port except that it may be allowed to enter for the purposes of inspection and taking other actions by the port State.

The evidentiary standard for the chapeau is "sufficient proof", based on Article 9(4) of the FAOA, but this may be reconsidered as suggested in section 3.2 of this document, depending on national evidentiary laws.

Communication must be made to the vessel or its representative in cases of denial of entry into or use of port.

Legislation may also provide for denial of entry into and use of a port where there are reasonable grounds to believe that the vessel has violated the legislation (subsection (3)) or, as appropriate, other national legislation. Although this is not provided in the instruments, it is consistent with them and would apply to a situation where a vessel has entered or used port after permission was denied, and is requesting re-entry.

*References* Article 9 FAOA; Section 7 IOTCR.

## 6. *Denial of entry into port and use of port*

- 1) The [official], where there is sufficient proof that a vessel seeking entry into a port of [country] has engaged in IUU fishing or fishing related activities in support of such fishing, in particular where it is an IUU listed vessel:
  - a. shall deny entry to such vessel; or
  - b. notwithstanding subparagraph (a), may allow such vessel to enter a port 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; and
  - c. shall communicate any decision taken pursuant to paragraphs (a) or (b) to the vessel or its representative.
- 2) Where a vessel has been allowed entry pursuant to subsection (1)(b), it shall not be authorized to use the port.

<sup>73</sup>IOTC CPCs may also request entry "immediately after the end of fishing operations, if the time distance to the port is less than 24 hours, sufficiently in advance to allow enough time for the port State to examine the information".

- 3) The [official] may deny entry into and use of a port to any vessel that the [official] has reasonable grounds to believe has violated this [legislation].
- 4) Where entry is denied under subsection (1)(a), (2) or (3), the [official] shall notify the decision to the flag State of the vessel and, as appropriate, to each relevant coastal State, RFMO and other international organization.

### FORCE MAJEURE OR DISTRESS

A vessel's entry into port for reasons of *force majeure* or distress is not to be affected by the requirements in the previous sections.

However, *force majeure* or distress are not a right of the vessel under international law, it is the sovereign right of the port State to decide whether any vessel may enter port. This protects the country's right to self-defense, as well as port safety and other concerns.

The qualifications for claims of *force majeure* or distress in subsection (1)(a)-(d) make it clear that the vessel claiming *force majeure* or distress must not do so falsely and that the vessel operator has the burden of proving such claims. The vessel may then be inspected and subject to the direction of appropriate officials of the port State.

The instruments recognize that it is the decision of the port State to allow entry for *force majeure* or distress, and these provisions elaborate relevant responsibilities. They aim to protect the sovereignty of the port State against false claims of *force majeure* or distress, based on best practices.

Entry into port for *force majeure* or distress may be granted, in accordance with the instruments, only for such period of time necessary to remedy the claim and entry is granted exclusively to render assistance to persons or vessels in danger or distress.

*References* Article 10 FAOA; Section 8 IOTCR.

## 7. *Force majeure or distress*

- 1) Nothing in this [legislation] affects the entry of a vessel to port in accordance with the laws of [country] for reasons of *force majeure* or distress, providing:
  - a. a claim of *force majeure* or distress shall not apply where:
    - i. it is contrived, untrue or otherwise intentionally created; or
    - ii. its objective is to avoid liability, and any person who makes an inapplicable claim commits an offence;<sup>74</sup>
  - b. the burden of proof that a claim of *force majeure* or distress is valid and does not fall within prohibitions in paragraph (a) shall be on the vessel operator;
  - c. an [official – e.g. authorized officer] may board and inspect the vessel at any time for the purpose of verifying the claim of *force majeure* or distress;
  - d. a vessel that claims *force majeure* or distress shall be subject to the direction of [official].

<sup>74</sup> A specific offence should be provided in the relevant section.

- 2) The [official, and if not a fisheries official then in consultation with a designated fisheries official] may grant a vessel that falls within the scope of this [legislation] entry into port for reasons of *force majeure* or distress, provided that:
  - a. the vessel may enter port under its claim of *force majeure* or distress for such period of time necessary to remedy such claim; and
  - b. the vessel is permitted entry exclusively for the purpose of rendering assistance to persons or vessels in danger or distress.

### DENIAL OF USE OF PORT AFTER ENTRY

After a vessel has entered port, the instruments require denial of use of port if the conditions specified in this section are met. They include not having an applicable authorization required by the flag State or a coastal State, clear evidence that the fish was taken illegally from a coastal State's jurisdiction, failure of a flag State to confirm that the fish was taken in accordance with relevant RFMO requirements or reasonable grounds to believe that the vessel was otherwise engaged in IUU fishing or fishing related activities.

The evidentiary standard for subsection (1)(b) is "clear evidence", based on Article 11(1)(c) of the FAOA, but this may be reconsidered as suggested in section 3.2 above.

The evidentiary standard for subsection (1)(d) is "reasonable grounds to believe", based on Article 11(1)(e) of the FAOA, but this may be reconsidered as suggested in section 3.2. above.

In the above circumstances, the use of port may be allowed but only for the health or safety of the crew or vessel or the scrapping of the vessel.

Denial of the use of port must be communicated to the flag State and, as appropriate, to each relevant coastal State, RFMO and other international organization.

*References* Article 11 (1), (2) and (3) FAOA; Section 9.1, 9.2 and 9.3 IOTCR.

## 8. Denial of use of port after entry

- 1) Where a vessel that has been granted authorization to enter a port pursuant to section \*\*5(c) has entered a port, the [official] shall deny such vessel the use of port for landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including refuelling and resupplying, maintenance and drydocking, if:
  - a. the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities required by:
    - i. its flag State; or
    - ii. a coastal State in respect of areas under its national jurisdiction;
  - b. there is 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;
  - c. the flag State does not confirm within a reasonable period of time, on the request of [official], that the fish on board was taken in accordance with applicable requirements of a relevant RFMO; or

- d. the [official] has reasonable grounds to believe that the vessel was otherwise engaged in IUU fishing or fishing related activities in support of IUU fishing unless the operator or charterer of 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 that had engaged in IUU fishing or an IUU listed vessel.
- 2) Notwithstanding subsection (1), the [official] may allow a vessel the use of port services:
  - a. where such services are essential to the safety and health of the crew or the safety of the vessel, provided these needs are duly proven; or
  - b. as appropriate, for the scrapping of the vessel.
- 3) Where the use of port is denied under subsection (1), the [official] shall notify the decision to the flag State of the vessel and, as appropriate, to each relevant coastal State, RFMO and other international organization.

#### WITHDRAWAL OF DENIAL OF USE OF PORT

Withdrawal of denial of the use of port is provided in the instruments, and although they do not specifically require transparent and accountable consultative procedures, inclusion of such procedures in legislation would promote good governance and deter corruption-related practices. For example, the responsible official could withdraw the denial on the advice of, or in consultation with, the Attorney-General and other officials.

The evidentiary standard for withdrawal under paragraph (a) is “sufficient proof” that the grounds were inadequate, erroneous or no longer apply, based on Article 11 (4) of the FAOA. This standard may be reconsidered in the context of national evidentiary standards as suggested in section 3.2 of this document, above.

*References* Article 11(4) and (5) FAOA; Section 9.4 and 9.5 IOTCR.

### 9. *Withdrawal of denial of use of port*

Where the use of port has been denied pursuant to section 8, [country may identify an official or a transparent consultative process as appropriate, e.g. [official] on the advice of the [Attorney General]] shall:

- a) withdraw such denial in respect of a vessel only if there is sufficient proof that the grounds on which use of port was denied were inadequate or erroneous or that such grounds no longer apply; and
- b) promptly notify the withdrawal promptly to each person that was notified pursuant to section 8(3).

### CONDUCT OF INSPECTIONS OF VESSELS IN PORT

The framework for conducting inspections of vessels in port consists of the following elements:

- designation of inspecting agency/agencies;
- priorities for inspecting vessels;
- inspection of a certain level, or percentage, of vessels that call into port annually;
- inspectors must conform to procedures and submit a written report;
- the master must cooperate;
- the results of the inspection must be transmitted to relevant countries and organizations.

The officials responsible for conducting inspections should be designated – e.g. fisheries, or fisheries and navy/coast guard or other as applicable in each country (subsection (1)). It would be useful to designate a lead agency as appropriate, preferably fisheries.

In addition to the proposed language, countries may wish to provide that the [official] may use personnel, services, equipment, etc. of other government agencies and/or conclude an interagency agreement or memorandum of understanding (MOU) specifying responsibilities and contributions of each agency. Interagency cooperation is discussed more fully in section 5 of this document.

An MOU or use of personnel, etc. are not specifically required in the instruments, but inclusion of appropriate language in the legislation could be used as a tool to facilitate effective procedures to be developed, give authority to relevant agencies for inspections and identify lead responsibilities.

Responsibility should be designated for carrying out specified priorities (subsection (2)) and specified levels of inspections taking into account priorities and levels agreed under an applicable RFMO CMM,<sup>75</sup> (e.g. 5 percent of all vessels calling into port per year - (subsection (3)). For an RFMO, the requirement is to verify compliance with its Resolutions.

Concerning subsection (4), procedures for inspection required in the relevant Annexes to the instruments<sup>76</sup> may be implemented through a mechanism best suited to the country, for example official Standard Operating Procedures (SOPs), as may be required by the Minister or official or by Regulation. The legislation could also provide that the [Minister/ official] has the responsibility for determining or requiring the procedures.

The requirements for the master to assist the inspector (subsection (5)) are reinforced by proposed supporting legislation in section 4 of this document.

The transmission of inspection results to designated countries/organizations is required after every inspection.

<sup>75</sup> The IOTCR replaces applicable "CMM" with applicable "Resolution".

<sup>76</sup> Article 13, Annex B FAOA; Section 11, Annex II IOTCR.

**CONDUCT OF INSPECTIONS OF VESSELS IN PORT (*continued...*)**

The IOTCR requires the transmission of inspection reports to different recipients. The port State must transmit results to the master of the vessel and the IOTC Secretariat, and as appropriate to the flag State, relevant CPCs and States and the master's national State.

The Secretariat then transmits the inspection reports to relevant RFMOs and posts them on the website. The IOTCR requires transmission within three full working days of the completion of inspection.

*References* Articles 13, 14 and 15 and Annexes B and C, FAOA; Sections 11, 12, 13 and Annexes II and III, IOTCR which also requires verification with IOTC CMMs. The Annexes of the instruments are identical.

**10. Conduct of inspections of vessels in port**

- 1) The [official(s) responsible for the lead agency/agencies that will be conducting inspections] shall conduct vessel inspections as necessary for the purposes of this [legislation].
- 2) The [official] shall prioritize vessel inspections based on:
  - a. vessels that have been denied entry or use of a port in accordance with the Agreement and/or an applicable conservation and management measure;
  - b. a request from another State or RFMO to inspect a certain vessel, particularly where the request is supported by evidence of IUU fishing or fishing related activities in support of IUU fishing by the vessel in question; and
  - c. whether there are clear grounds for suspecting that a vessel has engaged in IUU fishing or fishing related activities in support of such fishing.
- 3) The [official] shall, to the extent possible, ensure inspection of a level of vessels as may be required by an applicable conservation and management measure.
- 4) During inspections of a vessel in port, inspectors shall carry out inspection in conformity with such procedures as may be determined, and complete a written report of the inspection in the form provided in [Annex \*\* of the legislation, or otherwise refer to the requirements of the Annexes of the instruments<sup>77</sup>] and submit it to [official].
- 5) The master of the vessel shall, in relation to inspection of the vessel, give inspectors all necessary assistance and information, and present relevant material and documents as may be required, or certified copies thereof.
- 6) The [official] shall transmit the results of an inspection under this [legislation] to the flag State of the inspected vessel, and as appropriate to:
  - a. those States for which there is evidence through inspection that the vessel has engaged in IUU fishing or fishing related activities within waters under their national jurisdiction;
  - b. the State of which the vessel master is a national;
  - c. other relevant States and Parties to a relevant international or regional agreement concerning port State measures;
  - d. relevant RFMO(s); and
  - e. FAO and other relevant international organizations.

<sup>77</sup> Annex C FAOA and Annex III IOTCR. The Annexes are identical.

### DENIAL OF USE OF PORT AFTER INSPECTION

The instruments provide as a standard of proof for section (1) “clear grounds to believe” IUU fishing or related activities has taken place. This is linked to an inspection report.

The evidentiary standard for subsection (1) is “reasonable grounds to believe”, based on Article 18(1) of the FAOA, but this may be reconsidered as suggested in section 3.2 of this document.

Other Articles (e.g. relating to the use of ports) require “reasonable grounds to believe”. The two standards are similar, and for consistency with each other and best practices in national legislation, the latter is suggested but each country should review this in the context of their evidentiary standards.

Where national law uses other evidentiary standards, maximum consistency with this criterion should be provided.

For a transparent and accountable process to establish “reasonable grounds”, the legislation may provide for consultation with, for example, the Attorney General or qualified officials. However, the process identified should be able to yield results without delay.

*References* Article 18 FAOA; Section 15 IOTCR also requires notification to the Secretariat.

#### 11. *Denial of use of port after inspection*

- 1) Where, following an inspection, the [official] has reasonable grounds to believe that a vessel has engaged in IUU fishing or fishing related activities in support of such fishing, the [official] shall:
  - a. promptly notify the flag State and, as appropriate, relevant coastal States, RFMOs and other international organizations, and the State of which the vessel’s master is a national of the 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 refueling and resupplying, maintenance and drydocking, if these actions have not already been taken in respect of the vessel.
- 2) Notwithstanding paragraph (1)(b), the [official] shall not deny a vessel the use of port services, where such services are essential to the safety and health of the crew or the safety of the vessel, provided these needs are duly proven.

### PROHIBITED TO USE OR ASSIST, ETC. IN THE USE OF PORT IN ABSENCE OF AUTHORIZATION OR AFTER DENIAL

Where a vessel has:

- not complied with the prerequisites of port entry (i.e. requested entry, provided information, received an authorization and presented the same upon entry);
- been denied port entry;
- been permitted entry only for purposes of inspection or *force majeure*; or
- been denied use of port after entry,

it is an offence for the vessel to use the port. This proposed provision also extends the offence to those who allow or assist the vessel to use port in contravention of the above, although the instruments do not provide for this.

There is an exception for circumstances where vessels otherwise denied the use of port are permitted use, e.g. for services essential to the safety of the crew and vessel. However, there should be transparent and accountable procedures to permit such use.

*References* There are no direct references in the instruments to such a provision but this type of provision permits enforcement and has been implemented in national legislation.

#### 12. *Prohibited to use or assist, etc. in the use of port in absence of authorization or after denial*

- 1) Where a vessel:
  - a. is in port in contravention of:
    - i. the requirements in section 5;
    - ii. an applicable denial of authorization to enter port pursuant to section 6(1)(a) or 6(2);
  - b. has been permitted to enter port exclusively for the purpose of:
    - i. inspection pursuant to section 6(1)(b);
    - ii. rendering assistance to persons or vessels in danger or distress pursuant to section 7(2)(b); or
  - c. has been denied the use of port pursuant to section 8 or section 11,
  - d. no person, including the operator or crew member of such vessel or any person that is acting directly or indirectly in relation to the vessel, shall:
  - e. engage in the use of such port or cause such port to be used otherwise than as permitted under subsection (2); or
  - f. allow, assist or cause, directly or indirectly, the use of port by such vessel.



- g. Notwithstanding subsection (1), the port may be used by such vessel where the [official as appropriate in consultation with, e.g. port authority, transport, health officials] permits in writing services to be used exclusively for the safety or health of the crew or the safety of the vessel in accordance with this [legislation] and gives public notice of such permission, and the port is used exclusively for such purposes.

#### REQUIREMENTS IN RELATION TO [COUNTRY] VESSELS IN OTHER PORT STATES

The role of the flag State is spelled out in the instruments. The flag State roles appropriate for implementing in a flag State's national legislation include:

- for vessels, to cooperate with inspections in foreign ports and not use ports in States designated by RFMOs as being non-compliant; and
- for officials, to request the foreign port State to inspect where there are reasonable grounds to believe IUU fishing or fishing related activities and to ensure full investigation where the inspection report shows grounds to believe IUU fishing.

Other roles are more procedural and include reporting and applying effective measures to flag vessels.

The evidentiary standard for subsections (2) and (3) is "reasonable grounds to believe" there had been IUU fishing or fishing related activities, based on Article 20(2) and (4) of the FAOA, but this may be reconsidered as suggested in section 3.2 of this document.

*References* Article 20 FAOA; Section 17 IOTCR.

### 13. Requirements in relation to [country] vessels in other port States

- 1) The operator of each [country] vessel shall:
  - a. cooperate fully with inspections carried out in the ports of other States in accordance with their laws and procedures; and
  - b. not land, tranship, package and process fish, and use other port services, in a port State identified by a relevant RFMO as not acting in accordance with, or in a manner consistent with, applicable international or regional instruments relating to port State measures.
- 2) Where there are clear grounds to believe that a [country] vessel 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, [official] shall, as appropriate request such State to inspect the vessel or take other measures consistent with applicable international or regional instruments, including those relating to port State measures.
- 3) Where, following port State inspection, there are clear grounds to believe that a [country] vessel has engaged in IUU fishing or fishing related activities in support of such fishing, [official] shall cause the matter to be immediately and fully investigated and, upon sufficient evidence enforcement action to be taken without delay in accordance with [legislation].

### FINES, PENALTIES, SANCTIONS

Fines, penalties or other sanctions for the flag vessels of a port State are to be “at least as effective” in combating IUU fishing and related activities as port State measures applied to foreign vessels.

This is a matter for national law to determine, in line with international best practices.

*References* Article 20 (6) FAOA; Section 17.6 IOTCR.

#### 14. *Fines, penalties, sanctions*

Where a [country] vessel, upon the completion of applicable judicial or administrative processes, has been found to have engaged in IUU fishing or fishing related activities in support of such fishing, the operator shall be liable to: [state measures at least as effective as denial of port use – e.g., suspension/revocation of license, fine, penalty or other].

### DUTIES OF THE [E.G., MINISTER/SECRETARY]

These provisions implement the following requirements:

Integration and coordination at the national level, which requires integration of port State measures within the broader national system of port controls and with other measures to combat IUU fishing, as well as exchange of information;

Cooperation and exchange of information, which requires a contact point to be designated for the exchange of information;

Information on recourse in the port State, which requires information on recourse where port State measures have been taken in relation to a vessel.

*References* Articles 5, 16 and 19 FAOA; Sections 4 and 16 IOTCR. The IOTCR has no corresponding requirement relating to paragraph (b), the cooperation and exchange of information.

#### 15. *Duties of the [e.g., Minister/Secretary]*

The [Minister/officials] shall:

- a. in consultation with the [e.g. port authority, coast guard/navy, etc], develop procedures for making such determinations and notifications as may be necessary to carry out the purposes of this [legislation];
- b. designate a point of contact for purposes of electronic exchange of information and notify this information to FAO and to any relevant regional fisheries management organization pursuant to an applicable conservation and management measure;
- c. maintain information regarding any legal remedy available to a person who is affected by an action under this [legislation]. The information shall be made publicly accessible and provided upon written request, to the owner, operator, master or representative of a vessel.

## 4. LEGISLATIVE TEMPLATE FOR THE IMPLEMENTATION OF PORT STATE MEASURES – SUPPORTING PROVISIONS

### 4.1 Introduction

Section 3.3 of this document provided a legislative template to implement the core provisions of the FAO Agreement and IOTC Resolution at national level. They should be supported by a broader spectrum of practical requirements that provide a firm legal basis for enforcing fisheries legislation generally and are normally included in national laws and regulations.

The supporting provisions in this template may already be in the national fisheries legislation of many countries. They focus on the following areas: general, fisheries management, information, MCS, evidence, jurisdiction and compliance. They are robust and take into account current relevant international law and best practices of national fisheries legislation.

As appropriate, although the supporting provisions are not required under the FAO Agreement, it could be useful for countries to review relevant national fisheries legislation for consistency and completeness with the provisions suggested in the template and where needed, as a possible basis for strengthening existing legislation.

The Guide for using the references in the legislative template for core provisions shown in Table 3, above, is applicable to this legislative template for supporting provisions.

### 4.2 Legislative template

The explanations on the use of terms, square brackets and other designations described for the core provisions in section 3.3 above are applicable for the supporting provisions.<sup>78</sup>

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<sup>78</sup> Recall that the definition of “fishing related activities” given under section 3.2 above (core provisions) is the same as that in the FAOA and IOTCR. As explained in that section, the instruments properly refer throughout to “IUU fishing and fishing related activities in support of such fishing”. However, for convenience, reference in the text of this document to “IUU fishing and related activities” has the same meaning.

## I. GENERAL

### USE OF TERMS

The following terms are not defined in the instruments but for clarity should be defined in the supporting legislation as applicable. Best practices definitions are given. Terms defined for the core provisions are applicable here.

"authorized person"	"high seas"
"buy"	"import"
"export"	"sell"
"fishery" or "fisheries"	"surveillance"
"fishing gear"	"vessel monitoring system"
"flag State"	

#### 1. *Use of terms*

"authorized person" includes authorized officers, inspectors, observers and any other person performing MCS duties under this [legislation];

"buy" includes:

- (a) barter or attempt to barter;
- (b) purchase or attempt to purchase;
- (c) receive on account or consignment;
- (d) receive in order to send, forward or deliver for sale;
- (e) broker a sale;
- (f) purchase or barter for future goods or for any consideration of value; and
- (g) purchase or barter as an agent for another person,
- (h) and "buyer" has a corresponding meaning;

"export" in relation to fish or fish products means to:

- (a) send or take out of [country];
- (b) attempt to send or take out of [country];
- (c) receive on account or consignment for the purposes of (a) or (b); or
- (d) carry or transport anything for the purposes of (a) or (b), when associated with any buying or selling, or intended buying or selling of the fish or fish products;

"fishery" or "fisheries" means:

- (a) one or more stocks of fish, or parts thereof, which can be treated as a unit for the purposes of conservation, development and management, taking into account geographical, scientific, technical, customary, recreational, economic and other relevant characteristics; or
- (b) any fishing for such stocks;

"fishing gear" means any equipment, implement, structure, construction, installation or other article that can be used for fishing, whether or not it is used in connection with a vessel, including any fishing net, line, float, cork, buoy, basket, light, winch, boat or aircraft;

"flag State" in relation to a vessel that is not a [country] fishing vessel means the State in which the vessel is registered, providing it is registered in only one State;

"high seas" means the waters beyond areas under the jurisdiction of any State including the territorial sea, exclusive economic zone or other zone of national jurisdiction;

"import" means the bringing into the country of any fish or fish product and aquatic flora from any place outside [country];

"international agreement" includes any treaty or other legally binding instrument, including bilateral, multilateral regional agreements or arrangements;

"sell" includes-

- (a) any method of disposition for consideration, including cash, anything which has value or which can be exchanged for cash, and barter; and
- (b) disposition to an agent for sale on consignment; and
- (c) offering or attempting to sell, or receiving or having in possession for sale, or displaying for sale, or sending or delivering for sale, or causing or permitting to be sold, offered, or displayed for sale; and
- (d) disposition by way of raffle, lottery, or other game of chance,

and "sell" and "sold" have a corresponding meaning;

"vessel monitoring system" includes a satellite based reporting system capable of monitoring the position and activities of vessels.

## II. FISHERIES CONSERVATION AND MANAGEMENT

### INTERNATIONAL, REGIONAL, BILATERAL COOPERATION

National legislation should recognize regional and international obligations. This would support the implementation of port State measures and promote cooperation among countries and with RFMOs and international organizations.

It also provides the foundation to enter into cooperative MCS agreements for port State measures, for example concerning the exchange of information and inspectors.

## 2. *International, regional, bilateral cooperation*

The [Minister] shall ensure cooperation with other States necessary to discharge regional or international obligations or to promote regional and international cooperation or coordination in fisheries management, including monitoring, control and surveillance of relevant activities.

## II. FISHERIES CONSERVATION AND MANAGEMENT

### PROHIBITED ACTIVITIES RELATING TO FISH OR FISH PRODUCTS TAKEN FROM ANOTHER STATE

This section combats IUU fishing by prohibiting the sale, purchase, import, export, landing, etc. of any fish or fish product taken, possessed, etc. in violation of any law of another State. Most of these activities apply to port activities and can be applied to the vessel and the entities doing business with them.

This implements the standards of the landmark 1900 US “Lacey Act”<sup>79</sup> that has effectively banned trafficking in fish, wildlife, plants and animals taken in violation of legislation of another State and is implemented in the legislation of many other countries. It can apply to fish caught illegally in another State and be extended to IUU caught fish in violation of an applicable RFMO international conservation and management measure. In this way, the act of trading or trafficking in IUU caught fish in areas under national jurisdiction is an offence, and not the act of illegal fishing in areas beyond national jurisdiction. It is an effective weapon in deterring IUU fishing.

## 3. *Prohibited activities relating to fish or fish products taken from another State*

- (1) No person shall, within [country] including waters under national jurisdiction, on their own account or any other capacity:
  - (a) cause or permit a person acting on his or her behalf; or
  - (b) use or permit a vessel to engage in fishing or related activity,
 to take, possess, import, export, tranship, land, transport, sell, receive, acquire or buy any fish or fish product taken, possessed, transported or sold in violation of any law or regulation of another State or of any conservation and management measure.
- (2) This section does not apply to fish taken on the high seas contrary to the law of another State where [country] does not recognize the jurisdiction of that State over those fish.

<sup>79</sup> 16 U.S.C. SS 3371-3378. It

### IMPLEMENTATION OF CONSERVATION AND MANAGEMENT MEASURES

National implementation of RFMO CMMs may be problematic. For example, new CMMs may be agreed annually in RFMOs but swift legislative implementation may be difficult for some countries due to legislative processes, weak capacity or other reasons. A number of countries implement CMMs through imposing license conditions on national or foreign vessels, but this approach does not necessarily cover the range of duties in the measures where national law is incomplete.

For example, where CMMs (including port State measures) are applicable to activities in areas beyond national jurisdiction, the scope or application of national legislation should underpin the license conditions.

Where there is evidence of IUU fishing or related activities in areas beyond the national jurisdiction of the port State contrary to an applicable RFMO CMM, the CMM should be expressly implemented into national legislation in the port State. However, because the core measures already provide definitions of IUU fishing and conditions for the denial of use of port, implementation may not be essential but would play a supportive role in the event of any unforeseen challenges.

Prompt implementation of CMMs in national law would serve broader purposes, including enabling the port State to discharge its role as a flag State by controlling its nationals (vessels and persons) in areas beyond national jurisdiction covered by applicable CMMs.

This section proposes examples of mechanisms for implementation of CMMs which are legally binding upon the country: by regulation or by official Notice. The process for the latter option would be less complicated, but there should be an associated provision for fines, penalties or other measures, for example through an applicable “General Offences” provision for contravention of CMMs in legislation.

#### 4. *Implementation of conservation and management measures*

- (1) The [Minister] may, [by Regulation/Notice in the Gazette] give notice of any international conservation and management measure legally binding upon [country] in accordance with international law, including those measures applicable in areas beyond national jurisdiction.
- (2) A [Regulation/Notice] under subsection (1) shall:
  - (a) append the relevant international conservation and management measure which shall thereby be enforceable pursuant to this [legislation]; and
  - (b) apply:
    - (i) at all times, to national vessels and persons in areas beyond national jurisdiction; and
    - (ii) to any relevant foreign vessel within the area governed by the relevant measure where the flag State is bound by such measure, except that measures against such vessel shall not be taken under this [legislation] unless it enters areas under the national jurisdiction of [country].
- (3) Unless otherwise provided, where there has been a contravention of the conservation and management measure notified under subsection (1), a fine or penalty may be imposed of [e.g.

may refer to a general offence applicable to violations of CMMs if in national legislation, or empower the Minister to set a fine or penalty in the Regulation] and other measures may be taken in accordance with this [legislation] and international law.

### III. INFORMATION, DATA AND RECORDS

#### INFORMATION, DATA AND RECORDS

Persons carrying out activities under the scope of the [legislation] should be required to keep and furnish such information, data and records that may be required.

The type of information to be kept is described, as well as categories of persons required to keep/furnish the information.

This is applicable to, *inter alia*:

- vessels that seek entry into port;
- vessels that are inspected in port;
- flag vessels in the ports of other States;
- persons engaged in relevant activities – e.g. landing, transhipment etc.
- persons involved in “use of port” (as defined in the core provisions), including those associated with the vessel and those assisting or allowing a vessel to use port.

Audits, inspections and further information may be required.

#### 5. Information, data and records

- (1) The [official] may, for purposes of this [legislation], require any person to keep and furnish in such manner and form and at such time as he/she may specify, or as may be prescribed:
  - (a) any information and data, including information relating to fishing, fisheries, landing, storage, food safety, processing, buying, selling, exports and other related transactions;
  - (b) accounts, records, returns, documents; and
  - (c) other information in relation to activities falling within the scope of this [legislation] additional to that specified under this [legislation].
- (2) The following categories of persons shall keep such accounts, records, documents and furnish such returns, data and other information, in accordance with the requirements under this [legislation]:
  - (a) holders of licenses or authorizations issued under this [legislation];
  - (b) owners, operators, legal representatives and masters of vessels licensed or authorized under this [legislation];
  - (c) owners and persons in charge of any premises where fish or fish products are received, bought, stored, transported, processed, sold, or otherwise disposed of;
  - (d) persons who engage in the landing, transhipment, receiving, buying, selling, transporting, packaging, processing, storage, export, import or disposal of fish or fish products;



- (e) persons who provide, allow, assist, procure or are otherwise involved in the use of port by a vessel including for purposes of fueling, supplying, maintenance or drydocking; and
  - (f) such other persons who may be required to do so by the [official] pursuant to this [legislation].
- (3) The [official] may, for purposes of verification of accounts, records, documents, returns, or information required to be kept, furnished or communicated in any manner or form under subsection (1) or (2):
- (a) audit or inspect any accounts, records, returns or other information or place where such information may be kept;
  - (b) audit or inspect any vessel, processing plant or other facility operating under the scope of this [legislation]; and
  - (c) require from any person further information, clarification or explanation regarding any accounts, returns or information kept, furnished or communicated under this section in accordance with such time limits as may be specified or prescribed.

#### INFORMATION TO BE TRUE, COMPLETE AND CORRECT

All information given under the legislation must be true, complete and correct. This provision would be applicable to all activities, including information given by vessels prior to entry into port and during inspection.

### 6. *Information to be true, complete and correct*

Any information given, furnished or maintained or required to be given, furnished or maintained under this [legislation] shall be true, complete and accurate and no such information shall be false, misleading or inaccurate.

#### FALSE OR FORGED DOCUMENTS

It is an offence to alter, forge, falsify etc. any documents that are required under the legislation.

### 7. *False or forged documents*

No person shall unlawfully alter, destroy, erase, obliterate, forge or falsify any document made or required under this [legislation].

### REGISTERS OF LICENSES AND VESSELS

The instruments require denial of port use, *inter alia*, where a vessel doesn't have a required license or authorization as required by the flag State or a relevant coastal State.

Countries should maintain registers of relevant licenses and vessels in their roles as flag or coastal States in order to expedite the provision of information to a port State in support of its actions under the instruments.

Information must be kept on, *inter alia*, non-compliance by vessels, including action taken by another State (e.g. port State measures) and requirements of any relevant CMM.

Access to the information must be provided to directly interested governments, RFMOs etc, taking into account confidentiality, and sufficient for MCS purposes. It must also be communicated to other governments, RFMOs etc. in a timely manner to ensure the discharge of the regional and international obligations of [country] including as a flag State and RFMO member.

8. Registers of licenses and vessels
  - (1) The [official] shall establish and maintain a national register of licenses and authorizations issued under this [legislation] in accordance with such requirements as may be prescribed or required by the [Minister].
  - (2) The register established under subsection (1) shall include:
    - (a) information on applications for licenses and authorizations under this [legislation];
    - (b) information on each license and authorization issued, renewed, suspended and/or cancelled under this [legislation], including the activity, date and duration;
    - (c) information on each licensed or authorized person;
    - (d) information on the relevant vessel, facility, and/or licensed or authorized activity;
    - (e) any record of non-compliance with the license or authorization;
    - (f) any record of action taken as a result of non-compliance, including by any other State;
    - (g) the requirements of any relevant international conservation and management measure; and
    - (h) such other information that may be prescribed or required by the [official].
  - (3) The register established under subsection (1) shall contain information relating to vessels licensed or authorized for fishing or fishing related activities in areas:
    - (a) under national jurisdiction; and
    - (b) beyond national jurisdiction.
  - (4) The [official] shall, in respect of information contained in the register in accordance with subsection (2), provide access to such information on request by directly interested Government bodies of [country], regional fishery bodies including regional fisheries management organizations, international organizations and foreign States or entities, taking into account any applicable laws regarding the confidentiality or release of such information.

- (5) The [official] shall ensure that the information on each license and authorization in the database is sufficient for purposes of fisheries management and monitoring, control and surveillance, and to implement the international and regional agreements to which [country] is party or cooperating non-party.
- (6) The [official] shall ensure that, as appropriate, information is released from the database and communicated to other States and regional and international organizations in a timely manner to ensure the discharge of the regional and international obligations of [country] including as a flag State and as a member of regional fisheries management organizations.
- (7) Registration of a license or authorization in the national register shall not be considered a license or authorization for the purposes of this [legislation].
- (8) A person may, upon payment of such fee as may be prescribed, access any non-confidential information from the register.

#### **INFORMATION ON LEGAL, ADMINISTRATIVE ACTION TAKEN UNDER THE [LEGISLATION]**

Information is to be maintained and made publicly available on actions resulting in a judgment or administrative determination. Such information could provide useful background in relation to a vessel's activities, especially if there is a judgment or administrative determination of IUU fishing or related activities that should be notified to a port State.

However, it is necessary to be mindful of the possibilities that a vessel's owner may have changed and that the fine or determination may have been fully satisfied.

#### **9. *Information on legal, administrative action taken under the [legislation]***

The [official] shall maintain and make publicly available a record of the outcome of any legal or administrative action taken in respect of any violation against this [legislation] that results in a judgment or administrative determination.

#### **PUBLIC ACCESS TO INFORMATION**

Subject to the following section on confidentiality, information is to be made available to the public.

This would support transparency for the purpose of releasing information on vessels where there is suspected IUU fishing or related activities.

## 10. *Public access to information*

The [official] shall make information available to the public and as necessary disseminate relevant information to stakeholders for purposes of fisheries conservation, management and development, including regional and international organizations, except for such information that is designated confidential in accordance with this [legislation].

### CONFIDENTIAL INFORMATION

Examples of general requirements for identifying confidential information are set out, which countries may wish to draw upon if not already included in legislation.

In this context, and relevant for implementing the instruments, paragraph 5(e) authorizes disclosure of information necessary to discharge regional or international obligations or to promote regional and international cooperation or coordination in monitoring, control and surveillance of relevant activities

This ensures a basis for countries to discharge the obligations relating to exchange of information under the instruments.

## 11. *Confidential information*

- (1) No person carrying out duties or responsibilities under this [legislation], including the [Minister] and [official] shall, unless authorized or otherwise provided or directed in accordance with this [legislation], reveal information or other data of a confidential nature or designated as confidential in accordance with this [legislation], acquired by virtue of their said authority, duties and responsibilities to any person not having such authority or carrying out such duties and responsibilities.
- (2) The [Minister] in consultation with the [official] may designate any information as confidential, and in doing so may also exempt general summaries of aggregated information from confidentiality requirements.
- (3) The [official] may authorize in writing any person to:
  - (a) receive or access confidential information;
  - (b) access or restrict access to such premises holding confidential information as he/she may designate.
- (4) Notwithstanding subsection (2), the following information shall be confidential unless the [Minister] in consultation with the [official] otherwise directs:
  - (a) any information or data of a commercial nature provided in records, returns, or other documents required under this [legislation];
  - (b) any information or data supplied by a vessel monitoring system or part thereof in accordance with this [legislation];
  - (c) such raw data from scientific research as may be designated by the Minister in consultation with the [official]; and
  - (d) such other information or data as may be required by the Minister in consultation with the [official].
- (5) Information may be disclosed to the extent:
  - (a) that disclosure is authorized or required under this [legislation] or any other law;

- (b) that the person providing the information authorized its disclosure;
  - (c) necessary to enable the [official] to publish statistical information relating to the fisheries sector;
  - (d) necessary for enforcement of [country] laws by other Ministries and agencies of the Government of [country];
  - (e) necessary to discharge regional or international obligations or to promote regional and international cooperation or coordination in monitoring, control and surveillance of relevant activities; and
  - (f) necessary to enable advice to be given to the [Minister].
- (6) The Minister in consultation with the [official] may authorize in writing the release of any information:
- (a) relating to the real-time or other position of any vessel, upon request, to the responsible authority for purposes including surveillance, search and rescue and other emergency;
  - (b) for purposes he/she deems would be supportive of the objectives and enforcement of this [legislation], including reasonable transparency in decision-making; or
  - (c) designated as confidential for such purposes as the Minister may approve or as may be prescribed.
- (7) Any information designated as confidential shall maintain such classification for a period of five years from the time of such designation, and at the expiry of five years, the Minister in consultation with the [official] may extend such classification for a further period of up to five years or more as he/she may deem necessary for purposes relating to the objectives and enforcement of this [legislation].

#### EXCHANGE OF INFORMATION

An official, designated in accordance with the FAO Agreement<sup>80</sup> and/or other international or regional obligations, is responsible for exchanging information with other States to combat IUU fishing and related activities and promote effective fisheries management, and in accordance with international obligations.

### 12. *Exchange of information*

The [official] shall provide and exchange such information with other States and organizations as may be required under international, regional or bilateral agreements, paying due regard to the requirements of confidentiality, and shall do so in general to prevent, deter and eliminate IUU fishing and related activities in support of such fishing and to promote effective fisheries management throughout the range of the stocks and taking into account the ecosystem approach to fisheries management.

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<sup>80</sup> Article 16(3).

## IV. MONITORING, CONTROL AND SURVEILLANCE

### APPOINTMENT OF AUTHORIZED OFFICERS

Countries may use different designations for persons responsible for fisheries MCS, and different categories of persons – e.g. authorized officers or inspectors.

In any case, legislation should provide the process for appointment, for example, as shown in subsection (1) (a) – (c). The requirements for appointment will differ among countries.

Countries may consider providing for appointment of non-nationals as indicated in subsection (1)(c). This allows officers appointed by another country to be appointed temporarily under an international agreement (e.g. MoU or other) with the objective of MCS cooperation, which would include port State measures.

The purpose for the appointment of authorized officers should be stated, as indicated in the last part of subsection (1).

It should include reference to their duties relating to this legislation and other relevant legislation and measures in areas within and beyond national jurisdiction, as well as applicable international agreements and conservation and management measures.

Such a provision would define the objective and scope of their appointment and include, for example, inspection of a flag vessel in the port of another country, and denial of the use of port to vessels that have fished in the waters of another State without a required license or authorization.

#### 13. *Appointment of authorized officers*

- (1) The [official] may, with the approval of the [Minister], appoint in writing as authorized officers:
  - (a) fisheries officers;
  - (b) any person or class of persons who are public officers appointed in accordance with the Constitution; and
  - (c) for a specified period of time, any person or class of persons who are not [country] nationals but are appointed as authorized officers by their national State where such State is party to an applicable international agreement or arrangement with the objective of carrying out fisheries monitoring, control and surveillance operations jointly or cooperatively with the Government of [country],

for the purpose of administering, monitoring and enforcing this [legislation] and such other relevant legislation and measures in areas within and beyond national jurisdiction that fall within the scope of this [legislation], any applicable international agreement and/or conservation and management measure, and shall publicly notify such appointments in the *Gazette*.
- (2) The Minister may limit the exercise of any powers and functions of any authorized officer to a specific area and/or period of time.

### AUTHORITY AND GENERAL POWERS OF AUTHORIZED OFFICERS

The authority and general powers of authorized officers, inspectors, etc should be given.

The scope of authority should apply the legislation to authorized officers undertaking duties in areas beyond national jurisdiction, which would include inspections of flag vessels in foreign ports.

Where an authorized officer is a non-national or serving under the authority of another State, reporting procedures should be described, along the lines of those in subsection (5).

#### 14. *Authority and general powers of authorized officers*

- (1) An authorized officer may do all such acts and things and give such directions as are reasonably necessary for the purposes of exercising any of his/her powers under this [legislation].
- (2) An authorized officer may use such force as may be reasonably necessary to enable the exercise of his/her powers under this [legislation].
- (3) An authorized officer bringing a vessel to a place in [country] in accordance with this [legislation], or in other circumstances where the need for assistance in enforcing this [legislation] is immediate and overwhelming, may require any person to assist him or her, and that person shall be deemed to be an authorized officer for the purposes for, and time during which he/she is required to act.
- (4) Where an authorized officer is required to undertake duties in areas beyond national jurisdiction, unless provided otherwise in an international agreement or arrangement, the provisions of this [legislation] are applicable as if the duties were performed within areas under national jurisdiction providing that the authorized officer complies with the applicable laws of any other State.
- (5) Where an authorized officer has been appointed in accordance with section 13 or is otherwise serving under the authority of another State where such State is party to an applicable international agreement or arrangement with the objective of carrying out fisheries monitoring, control and surveillance operations jointly or cooperatively with the Government of [country], he/she shall make such reports to the [official] as may be required pursuant to the terms of such international agreement or arrangement.

### IDENTIFICATION OF AUTHORIZED OFFICERS

Authorized officers must identify themselves upon request and produce evidence of their status as an authorized officer.

The instruments require identification prior to inspection of a vessel,<sup>81</sup> and this is accommodated in subsection (1).

<sup>81</sup> Article 13(2)(b) FAOA; Section 11.2(b) IOTCR.

### 15. *Identification of authorized officers*

- (1) An authorized officer in exercising any power conferred by this [legislation] shall, upon request or such time as may be identified by international agreement or any applicable international conservation and management measure, identify himself /herself and produce evidence that he/she is an authorized officer.
- (2) The production by any authorized officer of any identification document issued to him or her shall, until the contrary is proved, be sufficient authority for any such authorized officer to do anything which he/she is authorized by this [legislation] to do.

#### POWERS OF ENTRY AND SEARCH

Powers of entry and search should provide scope for inspections of vessels in port as well as persons and places involved in the use of port in relation to vessels (e.g. transshipment, landing, refueling, resupplying operations, etc.).

Powers of entry and search should be allowed as a matter of course and in accordance with national laws and procedures; they should *not* require the officer to believe an offence has been committed, or require a warrant or other process. However, standards for premises used exclusively as dwelling houses should be different and as appropriate require warrants or other process.

The power of detention should be given for a reasonable period of time.

### 16. *Powers of entry and search*

- (1) An authorized officer may, for purposes falling within the scope of this [legislation], without a warrant at any reasonable time:
  - (a) stop, enter, board, stay on board, examine and search any vessel, vehicle or aircraft, including:
    - i. any [country] vessel outside areas under national jurisdiction; and
    - ii. any other vessel to which this [legislation], any international agreement or conservation and management measures applies;
  - (b) enter, examine and search any premises or place, other than premises used exclusively as a dwelling house, including premises that are part of or attached to a dwelling house which he/she reasonably suspects are used for activities falling within the scope of this [legislation]:
    - i. in or on which he/she has reason to suspect that evidence of an offence against this [legislation] may be found; or
    - ii. that it is necessary or expedient to enter or search to ascertain whether [legislation] is being or has been complied with;
  - (c) stop any person and examine any record, article, container, gear, apparatus, device, or fish in the possession of that person; and
  - (d) pass across any land,
 and may examine and search any document, record, article, container, gear, equipment, apparatus, device, container, fish and contents of any kind found therein or thereon.



- (2) An authorized officer may detain any person, vessel, vehicle, or aircraft, parcel, package, record, document, article, fishing gear, equipment, apparatus, device, container, fish or thing for such period as is reasonably necessary to enable the authorized officer to carry out an examination or search under this section.
- (3) An authorized officer may, in respect of premises used exclusively as a dwelling house, only conduct searches and seizures in accordance with this section with a warrant issued by any court of competent jurisdiction and, the provisions of this section shall apply *mutatis mutandis*.

#### **POWER TO TAKE, DETAIN, REMOVE AND SECURE INFORMATION AND EVIDENCE**

Authorized officers should have the power to take, detain, remove and secure information or evidence for purposes and activities falling within the scope of the [legislation]. This is an important power for inspections of vessels in port, and a comprehensive provision is given below.

#### **17. Power to take, detain, remove and secure information and evidence**

- (1) An authorized officer may, for purposes and activities falling within the scope of this [legislation]:
  - (a) inspect, take, detain and secure samples, documents, logbooks or other information, or copies thereof, from any vessel, premises, facilities or other place, other than premises used exclusively as a dwelling house but including premises that are part of or attached to a dwelling house used for activities falling within the scope of this [legislation];
  - (b) make or take copies of any record, and for this purpose may take possession of and remove from the place where they are kept any such records, for such period of time as is reasonable in the circumstances;
  - (c) if necessary, require a person to reproduce, or assist the authorized officer to produce in a useable form, information recorded or stored in a document;
  - (d) require any person associated or apparently associated with a vessel, premises, facilities or other place or activity falling within the scope of this [legislation], to provide such information as may be reasonably required for the monitoring or enforcement of this [legislation]; and
  - (e) otherwise remove and secure any item that may reasonably be considered to be evidence of an offence against this [legislation].
- (2) Where an authorized officer is questioning a person pursuant to subsection (1), he/she may, *inter alia* require:
  - (a) the person being questioned to provide answers including any explanation or information concerning any vessel or any place or thing or fishing method, fishing gear, apparatus, record, document, article, device, or thing relating to the taking, landing, transshipment, sale, buying, trade, import, export or possession of any fish or use of port; and
  - (b) that person or any other person to produce any license, authorization, permit, authority, approval, permission, certificate or other document issued in relation to any vessel, vehicle, person or other relevant entity.

### POWER OF ARREST

Conditions for making an arrest should be described along the lines shown in this section and consistent with other national legislation and procedures.

The requirement in subsection (2) to deliver the arrested person into the custody of the police may not be applicable in many countries, depending on the system of enforcement.

#### 18. *Power of arrest*

- (1) An authorized officer may, if he/she believes on reasonable grounds that a person is committing or has committed an offence against this [legislation], or if a person assaults him/her or any other authorized officer or inspector while exercising his/her powers or duties under this [legislation], or offers a bribe to an authorized officer or inspector:
  - i. order that person to forthwith cease and desist;
  - ii. request that person to supply to the authorized officer that person's name, date of birth, residential address and occupation and may request that person to supply such verification of those details as it is reasonable in the circumstances to require that person to provide; and
  - iii. arrest, without warrant, that person.
- (2) [If an authorized officer arrests a person under subsection (1) he/she shall cause the person to be delivered into the custody of a member of [Police Force] as soon as practicable and that person shall thereafter be dealt with in accordance with the relevant [legislation]].

### POWER OF SEIZURE

The power of seizure is given to an authorized officer and items are identified that may be seized (e.g. vessel, conveyance, gear, fish, article, record etc) and retained (e.g. passports and seaman's books).

The national court with jurisdiction over the matter should be identified.

#### 19. *Power of seizure*

- (1) For the purposes of this section:
  - (a) a vessel's equipment, fishing gear, furniture, appurtenances, stores, cargo and aircraft shall be deemed to form part of the vessel;
  - (b) aircraft operating independently of a vessel shall be subject to this section; and
  - (c) "Court" means the [e.g. High Court].
- (2) An authorized officer may seize:
  - (a) any vessel or other conveyance, fishing gear, furniture, stores, cargo, implement, appliance, material, container, goods, equipment or thing which the authorized officer believes on reasonable grounds is being or has been or is intended to be used in the commission of an offence against this [legislation];

- (b) any fish which the authorized officer believes on reasonable grounds are being, or have been taken, killed, transported, bought, sold, received, acquired, imported, exported, or found in the possession of any person in contravention of this [legislation] and any other fish with which such fish are intermixed;
  - (c) any article, record or thing which the authorized officer believes on reasonable grounds may be or contain evidence of an offence against this [legislation];
  - (d) and retain any passport and seaman's book:
    - i. of any person arrested, until that person is brought before a Court; or
    - ii. pursuant to any order of the Court; and
  - (e) any other item which the authorized officer has reasonable grounds to believe:
    - i. has been or is being used in the commission of an offence against this [legislation];
    - ii. has been seized or forfeited under this [legislation]; or
    - iii. has been unlawfully removed from custody under this [legislation].
- (3) Anything seized pursuant to subsection (1) shall be delivered into the custody of the [official].
- (4) A written notice shall be given to the person from whom any article or thing was seized or to any other person whom the authorized officer believes is the owner or person otherwise entitled to possession of the article or thing seized and the grounds for such seizure shall be stated in the receipt.

#### REMOVAL OF PARTS FROM SEIZED VESSELS, ETC.

An authorized officer may remove any part from a seized vessel for the purpose of immobilizing it, but the parts must be returned to the vessel upon release. It is an offence to obtain replacement parts or attempt to fit any replacement parts.

This authority is especially useful where port inspections are planned or ongoing, and prevents the master from illegally sailing out to sea.

#### **20. *Removal of parts from seized vessels, etc.***

- (1) An authorized officer may remove any part from the vessel seized pursuant to this [legislation] for the purpose of immobilizing that vessel.
- (2) Any part or parts removed under subsection (1) shall be kept safely and returned to the vessel upon release.
- (3) No person shall, otherwise than acting under the authority of the [official]:
  - (a) possess or arrange to obtain any part or parts removed under subsection (1);
  - (b) possess or arrange to obtain or make any replacement or substitute part or parts for those removed under subsection (1); or
  - (c) fit or attempt to fit any part or parts or any replacement or substitute part or parts to a vessel immobilized pursuant to this [legislation].

### APPOINTMENT OF, AND IDENTIFICATION BY INSPECTORS

Where a country appoints inspectors (including for port inspections) that have investigatory functions but not the more comprehensive powers (including arrest) assigned to “authorized officers”, legislation should set out the functions of the inspectors and require identification.

Examples of functions could include monitoring, compliance, management and auditing.

#### 21. *Appointment of, and identification by inspectors*

- (1) The [official] may, in writing, appoint inspectors for purposes of monitoring, compliance, management and auditing, including inspections of vessels, premises and facilities.
- (2) An inspector shall on request identify himself or herself and produce evidence that he/she is an inspector.

### APPLICATION OF [LEGISLATION] TO AUTHORIZED OFFICERS IN AREAS BEYOND NATIONAL JURISDICTION

Authorized officers carrying out duties under the legislation beyond national jurisdiction are subject to its provisions. This covers inspections of flag vessels in foreign ports which may be carried out by invitation of or under agreement with the port State.

#### 22. *Application of [legislation] to authorized officers in areas beyond national jurisdiction*

Where any authorized officer is carrying out duties under the scope of this [legislation] in areas beyond national jurisdiction, and in accordance with any agreement with an applicable coastal State, a regional or international agreement, international conservation and management measures or international law, he/she shall be subject to the provisions of this [legislation].

### APPLICATION OF [LEGISLATION] TO NON-NATIONAL AUTHORIZED OFFICERS UNDER AGREEMENT UNDER NATIONAL JURISDICTION

Where non-national flag State authorized officers are invited to participate in a port inspection, they have no powers except reporting.

However, where there is a formal agreement between the countries for cooperation in port inspections, this provision would give them full authorities under the legislation in accordance with the terms of the agreement.

Countries may also agree to apply this to port inspectors or to limit such authority.

### 23. *Application of [legislation] to non-national authorized officers under agreement in areas under national jurisdiction*

Where any non-national authorized officer is carrying out duties under the scope of this [legislation] in areas within national jurisdiction and under an agreement between the Government of [country] and the government of which the authorized officer is a national, such authorized officer shall have such powers and duties under this [legislation] as may be specified in the agreement.

#### **DUTIES OF OPERATORS, ETC, TO AUTHORIZED PERSONS**

“Authorized persons” are addressed in the following sections. They are defined above in the interpretation section as “including authorized officers, inspectors, observers and any other person performing MCS duties under this [legislation]”.

In this section, the operator and crew and others aboard a vessel or others on which an authorized person is performing duties must allow and assist the authorized person to effectively carry out his/her duties.

### 24. *Duties of operators, etc., to authorized persons*

- (1) The operator and each crew member of any vessel, or license holder in respect of any vessel to which an inspector has been assigned pursuant to this [legislation] and any relevant international conservation and management measures or international agreement, shall allow and assist the inspector, in the performance of his/her official duties, to carry out his/her duties, including to:
  - (a) board such vessel at such time and place as the [official] may require;
  - (b) receive and transmit messages and communicate with the shore and other vessels by means of the vessel’s communications equipment;
  - (c) take photographs, including of fish, fishing gear, equipment, documents, charts and records, and remove from the vessel such photographs and photographic equipment as he/she may have taken or used on board the vessel; and
  - (d) gather such other information relating to fisheries as may be required for purposes of carrying out the objectives of this [legislation].
- (2) The provisions of subsection (1) shall apply when the vessel is at any place in an area:
  - (a) under national jurisdiction; or
  - (b) beyond national jurisdiction at any place where fish taken from the area under national jurisdiction is unloaded or transshipped, as may be required in the applicable license, international conservation and management measure or international agreement, or as may be otherwise authorized.

#### **OBSTRUCTION, ETC OF AUTHORIZED PERSONS**

A wide range of prohibited actions are described which would result in the obstruction, etc. of an authorized person.

**25. Obstruction, etc., of authorized persons**

- (1) For the purposes of this section “fail” includes any effort which does not result in meeting the specified requirement.
- (2) No person shall:
  - (a) being the operator or crew member of a vessel, fail or refuse to allow and assist any person identified as an authorized person:
    - i. safe boarding of a vessel;
    - ii. to have full access to and use of all facilities, fishing gear and equipment on board which such authorized person may determine is necessary to carry out his/her duties, including full access to the bridge, fish and fish products on board, fishing gear and areas which may be used to hold, process, weigh or store fish; that are not of a specified size or dimension;
    - iii. to have full access to the vessel’s records including its logs, charts and documentation and other information relating to fishing, whether required to be carried and maintained under this [legislation] or otherwise, for purposes of carrying out functions and exercising powers under this [legislation], including inspection and copying of records;
    - iv. to have access to all navigational and communications equipment;
    - v. to take, measure, store on or remove from the vessel and retain such reasonable samples or whole specimens of any fish as may be required for scientific purposes;
    - vi. where any authorized person is forced by circumstances to stay on board the vessel for a prolonged period of time, provide him/her while on board the vessel with food, accommodation and medical facilities equivalent to that accorded to officers of the vessel, at the expense of the operator; and
    - vii. safe disembarkation from a vessel;
  - (b) fail or refuse to allow an audit, inspection, examination or search that is authorized by or under this [legislation] to be made or impedes the same;
  - (c) in respect of any premises, facility, including those used for cold storage, export and processing, landing site or other place where person(s) engage in activities within the scope of this [legislation] fail or refuse to facilitate by all reasonable means the entry into and inspection by an authorized person in accordance with this [legislation] of:
    - i. the entire premises, facility, landing site or other place including storage areas; and
    - ii. any fish or fish product, fishing gear, equipment or records;
  - (d) fail, refuse or neglect to immediately and fully comply with every lawful instructions or directions given by an authorized person;
  - (e) deny a request by an authorized person made in the course of exercising his or her duties and powers under this [legislation], including requesting access to records, documents, areas, fishing gear and equipment including navigation and communication equipment and that equipment be turned on for his or her use;
  - (f) when lawfully required to state his/her name, date of birth and place of abode to an authorized person fail or refuse to do so or state a false name, date of birth or place of abode to the authorized person;
  - (g) when lawfully required by an authorized person to give information, give information which is false, incorrect or misleading in any material respect;
  - (h) resist lawful arrest for any act prohibited by this [legislation];

- (i) aid, incite or encourage another person to assault, resist, intimidate or obstruct an authorized person who is carrying out his/her duties or exercising his/her powers under this [legislation], or any person lawfully acting under a authorized officer's instructions or in his/her aid;
- (j) interfere with, delay or prevent by any means, the apprehension or arrest of another person having reasonable grounds to believe that such person has committed an act in contravention of this [legislation];
- (k) fail or refuse to allow an authorized person to carry out all duties safely, or to take all reasonable measures to ensure the safety of an authorized person as appropriate in the performance of his/her duties;
- (l) impersonate or falsely represent himself or herself to be an authorized officer, or to be a person lawfully acting under the [official]'s instructions or in his/her aid;
- (m) impersonate or falsely represent himself or herself to be the master or an officer, or not to be the master or an officer, of a vessel;
- (n) bribe or attempt to bribe an authorized person;
- (o) interfere with an authorized person in the performance of his/her duties; or in any other way obstruct or hinder an authorized person in the exercise of his or her powers, duties or functions under this [legislation];
- (p) use abusive or threatening language or insulting gestures or behave in a threatening or insulting manner towards an authorized person who is carrying out his/her duties or exercising his/her powers under this [legislation], or towards any person lawfully acting under the authorized officer's instructions or in his/her aid; or
- (q) obstruct, resist, delay, refuse boarding to, intimidate, or kidnap an authorized person who is performing his/her duties or exercising his/her powers under this [legislation], or any person lawfully acting under an authorized officer's instructions or in his/her aid; or
- (r) breach any other duty to an authorized person as required under this [legislation].

## V. EVIDENCE

### PRESUMPTIONS

Rebuttable evidentiary presumptions may be given in relation to port State measures. They form part of best practices of national legislation.

Unless the defendant can prove otherwise, it is presumed that all fish on board were caught during the commission of an offence under the legislation where a vessel: is used or seized in connection with a violation of the legislation; or where false, inaccurate or misleading information or no information has been provided at any time (including prior to entry into port).

The legislation should provide separately that violation of applicable CMMs is an offence, so in this way the presumptions also apply to IUU fishing.

Depending on national legal systems, the presumptions may be applicable generally or only to forfeiture proceedings.

## 26. *Presumptions*

For the purposes of this [legislation], all fish, components thereof or fish products found on board a vessel:

- (a) that is used or seized in connection with an offence against this [legislation]; or
  - (b) in respect of which false, inaccurate or misleading information or no information has been provided, in violation of requirements of this [legislation],
- shall be presumed to have been caught, taken, obtained or retained during the commission of such offence or as a result of IUU fishing or fishing related activities in support of IUU fishing, unless the contrary is proved.

### ONUS OF PROOF

Circumstances in which the onus of proof is reversed are given, e.g. the charged person must prove that he/she held a requisite license.

This forms part of best practices of fisheries legislation.

## 27. *Onus of proof*

- (1) Where, in proceedings under this [legislation], a person is charged with having committed an offence involving an act for which a license, authorization or other permission is required, the onus shall be on that person to prove that at the relevant time, the requisite license or authorization or other permission was held by that person.
- (2) Where a person is charged with furnishing information that is not true, complete and accurate, the onus shall be on that person to prove that the information given was true, complete and accurate.

### TAMPERING WITH ITEM, ETC THAT MAY BE USED IN EVIDENCE OF NON-COMPLIANCE WITH THE LEGISLATION

It is prohibited to tamper with, destroy etc. any item, document or other thing that may be used in evidence of non-compliance with the legislation. This would include non-compliance with port State measures.

## 28. *Tampering with item, etc that may be used in evidence of non-compliance with the [legislation]*

No person shall tamper with any item, document or thing that may be used in evidence of non-compliance with this [legislation], including evidence relating to the catching, loading, landing, handling, transshipping, transporting, processing, possession, and disposal of fish and otherwise in relation to the use of port.



## VI. JURISDICTION

### JURISDICTION OF COURTS

The jurisdiction of specified courts should be deemed to extend to fisheries related offences committed in the EEZ and areas beyond national jurisdiction, if this is not already the case.

A time bound limitation for bringing action under the legislation is provided.

#### 29. *Jurisdiction of Courts*

- (1) Any act or omission in contravention of any provision of this [legislation] committed:
  - (a) by a person or vessel within areas under national jurisdiction;
  - (b) beyond areas under national jurisdiction by any citizen or vessel or person ordinarily resident in [country];
  - (c) outside areas under national jurisdiction by any person or vessel in contravention of conditions required under this [legislation] or international conservation and management measures; or
  - (d) by any person on board any national vessel,
 shall be dealt with [in a court determined by the [Chief Justice], but where a foreign vessel is involved, the matter shall be dealt with by the [High Court [and the judicial proceedings shall be taken as if the act or omission had taken place within the jurisdiction of [country]].
- (2) Where an authorized officer is exercising any powers conferred on him/her outside areas under national jurisdiction in accordance with this [legislation], any act or omission of any person in contravention of a provision of this [legislation] shall be deemed to have been committed within areas under national jurisdiction.
- (3) Notwithstanding any provision of any other act, an information or charge in respect of any offence against this [legislation] may be laid at any time within [\*\* year(s)] of the commission of the offence.

## VII. COMPLIANCE

### OFFENCES AND FINES

The offences, fines, and penalties in relation to the above requirements should be included in the legislation. They are not detailed in this document because it is a matter for countries to determine, with a view to ensuring that deterrent fines are provided in accordance with the seriousness of the offence.

In describing offences, it is recommended that responsibility for the offence be directed, as appropriate, to any person who commits the offence, as well as any person who allows, assists or directly or indirectly causes the offence to be committed.

To encourage deterrent levels of fines and penalties to be set for each case, as well as other relevant aspects of costs and sanctions, guidance is given in subsequent provisions. They cover imprisonment, forfeiture, continuing offences and repeat offenders, banning orders, cancellation or suspension of license, liability of operator, costs incurred by State, compensation for loss or damage, deprivation of monetary benefits, default for non-payment of fines and non-payment of pecuniary penalties.

#### 30. *Offences and fines*

[To be determined at national level.]

### COURT MAY ORDER IMPRISONMENT

Imprisonment may be ordered for specified offences in accordance with national law and practice.

Imprisonment in relation to foreign vessels should implement Article 73 of the 1982 Law of the Sea Convention, which prohibits imprisonment for violations of fisheries laws in the EEZ in the absence of an agreement to the contrary with the national State of the vessel or its crew.

#### 31. *Court may order imprisonment*

[To be determined for each offence, except for (1) - (3) below.]

- (1) In cases of arrest or detention of any foreign vessel for a violation of this [legislation], the [official] shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.
- (2) Any foreign vessel and its crew arrested for the contravention of any provision of this [legislation] that governs any act of fishing or fishing related activity shall be promptly released upon the posting of a reasonable bond or other security.
- (3) In the absence of any agreement to the contrary with the State of which the vessel or its crew are nationals, penalties for violations of [country legislation] in the Exclusive Economic Zone shall not include imprisonment or any other form of corporal punishment.

### COURT MAY ORDER FORFEITURE

The legislation should address forfeiture if this is not already provided in national fisheries legislation.

It caters to situations, for example, where the foreign vessel violated national laws (including IUU fishing, reporting and information requirements and the use of port), the flag State requested the port State to take measures or there was a violation of applicable “Lacey Act” provisions.

### 32. *Court may order forfeiture*

- (1) Where a court convicts a person of an offence pursuant to this [legislation], or such other offence(s) as may be prescribed for the purposes of this subsection, the Court may order the forfeiture of any of the following:
  - (a) any fish, fish product, vessel (including its fishing gear, furniture, appurtenances, stores, cargo and aircraft) vehicle, aircraft, fishing gear, equipment, explosive or noxious substance taken, used or otherwise involved in the commission of the offence;
  - (b) where a fishing vessel, vehicle or aircraft was used in the commission of an offence, any fish on board such vessel, vehicle or aircraft at the time of the offence;
  - (c) where a storage facility was used in the commission of the offence, any fish or fish products in the facility at the time of the offence; or
  - (d) where any fish has been sold in accordance with this [legislation], the proceeds of the sale of the fish.
- (2) Where a court convicts a person of an offence against this [legislation], or such other offence(s) as may be prescribed for the purposes of this subsection, in the commission of which a foreign vessel was used or was otherwise involved, the Court shall order the forfeiture of:
  - (a) the vessel;
  - (b) any fishing gear and other equipment that was on the vessel concerned at the time of the offence; and
  - (c) all fish or fish products on board the vessel at the time of the offence, or where the fish or fish products have been sold, the proceeds of sale.

### CONTINUING OFFENCES AND REPEAT OFFENDERS

This provision aims to ensure deterrence, as encouraged by the instruments. It considers each day of a continuing offence to be a separate offence and requires the level of fine to be doubled for each successive violation, aims to ensure deterrence.

### 33. *Continuing offences and repeat offenders*

- (1) Each day of a continuing offence shall be considered a separate offence.
- (2) Where a person has committed the same offence under this [legislation] more than once, the level of fine shall, as a minimum, be doubled for each successive violation.

**BANNING ORDER**

A Court may order that a convicted person shall be banned from going on or remaining on board a vessel, or carrying out specified activities for a period (e.g. of up to five years)

**34. Banning order**

Where a person has been convicted of an offence against this [legislation], the Court may in addition to any other penalty or forfeiture, order that for a period not exceeding five years that person be banned from going on or remaining aboard any vessel in areas under national jurisdiction.

**CANCELLATION OR SUSPENSION OF LICENSE**

A Court may order that a convicted person's license be cancelled or suspended.

**35. Cancellation or suspension of license**

In addition to any other penalty, the Court may order the suspension or cancellation of any license, permit or authorization given under this [legislation] where there has been a serious violation of this [legislation].

**LIABILITY OF OPERATOR**

[legislation] or omission of crew member is deemed to be that of the operator.

**36. Liability of operator**

In any proceedings under this [legislation], the act or omission of a crew member of a vessel or in association with a vessel shall be deemed to be that of the operator of the vessel, unless otherwise expressly provided.

**COSTS INCURRED BY STATE**

The operator and charterer of a vessel shall bear the costs to the Government in connection with seizures, prosecutions, costs of maintaining seized items and imprisonment.

**37. Costs incurred by State**

- (1) The operator and charterer shall jointly and severally bear the cost or expenditure incurred by the Government, upon application by the Government and as determined by the Court upon conviction, in connection with:
  - (a) the seizure of a vessel, vehicle or aircraft or other item for an offence against this [legislation], including any relevant costs of pursuit of a vessel, vehicle or aircraft;

- (b) the prosecution for an offence in accordance with this [legislation];
  - (c) the costs of imprisonment; and
  - (d) the repatriation of the master or crew of any vessel seized under this [legislation].
- (2) The amount of any costs or expenditure by the Court under subsection (1) may be recovered in the same manner as a fine and shall be imposed in addition to any fine or penalty that may be ordered by the Court.
  - (3) Nothing in subsection (1) shall be deemed to allow for the recovery of any cost or expenditure that has already been recovered pursuant to any other order made under this [legislation].
  - (4) If it intends to apply for pursuit costs in accordance with subsection (1), the Government shall, fourteen (14) days prior to a trial related to the offence, serve the defendant with written details of those costs.

#### **COMPENSATION FOR LOSS OR DAMAGE**

A Court may award as compensation or restitution, in addition to a fine, an amount for loss or damage caused to a person or the environment by the person who committed the offence.

### **38. Compensation for loss or damage**

- (1) Any person who commits an offence under this [legislation] may be liable for loss or damage to any person or the environment caused by the offence notwithstanding any fine, penalty or other determination that may be required, and the amount of such loss or damage may be awarded by the Court as compensation or restitution in addition to a fine.

#### **DEPRIVATION OF MONETARY BENEFITS**

Where a Court has convicted a person, it may impose an additional fine equal to the court's estimation of a monetary benefit gained.

### **39. Deprivation of monetary benefits**

- (1) A Court that has convicted a person of an offence under this [legislation] may summarily and without pleadings inquire into the pecuniary benefit acquired or saved by the person as a result of the commission of the offence and may, upon reliable expert evidence otherwise admissible in a court of law and in addition to other penalty imposed, impose a fine equal to the court's estimation of that pecuniary benefit, despite any maximum penalty elsewhere provided.
- (2) The Court shall, in imposing a fine pursuant to subsection (1), report fully in writing on details of the expert evidence upon which its judgment was based.

#### **DEFAULT FOR NON-PAYMENT OF FINES**

In addition to any other fine or penalty, the Court may order a default penalty for non-payment of fines or determinations.

**40. *Default for non-payment of fines***

In addition to any fine or penalty determined under this [legislation], the Court may order a default penalty for non-payment of fines or determinations, not to exceed one percent (1 percent) per day of the total amount of the fine or determination.

**NON-PAYMENT OF PECUNIARY PENALTIES**

Fines, forfeitures etc. unpaid may be sued for.

**41. *Non-payment of pecuniary penalties***

All pecuniary penalties not specifically designated as fines and all forfeitures incurred under or imposed pursuant to this [legislation], and the liability to forfeiture of any article seized under the authority thereof, and all rents, charges, expenses and duties and all other sums of money payable under this [legislation] may be sued for, determined, enforced and recovered by suit or other appropriate civil proceedings in a court of competent jurisdiction in the [country] as the nominal plaintiff, and all such proceedings shall be deemed to be civil proceedings.

## 5. FRAMEWORK OF NATIONAL PROCEDURES TO SUPPORT PORT STATE MEASURES

### 5.1 Introduction

Effective implementation of the legislative framework for port State measures depends upon clear and effective operating procedures for each phase of the activities: designation of ports, request for port entry, denial of use of port before and after inspection, and post-inspection follow-up.

Procedures to discharge the duty of the flag State must also be in place, and more generally to determine whether port State measures apply to a specific vessel, such as a container vessel which may be carrying fish or fish products. Procedures must also underpin requirements for interagency cooperation and exchange of information and be applied in a fair, transparent and non-discriminatory manner.

For each phase, procedures to implement port State measures should identify the requirements, players, process and decision-makers, and designate responsibility for communications and information.

Development of procedures and inspectors training programmes must be underpinned by legislative implementation of port State measures. Without legislation, enforcement could not occur, even where inspection procedures reveal IUU fishing activities. Conversely, the procedures support the implementation of the law.

The general objectives of procedures for port State measures that support the legal framework in the FAO Agreement are to:

- determine whether there is a risk in allowing a vessel to enter port;
- determine whether there is evidence of IUU fishing – in areas within and beyond national jurisdiction - either before or after inspection;
- ensure a sufficient level of inspections by qualified inspectors in accordance with minimum standards;
- take appropriate action relating to the vessel, its master and crew;
- enforce the denial of use of port in respect of the vessel itself and any person that attempts to assist or allow the vessel to use port;
- take other enforcement action as appropriate; and
- collect and communicate information nationally, regionally and internationally.

The procedures should be based on the national legislative framework to the extent possible. Where a country has not yet implemented the legislative requirements of the templates described in sections 3 and 4 above, procedures may be developed within the general compliance and enforcement framework of the national relevant fisheries legislation.

Development of robust procedures will also require the national fisheries authority to play a role in fostering cooperation among national agencies which may have overlapping or even conflicting

mandates and procedures, and weak or no interagency communication.<sup>82</sup> Inadequate interagency cooperation can have many adverse consequences, including the following.

- *From the perspective of the vessel.* The vessel used for fishing or fishing related activities must report to, and be inspected by, several different agencies. Inspections are not always coordinated in a “one stop shopping” manner, and may cause delays and confusion to the detriment of the vessel’s planned port activities and timetable.
- *Concerning fishing related activities.* A potential procedural complication arises from the application of port State measures to fishing related activities, such as transshipment and supply, which could involve carrier or merchant vessels. There is a possibility that port authorities might consider that the relevant vessel is a cargo vessel and not one that should be subject to control by the fisheries agency.

A framework for interagency cooperation is suggested in section 5.2 below.

Where a country is legally bound to implement port State measures under an RFMO CMM, procedures must address requirements *vis-à-vis* the RFMO, such as making reports to the Secretariat and implementing specific obligations such as the annual level of inspections.

Procedures should also take into account the relevant precedent in the international standards for port control over merchant vessels first agreed over three decades ago. In fact, the FAO Agreement requires Parties to interpret and apply it taking into account applicable rules and standards established through the International Maritime Organization (IMO).<sup>83</sup>

The initial Paris MOU on port State Control for merchant vessels entered into force in 1982 and since then has been amended several times to accommodate new safety and marine environment requirements stemming from the IMO and requirements related to working and living conditions of seafarers. Encouraged by the IMO, eight additional regional MOUs and organizations on Port State control have been developed and cover all the world’s oceans.<sup>84</sup>

The main objective of these MOUs is to establish an effective port State control regime in the respective regions through co-operation of its members and harmonization of their activities. They aim to eliminate sub-standard shipping so as to promote maritime safety, protect the marine environment and safeguard working and living conditions on board ships. The MOUs provide for inspection regimes, databases, watch lists, detention systems, ship risk profiles and denial of access to port and to regions.

Port State Control Officers carry out port State control under these MOUs. They are properly qualified persons acting under the responsibility of the maritime authority of the port State, and carry out inspections in accordance with the MOUs. Various training courses and seminars for the Officers are organized and, importantly, harmonized inspection procedures are promoted throughout the regions.<sup>85</sup>

Mindful of the above considerations, the procedures should be built upon two pillars: one being the integration of the measures into the broader system of port controls; and the other being port State

<sup>82</sup> For example, other agencies could include the port authority, maritime transport, customs/immigration, health/sanitary, labour, police and defense and the Attorney General’s Office.

<sup>83</sup> Article 4 paragraph 4.

<sup>84</sup> [http://www.imo.org/blast/mainframe.asp?topic\\_id=159](http://www.imo.org/blast/mainframe.asp?topic_id=159).

<sup>85</sup> e.g., an element of the Strategic Plan for the Paris MOU 2012-2017 is to promote harmonized port State control procedures.



measures legislation and applicable CMMs and international instruments. The former should be based on formalized interagency cooperation and aim to promote harmonization with the procedures developed under the regional MOUs for merchant vessels.

To inform the review and, as necessary, development of procedures to implement port State measures, a comprehensive checklist is presented in section 5.3, below. They include all aspects of the FAO Agreement, indicate where coordination, communication and decision-making are needed, and provide guidelines for inspections themselves.

They do not refer directly to the special requirements of RFMOs which are elaborated in section 6 of this document. They may be tailored as necessary at national level to address such obligations as may be necessary.

## 5.2 Role of interagency cooperation

The role of interagency cooperation for port State measures is to identify port entry and inspection responsibilities of the various national agencies and promote integration and information-sharing through agreed procedures and mechanisms for cooperation/coordination. This should preferably be spelled out in a formal interagency instrument such as a letter of agreement or MOU.

The interagency instrument should establish a process and framework for notification, consultation and coordination among agencies in the procedures, actions and measures to be taken in relation to vessels that are seeking entry to, or are in port. It should also set out requirements for information, information-sharing, inspection and enforcement.

The general roles of various agencies of a country in relation to vessels should be well defined in the instrument and based on mandates in relevant national legislation. The lead authority and responsibility of the fisheries agency should be acknowledged in relation to the implementation of port State measures for fishing and fishing related activities and combating IUU fishing.

Some examples of mandates of relevant national agencies with which formalized cooperation could be considered are: **port** authorities control entry into port and may facilitate inspections and control the use of port services; **maritime/transport** authorities inspect vessels for compliance with safety, pollution and related international standards; **health** authorities inspect the vessel and crew for infectious diseases; **customs** authorities inspect and provide customs clearance for fish, fish products and other items landed or transhipped in port; **immigration** authorities clear the vessel and crew after port entry; and **police/defense** authorities investigate and enforce national laws and transnational crimes.

To avoid overlap and enhance synergies, various **mechanisms for cooperation and coordination** should be elaborated in the interagency instrument. These could address the following:

- establishment of a process to develop interagency procedures, as shown in Table 4 below to be facilitated by the fisheries agency and in which other agencies agree to cooperate;
- agreement to implement procedures;

- develop an annual work plan to identify priorities in implementing the interagency instrument;<sup>86</sup>
- procedures for interagency coordination (meetings, focal points);
- mechanism for resolution of interagency legal or policy issues (e.g. by Attorney General or Cabinet);
- information and data exchange;
- inspections – may be conducted jointly and in accordance with a work plan;
- a system of referrals of proof or reasonable belief of IUU fishing to be made for enforcement purposes; and
- interagency training of personnel.

**Table 4**

**Indicative interagency procedures for port State measures**

The responsibilities of agencies and officials may be designated in relation to the following decisions and activities that are required under the FAO Agreement and many RFMO CMMs:

- (a) requiring relevant information from a vessel requesting entry into port;
- (b) receiving and exchanging such information promptly;
- (c) liaising as appropriate with organizations, States or other contacts outside [country];
- (d) deciding whether to allow port entry, and if so whether it is conditional;
- (e) deciding whether to refuse use of port after entry into port but prior to inspection;
- (f) identifying which vessels to inspect;
- (g) carrying out inspections;
- (h) reporting on inspections;
- (i) deciding whether to refuse use of port after inspection and communicating the decision;
- (j) enforcing refusal of use of port;
- (k) deciding whether to take other measures;
- (l) transmittal of inspection reports and communication of any measures taken;
- (m) taking legal or administrative action, and communicating the decision to take such action; and
- (n) establishing and maintaining a database to record and facilitate the above actions.

<sup>86</sup> Examples of the components of a work plan are:

- risk management;
- relevant laws and procedures, and their adequacy to achieve the purpose and objectives of this MOU;
- operations and compliance;
- intelligence and information sharing;
- funding;
- information and communications technology;
- human capacity development;
- joint communications; and
- international relations.

In recognizing the lead role of the fisheries agency, the interagency instrument should clearly specify the responsibilities of the agency relating to areas beyond national jurisdiction, mindful that port State measures apply to IUU fishing in the waters of other coastal States and, where subject to CMMs of applicable RFMOs, the high seas.

### 5.3 Framework of procedures

The procedures should be developed taking into account the elements of the framework below, and be based on requirements in the FAO Agreement, national legislation including the mandates of other government agencies, relevant RFMO requirements and take into account other applicable instruments such as the IMO standards.

They should set out general procedures and apply prior to a vessel's entry into port and after arrival into port. Accordingly, suggested procedures are grouped under the following headings and are elaborated below in sections 5.3.1 – 5.3.7.

#### *General procedures*

1. Information, communication

#### *Prior to entry into port*

2. Request for entry – assessment of the AREP
3. Decision to permit/deny entry and relevant matters

#### *After entry into port*

4. Decision to permit/deny use of port – prior to inspection (stage 1)
5. Inspections
6. Decision to deny use of port – post-inspection (stage 2)

#### *Role of the flag State*

7. Flag State responsibilities

As a general rule, where the procedures designate specific responsibilities, sufficient human capacity should exist to ensure their effective discharge.

#### 5.3.1 General procedures – information, communications

Procedures should designate roles and responsibilities for information and communications as follows:

- (a) developing interagency cooperation;
- (b) ensuring the measures are being applied in a fair, transparent and non-discriminatory manner;
- (c) coordination and communication among government agencies;
- (d) interagency collection, maintenance and dissemination of information and data, taking into account the need to promote the exchange of information;
- (e) supporting conservation and management measures taken by other States and international organizations, including exchanging information and cooperating with them;

- (f) designation and publication of ports where foreign vessels are allowed to enter;
- (g) ensuring adequate human capacity at designated ports for inspections;
- (h) establishing a communication mechanism that allows for direct electronic exchange of information, including a list of contact points of other national agencies, States, RFMOs and FAO and developing a protocol for the direct exchange of information.

### 5.3.2 Request for entry - AREP

Where a vessel has requested entry to port, procedures should establish responsibility, and as appropriate criteria for:

- (a) requiring and receiving the AREP and exchanging relevant information;
- (b) assessing the risk of allowing entry – including determining whether:
  - i. there is evidence of IUU fishing or related activities;
  - ii. a vessel is on an RFMO IUU vessel list;
  - iii. foreign vessels have the required authorizations to fish;
  - iv. container vessels are carrying fish not previously landed;
  - v. the flag State has requested measures to be taken;
  - vi. flag vessels of RFMO parties have contravened its CMMs;
  - vii. flag vessels of RFMO cooperating non-parties have violated international obligations;
  - viii. there has been non-compliance with reporting procedures of an RFMO through underreporting or misreporting;
  - ix. stateless vessels, non-parties or a fishing entity have conducted fishing activities in a manner inconsistent with or in contravention of an RFMO's CMMs.<sup>87</sup>

### 5.3.3 Decision to permit/deny entry – conditions of decision – communications – liaison - enforcement

Authority for decision-making, communication, liaison and enforcement should be designated as appropriate, consistent with relevant legislation, for:

- (a) making the decision on whether to:
  - i. deny port entry;
  - ii. allow port entry;
  - iii. allow port entry only for purposes of inspection, taking measures as effective as denial of port use, scrapping the vessel, in cases of *force majeure* or distress exclusively for rendering assistance, or other conditions, but deny port use;
- (b) communicating the decision to:
  - i. allow port entry to the vessel, the vessel representative and other national authorities;
  - ii. deny port entry to:
    - a) the vessel, its representative and flag State, and as appropriate to relevant coastal States, RFMOs and other international organizations;

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<sup>87</sup> For the legal basis for points vi – ix, see section 6.2 in part 6, below on the Role of RFMOs.

- b) relevant persons (natural or legal) and organizations in order that they do not allow or participate in the arrival at or use of port by the vessel;
- (c) providing the authorization to enter port to the vessel and/or the vessel's representative;
- (d) where a vessel does not comply with the denial of entry into port, ordering and taking enforcement action and reporting on action taken.

#### 5.3.4 After entry into port, decision to permit/deny use of port– prior to inspection (stage 1)

Responsibilities for investigation, decision-making and communications should be designated to:

- (a) investigate and assess whether the use of port may be denied prior to inspection in accordance with criteria identified in the instruments/legislation;<sup>88</sup>
- (b) decide on the denial of use of port based on the assessment;
- (c) communicate the decision to deny the use of port to:
  - i. national authorities, the flag State and as appropriate relevant coastal States, RFMOs and other relevant organizations;
  - ii. relevant persons (natural or legal) and organizations in order that they do not allow or participate in the arrival at or use of port by the vessel;
- (d) order and take enforcement action where there is non-compliance by the vessel or relevant persons and report on action taken;
- (e) assess whether there is sufficient proof that the grounds for denial were inadequate or erroneous or where they no longer apply;
- (f) decide to withdraw denial of use of port based on the above assessment, and notify all relevant authorities and others named under (c) above.

#### 5.3.5 Inspections

Procedures for inspections in port should:

- (a) operationalize decisions taken regarding the level of, and priorities for, inspections, consistent with national legislation and the levels and priorities agreed in the instruments;
- (b) set standards or guidelines for risk management;
- (c) indicate the persons authorized to inspect, including the decision-making authority to designate coordination among national agencies and as appropriate conditions for their designation and the level of training required;
- (d) address the possibility of the involvement and the authorities of non-national inspectors, e.g. from a relevant RFMO or flag State;
- (e) ensure that the inspection procedures required in legislation and the instruments are implemented as minimum standards;
- (f) ensure the inspection report documentation implements the minimum standards set out in legislation and the instruments;

<sup>88</sup> The criteria include not having an authorization to fish required by the flag State or a relevant coastal State; clear evidence that fish on board were taken illegally in a coastal State; failure by the flag State to confirm that the fish were taken in accordance with relevant RFMO CMMs and reasonable grounds to believe that the vessel was otherwise engaged in IUU fishing or related activities, unless the vessel can establish that it was acting in a manner consistent with relevant CMMs or in the case of provision of personnel, fuel, gear and other supplies at sea that the provisioned vessel was not at that time was not on an RFMO IUU Vessel List.

- (g) describe what must be inspected (e.g. all areas of vessel, gear, catch), including requirements for the collection and custody of vessel documentation and other evidence;
- (h) provide standards or guidelines for:
  - i. evaluating the consistency of catches and areas, the sampling of catches (composition and size) and processing conversion factors and stowage factors;
  - ii. consulting other sources of information, e.g., VMS, Automatic Identification System, logbook, transshipment documents, stowage or tank drawings, bunkering and/or supply at sea, and other relevant requirements (e.g. whether fish is designated as prohibited or endangered);
  - iii. evaluating the information collected during inspection, including compliance with applicable catch documentation schemes and trade information schemes, and identification of apparent infringements with reference to relevant legal instrument(s);
  - iv. inspections standards and conditions, including avoiding unduly causing delays, possible assistance of interpreters, carrying out fair, transparent and non-discriminatory inspections and not interfering with the master's capacity to communicate with flag State authorities;
- (i) provide for the transmittal of inspection reports;
- (j) provide procedures for detention, seizure and arrest; and
- (k) provide notification procedures, including any applicable time lines.

### 5.3.6 Decision to deny use of port – post-inspection (stage 2)

Procedures relating to the decision to deny the use of port should address, consistent with national legislation and as appropriate RFMO procedures:

- (a) decision-making authority to:
  - i. determine whether there are clear grounds for believing that a vessel has engaged in IUU fishing or related activities;
  - ii. deny the use of port;
  - iii. determine whether port services essential for the safety or health of the crew or health of the vessel should be exempted from the denial;
- (b) responsibility for notification of the decision to deny use of port to:
  - i. all relevant government agencies;
  - ii. all persons who may be involved in participating or assisting in the use of port by the vessel;
  - iii. the flag State, and, as appropriate, relevant coastal States, RFMOs and other international organizations, and the nation of which the vessel's master is national;
- (c) responsibility for determining whether additional measures may be taken under the law where there are clear grounds for believing that the vessel has engaged in IUU fishing;
- (d) responsibility for determining whether a request should be made to a relevant RFMO to include the vessel on its IUU vessel list;
- (e) responsibility for taking such measures as the flag State of the vessel has expressly requested or to which it has consented.

### 5.3.7 Flag State responsibilities

Procedures and/or responsibilities for flag State vessels should be developed for:

- (a) encouraging flag vessels to act consistent with national legislation and the international instruments;
- (b) assessing whether there are clear grounds to believe that a flag vessel has been engaged in IUU fishing or related activities;
- (c) decision-making to request another port State to inspect one of its flag vessels;
- (d) requesting the other port State to perform the inspection and notifying other national agencies of the request;
- (e) operationalizing immediate and full investigation of port inspection reports from other port States of flag vessels that show clear grounds to believe IUU fishing or related activities have taken place;
- (f) assessing whether there is sufficient evidence of IUU fishing or related activities;
- (g) upon a positive assessment, directing that enforcement action be taken without delay;
- (h) reporting to others (e.g. Parties to international instruments, relevant port States, other relevant States, RFMOs and FAO) on actions taken in respect of its flag vessels determined to have engaged in IUU fishing or related activities;
- (i) ensuring that national measures applied to its flag vessels are at least as effective in combating IUU fishing and related activities as port State measures.

## 5.4 General

As described above, in reviewing or developing procedures to implement port State measures, each country should seek to integrate the procedures in the broader system of port control, and at the same time clearly designate leadership responsibilities and consultative obligations. This may be supported by review and development of capacity.

To support the development and implementation of procedures through strengthened capacity in developing States, the FAO Agreement and some RFMOs have established relevant mechanisms. Under the FAO Agreement, developing States Parties are eligible for assistance from the funding mechanism which is specifically directed towards, *inter alia*, developing and enhancing capacity, including for MCS and training.<sup>89</sup>

The IOTC Resolution requires CPCs to enhance the capacity of CPC developing States for the implementation of effective port State measures, including by facilitating technical assistance.<sup>90</sup> The technical assistance has been extensive and exemplary, and has included training and the preparation of procedures for the implementation of port State measures.<sup>91</sup>

Other relevant initiatives taken through RFMOs have included the Asia-Pacific Fishery Commission training course materials for port inspection,<sup>92</sup> encouragement in the CCSBT CMM for members to assess the special requirements of developing Members concerning the implementation of port State

<sup>89</sup> Article 21(4)(b).

<sup>90</sup> Section 18. Some key outcomes of technical assistance are available at <http://www.iotc.org/compliance/port-state-measures>.

<sup>91</sup> Available at <http://www.iotc.org/documents/iotc-psm-procedures-implementation-indian-ocean-tuna-commission-port-state-measures>.

<sup>92</sup> Available at <http://www.apfic.org/port-inspection-training-course/viewcategory/42-port-state-measures-inspections-training-course.html>.

measures<sup>93</sup> and the establishment of a special Monitoring, Control, and Surveillance Fund by ICCAT in 2014 that aims at supporting and strengthening the development and implementation of effective port inspection systems in developing CPCs.<sup>94</sup> Technical assistance is provided to port inspectors and other relevant enforcement personnel for, *inter alia*, the development and implementation of port inspection systems.

It is recognized that projects or programmes of assistance to implement the procedural aspects of port State measures should take into account the legislative basis for the procedures, including the authority to take port State measures as well as the appointment, functions and powers of persons performing the inspections. Without a strong legislative basis, inspection procedures may have very little impact.

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<sup>93</sup> Resolution for a CCSBT Scheme for Minimum Standards for Inspection in Port (2015), Section 8.

<sup>94</sup> Recommendation 14-08 to support effective implementation of recommendation 12-07 by ICCAT for an ICCAT scheme for minimum standards for inspection in port.



## 6. ROLE OF REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS

The FAO Agreement is explicit in exempting Parties from becoming bound by measures or decisions of, or recognize any RFMO of which they are not a member, and from giving effect to RFMO measures or decisions that were not adopted in conformity with international law.<sup>95</sup>

Otherwise, the role of RFMOs has prominence throughout the FAO Agreement. Importantly, Parties must cooperate, at the subregional, regional and global levels, in the effective implementation of the Agreement including, where appropriate, through RFMOs.<sup>96</sup>

Conversely, members of RFMOs are already legally obligated to cooperate and implement CMMs relating to port State measures where they have been approved. Although many RFMOs have been working to adopt the minimum standards in the FAO Agreement, propelled by members' proposals as well as performance review recommendations, the measures among RFMO CMMs vary and the process is ongoing.

The legislative template and procedures in this document are anchored in the FAO Agreement, but have sufficient breadth to be adapted as necessary to the range of CMMs described in this section. This is especially useful where one country is subject to various standards set out in CMMs of different RFMOs in which it is member.

Therefore, as countries become party to the FAO Agreement, implementation of its requirements and standards would bring the added benefit of providing a legal basis for implementing relevant CMMs, if this has not already occurred.

The key elements of the FAO Agreement relating to RFMOs are comprised of the following, and are elaborated below in this section.<sup>97</sup>

- Use of terms relating to RFMOs in the FAO Agreement
- Assessment of evidence of IUU fishing
- RFMO role to develop procedures for identifying "ports of non-compliance"
- Communication and notification requirements for RFMOs
- Role of the RFMO Secretariat

The role of performance reviews in strengthening RFMO port State measures is also described, considering that port State measures are addressed in almost all reviews and that a number of RFMOs have completed, or are initiating, their second review.

To facilitate better understanding of the requirements of, and variations among, RFMO CMMs relating to port State measures - and therefore of the needs for their implementation in national law or strengthening in the RFMO - summaries of the CMMs are given for all five tuna-RFMOs and for five select other RFMOs with mandates over areas beyond national jurisdiction.

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<sup>95</sup> Article 4, paragraphs 2 and 3.

<sup>96</sup> Article 6, paragraph 3.

<sup>97</sup> References to relevant provisions in the FAO Agreement are given in the elaboration below.

The summaries are based on the RFMO CMMs on port State measures, as well as other CMMs that involve port measures, such as those on IUU vessel lists and CDS. Relevant provisions of the CMMs are summarized within the framework of the FAO Agreement and appear in ANNEX V for tuna-RFMOs and ANNEX VI for other select RFMOs.

The tuna-RFMOs are: Commission for the Conservation of Southern Bluefin Tuna (CCSBT), Inter-American Tropical Tuna Commission (IATTC), International Commission for the Conservation of Atlantic Tuna (ICCAT), Indian Ocean Tuna Commission (IOTC) and the Western and Central Pacific Fisheries Commission (WCPFC).

The select RFMOs are: Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), General Fisheries Commission for the Mediterranean (GFCM), Northwest Atlantic Fisheries Organization (NAFO), North East Atlantic Fisheries Commission (NEAFC) and the South East Atlantic Fisheries Organization (SEAFO).

## 6.1 Use of Terms relating to RFMOs in the FAO Agreement

The FAO Agreement defines ten terms used in the instrument,<sup>98</sup> of which three apply directly to RFMOs. They are the definition of an RFMO itself, CMMs and IUU fishing, as described below.

*RFMO* is an “intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish conservation and management measures”.

*CMMs* are “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 (1982 Law of the Sea) Convention”.

*IUU fishing* incorporates the definition of IUU fishing in the FAO IPOA-IUU.<sup>99</sup> The elements of that definition that relate specifically to RFMOs are:

- *Illegal fishing* includes activities conducted by vessels flagged to parties of a relevant RFMO in contravention of its CMMs, or in violation of national laws or international obligations including those undertaken by cooperating States to a relevant RFMO.
- *Unreported fishing* includes unreported or misreported fishing activities undertaken in the area of a relevant RFMO, in contravention of its reporting procedures.
- *Unregulated fishing* includes fishing activities conducted in the area of a relevant RFMO by stateless vessels, non-parties or a fishing entity in a manner inconsistent with or in contravention of its CMMs.

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<sup>98</sup> Article 1.

<sup>99</sup> “3.1 Illegal fishing refers to activities:

3.1.2 conducted by vessels flying the flag of States that are parties to a relevant RFMO but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or

3.1.3 in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant RFMO.

3.2 Unreported fishing refers to fishing activities:

3.2.2 undertaken in the area of competence of a relevant RFMO which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.

3.3 Unregulated fishing refers to fishing activities:

3.3.1 in the area of application of a relevant RFMO that are conducted by 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.”

There has been some controversy concerning the overlap and accuracy of the definition of IUU fishing; for example, unregulated fishing could also be illegal fishing. However, they provide a good general guide for use in determining when port State measures should be invoked and reinforce the obligations of States to comply with CMMs of relevant RFMOs. In turn, some RFMOs have adopted this definition while others have developed separate CMMs to define IUU fishing based on their circumstances.<sup>100</sup>

## 6.2 Assessment of evidence of IUU fishing in relation to RFMOs

Decisions of national authorities to permit or deny a vessel entry into port or use of port, and to conduct inspections, must be based on an assessment of whether there is evidence of IUU fishing or related activities. The authorities would need to take into account considerations relevant to RFMOs shown in Table 5 below.

<b>Table 5</b> <b>FAO Agreement</b> <b>Requirements for assessment by national authorities of evidence of IUU fishing and fishing related activities relevant to RFMOs</b>
<p>Based on the use of terms in the FAO Agreement, and unless the term is defined differently by a relevant RFMO, national authorities are obliged to assess whether there is evidence that, in relation to a relevant RFMO:</p> <ul style="list-style-type: none"> <li>• flag vessels: <ul style="list-style-type: none"> <li>➤ of parties have contravened its CMMs;</li> <li>➤ of cooperating non-parties have violated international obligations;</li> </ul> </li> <li>• there has been non-compliance with reporting procedures through underreporting or misreporting;</li> <li>• stateless vessels, non-parties or a fishing entity have conducted fishing activities in a manner inconsistent with or in contravention of its CMMs.</li> </ul>

The assessment of “fishing related activities” must be factored into the assessment noted above, because they are controlled under RFMO CMMs. The definition of the term in the FAO Agreement is:

*“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”.*

The reference to RFMO CMMs in the definition of IUU fishing therefore incorporates fishing related activities. Some key RFMO CMMs relevant to assessing evidence of IUU fishing and fishing related activities address:

<sup>100</sup> For example, the CMMs on port State measures adopted by GFCM adopts the same definition in the FAO Agreement while the IOTC referred to its definition in Resolution 09/03 (superseded by Resolution 11/03).

- IUU vessel lists;
- authorized vessel lists;
- transshipments and landings;
- CDS;
- reporting requirements.

The FAO Agreement requires a party to deny vessels on any IUU vessel list entry into port, or allow entry only for purposes of inspection under the FAO Agreement.<sup>101</sup> Most RFMOs have adopted CMMs establishing an IUU vessel list, but there are some differences among them in the consequences for vessels that are listed.

For example, they variously refer to denial of entry into port for “landing transshipping or processing” (GFCM), being prohibited from entering into port “and landing” (NAFO) or requiring members and cooperating non-members to ensure that vessels on an IUU vessel list are “not authorized to land, tranship, refuel, resupply or engage in other commercial transactions in their ports, except in cases of *force majeure*”<sup>102</sup> (CCSBT and ICCAT). Several CMMs obligate the members and cooperating non-members to take action without indicating if they should do so as the flag State or the port State. Because this is not specified, it is safe to assume that the obligation applies to both roles.

If a vessel is not on an authorized vessel list it can be deemed not to be authorized to fish for the species regulated by an RFMO and members are to prohibit transshipments and landings.<sup>103</sup> Similarly, transshipments and landings of such species may be prohibited without validated CDS documents or tags. The FAO Agreement and RFMOs all require reporting, including prior to port entry, although standards for reporting may vary.

### 6.3 RFMO role to develop procedures for identifying “ports of non-compliance”

The Agreement foreshadows the possibility of “ports of non-compliance” which accept IUU caught fish or fish products, generally for re-export, without applying port State measures. Their activities undermine the efforts of other port States to combat IUU fishing through harmonization and application of port State measures. To combat this practice, the FAO Agreement obligates flag States to encourage its vessels to use port services in ports of States that are acting consistently with the Agreement.<sup>104</sup>

The role of facilitating identification of the rogue “ports of non-compliance” is given to RFMOs. Parties are encouraged to develop through RFMOs 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 the Agreement.

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<sup>101</sup> Article 9, paragraphs 4 and 5.

<sup>102</sup> e.g. 2013 CCSBT Resolution on Establishing a List of Vessels Presumed to have carried out Illegal, Unreported and Unregulated Fishing Activities For Southern Bluefin Tuna.

<sup>103</sup> e.g. the 2014 CCSBT Resolution on amendment of the Resolution on IUU fishing and establishment of a CCSBT record of vessels over 24 meters authorized to fish for southern Bluefin tuna. Available at [https://www.ccsbt.org/sites/ccsbt.org/files/userfiles/file/docs\\_english/operational\\_resolutions/Ammended\\_resolution\\_on\\_authorized\\_24m\\_vessel\\_list.pdf](https://www.ccsbt.org/sites/ccsbt.org/files/userfiles/file/docs_english/operational_resolutions/Ammended_resolution_on_authorized_24m_vessel_list.pdf).

<sup>104</sup> Article 20(3).

## 6.4 Communication and notification requirements

Parties, port States and flag States are variously required to communicate, notify, exchange information with, and transmit specified matters or information to relevant RFMOs. FAO – although not a party to the Agreement – is obligated to request relevant RFMOs to provide information.

These obligations are shown in Table 6 below. The obligations may also extend to others not shown in the Table, including flag States, coastal States and international organizations.

In all cases the Agreement refers to the “relevant” RFMOs, and in most cases the requirement is further qualified by the language “as appropriate”, to be determined by the circumstances. Notification of denial of use of port under Article 11 – i.e. prior to inspection – must be prompt, as must notification of withdrawal of denial where it occurs.

Although there is no requirement in the FAO Agreement for parties to notify RFMOs of the ports they have designated to which vessels may request entry,<sup>105</sup> this is normally required under RFMO CMMs. For example, the IOTC Resolution on port State measures requires notification of designated ports to the Secretariat, which would then post them on a dedicated website. This is consistent with the requirement to publicize designated ports.

**Table 6**

FAO Agreement – Requirements relating to communication, notification and transmittal of information to RFMOs

Article	Requirement	Responsible Party/FAO	Qualifications
Cooperation and exchange of information <sup>106</sup>	Cooperation and exchange information with relevant RFMOs, including the measures adopted by RFMOs in relation to the objective of the Agreement	Parties	With due regard to appropriate confidentiality requirements
Port entry, authorization or denial <sup>107</sup>	Communicate decision to deny the entry into port to relevant RFMOs	Port State	As appropriate and to the extent possible
Use of ports <sup>108</sup>	Notify relevant RFMOs of the decision to deny the use of port	Port State	As appropriate Promptly
Use of ports <sup>109</sup>	Notify relevant RFMOs of the withdrawal of the decision to deny the use of port	Port State	As appropriate Promptly
Transmittal of inspection reports <sup>110</sup>	Transmit the results of each inspection to relevant RFMOs	Port State	As appropriate

<sup>105</sup> Article 7.

<sup>106</sup> Article 6(1).

<sup>107</sup> Article 9(1)(3).

<sup>108</sup> Article 11(3).

<sup>109</sup> Article 11(5).

<sup>110</sup> Article 15.

Article	Requirement	Responsible Party/FAO	Qualifications
Electronic exchange of information <sup>111</sup>	FAO to request relevant RFMOs to provide information concerning the measures or decisions they have adopted and implemented relating to the Agreement for integration into the information-sharing mechanism	FAO	Taking due account of the appropriate confidentiality requirements
Port State actions following inspections <sup>112</sup>	Notify relevant RFMOs of findings where, following inspection, there are clear grounds for believing a vessel engaged in IUU fishing or fishing related activities	Port State	Promptly
Role of flag States <sup>113</sup>	Report to relevant RFMOs on actions it has taken in respect of its flag vessels, that have been determined, as a result of port State measures, to have engaged in IUU fishing or fishing related activities	Flag State	As appropriate

From another perspective, there are some differences between the FAO Agreement and IOTC Resolution in relation to notification and communication requirements, due in part to the status of IOTC as an RFMO. A comparison of requirements relating to communication, notification and transmittal of information to RFMOs is in ANNEX III.

### 6.5. Role of the RFMO Secretariat

The role of the Secretariat in communication, notification and transmittal of information forms a common element in RFMO CMMs on port State measures, but it is approached differently and specific requirements vary. Some CMMs contain a separate provision setting out the role of the Secretariat (e.g. GFCM, IOTC, NAFO) and/or integrate responsibilities in relevant paragraphs, such as communicating denial of entry or use of port. In many cases RFMOs are obligated to communicate with other RFMOs as well as the membership.

Some indicative roles of the Secretariat described in RFMO CMMs are summarized in Table 7 below.

<sup>111</sup> Article 16.

<sup>112</sup> Article 18(1)(a). Unlike the requirement in Article 11(3) to notify RFMOs of the denial of the use of port, notification is not required for denial. However, port States are required to deny use of port where, after inspection, there are clear grounds for believing that IUU fishing or related activities occurred so it is possible that notification of denial can be implied.

<sup>113</sup> Article 20(5).

Table 7

## CMMs on port State measures – Indicative Secretariat roles

Following are some indicative roles of the Secretariat as provided in CMMs of some RFMOs.

- |       |  |
|-------|--|
| GFCM  | Develop a regional information system to better monitor and control the GFCM Area.   |
| ICCAT | Post specified information on the website and develop model formats for prior notification and inspection reports, taking into account the FAO Agreement and practice in other RFMOs.        |
| IOTC  | Post specified information on the website, including port inspection reports, and transmit inspection reports to relevant RFMOs.   |
| NEAFC | Compile an annual report analysing all reports received from Contracting Parties on port inspections for presentation to the Permanent Committee for Control and Enforcement. <sup>114</sup> |

When Contracting Parties have adopted and implemented measures consistent with the provisions of the FAO Agreement, they shall transmit to the Secretary a statement of the actions they have taken in this respect, and the Secretary shall circulate the statements to all Contracting Parties.<sup>115</sup>

The CMMs are generally consistent with the FAO Agreement in describing the role of the Secretariat in relation to communications, notifications and transmittal of information, but elaborate additional responsibilities as agreed by Members.

The duties differ slightly among RFMOs. For example, CCSBT, ICCAT and IOTC are required to post the following information on their websites:

- points of contact (CCSBT and ICCAT), information about the designated competent authority (IOTC);
- designated ports;
- prior notification period.

However, on the secure part of the website:

- ICCAT is required to post information where the infringement falls within the jurisdiction of the port CPC, and a status report on any action taken for any infringements by the flag State;
- IOTC must post copies of all inspection reports.

IOTC must post all forms relating to a specific landing or transhipment together, and the inspection reports are to be transmitted to relevant RFMOs. It must also post a blank copy of the IOTC port inspection report form. As noted above in Table 6, ICCAT has the added responsibility of developing

<sup>114</sup> NEAFC Scheme of Control and Enforcement, CHAPTER V - Port State Control of Foreign Fishing Vessels, Chapter V Article 25.5. [http://www.magrama.gob.es/es/pesca/temas/control-e-inspeccion-pesquera/NEAFC\\_Scheme\\_2014\\_y\\_recomendaciones\\_tcm7-326885.pdf](http://www.magrama.gob.es/es/pesca/temas/control-e-inspeccion-pesquera/NEAFC_Scheme_2014_y_recomendaciones_tcm7-326885.pdf).

<sup>115</sup> NEAFC Scheme of Control and Enforcement (2016), Article 20 bis (effective 30 days upon the ratification, acceptance, approval or accession of the FAO Agreement by all NEAFC Contracting Parties. Available at <http://neafc.org/system/files/NEAFC%20Scheme%20of%20Control%20and%20Enforcement%202016-PDF.pdf>.

model formats for prior notification and inspection reports, taking into account the FAO Agreement and practice in other RFMOs.

## 6.6 Strengthening RFMO port State measures: the role of performance reviews

As noted above, the IOTC Resolution provides for the range of port State measures that are most similar to those in the FAO Agreement, and CMMs of other RFMOs have increasingly supported, to varying degrees, elements of the Agreement as discussed in section 6.7 and 6.8 below. Some CMMs, such as those adopted by NEAFC, exceed the minimum standards. The variations are based on different circumstances among RFMOs, including functions and mandates, as well as the political will of their members.

Performance reviews have played a significant role in strengthening RFMO port State measures. The template usually used for RFMO performance reviews (agreed, *inter alia*, through the Kobe process<sup>116</sup>) devotes a section to port State measures within the MCS component of the review. Summaries of the relevant recommendations of the performance reviews undertaken for the tuna and select other RFMOs are given below.

### 6.6.1 Summary of performance reviews of tuna-RFMOs

Four of the five tuna-RFMOs have undergone performance reviews.<sup>117</sup> The first performance reviews of the tuna-RFMOs took place in 2008 (CCSBT), 2009 (ICCAT and IOTC) and 2010 (WCPFC) and in 2014 IATTC agreed to undertake a review.<sup>118</sup> The second review for CCSBT was reported in 2014,<sup>119</sup> and for IOTC in 2016.<sup>120</sup> In 2016, ICCAT<sup>121</sup> was developing criteria for a second performance review.

Even before the FAO Agreement was adopted, the reviews made detailed recommendations for strengthening compliance and enforcement, including port State measures,<sup>122</sup> and in particular recommended that the RFMOs adopt port State measures taking into account the FAO Agreement, then being negotiated.

A table of tuna-RFMO performance review panel recommendations on port State measures is in ANNEX IV. It shows, for each organization, the review panel's comment on port State measures, the relevant recommendations, any subsequent measure considered or adopted and recent developments.

<sup>116</sup> A process of joint meetings of the five tuna-RFMOs begun in Kobe, Japan in 2007. Its aim was to strengthen, where appropriate, the co-operation among tuna-RFMOs with the objective of agreeing on common standards, approaches and working methods based on best practice for the purpose of simplification and with the view of avoiding unnecessary duplication of work.

<sup>117</sup> CCSBT, ICCAT, IOTC and WCPFC. The IATTC, approved terms of reference for a performance review were approved at the IATTC annual meeting in November 2014, but they did not include MCS matters, including port State measures. The review would be carried out for of IATTC and the Agreement on the International Dolphin Conservation Program. Resolution C-14-09 Terms of Reference for the Review of the IATTC and AIDCP. See also <https://www.iattc.org/Meetings/Meetings2014/OCT/PDFs/IATTC-87-2-Minutes.pdf>.

<sup>118</sup> Resolution C-14-09 Terms of reference for the review of the IATTC and AIDCP. Available at <https://www.iattc.org/PDFFiles2/Resolutions/C-14-09-Terms-of-reference-for-performance-review.pdf>.

<sup>119</sup> Available at [http://www.tuna-org.org/Documents/2014\\_CCSBT\\_Independent\\_Performance\\_Review.pdf](http://www.tuna-org.org/Documents/2014_CCSBT_Independent_Performance_Review.pdf).

<sup>120</sup> The terms of reference for the second IOTC performance review, which held its first meeting in February 2015, included assessing the extent to which the IOTC had adopted measures relating to the exercise of the rights and duties of its members as port States and the extent to which these measures were effectively implemented. The report is available at <http://www.iotc.org/documents/report-2nd-iotc-performance-review>.

<sup>121</sup> Recommendation 14-12 to establish an ad hoc working group for preparing the next performance review, available at <http://www.iccat.int/Documents/Recs/compendiopdf-e/2014-12-e.pdf>.

<sup>122</sup> Examples of other measures are noted by Koehler, *op. cit.*, are VMS, observer programs, statistical document or catch documentation schemes and transshipment monitoring requirements.



In related information, section 6.7 below addresses port State measures adopted by each tuna-RFMO (elaborated in ANNEX V), noting that CCSBT, ICCAT and IOTC had adopted comprehensive measures but IATTC and WCPFC, for different reasons, had not yet adopted any.

Generally, all tuna-RFMOs followed up and acted on the recommendations except for WCPFC, which, despite consideration of a number of proposals, had not yet adopted a CMM on port State measures at the time of writing.

The first CCSBT performance review (2008) stated the need for a consistent and coordinated approach to port inspections. The second performance review (2014) recommended that progress should be accelerated in developing a Resolution on Port State Measures, consistent with the 2009 FAO Port States Agreement, and in conjunction with this called on CCSBT to accelerate its progress in reviewing its Transshipment Program for tuna longline vessels. In addition, the priority actions in the 2014 three year CCSBT Compliance Plan included development and adoption of additional minimum performance requirements for port State measures, and completion and implementation of CCSBT port State Measures.<sup>123</sup> CCSBT adopted Resolution for a CCSBT Scheme for minimum Standards for Inspection in port in 2015, which will enter into force on 1 January 2017.

In 2009, the ICCAT performance review panel considered that take further action should be taken in order to expand and strengthen port State measures in conformity with the United Nations Fish Stocks Agreement (UNFSA), taking into account the recent work of FAO to draft a new international agreement on port State control. In 2012, ICCAT adopted Recommendation 12-07 for an ICCAT Scheme for Minimum Standards for Inspection in Port.

In 2009, the IOTC performance review panel recommended that: any amendment to or replacement of the IOTC Agreement should include specific provisions on member's duties as port States; IOTC should explore the possible implementation of the FAO Model Scheme on port State Measures; and IOTC should note the outcome of the FAO process to develop the Agreement. In 2010, IOTC adopted Resolution 10/11 on port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

In 2016, the Report of the IOTC second performance review recommended that, since port State measures are critical for the control of fishing in the IOTC area and beyond, CPCs should take action to ratify the FAO Agreement on Port State Measures, and the Commission explore possible ways of including ports situated outside the IOTC area known to be receiving IOTC catches in applying port State measures established by the IOTC. The latter recommendation took into account that Resolution 10/11 was only applicable to the IOTC area but that IOTC membership included countries that were not situated in the IOTC area. The 2016 report also recommended that the Commission, through its port State measures training, support the implementation, including support from FAO and other donors, of the requirements of the FAO Agreement and the IOTC Resolution.

The 2010 WCPFC performance review recommended that, when developing a CMM on port State measures, members should consider: the fullest implementation possible of the FAOA and provide for amendments or other clarifications and minimum standards in the FAOA, measures and practices of

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<sup>123</sup> [http://www.ccsbt.org/userfiles/file/docs\\_english/operational\\_resolutions/CCSBT\\_Compliance\\_Plan.pdf](http://www.ccsbt.org/userfiles/file/docs_english/operational_resolutions/CCSBT_Compliance_Plan.pdf)

other RFMOs and developments in the broader system of Port controls. Since then, a series of proposals for PSM CMMs were made, either by the EU or by members of the Pacific Islands Forum Fisheries Agency (FFA), which form a bloc within WCPFC.

At the 2015 WCPFC Regular Session FFA members introduced a new proposal for enhanced port-based MCS measures, but reported that one CCM's<sup>124</sup> position meant it was unable to progress.<sup>125</sup> A number of delegations expressed disappointment that the proposal had not been adopted. FFA members advised they will continue to develop port State measures within the FFA framework, and FFA asked that CCMs consult with them on elements which need to be changed.

### 6.6.2 Summary of performance reviews of select RFMOs

All five of the select RFMOs had undergone performance reviews, which took place in 2006 (NEAFC), 2008 (CCAMLR), 2010 (SEAFO) 2011 (GFCM and NAFO). The second review of NEAFC was performed in 2014 and NAFO agreed in 2015 to a second review.<sup>126</sup>

A table of the port State measures adopted by each select RFMO is in ANNEX VI and discussed in section 6.8 below.

Generally, the CCAMLR review made key recommendations to expand the scope of its measures, the reviews of GFCM and NEAFC expressed satisfaction that their CMMs on port State measures reflected the provisions of the FAO Agreement, but the NAFO panel encouraged further harmonization. As shown in ANNEX VI, all select RFMOs have adopted progressively robust measures consistent with the FAO Agreement.

The CCAMLR review was undertaken prior to the conclusion of negotiations for the FAO Agreement. It stated that until such time as a legally binding Port State agreement was concluded by FAO, attempts to develop CCAMLR's Port State regulations further could be premature, and therefore not achievable. However, in keeping with CCAMLR's history of early adoption of innovative measures, it recommended that CCAMLR give consideration to adopting appropriate provisions of the FAO scheme as soon as it had been finalized.

Otherwise the review focused on the reporting and CDS system,<sup>127</sup> and encouraged the development of a more comprehensive approach to port inspections by defining 'fishing vessels' to include reefer and fishing support vessels and widening the inspections to cover all species in the Convention Area. A CMM was subsequently adopted that addressed these recommendations.<sup>128</sup>

The GFCM review concluded that the Recommendation on port State measures adequately reflected the provisions of the final FAO Agreement and the characteristics of the Region. However, it called for the Compliance Committee to establish the level of compliance by Members with the Recommendations on port State measures and as appropriate develop mechanisms and priorities to

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<sup>124</sup> Member and Cooperating non-Member and Participating Territory.

<sup>125</sup> [https://www.wcpfc.int/system/files/WCPFC12%20Summary%20Report\\_final1\\_revised.pdf](https://www.wcpfc.int/system/files/WCPFC12%20Summary%20Report_final1_revised.pdf), paragraph 66o.

<sup>126</sup> <http://archive.nafo.int/open/gc/2015/gcdoc15-04.pdf>.

<sup>127</sup> It urged the Commission to determine the format and minimum content of inspection reports, set minimum timelines for their submission and provide a further means of verification of the CDS in an enhanced catch reconciliation system. It also noted that the effectiveness of CM 10-03 was reduced by its focus on fishing vessels only, and moreover by being restricted only to vessels known to be carrying toothfish.

<sup>128</sup> CMM 10-03 (2014) Port inspections of fishing vessels carrying Antarctic marine living resources.

strengthen the compliance.<sup>129</sup> In 2015, the Compliance Committee invited the GFCM Secretariat to work on a revised draft Recommendation GFCM/32/2008/1 on Port State Measures, in order to align it with the 2009 FAO Port State Measures Agreement, and submit it to the Commission for adoption.<sup>130</sup>

The NAFO review observed that its measures were comprehensive and harmonized with NEAFC, which contributed to their effectiveness, and that they conformed with Article 23 of the United Nations Fish Stocks Agreement. It recommended further harmonization with the FAO Agreement, taking into account the NEAFC experience. It also encouraged NAFO to cooperate with other RFMOs to the extent possible to enhance the efficiency of its port State measures. In 2016, the Port State Control Chapter of the NAFO Conservation and Enforcement Measures was under review with the aim of aligning it with the FAO Agreement.

The two NEAFC reviews praised the Commission for the comprehensive nature of the port control measures, in 2006 by exceeding the standards of the FAO Model Scheme on Port State Measures and in 2014 by declaring that full consistency was ensured between the NEAFC port control scheme and the FAO Agreement.<sup>131</sup> The 2014 review among other things also noted the levels for inspection of fresh and frozen fish and the need for periodic review and for guidelines for risk management in relation to port State control (PSC). It concluded that implementation of the PSC system seemed to be running smoothly despite some reported technical problems caused by the migration from paper-based PSC procedures to e-PSC form procedures.

In 2015 the NEAFC Scheme of Control and Enforcement expanded the PSC system to cover all fish products, and the 2016 NEAFC Scheme of Control and Enforcement provides – conditional upon the ratification, acceptance, approval or accession of all Contracting Parties of the FAO Agreement – that the FAO Agreement applies *mutatis mutandis* as a minimum standard for the Port State Control of foreign fishing vessels.<sup>132</sup>

The SEAFO review panel recommended that the implications of the FAO Agreement for the SEAFO port State measures be examined and the latter measures amended as appropriate. This has been done and requirements form part of the SEAFO System of observation, inspection compliance and enforcement.<sup>133</sup>

## 6.7 Implementation of port State measures by tuna-RFMOs

As discussed above, of the five tuna-RFMOs, CCSBT, ICCAT and IOTC have adopted CMMs dedicated to port State measures, and each of these takes a comprehensive approach although they differ in some respects.

<sup>129</sup> It was problematic at the time that very few Members had submitted their national reports on the status of implementation of GFCM decisions.

<sup>130</sup> FAO. 2016. Report of the thirty-ninth session of the General Fisheries Commission for the Mediterranean (GFCM), Milan, Italy, 25-29 May 2015. GFCM Report No. 39. Rome, Italy, paragraph 41. Available at <http://www.fao.org/3/a-i5346e.pdf>. A Proposal for a GFCM recommendation on a regional scheme on port State measures to combat illegal, unreported and unregulated fishing activities in the GFCM area of application was prepared for introduction at the Fortieth Session of GFCM in 2016.

<sup>131</sup> This had been achieved by the adoption of Recommendation 09:2014 which mandates harmonization of the provisions of PSC with those of the FAOA and requires a *mutatis mutandis* application of the provisions of the FAOA.

<sup>132</sup> Article 20 bis. Available at: <http://neafo.org/system/files/NEAFC%20Scheme%20of%20Control%20and%20Enforcement%202016-PDF.pdf>.

<sup>133</sup> Revised Phase 2 (EOCC/06/2012), entered into force 15 February 2014.

The summary comparison of each body's CMM in ANNEX V sets out their content in relation to the titles of relevant articles of the FAO Agreement.<sup>134</sup> Under each title, the corresponding provisions of the CCSBT, ICCAT and IOTC CMMs are shown. For IATTC and WCPFC, which do not have dedicated CMMs on port State measures, indicative supportive measures are shown including those with implications for port control, such as IUU vessel lists, authorized vessel lists and related landing/transshipment and other prohibitions.

The CCSBT and ICCAT Resolutions are similar, and the only articles of the FAO Agreement not addressed by either relate to integration and coordination at the national level, conditional entry into port for *force majeure* or exclusively for the purpose of inspection and training of inspectors. The IOTC Resolution does not include priorities for inspection.

The reasons why the two other tuna-RFMOs had not adopted proposals for a CMM on port State measures before 2016 varied, despite apparent best efforts in each case to deter blockage. In IATTC the blockage was based on concerns relating to additional financial support for implementation, but in WCPFC it was reportedly a developed Member that blocked progress, as described below. Members of each RFMO expressed disappointment and indicated that they would continue to progress the initiatives.

- IATTC considered, but did not adopt, proposals for resolutions on port State measures presented by the EU at four of its Meetings. The resolution on minimum standards for inspections in port proposed at the 89<sup>th</sup> Meeting in July, 2015 was not adopted because of failure to reach consensus due to the persistent reservations of some Members that wanted additional financial support for the implementation of these measures and the impossibility of reaching a compromise at the meeting.<sup>135</sup>
- WCPFC considered, but did not adopt, proposals resolutions on for port State measures presented variously by the EU or FFA members at six of its Regular Sessions. FFA members proposed a Resolution for Enhanced Port Based Measures at the 12<sup>th</sup> Regular Session in 2015, but stated that the position of one CCM (Member and Cooperating non-Member and Participating Territory) meant their proposal was unable to progress.<sup>136</sup> FFA members advised they would continue to develop port State measures within the FFA framework, and FFA asked that CCMs consult with them on elements which need to be changed.

All five tuna bodies have adopted CMMs which, while not necessarily dedicated to port State measures are supportive of certain elements, including designation of ports, denial of entry into port, denial of use of port in circumstances where inspection is not necessary and denial of use of port after inspection. Some indicative supportive CMMs are shown in Table 7 below, and include:

- action plans to ensure compliance with CMMs - CCSBT;
- establishment of a multi-annual recovery plan for the conservation of tuna - ICCAT;

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<sup>134</sup> An additional title (not in the FAO Agreement) was added because of its inclusion in CMMs of some RFMOs in this study: the responsibility of operator, master, etc. The FAO Agreement does, however, require States to require the master to give inspectors all necessary assistance and information, and to present relevant material and documents as may be required, or certified copies thereof. (Article 13.2(d))

<sup>135</sup> <http://www.iattc.org/Meetings/Meetings2015/June/PDFs/IATTC-89-Minutes.pdf>. Interestingly, the Explanatory Memorandum on the 2015 proposal stated: In line with similar proposals adopted by other RFMOs, the most essential elements of the proposal is the inspection of vessels, designation of ports, prior notifications and reporting of possible infringements. It is therefore more in line with the requests from developing coastal CPCs as it also includes a number of simplified provisions in order to facilitate consensus at the IATTC. At Appendix 3h.

<sup>136</sup> The proposal was WCPFC12-2015-DP10, and the discussion referenced is at Paragraph 660 in the Summary Report. Both are available at: [https://www.wcpfc.int/system/files/WCPFC12%20Summary%20Report\\_final1\\_revised.pdf](https://www.wcpfc.int/system/files/WCPFC12%20Summary%20Report_final1_revised.pdf), paragraph 660.

- regulation of transshipment - WCPFC;
- authorized vessel lists – CCSBT, WCPFC;
- IUU vessel lists – CCSBT, IATTC, ICCAT, IOTC, WCPFC; and
- catch documentation scheme - CCSBT.

**Table 8**  
Indicative CMMs of tuna-RFMOs relevant to port State measures

Designated ports for transshipments, landings	
CCSBT	Members and Cooperating Non-Members (CNMs) should designate <i>foreign</i> ports of <i>transshipment</i> for Southern Bluefin Tuna (SBT), prohibit such transshipment at other foreign ports and communicate with the designated port States to share relevant information required for effective inspection. <sup>137</sup>
ICCAT	(In addition to designation of ports for foreign vessels with sufficient capacity for inspection) ICCAT CPCs fishing for eastern Atlantic and Mediterranean bluefin tuna to designate ports in which <i>transshipping</i> and <i>landing</i> of bluefin tuna is authorised, and communicate a list annually to the ICCAT Secretariat. <sup>138</sup>
WCPFC	CCMs may notify the Executive Director a list of their designated ports <i>for transshipment</i> and the Executive Director must circulate such a list. <sup>139</sup>
Denial of entry into port	
CCSBT	Entry into ports of foreign flagged vessels included on the CCSBT IUU Vessel List to be prohibited, except in case of <i>force majeure</i> , unless they are allowed entry into port for the exclusive purpose of inspection and/or effective enforcement action. <sup>140</sup>
IATTC	Entry into their ports of vessels included on the IUU Vessel List to be prohibited except in case of <i>force majeure</i> , unless vessels are allowed entry into port for the exclusive purpose of inspection and effective enforcement action.
Denial of use of port prior to inspection for specified reasons	
CCSBT	Members and CNMs to ensure that: vessels on the CCSBT IUU Vessel List are not authorised to land, tranship, re-fuel, re-supply, or engage in other commercial transactions in their ports, except in case of <i>force majeure</i> ; and foreign flagged vessels included on the CCSBT IUU Vessel List do not enter into their ports, except in case of <i>force majeure</i> , unless vessels are allowed entry into port for the exclusive purpose of inspection and/or effective enforcement action; <sup>141</sup>  Fishing Vessels not entered into the Record of Authorized Vessels are deemed not to be authorized to fish for, retain on board, tranship or land SBT. <sup>142</sup>

<sup>137</sup> 2008 Resolution on action plans to ensure compliance with conservation and management measures

<sup>138</sup> Recommendation amending the Recommendation by ICCAT to Establish a Multi-annual Recovery Plan for Bluefin Tuna in the Eastern Atlantic and Mediterranean [Rec. 13-07]

<sup>139</sup> Conservation and management measure CMM 2009-06 (para 4-5) on the regulation of transshipment

<sup>140</sup> Resolution on Establishing a List of Vessels Presumed to have Carried Out Illegal, Unreported and Unregulated Fishing Activities for Southern Bluefin Tuna (SBT) (revised at the 21st Annual Meeting, 16 October 2014).

<sup>141</sup> Resolution on Establishing a List of Vessels Presumed to have Carried Out Illegal, Unreported and Unregulated Fishing Activities for Southern Bluefin Tuna (SBT) (revised at the 21st Annual Meeting, 16 October 2014), Paragraph 18 (c) and (d).

<sup>142</sup> Resolution on amendment of the Resolution on "Illegal, Unregulated and Unreported Fishing (IUU) and Establishment of a CCSBT Record of Vessels over 24 meters Authorized to Fish for Southern Bluefin Tuna" (revised at the Twenty-First Annual Meeting: 16 October 2014), Paragraph 2.

IATTC	<p>Landings, transhipments by vessels on the IATTC IUU Vessel List that enter ports voluntarily are not to be authorized, and commercial transactions, imports, landings and/or transshipment of species covered by the IATTC Convention are prohibited from vessels on the IATTC IUU Vessel List.<sup>143</sup></p> <p>CPCs shall take measures, under their applicable legislation, to prohibit fishing for, retaining on board, transshipment and landing of tuna and tuna-like species by LSTLFVs not included in the LSTLFV List (of authorized vessels).<sup>144</sup></p> <p>Fishing vessels are prohibited from retaining on board, transshipping, landing or trading in any fins harvested in contravention of the Resolution on Conservation of Sharks.<sup>145</sup></p>
ICCAT	<p>Imports, or landing and/or transshipment, of tuna and tuna-like species to be prohibited from vessels included in the IUU Vessel List.<sup>146</sup></p> <p>Importers, transporters and other sectors concerned, to be encouraged to refrain from transaction and transshipment of tuna and tuna-like species caught by vessels included in the IUU Vessel List.<sup>147</sup></p> <p>CPCs shall take measures, under their applicable legislation, to prohibit the fishing for, the retaining on board, the transshipment and landing of tuna and tuna-like species by the LSTVs which are not entered into the ICCAT record.<sup>148</sup></p>
IOTC	<p>IUU vessels that enter ports voluntarily are not authorized to land, tranship, refuel, re-supply, or engage in other commercial transactions.</p> <p>Imports, landing or transshipment, of tuna and tuna-like species from vessels included in the IUU Vessels List to be prohibited.<sup>149</sup></p> <p>Vessels are to be denied the use of port prior to inspections for the same reasons as set out in the FAO Agreement.<sup>150</sup></p> <p>CPCs shall take all necessary measures, under their applicable legislation: so that IUU vessels that enter ports voluntarily are not authorized to land, tranship, refuel, re-supply, or engage in other commercial transactions; to prohibit the imports, landing or transshipment, of tuna and tuna-like species from vessels included in the IUU Vessels List.<sup>151</sup></p> <p>CPCs shall take measures, under their applicable legislation, to ... prohibit the fishing for, the retaining on board, the transshipment and landing of tuna and tuna-like species by the vessels which are not entered into the IOTC Record of authorized vessels.<sup>152</sup></p>

<sup>143</sup> Resolution C-05-07 to establish a list of vessels presumed to have carried out IUU fishing activities in the Eastern Pacific Ocean.

<sup>144</sup> Resolution C-11-05 resolution (amended) on the establishment of a list of longline fishing vessels over 24 meters (LSTLFVS) authorized to operate in the Eastern Pacific Ocean (adopted at the 82<sup>nd</sup> Meeting, 4-8 July 2011), Paragraph 6(a). This Resolution does not specify whether the responsibility is for flag States, port States or both.

<sup>145</sup> Resolution C-05-03 Resolution On the Conservation Of Sharks Caught In Association with Fisheries in The Eastern Pacific Ocean, Paragraph 6.

<sup>146</sup> Recommendation 11-18 Further Amending Recommendation 09-10 Establishing a List of Vessels Presumed to Have Carried Out IUU fishing activities in the ICCAT Convention Area.

<sup>147</sup> Recommendation 11-18 Further Amending Recommendation 09-10 Establishing a List of Vessels Presumed to Have Carried Out Illegal, Unreported and Unregulated Fishing Activities in the ICCAT Convention Area.

<sup>148</sup> Recommendation 09-08 By ICCAT Concerning the Establishment of an ICCAT Record of Vessels 20 Meters in Length Overall or Greater Authorized to Operate in the Convention Area, Paragraph 7(a).

<sup>149</sup> Resolution 11/03 Establishing a List of Vessels Presumed to have Carried Out Illegal, Unreported And Unregulated Fishing In The IOTC Area of Competence.

<sup>150</sup> Section 9.

<sup>151</sup> Resolution 11/03 Establishing a List of Vessels Presumed to have Carried Out Illegal, Unreported and Unregulated Fishing in The IOTC Area of Competence, Paragraphs 16(b) and (e).

<sup>152</sup> Resolution 14/04 Concerning The IOTC Record of Vessels Authorised to Operate in the IOTC Area of Competence, Paragraph 9(a).

WCPFC	Landing, transshipment, refueling and resupply to be prohibited by vessels on the IUU Vessel List, voluntarily in port, and are to be inspected upon entry. <sup>153</sup> Commercial transactions, imports, landings and/or transshipment of WCPFC species to be prohibited from vessels on the WCPFC IUU Vessel List. <sup>154</sup> CCMs to prohibit landings at its ports or transshipment to vessels flying its flag of highly migratory fish stocks caught in the Convention Area by vessels not entered on the Record or the Register. <sup>155</sup>
<b>Denial of use of port after inspection</b>	
CCSBT	Transshipment and landing of SBT as domestic product to be denied without required documents or a tag. <sup>156</sup>
IATTC	Landing and transshipment to be prohibited where they are positively identified as originating from fishing activities that contravene the CMM. <sup>157</sup>

In summary, most of the requirements in the FAO Agreement have been implemented to varying degrees by the CMMs dedicated to port State measures adopted by CCSBT, ICCAT and IOTC. The supportive CMMs of all tuna-RFMOs have served to provide broader implementation for such measures as those indicated in Table 8 above. As noted above and reflected in ANNEX V, other standards in the port control measures vary among RFMOs.

In this regard, the CMMs do not generally reflect the breadth of the “uses of port” described in the FAO Agreement, as most of them are limited to landings and transshipments. Adoption of the broad range of uses of port to be denied would significantly strengthen the consequences of denial for the IUU vessel, and therefore the measure itself.

The tuna-RFMO CMMs have variously incorporated many of the requirements and standards of the FAO Agreement, mindful that some variations are to be expected due to the different mandates and membership of the organizations, but that some RFMOs have sought to harmonize the measures between themselves. Mindful that three RFMOs had adopted dedicated CMMs on port State measures at the time of entry into force of the FAO Agreement, it was reassuring that eleven of the nineteen provisions for implementation identified in ANNEX V had been adopted by three RFMOs, as shown in the list below.

All five tuna-RFMOs had adopted CMMs to deny the use of port prior to inspection for specified reasons, and four had requirements relating to designation of port and the denial of the use of port after inspection and follow-up, but this included CMMs relating to measures such as IUU vessel lists, described above.

No tuna-RFMO had implemented requirements for a system for the electronic exchange of information, only one RFMO had provisions on integration and coordination at national level,

<sup>153</sup> CMM 2010-06 (para 22b) to establish a list of vessels presumed to have carried out illegal, unreported and unregulated fishing activities in the WCPO.

<sup>154</sup> *Ibid.*

<sup>155</sup> CMM 2013-10 WCPFC Record of Fishing Vessels and Authorization to Fish. (“Register” refers to the WCPFC Interim Register of non-Member Carrier and Bunker Vessels, and “Record” refers to the WCPFC Record of Fishing Vessels.)

<sup>156</sup> Resolution on the implementation of a CCSBT CDS. The Resolution for a CCSBT Scheme for Minimum Standards for Inspection in Port does not provide for the denial of use of port in accordance with the FAO Agreement. Instead it defers to the legal jurisdiction of the port Member (section 23), or failing jurisdiction, requires referral to the flag State or relevant coastal State (section 24).

<sup>157</sup> Resolution C-13-01 on a multiannual program for the conservation of tuna in the Eastern Pacific Ocean during 2014-2016.

conditional entry into port and the training of inspectors and two RFMOs had set requirements for inspection priorities.

The list below shows the breakdown of the number of tuna-RFMOs that have implemented the various provisions of the FAO Agreement.

NUMBER OF TUNA RFMOS THAT IMPLEMENTED PROVISIONS	PROVISIONS OF THE FAO AGREEMENT INCLUDED IN TUNA-RFMO CMMS
5	Denial of use of port prior to inspection for specified reasons
4	Designation of port Denial of use of port after inspection and follow-up
3	Request for entry into port Denial of entry into port Authorization of entry into port Inspection levels Inspection procedures Responsibility of operator, master, etc. Results of inspections Transmittal of inspection results Role of the flag State Requirements of developing countries Role of the Secretariat
2	Inspection priorities
1	Integration and coordination at national level Conditional entry into port (inspection, <i>force majeure</i> ) Training of inspectors
0	System for the electronic exchange of information

In general, this indicates that although most tuna-RFMOs have made notable strides in developing or strengthening port State measures, implementation has been a challenging issue for two of the bodies, and was considered as work in progress at the time of entry into force of the FAO Agreement.

## 6.8 Implementation of port State measures by select RFMOs

Five RFMOs, each with a mandate over areas beyond national jurisdiction, were selected to indicate the status of the implementation of port State measures among non-tuna RFMOs. The principal CMMs, referenced in ANNEX VI, all relate to port schemes or inspections as follows:



CCAMLR	Port inspections of fishing vessels carrying Antarctic marine living resources
GFCM	Regional scheme on port State measures to combat IUU fishing activities in the GFCM Area <sup>158</sup>
NAFO	Northwest Atlantic Fisheries Organization Conservation and Enforcement Measures, Chapter VII Port State Control <sup>159</sup>
NEAFC	2016 Scheme of Control and Enforcement, Chapter V Port State Control of Foreign Fishing Vessels
SEAFO	System of observation, inspection, compliance and enforcement, Chapter VI Port State Control

The bodies have also adopted other CMMs relevant to some port State measures, and provisions relating to IUU vessel lists are shown for all five in ANNEX VI. Four of the RFMOs in this study maintain a combined list of IUU vessels together with four of the tuna-RFMOs.<sup>160</sup>

The measures have generally been adopted or amended to reflect relevant areas in the framework of the FAO Agreement, and, while not all of them are the same, the measures adopted by these RFMOs show a strong consistency with the FAO Agreement and each other. Significantly, ten provisions in the FAO Agreement are implemented in the CMMs of 4 or 5 select RFMOs.

The list below shows the breakdown of the number of select RFMOs that have implemented the various provisions of the FAO Agreement.

<b>NUMBER OF SELECT RFMOS THAT IMPLEMENTED PROVISIONS</b>	<b>PROVISIONS OF THE FAO AGREEMENT INCLUDED IN SELECT RFMO CMMs</b>
5	Designation of port Request for entry into port Denial of entry into port Denial of use of port prior to inspection for specified reasons Inspection procedures Results of inspections Transmittal of inspection results Role of the Secretariat
4	Authorization of entry into port Inspection levels
3	Denial of use of port after inspection and follow-up <sup>161</sup>
2	Conditional entry into port (inspection, <i>force majeure</i> )

<sup>158</sup> Under review in 2016.

<sup>159</sup> Under review in 2016.

<sup>160</sup> See <http://iuu-vessels.org/iuu>. They are CCAMLR, IATTC, ICCAT, IOTC, NAFO, NEAFC, SEAFO, WCPFC.

<sup>161</sup> NAFO and NEAFC do not specifically provide for the denial of use of port after inspection, but have other follow-up processes described in ANNEX VI.

	Inspection priorities
	Responsibility of operator, master etc
	Training of inspectors
	Role of the flag State
1	Integration and coordination at the national level
	System for electronic exchange of information
0	Requirements of developing countries.

There is some consistency between the select RFMOs and the tuna-RFMOs in the provisions of the FAO Agreement that appear infrequently in their respective port State measures CMMs. One, two or no RFMOs in each category implemented provisions on integration and coordination at national level, conditional entry into port (inspection, *force majeure*), inspection priorities, training of inspectors and a system for the electronic exchange of information. Some of these topics may be addressed in other CMMs or capacity development initiatives.

## 7. CONCLUSIONS

The extraordinary value of port State measures in global efforts to combat IUU fishing was realized through the adoption of the FAO Agreement in 2009. Since then, adoption or further elaboration of its minimum standards and provisions by several RFMOs has brought about considerable success in detecting, deterring and bringing to justice illegal practices and associated criminal activity in connection with illegal fishing and related activities.

The legally binding nature of the RFMO CMMs has also served to propel initiatives for their national implementation, even before the entry into force of the FAO Agreement. However, much remains to be done at national and regional levels.

There was steady progress in preparing for the entry into force of the FAO Agreement, but much remains to be done. Countries and RFMOs have been mindful of the resources invested in developing the instruments, based on a shared vision for effectively coming to grips with IUU fishing, as well as their potential benefits and cost-effectiveness. The interrelationship of port State measures with other fisheries governance tools continues to be fostered through regional and international organizations, including those affecting activities in areas beyond national jurisdiction.

As the process moves forward, countries are faced with three objectives:

- becoming party to the FAO Agreement, if not already achieved;
- implementing its requirements and thereby those of relevant RFMOs in national legislation and procedures; and
- cooperating through RFMOs to strengthen and implement their CMMs relating to port State measures as appropriate.

The elements of the process to become party to the FAO Agreement depend on the institutional requirements in each country. Countries may seek advice from the FAO Legal Office on this matter. Although many countries may already be members of RFMOs and therefore obligated in some respects to implement port State measures, the objective is global harmonization, standards and cooperation, including through RFMOs.

It is crucial for countries to have national implementing legislation in place to discharge their obligations as parties to the FAO Agreement and members of RFMOs. However, any country can adopt implementing legislation without being parties or members.

The legislative template and framework for procedures in this document are designed to facilitate implementation of the Agreement, and as appropriate RFMO CMMs, for all countries. They are generic and may be used in, or easily adapted to any legal system. They support the in-country expertise and capacity both in terms of legal drafting and explanations.

Cooperation through RFMOs to adopt or strengthen port State measures is ongoing, including in response to recommendations of performance reviews. The minimum standards of the FAO Agreement have been progressively introduced into CMMs of a number of RFMOs. However, there are still some challenges ahead and this document may assist in providing a basis for further development and implementation of port State measures at national and regional levels.



## ANNEX I

## 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, refuelling or resupplying;
- (h) “regional economic integration organization” means a regional economic integration organization to which its member States have transferred competence over matters covered by this Agreement, including the authority to make decisions binding on its member States in respect of those matters;
- (i) “regional fisheries management organization” means an intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish conservation and management measures; and
- (j) “vessel” means any vessel, ship of another type 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*, refuelling 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*, refuelling 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 in 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*, refuelling 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 Articles 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 Articles 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 mobilization 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 FAO from the Twenty-second day of November 2009 until the Twenty-first day of November 2010 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 Depositary 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 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 in Rome on this Twenty-second day of November, 2009.

## Annex A

## Information to be provided in advance by vessels requesting port entry

1. Intended port of call										
2. Port State										
3. Estimated date and time of arrival										
4. Purpose(s)										
5. Port and date of last port call										
6. Name of the vessel										
7. Flag State										
8. Type of vessel										
9. International Radio Call Sign										
10. Vessel contact information										
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>			

## Annex B

## 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.

## Annex C

## Report of the results of the inspection

1. Inspection report no				2. Port State			
3. Inspecting authority							
4. Name of principal inspector				ID			
5. Port of inspection							
6. Commencement of inspection		YYYY		MM		DD	
7. Completion of inspection		YYYY		MM		DD	
8. Advanced notification received		Yes				No	
9. Purpose(s)		LAN	TRX	PRO		OTH (specify)	
10. Port and State and date of last port call				YYYY		MM	DD
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		No	Yes: National		Yes: RFMOs		Type:
26. Status in RFMO areas where fishing or fishing related activities have been undertaken, including any IUU vessel listing							
Vessel identifier	RFMO	Flag State status		Vessel on authorized vessel list		Vessel on IUU vessel list	

27. Relevant fishing authorization(s)						
Identifier	Issued by	Validity	Fishing area(s)	Species	Gear	
28. Relevant transshipment authorization(s)						
Identifier		Issued by		Validity		
Identifier		Issued by		Validity		
29. Transshipment information concerning donor vessels						
Name	Flag State	ID no.	Species	Product form	Catch area(s)	Quantity
30. Evaluation of offloaded catch (quantity)						
Species	Product form	Catch area(s)	Quantity declared	Quantity offloaded	Difference between quantity declared and quantity determined, if any	
31. Catch retained onboard (quantity)						
Species	Product form	Catch area(s)	Quantity declared	Quantity retained	Difference between quantity declared and quantity determined, if any	
32. Examination of logbook(s) and other documentation				Yes	No	Comments
33. Compliance with applicable catch documentation scheme(s)				Yes	No	Comments
34. Compliance with applicable trade information scheme(s)				Yes	No	Comments
35. Type of gear used						
36. Gear examined in accordance with paragraph e) of Annex B				Yes	No	Comments
37. Findings by inspector(s)						

**38. Apparent infringement(s) noted including reference to relevant legal instrument(s)**

**39. Comments by the master**

**40. Action taken**

**41. Master's signature**

**42. Inspector's signature**



## Annex D

**Information systems on port State measures**

In implementing this Agreement, each Party shall:

- a) seek to establish computerized communication in accordance with Article 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.

## ANNEX II

**IOTC Resolution 10/11 on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing****The Indian Ocean Tuna Commission (IOTC):**

DEEPLY CONCERNED about the continuation of illegal, unreported and unregulated fishing in the IOTC Area and its detrimental effect upon fish stocks, marine ecosystems and the livelihoods of legitimate fishers in particular in Small Island Developing States, and the increasing need for food security in the region,

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,

RECOGNIZING the need for assistance to developing countries, in particular Small Island Developing States to adopt and implement port State measures,

TAKING NOTE OF the binding Agreement on port State measures to combat IUU fishing which was adopted and opened for signature within the framework of FAO in November 2009, and desiring to implement this Agreement in an efficient manner in the IOTC Area,

BEARING IN MIND that, in the exercise of their sovereignty over ports located in their territory, IOTC Members and Cooperating non-Contracting Parties (CPCs) 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 Resolutions by Fishing Vessels on the High Seas of 24 November 1993 and the 1995 FAO Code of Conduct for Responsible Fisheries,

ADOPTS, in accordance with the provisions of Article IX, paragraph 1 of the IOTC Agreement, the following:

## PART 1 GENERAL PROVISIONS

### 1. *Use of terms*

For the purposes of this Resolution:

- (a) "fish" means all species of highly migratory fish stocks covered by the IOTC Agreement;
- (b) "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;
- (c) "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;
- (d) "illegal, unreported and unregulated fishing" refers to the activities set out in paragraph 1 of the Resolution 2009/03;
- (e) "port" includes offshore terminals and other installations for landing, transshipping, packaging, processing, refueling or resupplying; and
- (f) "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.

### 2. *Objective*

The objective of this Resolution is to prevent, deter and eliminate IUU fishing through the implementation of effective port State measures to control the harvest of fish caught in the IOTC Area, and thereby to ensure the long-term conservation and sustainable use of these resources and marine ecosystems.

### 3. *Application*

- 3.1 Each CPC shall, in its capacity as a port State, apply this Resolution 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.
- 3.2 This Resolution shall be applied in a fair, transparent and non-discriminatory manner, consistent with international law.

### 4. *Integration and coordination at the national level*

Each CPC 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 Conservation and Management Resolution.

## PART 2 ENTRY INTO PORT

### 5. *Designation of ports*

- 5.1 Each CPC shall designate and publicize the ports to which vessels may request entry pursuant to this Resolution. Each CPC shall provide a list of its designated ports to IOTC Secretariat before 31 December 2010, which shall give it due publicity on the IOTC website.
- 5.2 Each CPC shall, to the greatest extent possible, ensure that every port designated and publicized in accordance with point 5.1 has sufficient capacity to conduct inspections pursuant to this Resolution.

### 6. *Advance request for port entry*

- 6.1 Each CPC shall require the information requested in Annex 1 to be provided before granting entry to a vessel to its port.
- 6.2 Each CPC shall require the information referred to in point 6.1 to be provided at least 24 hours before entering into port or immediately after the end of the fishing operations, if the time distance to the port is less than 24 hours. For the latter, the port State must have enough time to examine the above mentioned information.

### 7. *Port entry, authorization or denial*

- 7.1 After receiving the relevant information required pursuant to section 6, 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 CPC 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.
- 7.2 In the case of authorization of entry, the master of the vessel or the vessels representative shall be required to present the authorization for entry to the competent authorities of the CPC upon the vessels arrival at port.
- 7.3 In the case of denial of entry, each CPC shall communicate its decision taken pursuant to point 7.1, to the flag State of the vessel and, as appropriate and to the extent possible, relevant coastal States and IOTC secretariat. The IOTC Secretariat may, if deemed appropriate to combat IUU fishing at global level, communicate this decision to Secretariats of other RFMO's.
- 7.4 Without prejudice to point 7.1, when a CPC 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 regional fisheries management organization in accordance with the rules and procedures of such organization and in conformity with international law, the CPC shall deny that vessel entry into its ports.

- 7.5 Notwithstanding points 7.3 and 7.4, a CPC may allow entry into its ports of a vessel referred to in those points 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.
- 7.6 Where a vessel referred to in points 7.4 or 7.5 is in port for any reason, a CPC 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. Points 9.2 and 9.3 of section 9 apply *mutatis mutandis* in such cases. Denial of such use of ports shall be in conformity with international law.

#### 8. *Force majeure or distress*

Nothing in this Resolution 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

#### 9. *Use of ports*

- 9.1 Where a vessel has entered one of its ports, a CPC shall deny, pursuant to its laws and regulations and consistent with international law, including this Conservation and management resolution, 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 CPC 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 CPC 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 CPC 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; or
  - (e) the CPC 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 point 7.4, unless the vessel can establish:
    - i. that it was acting in a manner consistent with relevant IOTC resolutions; 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 point 4 of paragraph 7.

- 9.2 Notwithstanding point 9.1, a CPC shall not deny a vessel referred to in that point 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.
- 9.3 Where a CPC has denied the use of its port in accordance with this paragraph, it shall promptly notify the flag State and, as appropriate, relevant coastal States, IOTC or other regional fisheries management organizations and other relevant international organizations of its decision.
- 9.4 A CPC shall withdraw its denial of the use of its port pursuant to point 9.1 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.
- 9.5 Where a CPC has withdrawn its denial pursuant to point 9.4, it shall promptly notify those to whom a notification was issued pursuant to point 9.3.

## PART 4

### INSPECTIONS AND FOLLOW-UP ACTIONS

#### 10 *Levels and priorities for inspection*

- 10.1 Each CPC shall carry out inspections of at least 5% of landings or transshipments in its ports during each reporting year.
- 10.2 Inspections shall involve the monitoring of the entire discharge or transshipment and include a cross-check between the quantities by species recorded in the prior notice of landing and the quantities by species landed or transhipped. When the landing or transshipment is completed, the inspector shall verify and note the quantities by species of fish remaining on board.
- 10.3 National inspectors shall make all possible efforts to avoid unduly delaying a vessel and ensure that the vessel suffers the minimum interference and inconvenience and that degradation of the quality of the fish is avoided.
- 10.4 The port CPC may invite inspectors of other CPC to accompany their own inspectors and observe the inspection of landings or transshipment operations of fishery resources caught by fishing vessels flying the flag of another CPC.

#### 11 *Conduct of inspections*

- 11.1 Each CPC shall ensure that its inspectors carry out the functions set forth in Annex 2 as a minimum standard.
- 11.2 Each CPC 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 section 14;
  - (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 resolutions;

- (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 the flag State to participate in the inspection;
- (f) make all possible efforts to avoid unduly delaying the vessel to minimize interference and inconvenience, including any unnecessary presence of inspectors on board, and to avoid action that would adversely affect the quality of the fish on board;
- (g) make all possible efforts to facilitate communication with the master or senior crew members of the vessel, 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.

#### 12. Results of inspections

Each CPC shall, as a minimum standard, include the information set out in Annex 3 in the written report of the results of each inspection.

#### 13. Transmittal of inspection results

- 13.1 The port State CPC shall, within three full working days of the completion of the inspection, transmit by electronic means a copy of the inspection report and, upon request, an original or a certified copy thereof, to the master of the inspected vessel, to the flag State, to the IOTC Secretariat and, as appropriate, to:
  - (a) the flag State of any vessel that transhipped catch to the inspected vessel;
  - (b) the relevant CPCs and States, including 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
  - (c) the State of which the vessel's master is a national.
- 13.2 The IOTC Secretariat shall without delay transmit the inspection reports to the relevant regional fisheries management organizations, and post the inspection report on the IOTC website.

#### 14. Training of inspectors

Each CPC shall ensure that its inspectors are properly trained taking into account the guidelines for the training of inspectors in Annex 5. CPC shall seek to cooperate in this regard.

#### 15. Port State actions following inspection

- 15.1 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 CPC shall:
  - (a) promptly notify the flag State, the IOTC Secretariat and, as appropriate, relevant coastal States, and other regional fisheries management 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 Conservation and Management Resolution.

- 15.2 Notwithstanding point 15.1, a CPC shall not deny a vessel referred to in that point the use of port services essential for the safety or health of the crew or the safety of the vessel.
- 15.3 Nothing in this Resolution prevents a CPC from taking measures that are in conformity with international law in addition to those specified in points 15.1 and 15.2, including such measures as the flag State of the vessel has expressly requested or to which it has consented.

#### 16. *Information on recourse in the port State*

- 16.1 A CPC 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 CPC pursuant to sections 7, 9, 11 or 15, 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 CPC.
- 16.2 The CPC 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 sections 7, 9, 11 or 15, the CPC shall inform them of any change in its decision.

## PART 5 ROLE OF FLAG STATES

#### 17. Role of CPCs flag States

- 17.1 Each CPCs shall require the vessels entitled to fly its flag to cooperate with the port State in inspections carried out pursuant to this Resolution.
- 17.2 When a CPC 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 Resolution.
- 17.3 Each CPC 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 Resolution. CPCs are encouraged to develop 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 Resolution.
- 17.4 Where, following port State inspection, a flag State CPC 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.
- 17.5 Each CPC shall, in its capacity as a flag State, report to other CPCs, 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 Resolution, have been determined to have engaged in IUU fishing or fishing related activities in support of such fishing.

- 17.6 Each CPC 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 point 3.1.

## PART 6

### REQUIREMENTS OF DEVELOPING STATES

#### 18. Requirements of developing States

- 18.1 CPCs shall give full recognition to the special requirements of CPCs developing States in relation to the implementation of this Resolution. To this end, IOTC should provide assistance to CPCs developing States 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.
- 18.2 IOTC shall give due regard to the special requirements of developing CPCs port States, in particular the least-developed among them and small island developing States, to ensure that a disproportionate burden resulting from the implementation of this Resolution is not transferred directly or indirectly to them. In cases where the transfer of a disproportionate burden has been demonstrated, CPCs shall cooperate to facilitate the implementation by the relevant CPCs developing States of specific obligations under this Resolution.
- 18.3 IOTC shall assess the special requirements of CPCs developing States concerning the implementation of this Resolution.
- 18.4 IOTC CPCs shall cooperate to establish appropriate funding mechanisms to assist CPCs developing States in the implementation of this Resolution. These mechanisms shall, *inter alia*, be directed specifically towards:
- (a) 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;
  - (b) monitoring, control, surveillance and compliance activities relevant to port State measures, including access to technology and equipment; and
  - (c) listing CPCs developing States with the costs involved in any proceedings for the settlement of disputes that result from actions they have taken pursuant to this Resolution.

## PART 7

### DUTIES OF THE IOTC SECRETARIAT

#### 19. Duties of the IOTC Secretariat

- 19.1 The IOTC Secretariat shall without delay post on the IOTC website:
- (a) the list of designated ports,
  - (b) the prior notification periods established by each CPC,
  - (c) the information about the designated competent authority in each port State CPC,

- (d) the blank copy of the IOTC Port inspection report form.
- 19.2 The IOTC Secretariat shall without delay post on the secure part of the IOTC website copies of all Port inspection reports transmitted by port State CPCs.
- 19.3 All forms related to a specific landing or transshipment shall be posted together.
- 19.4 The IOTC Secretariat shall without delay transmit the inspection reports to the relevant regional fisheries management organizations.
- 20. This Resolution enters into force the 01 March 2011 and shall be applied to CPCs' ports within the IOTC area of competence. The CPCs situated outside the IOTC area of competence shall endeavour to apply this Resolution.

## Annex 1

## 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. IOTC ID											
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>						
21. Transshipment information concerning donor vessels											
<i>Date</i>	<i>Location</i>	<i>Name</i>	<i>Flag State</i>	<i>ID</i>	<i>Species</i>	<i>Product</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>			

## Annex 2

### 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 1;
- (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 IOTC Secretariat or other 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.

### Annex 3

## IOTC Port inspection report form

1. Inspection report no		2. Port State				
3. Inspecting authority						
4. Name of principal inspector				ID		
5. Port of inspection						
6. Commencement of inspection		YYYY	MM	DD	HH	
7. Completion of inspection		YYYY	MM	DD	HH	
8. Advanced notification received		Yes		No		
9. Purpose(s)		LAN	TRX	PRO	OTH (specify)	
10. Port and State and date of			YYYY	MM	DD	
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		No	Yes: National	Yes: RFMOs	Type:	
26. Status in IOTC, including any IUU vessel listing						
Vessel	RFMO	Flag State	Vessel on authorized	Vessel on IUU vessel list		
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>	

<b>31. Catch retained onboard (quantity)</b>						
<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>	
<b>32. Examination of logbook(s) and other documentation</b>				<i>Yes</i>	<i>No</i>	<i>Comments</i>
<b>33. Compliance with applicable catch documentation scheme(s)</b>				<i>Yes</i>	<i>No</i>	<i>Comments</i>
<b>34. Compliance with applicable trade information scheme(s)</b>				<i>Yes</i>	<i>No</i>	<i>Comments</i>
<b>35. Type of gear used</b>						
<b>36. Gear examined in accordance with paragraph e) of Annex 2</b>			<i>Yes</i>	<i>No</i>	<i>Comments</i>	
<b>37. Findings by inspector(s)</b>						
<b>38. Apparent infringement(s) noted including reference to relevant legal instrument(s)</b>						
<b>39. Comments by the master</b>						
<b>40. Action taken</b>						
<b>41. Master's signature</b>						
<b>42. Inspector's signature</b>						

## Annex 4

### Information systems on port State measures

In implementing this Conservation and Management Resolution, each CPC shall:

- (a) seek to establish computerized communication;
- (b) establish, to the extent possible, websites to publicize the list of ports designated in accordance with point 5.1 and the actions taken in accordance with the relevant provisions of this Conservation and Management Resolution;
- (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 1 and 3 and translate any other coding system into the international system.

countries/territories:        ISO-3166 3-alpha Country Code

species:                        ASFIS 3-alpha code (known as FAO 3-alpha code)

vessel types:                ISSCFV code (known as FAO alpha code)

gear types:                    ISSCFG code (known as FAO alpha code)

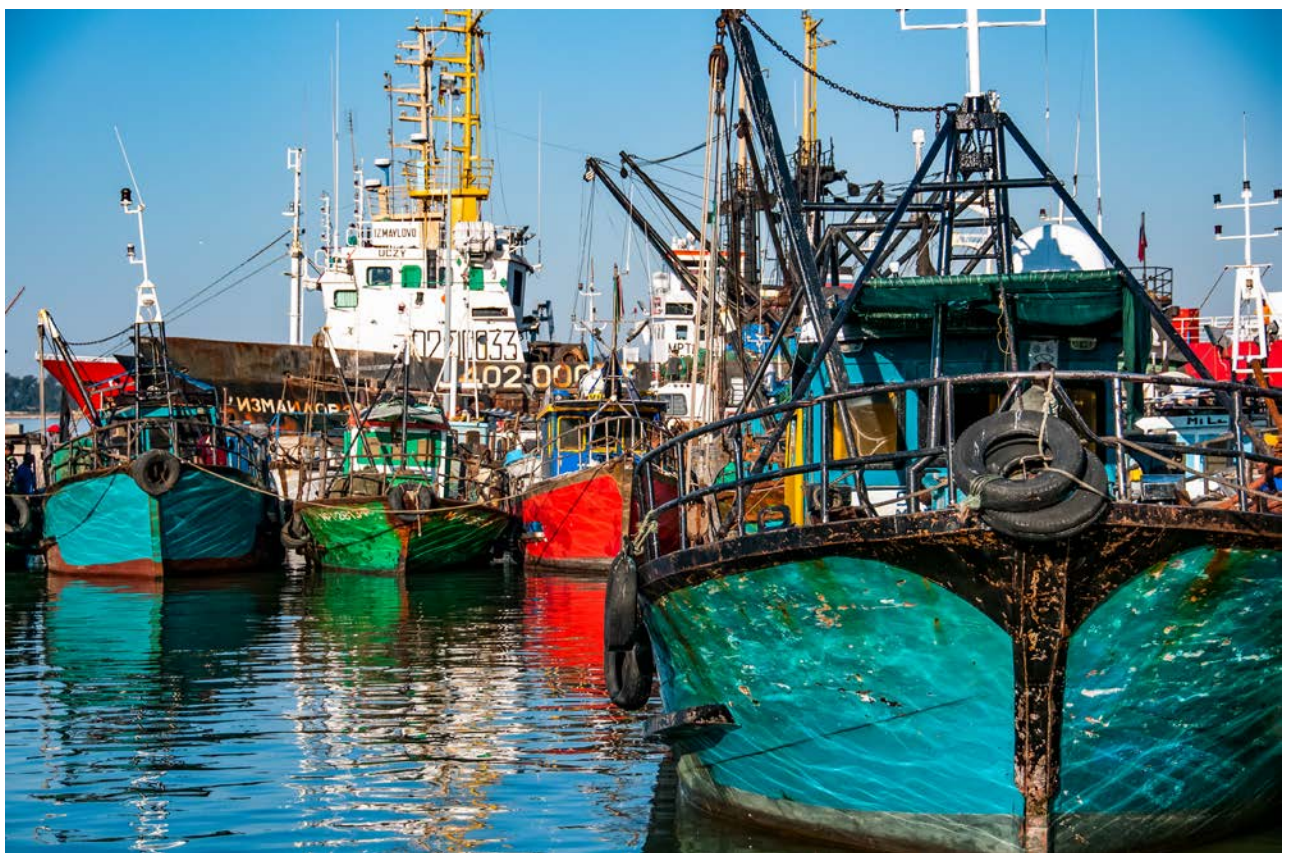


## Annex 5

### 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 resolutions of the IOTC, 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.



## ANNEX III

COMPARISON OF REQUIREMENTS RELATING TO COMMUNICATION,  
NOTIFICATION AND TRANSMITTAL OF INFORMATION TO RFMOs

## IOTC RESOLUTION/FAO AGREEMENT

Provision	IOTC Resolution	FAO Agreement
Cooperation and exchange of information <sup>162</sup>	<i>No corresponding provision</i>	Cooperation and exchange information with relevant RFMOs, including the measures adopted by RFMOs in relation to the objective of the Agreement
Designation of ports <sup>163</sup>	CPCs to provide a list of its designated ports to the IOTC Secretariat before 31 December 2010, which shall give it due publicity on the IOTC website.	<i>No corresponding provision for transmittal to RFMO</i>
Port entry, authorization or denial <sup>164</sup>	Communicate decision to deny entry to IOTC Secretariat which may notify the Secretariats of other RFMOs if deemed appropriate to combat IUU fishing on a global level.	Communicate decision to deny the entry into port to relevant RFMOs
Use of ports - denial <sup>165</sup>	Notify IOTC or other RFMOs of the decision to deny use of port	Notify relevant RFMOs of the decision to deny the use of port
Use of ports – withdrawal of denial <sup>166</sup>	Notify IOTC or other RFMOs of the withdrawal of the decision to deny the use of port	Notify relevant RFMOs of the withdrawal of the decision to deny the use of port
Transmittal of inspection reports <sup>167</sup>	Transmit to the IOTC Secretariat within three full working days of the completion of the inspection, by electronic means, a copy of the inspection report and upon request an original or certified copy thereof	Transmit the results of each inspection to relevant RFMOs
Electronic exchange of information <sup>168</sup>	<i>No corresponding provision</i>	FAO to request relevant RFMOs to provide information concerning the measures or decisions they have adopted and implemented relating to the Agreement for integration into the information-sharing mechanism
Port State actions following inspections <sup>169</sup>	Promptly notify the IOTC Secretariat where, following inspection, there are clear grounds for believing a vessel engaged in IUU fishing or fishing related activities	Notify relevant RFMOs of findings where, following inspection, there are clear grounds for believing a vessel engaged in IUU fishing or fishing related activities

<sup>162</sup> Article 6(1) FAOA.<sup>163</sup> Section 5.1 IOTCR; Article 7(1) FAOA.<sup>164</sup> Section 7.3 IOTCR; Article 9(1)(3) FAOA.<sup>165</sup> Section 9.3 IOTCR; Article 11(3) FAOA.<sup>166</sup> Section 9.5 IOTCR; Article 11(5) FAOA.<sup>167</sup> Section 13.1 IOTCR; Article 15 FAOA.<sup>168</sup> Article 16 FAOA.<sup>169</sup> Section 15.1 IOTCR; Article 18(1)(a) FAOA. Unlike the requirement in Article 11(3) to notify RFMOs of the denial of the use of port, notification is not required for denial. However, port States are required to deny use of port where, after inspection, there are clear grounds for believing that IUU fishing or related activities occurred so it is possible that notification of denial can be implied.

Provision	IOTC Resolution	FAO Agreement
Role of flag States <sup>170</sup>	Report to relevant RFMOs on actions it has taken in respect of its flag vessels, that have been determined, as a result of port State measures, to have engaged in IUU fishing or fishing related activities  (Same provision as FAO Agreement, IOTC Secretariat not mentioned)	Report to relevant RFMOs on actions it has taken in respect of its flag vessels, that have been determined, as a result of port State measures, to have engaged in IUU fishing or fishing related activities
Duties of the IOTC Secretariat <sup>171</sup>	<ol style="list-style-type: none"> <li>1. The IOTC Secretariat shall without delay post on the IOTC website:               <ol style="list-style-type: none"> <li>a) the list of designated ports;</li> <li>b) the prior notification periods established by each CPC;</li> <li>c) the information about the designated competent authority in each port State CPC;</li> <li>d) the blank copy of the IOTC Port Inspection report form.</li> </ol> </li> <li>2. The IOTC Secretariat shall without delay post on the secure part of the IOTC website copies of all port inspection reports transmitted by port State CPCs.</li> <li>3. All forms related to a specific landing or transshipment shall be posted together</li> <li>4. The IOTC Secretariat shall without delay transmit the inspection reports to the relevant RFMOs</li> </ol>	<i>No corresponding provision</i>

<sup>170</sup> Section 17.5 IOTCR; Article 20(5) FAOA.

<sup>171</sup> Section 19 IOTCR.

## ANNEX IV

## TUNA - RFMO PERFORMANCE REVIEW RECOMMENDATIONS ON PORT STATE MEASURES AND SUBSEQUENT DEVELOPMENTS

RFMO	Review Panel Comment	Review Panel Recommendation	Subsequent PSM Measure	Recent developments in RFMO
CCSBT 2008 <sup>172</sup> 2014 <sup>173</sup>	<p><b>2008:</b> There is a need for a consistent and coordinated approach to port inspections.</p> <p><b>2014:</b> The Panel reviewed measures as of 2008,<sup>174</sup> and noted Resolutions in:</p> <ul style="list-style-type: none"> <li>• 2009 on Action Plans to ensure Compliance with Conservation and Management Measures;<sup>175</sup></li> <li>• 2013 on Establishing a List of Vessels Presumed to have Carried out IUU Fishing Activities for SBT,<sup>176</sup></li> </ul>	<p><b>2008:</b> The FAO Technical Consultation on Port State Measures provides the Commission with some guidance on a preferred model when considering implementation of any CCSBT Port State measure.</p> <p><b>2014:</b> CCSBT should accelerate its progress in developing a Resolution on Port State Measures consistent with the 2009 FAO Port States Agreement.</p>	Resolution for a CCSBT Scheme for Minimum Standards for Inspection in Port, adopted at the 2015 Twenty-Second Annual Meeting, which will enter into force on 1 January 2017.	<b>2014:</b> The Commission noted the Performance Review recommendation that the CCSBT should accelerate its progress in developing a Resolution on Port State Measures consistent with the 2009 FAO Port States Agreement. <sup>177</sup> The 2014 three year Compliance Committee Action Plan includes development and implementation of port State measures.

<sup>172</sup> Available at [https://www.ccsbt.org/sites/ccsbt.org/files/userfiles/file/docs\\_english/meetings/meeting\\_reports/ccsbt\\_15/report\\_of\\_PRWG.pdf](https://www.ccsbt.org/sites/ccsbt.org/files/userfiles/file/docs_english/meetings/meeting_reports/ccsbt_15/report_of_PRWG.pdf).

[http://www.ccsbt.org/userfiles/file/docs\\_english/meetings/meeting\\_reports/ccsbt\\_15/report\\_of\\_PRWG.pdf](http://www.ccsbt.org/userfiles/file/docs_english/meetings/meeting_reports/ccsbt_15/report_of_PRWG.pdf).

<sup>173</sup> [http://www.tuna-org.org/Documents/2014\\_CCSBT\\_Independent\\_Performance\\_Review.pdf](http://www.tuna-org.org/Documents/2014_CCSBT_Independent_Performance_Review.pdf).

<sup>174</sup> CCSBT measures required members and CNMs to prohibit the landing of SBT by fishing vessels that were not on the CCSBT Record of Authorised Vessels over 24 meters authorized to fish for SBT.

<sup>175</sup> It required Members and CNMs of pelagic longline vessels to specify in their action plans improvement in port state inspection of transshipment of SBT and actual inspections of catches by Members and CNMs authorities. The resolution further specifies that for effective port state inspection, Members and CNMs should designate foreign ports of transshipment for SBT, prohibit such transshipment at other foreign ports and communicate with those designated port states to share relevant information required for effective inspection.

Since then, the CCSBT has prohibited landings of domestic product, exports, imports, and/or re-exports of SBT into and from farms which are not registered on the CCSBT record of authorised farms pursuant to the CCSBT Resolution on the Establishment of a Record of Authorised Farms (adopted in 2010).

<sup>176</sup> As with other RFMO IUU vessel lists, members and CNMS are to ensure that vessels on the CCSBT IUU Vessel List are not authorised to land, tranship, re-fuel, re-supply, or engage in other commercial transactions in their ports, except in case of force majeure.

<sup>177</sup> [http://www.ccsbt.org/userfiles/file/docs\\_english/meetings/meeting\\_reports/ccsbt\\_21/report\\_of\\_CCSBT21.pdf](http://www.ccsbt.org/userfiles/file/docs_english/meetings/meeting_reports/ccsbt_21/report_of_CCSBT21.pdf).

ANNEX IV – TUNA-RFMO PERFORMANCE REVIEW RECOMMENDATIONS AND DEVELOPMENTS

RFMO	Review Panel Comment	Review Panel Recommendation	Subsequent PSM Measure	Recent developments in RFMO
	<p>and a 2013 Compliance Committee meeting which considered a draft Port State Measures resolution and agreed that an intersessional working group meeting would progress this further in 2014.</p>			<p><b>2015:</b> The five-year draft Action Plan for implementing the CCSBT Strategic Plan included: Implement and review the Port State Inspection Resolution, taking into account the FAO Port State Measures Agreement and each Member’s domestic laws and regulations.<sup>178</sup></p>
<p>ICCAT 2009<sup>179</sup></p>	<p>The relevant UNFSA and FAO Compliance Agreement provisions have been partially implemented by referenced Recommendations.<sup>180</sup></p> <p>Mandatory inspection and possible prohibition of landing and transhipment in ports, however, is limited only to non-Contracting Party vessels. The detailed rules on transhipment in ports with procedural requirements and port State verification are in place, but they apply only to LSTVs of CPCs, and no sanctions are provided.</p>	<p>The Panel considers that ICCAT should take further action in order to expand and strengthen port State measures in conformity with UNFSA, taking into account the recent work of FAO to draft a new international agreement on port State control.</p>	<p>Recommendation 12-07 for an ICCAT Scheme for Minimum Standards for Inspection in Port, 2012.</p>	<p><b>2014:</b> The Commission approved the initiation of the second performance evaluation of ICCAT, and further considered criteria for its establishment in <b>2015</b> (moved to MCS from Compliance and Enforcement in first review), including:<sup>181</sup></p> <ul style="list-style-type: none"> <li>• Extent to which ICCAT has adopted measures relating to the exercise of the rights and duties of its members as port States, as reflected in UNFSA Article 23 and the Code of Conduct for Responsible Fisheries Article 8.3.</li> </ul>

<sup>178</sup> Section 8.1(iii) [https://www.ccsbt.org/sites/ccsbt.org/files/userfiles/file/docs\\_english/meetings/meeting\\_reports/ccsbt\\_22/report\\_of\\_CCSBT22.pdf](https://www.ccsbt.org/sites/ccsbt.org/files/userfiles/file/docs_english/meetings/meeting_reports/ccsbt_22/report_of_CCSBT22.pdf).

<sup>179</sup> Report of the Independent Performance Review of ICCAT, [http://www.iccat.int/Documents/Other/PERFORM\\_%20REV\\_TRI\\_LINGUAL.pdf](http://www.iccat.int/Documents/Other/PERFORM_%20REV_TRI_LINGUAL.pdf)

<sup>180</sup> *The Recommendation for a Revised ICCAT Port Inspection Scheme* [Rec. 97-10], recognizing that many Contracting Parties have port inspection schemes in place, provides that inspection shall be carried out by the appropriate authorities of the Parties, who may examine the fish, fishing gear, fish samples and all relevant documents. The inspector must draw up a report and send it to the flag State of the vessel concerned and to the ICCAT Secretariat.

*The Recommendation Concerning the Ban on Landings and Transhipments of Vessels from Non-Contracting Parties Identified as Having Committed a Serious Infringement* [Rec. 98-11] obliges the port State Parties to inspect vessels of non-Contracting Parties and not to allow to land or tranship any fish until the inspection has taken place. Landings and transhipments of all fish from such vessels shall be prohibited in all Contracting Party ports unless the vessel proves that the fish onboard were caught outside the Convention Area or in compliance with the relevant ICCAT conservation measures and requirements under the ICCAT Convention.

With regard to transhipment operation in ports by large-scale tuna vessels (LSTVs) of CPCs, a detailed set of requirements, as well as port State verification measures, have been established by the *Recommendation Establishing a Programme for Transhipment* [Rec. 06-11], Annex 3.

<sup>181</sup> [http://www.iccat.int/Documents/Meetings/COMM2014/Press\\_release\\_ENG.pdf](http://www.iccat.int/Documents/Meetings/COMM2014/Press_release_ENG.pdf) and <https://www.iccat.int/com2015/index.htm>.

RFMO	Review Panel Comment	Review Panel Recommendation	Subsequent PSM Measure	Recent developments in RFMO
				<ul style="list-style-type: none"> <li>• Extent to which ICCAT has adopted Port State Measures pursuant to the FAO Agreement.</li> <li>• Extent to which these measures are effectively implemented.</li> </ul>
IOTC 2009 <sup>182</sup> 2015 <sup>183</sup>	<p><b>2009:</b> IOTC had adopted a vague resolution<sup>184</sup> relating to the establishment of inspection in port, and compliance had been low. The Resolution was out dated and would require amendments, noting the FAO process to develop the Agreement.</p>	<p><b>2009:</b></p> <ul style="list-style-type: none"> <li>• Any amendment to or replacement of the IOTC Agreement should include specific provisions on member's duties as port States.</li> <li>• IOTC should explore the possible implementation of the FAO Model Scheme on Port State Measures.</li> <li>• IOTC should note the outcome of the FAO process to develop the Agreement.</li> </ul>	Resolution 10/11 on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing	<p><b>2015:</b> Agreed terms of reference and criteria to conduct the second performance review of the IOTC<sup>185</sup> included:</p> <ul style="list-style-type: none"> <li>• Extent to which the IOTC has adopted measures relating to the exercise of the rights and duties of its members as port States, as reflected in UNFSA Article 23 and the Code of Conduct for Responsible Fisheries Article 8.3 and the FAO Port State Measures Agreement; and</li> <li>• Extent to which these measures are effectively implemented.</li> </ul> <p><b>2016:</b> The Report of the Second Performance Review of the IOTC<sup>186</sup> recommended that:</p>

<sup>182</sup> <http://www.iotc.org/documents/report-iotc-performance-review-panel>.

<sup>183</sup> <http://www.iotc.org/meetings/2nd-performance-review-iotc>.

<sup>184</sup> Resolution 05/03 Relating to the establishment of an IOTC programme of inspection in port.

<sup>185</sup> *Ibid.*

<sup>186</sup> <http://www.iotc.org/documents/report-2nd-iotc-performance-review>, Paragraph 144.

ANNEX IV – TUNA-RFMO PERFORMANCE REVIEW RECOMMENDATIONS AND DEVELOPMENTS

RFMO	Review Panel Comment	Review Panel Recommendation	Subsequent PSM Measure	Recent developments in RFMO
				<ul style="list-style-type: none"> <li>• since port State measures are critical for the control of fishing in the IOTC area and beyond, CPCs should take action to ratify the FAO Agreement on Port State Measures, and the Commission explore possible ways of including ports situated outside the IOTC area known to be receiving IOTC catches in applying port State measures established by the IOTC.</li> <li>• the Commission, through its port State measures training, support the implementation, including support from FAO and other donors, of the requirements of the FAO Agreement and the IOTC Resolution.</li> </ul>
WCPFC 2010 <sup>187</sup>	To address concerns that may arise in adopting, and/or implementing, a CMM on port State measures, a cost-benefit analysis of such measures should be undertaken; <sup>188</sup> and as appropriate, regional special assistance mechanisms could be developed to support the implementation by developing States parties of the Port State Measures Agreement.	When developing a CMM on port State measures, members should consider: <ul style="list-style-type: none"> <li>• the fullest implementation possible of the FAOA and provide for amendments or other clarifications;<sup>189</sup></li> </ul>	None.  <i>(The Commission has considered several proposals for port State measures variously put forward by FFA</i>	<b>2015:</b> At the 2015 WCPFC Regular Session FFA members introduced a new proposal for enhanced port-based MCS measures, but reported that one CCM's position meant it was unable to progress. A number of delegations expressed disappointment that the proposal had not been adopted. <sup>190</sup>

<sup>187</sup> <http://www.wcpfc.int/node/5598>.

<sup>188</sup> The Performance Review recommended that this analysis should take into account the effectiveness of port State measures in combating IUU fishing, the benefits of global international minimum standards (taking into account the terms and effectiveness of related instruments such as the 1982 Paris Memorandum of Understanding on Port Controls, as well as port State measures schemes in other RFMOs), the costs of alternative controls (such as use of patrol vessels) and the legal basis for linkages with other compliance tools (such as observer programs and VMS).

<sup>189</sup> For example, through declarations that address and overcome limitations in the Convention that do not reflect current international law and practice, such as the requirement that vessels be voluntarily in Port before measures can be taken.

<sup>190</sup> [https://www.wcpfc.int/system/files/WCPFC12%20Summary%20Report\\_final1\\_revised.pdf](https://www.wcpfc.int/system/files/WCPFC12%20Summary%20Report_final1_revised.pdf), paragraph 66o.



ANNEX IV — TUNA-RFMO PERFORMANCE REVIEW RECOMMENDATIONS AND DEVELOPMENTS

RFMO	Review Panel Comment	Review Panel Recommendation	Subsequent PSM Measure	Recent developments in RFMO
		<ul style="list-style-type: none"> <li>• minimum standards in the FAOA, measures and practices of other RFMOs and developments in the broader system of Port controls.</li> <li>• a recommendation along the lines of the IOTC Resolution.</li> </ul>	<p><i>Members or the EU, but not adopted any.)</i></p>	



## ANNEX V

## CONSERVATION AND MANAGEMENT MEASURES RELEVANT TO PORT STATE MEASURES — TUNA RFMOs

	CCSBT <sup>191</sup>	IATTC <sup>192</sup>	ICCAT <sup>193</sup>	IOTC <sup>194</sup>	WCPFC <sup>195</sup>
1. Species	Southern Bluefin Tuna	Tuna and other species taken by tuna fishing vessels in the Eastern Pacific Ocean	Tuna and tuna-like species in the Atlantic Ocean	Tuna and tuna-like species in the Indian Ocean and adjacent seas	Tuna and tuna-like species in the Western Central Pacific
2. Integration and coordination at the national level				CPCs to integrate fisheries port state measures with broader systems of port State control, other measures to combat IUU fishing and take measures to exchange information among relevant national agencies. <sup>196</sup>	
3. Designation of port	Members to designate ports to which foreign fishing vessels may request entry, ensure sufficient		Ports for foreign fishing vessels to be designated, have sufficient capacity for inspection, provide ICCAT	CPCs to designate and publicize ports to which foreign vessels may request entry, and to greatest extent possible	CCMs may notify the Executive Director a list of their designated ports <i>for</i>

<sup>191</sup> All references, unless otherwise noted, are to the Resolution for a CCSBT Scheme for Minimum Standards for Inspection in Port, adopted at the 2015 Twenty-Second Annual Meeting, which will enter into force on 1 January 2017. It applies to foreign fishing vessels, including carrier vessels other than container vessels, carrying SBT or fish products originating from SBT that have not been previously landed or transhipped at port, and that are equal to or greater than 12 meters in length overall.

[https://www.ccsbt.org/sites/ccsbt.org/files/userfiles/file/docs\\_english/operational\\_resolutions/Resolution\\_Minimum\\_Port\\_Inspection\\_Standards.pdf](https://www.ccsbt.org/sites/ccsbt.org/files/userfiles/file/docs_english/operational_resolutions/Resolution_Minimum_Port_Inspection_Standards.pdf).

<sup>192</sup> IATTC had considered but at the time of writing had not adopted proposals for a CMM that aimed to implement relevant standards of the FAO Agreement. Otherwise the IATTC Resolution on transshipments is focused on establishing a program for verification and observation which does not address measures that a port State may take such as prohibiting the use of port. Information on transshipments is required to be notified to the port State, and the port State must verify information. Otherwise, information on entry into port and other areas addressed in the FAO Agreement are not included, so information on this Resolution is not shown in the Table. Resolution C-12-07. Amendment to Resolution C-11-09 on Establishing a Program for Transshipments by Large-Scale Fishing Vessels.

<sup>193</sup> All references are to Recommendation 12-07 for an ICCAT Scheme for Minimum Standards for Inspection in Port, 2012, unless otherwise noted.

<sup>194</sup> All references are to Resolution 10/11 on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, unless otherwise noted.

<sup>195</sup> WCPFC had considered but at the time of writing had not adopted proposals for a CMM that aimed to implement relevant standards of the FAO Agreement.

<sup>196</sup> Section 4.

	CCSBT <sup>191</sup>	IATTC <sup>192</sup>	ICCAT <sup>193</sup>	IOTC <sup>194</sup>	WCPFC <sup>195</sup>
	<p>capacity and provide CCSBT Secretariat a list.<sup>197</sup></p> <p>Members and CNMs should designate <i>foreign</i> ports of <i>transshipment</i> for SBT, prohibit such transshipment at other foreign ports and communicate with the designated port States to share relevant information required for effective inspection.<sup>198</sup></p>		<p>Secretariat a list.<sup>199</sup></p> <p>Secretariat to establish a register.<sup>200</sup></p> <p>CPCs fishing for eastern Atlantic and Mediterranean bluefin tuna to designate ports in which <i>transshipping</i> and <i>landing</i> of bluefin tuna is authorised, and communicate a list annually to the Secretariat.<sup>201</sup></p>	<p>ensure sufficient capacity for inspection and provide IOTC a list.<sup>202</sup></p>	<p><i>transshipment</i> and the Executive Director must circulate such a list.<sup>203</sup></p>
4. Request for entry	<p>Members to require certain information to be provided at least 72 hours before estimated time of arrival into port.<sup>204</sup></p> <p>Longer or shorter notification periods may be prescribed, but Member must inform the Secretariat.<sup>205</sup></p>		<p>CPC to require certain information to be provided 72 hours before estimated time of arrival into port.<sup>206</sup></p>	<p>CPC to require information in Annex I at least 24 hours before entering port or other time as specified.<sup>207</sup></p>	

<sup>197</sup> Section 3.

<sup>198</sup> 2008 Resolution on action plans to ensure compliance with conservation and management measures, adopted prior to the 2015 Resolution which will enter into force on 1 January 2017.

<sup>199</sup> Paragraph 9.

<sup>200</sup> Paragraph 10.

<sup>201</sup> Recommendation amending the Recommendation by ICCAT to Establish a Multi-annual Recovery Plan for Bluefin Tuna in the Eastern Atlantic and Mediterranean [Rec. 13-07].

<sup>202</sup> Section 5.

<sup>203</sup> Conservation and management measure CMM 2009-06 (para 4-5) on the regulation of transshipment.

<sup>204</sup> Section 11.

<sup>205</sup> Section 12.

<sup>206</sup> Paragraph 11.

	CCSBT <sup>191</sup>	IATTC <sup>192</sup>	ICCAT <sup>193</sup>	IOTC <sup>194</sup>	WCPFC <sup>195</sup>
5. Denial of entry into port	<p>Port Members shall decide whether to (authorize or) deny entry into port, based on information provided and any other information that may be required.<sup>208</sup></p> <p>Members and CNMs to ensure that foreign flagged vessels included on the CCSBT IUU Vessel List do not enter into their ports, except in <i>case of force majeure</i>, unless vessels are allowed entry into port for the exclusive purpose of inspection and/or effective enforcement action.<sup>209</sup></p>		<p>CPC Port State may (authorize or) deny entry into port based on information on whether the foreign fishing vessel has engaged in IUU fishing.<sup>210</sup></p> <p>Entry into their ports of vessels included on the IUU vessel list to be prohibited except in case of <i>force majeure</i>, unless vessels are allowed entry into port for the exclusive purpose of inspection and effective enforcement action.<sup>211</sup></p>	CPC Port State may deny entry and communicate its decision as specified. <sup>212</sup>	
6. Authorization	Member shall decide whether to authorize (or deny) entry into port, based on information provided and any other information that may be required. <sup>213</sup>		CPC port State may authorize entry into port. <sup>214</sup>	CPC port State may authorize entry into port, and the authorization must be presented upon the vessel's entry into port. <sup>215</sup>	

<sup>207</sup> Section 6.<sup>208</sup> Section 13.<sup>209</sup> Resolution on "Illegal, Unregulated and Unreported Fishing (IUU) and Establishment of a CCSBT Record of Vessels over 24 meters Authorized to Fish for Southern Bluefin Tuna" (revised at the 21st Annual Meeting, 16 October 2014), paragraph 18(d).<sup>210</sup> Paragraph 12. There is no reference to fishing related activities.<sup>211</sup> Recommendation 11-18 Further Amending Recommendation 09-10 Establishing a List of Vessels Presumed to Have Carried Out Illegal, Unreported And Unregulated Fishing Activities in the ICCAT Convention Area.<sup>212</sup> Section 7.<sup>213</sup> Section 13.<sup>214</sup> Paragraph 13.

	CCSBT <sup>191</sup>	IATTC <sup>192</sup>	ICCAT <sup>193</sup>	IOTC <sup>194</sup>	WCPFC <sup>195</sup>
7. Conditional entry into port (inspection, force majeure)				CPC port State may allow entry exclusively for inspection and taking actions to combat IUU fishing. <sup>216</sup>  Entry may be permitted for force majeure or distress exclusively for rendering assistance. <sup>217</sup>	
8. Denial of use of port prior to inspection for specified reasons	Members and CNMs to ensure that: <ul style="list-style-type: none"> <li>vessels on the CCSBT IUU Vessel List are not authorised to land, tranship, re-fuel, re-supply, or engage in other commercial transactions in their ports, except in case of <i>force majeure</i>;</li> <li>foreign flagged vessels included on the CCSBT IUU Vessel List do not enter into their ports, except in case of force majeure, unless vessels</li> </ul>	Landings, transhipments by vessels on the IATTC IUU Vessel List that enter ports voluntarily are not to be authorized. <sup>220</sup>  CPCs shall take measures, under their applicable legislation, to prohibit fishing for, retaining on board, transhipment and landing of tuna and tuna-like species by LSTLFVs not included in the LSTLFV List. <sup>221</sup> Fishing vessels are prohibited from retaining on board, transshipping, landing or trading in any	Imports, or landing and/or transhipment, of tuna and tuna-like species to be prohibited from vessels included in the IUU Vessel List. <sup>223</sup>  Importers, transporters and other sectors concerned, to be encouraged to refrain from transaction and transhipment of tuna and tuna-like species caught by vessels included in the IUU Vessel List. <sup>224</sup>  CPCs shall take measures, under their applicable legislation, to prohibit the	Vessels are to be denied the use of port prior to inspections for the same reasons as set out in the FAO Agreement. <sup>226</sup>  CPCs shall take all necessary measures, under their applicable legislation: <ul style="list-style-type: none"> <li>so that IUU vessels that enter ports voluntarily are not authorized to land, tranship, refuel, re-supply, or engage in other commercial transactions;</li> <li>to prohibit the imports, landing or transhipment, of tuna and tuna-like species from vessels included in the</li> </ul>	Landing, transhipment, refueling and resupply to be prohibited by vessels on the IUU Vessel List, voluntarily in port, and are to be inspected upon entry. <sup>229</sup>  Commercial transactions, imports, landings and/or transhipment of WCPFC species to be prohibited from vessels on the WCPFC IUU Vessel List. <sup>230</sup>  CCMs to prohibit landings at its ports or transhipment to vessels flying its flag of highly migratory fish stocks caught in the Convention

<sup>215</sup> Section 7.

<sup>216</sup> Section 7.

<sup>217</sup> Section 8.

<sup>220</sup> Resolution C-05-07 to establish a list of vessels presumed to have carried out IUU fishing activities in the Eastern Pacific Ocean.

<sup>221</sup> Resolution C-11-05 resolution (amended) on the establishment of a list of longline fishing vessels over 24 meters (LSTLFVS) authorized to operate in the Eastern Pacific Ocean (adopted at the 82nd Meeting, 4-8 July 2011), Paragraph 6(a). This Resolution does not specify whether the responsibility is for flag States, port States or both.

	CCSBT <sup>191</sup>	IATTC <sup>192</sup>	ICCAT <sup>193</sup>	IOTC <sup>194</sup>	WCPFC <sup>195</sup>
	are allowed entry into port for the exclusive purpose of inspection and/or effective enforcement action; <sup>218</sup>  Fishing Vessels not entered into the Record of Authorized Vessels are deemed not to be authorized to fish for, retain on board, tranship or land SBT. <sup>219</sup>	fins harvested in contravention of the Resolution on Conservation of Sharks. <sup>222</sup>	fishing for, the retaining on board, the transhipment and landing of tuna and tuna-like species by the LSTVs which are not entered into the ICCAT record. <sup>225</sup>	IUU Vessels List; 227  CPCs shall take measures, under their applicable legislation, to prohibit the fishing for, the retaining on board, the transhipment and landing of tuna and tuna-like species by the vessels which are not entered into the IOTC Record of authorized vessels. 228	Area by vessels not entered on the Record or the Register. <sup>231</sup>
9. Inspection levels	At least 5% of landing <i>and</i> transhipment operations as are made by foreign fishing vessels. <sup>232</sup>		5% of annual landing <i>and</i> transhipment operations made by foreign fishing vessels. <sup>233</sup>	5% of landings <i>or</i> transhipments during each reporting year. <sup>234</sup>	

<sup>223</sup> Recommendation 11-18 Further Amending Recommendation 09-10 Establishing a List of Vessels Presumed to Have Carried Out Illegal, Unreported and Unregulated Fishing Activities in the ICCAT Convention Area.

<sup>224</sup> Recommendation 11-18 Further Amending Recommendation 09-10 Establishing a List of Vessels Presumed to Have Carried Out Illegal, Unreported and Unregulated Fishing Activities in the ICCAT Convention Area.

<sup>226</sup> Section 9.

<sup>229</sup> Conservation and management measure CMM 2010-06 (para 22b) to establish a list of vessels presumed to have carried out illegal, unreported and unregulated fishing activities in the WCPO.

<sup>230</sup> Ibid.

<sup>218</sup> Resolution on Establishing a List of Vessels Presumed to have Carried Out Illegal, Unreported and Unregulated Fishing Activities for Southern Bluefin Tuna (SBT) (revised at the 21st Annual Meeting, 16 October 2014), Paragraph 18 (c) and (d).

<sup>219</sup> Resolution on amendment of the Resolution on "Illegal, Unregulated and Unreported Fishing (IUU) and Establishment of a CCSBT Record of Vessels over 24 meters Authorized to Fish for Southern Bluefin Tuna" (revised at the Twenty-First Annual Meeting: 16 October 2014), Paragraph 2.

<sup>222</sup> Resolution C-05-03 Resolution On The Conservation Of Sharks Caught In Association with Fisheries in The Eastern Pacific Ocean, Paragraph 6.

<sup>225</sup> Recommendation 09-08 By ICCAT Concerning the Establishment of an ICCAT Record of Vessels 20 Meters in Length Overall or Greater Authorized to Operate In the Convention Area, Paragraph 7(a).

<sup>227</sup> Resolution 11/03 Establishing a List of Vessels Presumed to have Carried Out Illegal, Unreported and Unregulated Fishing in The IOTC Area of Competence, Paragraphs 16(b) and (e).

<sup>228</sup> Resolution 14/04 Concerning The IOTC Record of Vessels Authorised to Operate in the IOTC Area of Competence, Paragraph 9(a).

<sup>231</sup> Conservation and Management Measure 2013-10 WCPFC Record of Fishing Vessels and Authorization to Fish. "Register" refers to the WCPFC Interim Register of non-Member Carrier and Bunker Vessels, and "Record" refers to the WCPFC Record of Fishing Vessels.

<sup>232</sup> Section 15.

<sup>233</sup> Paragraph 15. Note difference from IOTC, which requires 5% of landings or transhipments.

	CCSBT <sup>191</sup>	IATTC <sup>192</sup>	ICCAT <sup>193</sup>	IOTC <sup>194</sup>	WCPFC <sup>195</sup>
10. Inspection priorities	Member shall take into account: the vessel's failure to provide information; requests from other CPCs and RFMOs; and whether clear grounds exist for suspecting IUU fishing. <sup>235</sup>		CPC to take into account: the vessel's failure to provide information; requests from other CPCs and RFMOs; and whether clear grounds exist for suspecting IUU fishing. <sup>236</sup>  CPCs to give priority to the inspection of vessels on the IUU Vessel List, if such vessels are ... found in their Ports. <sup>237</sup>	<i>(The title of section 10 is "Level and priorities for inspection", but no priorities are stated in the provision).</i>	
11. Inspection procedures	Extensive procedures are described. <sup>238</sup>  Without prejudice to the domestic laws of the port CPC, the flag CPC may send its own officials to accompany port CPCs and observe or take part in the inspection of the vessel where bilateral agreements or arrangements exist. <sup>239</sup>		Extensive procedures are described. <sup>240</sup>  Without prejudice to the domestic laws of the port CPC, the flag CPC may send its own officials to accompany port CPCs and observe or take part in the inspection of the vessel where bilateral agreements or arrangements exist. <sup>241</sup>	Extensive procedures are described. <sup>242</sup>  The port CPC may invite inspectors of other CPCs to accompany them and observe landings or transshipments of CPC vessels. <sup>243</sup>	

<sup>234</sup> Section 10.1.<sup>235</sup> Paragraph 16.<sup>236</sup> Paragraph 16.<sup>237</sup> Recommendation 11-18 Further Amending Recommendation 09-10 Establishing a List of Vessels Presumed to Have Carried Out Illegal, Unreported and Unregulated Fishing Activities in the ICCAT Convention Area.<sup>238</sup> Sections 17 – 18.<sup>239</sup> Section 28.<sup>240</sup> Paragraphs 17-19.<sup>241</sup> Paragraph 28.



	CCSBT <sup>191</sup>	IATTC <sup>192</sup>	ICCAT <sup>193</sup>	IOTC <sup>194</sup>	WCPFC <sup>195</sup>
12. Responsibility of operator, master etc	Flag Members to ensure that Masters facilitate safe access, cooperate with the competent authorities of the port Member, facilitate inspections and communications and not obstruct, intimidate or interfere with port Member inspectors in the execution of their duties. <sup>244</sup>		Flag CPCs to ensure that Masters facilitate safe access to the fishing vessel, cooperate with the competent authorities of the port CPC, facilitate the inspection and communication and not obstruct, intimidate or interfere, or cause other persons to obstruct, intimidate or interfere with port CPC inspectors in the execution of their duties. <sup>245</sup>	CPCs, in carrying out port inspections, are to require the master to give inspectors all necessary assistance and information, and present relevant materials and documents as may be required, or certified copies thereof. <sup>246</sup>	
13. Results of inspections	Port Member to include as a minimum standard the information in Annex B. <sup>247</sup>		(A reporting form has been developed but is not referenced in the Resolution)	CPC to include the information in Annex III in a written report of the results of each inspection. <sup>248</sup>	
14. Transmittal of inspection results	Port Member to transmit inspection report to Secretariat no later than 14 days following the inspection, or notify reasons for not doing so. <sup>249</sup>		CPC to transmit inspection report to Secretariat no later than 14 days following the inspection, or notify reasons for not doing so. <sup>250</sup>	CPC to electronically transmit inspection report within 3 days of the inspection to the Secretariat and other specified States. <sup>251</sup>	

<sup>242</sup> Sections 10, 11.<sup>243</sup> Paragraph 10.<sup>244</sup> Section 21.<sup>245</sup> Paragraph 21.<sup>246</sup> Section 11.2.d.<sup>247</sup> Section 19.<sup>248</sup> Section 12.<sup>249</sup> Section 20.<sup>250</sup> Paragraph 20.

ANNEX V — CONSERVATION AND MANAGEMENT MEASURES — TUNA RFMOs

	CCSBT <sup>191</sup>	IATTC <sup>192</sup>	ICCAT <sup>193</sup>	IOTC <sup>194</sup>	WCPFC <sup>195</sup>
15. System for electronic exchange of information				("ANNEX IV Information systems on port State measures" is attached but there is no reference to it in the text of the Resolution)	
16. Training of inspectors				CPCs to ensure its inspectors are properly trained taking into account guidelines in Annex IV. <sup>252</sup>	
17. Denial of use of port after inspection, follow-up	<p>Port Members to take action in accordance with national laws, but if infringements do not fall within their jurisdiction other procedures provided for notification of flag Member and relevant coastal Member, and report by flag State to the Secretariat on measures it has taken.<sup>253</sup></p> <p>Where evidence of IUU fishing, port Member to notify Secretariat for inclusion in IUU vessel list.<sup>254</sup></p>	<p>Landing and transshipment to be prohibited where they are positively identified as originating from fishing activities that contravene the CMM.<sup>256</sup></p>	<p>Port CPCs to take action in accordance with national laws, but if infringements do not fall within their jurisdiction other procedures provided for notification of flag CPC and relevant coastal CPC, and report by flag State to the Secretariat on measures it has taken.</p> <p>Where evidence of IUU fishing, port State to notify Secretariat for inclusion in IUU vessel list.<sup>257</sup></p>	<p>Where clear grounds for believing a vessel has engaged in IUU fishing or fishing related activities, inspecting CPC to notify specified States, Secretariat, organizations etc and deny the use of port.</p>	

<sup>251</sup> Section 13.

<sup>252</sup> Section 14.

<sup>253</sup> Section 24.

<sup>254</sup> Section 25.

<sup>256</sup> Resolution C-13-01 on a multiannual program for the conservation of tuna in the Eastern Pacific Ocean during 2014-2016.

	CCSBT <sup>191</sup>	IATTC <sup>192</sup>	ICCAT <sup>193</sup>	IOTC <sup>194</sup>	WCPFC <sup>195</sup>
	CDS requirement: Transshipment and landing of SBT as domestic product to be denied without required documents or a tag. <sup>255</sup>				
18.Role of the flag State	The flag Member may, under specified conditions, send its own officials to accompany the inspectors of the port State and observe or take part in the inspection of its vessel. <sup>258</sup>  Flag Members to consider and act upon reports of infringements from inspectors of a port Member and Members to cooperate to facilitate judicial or other proceedings arising from inspection reports. <sup>259</sup>		CPC flag State may send officials to accompany port State inspectors under agreement or by invitation. <sup>260</sup>  CPC flag State to consider and act on reports of infringements of port CPC to facilitate judicial or other proceedings.  CPC flag State to investigate where port State inspection report shows evidence of IUU fishing, and notify the Secretariat of the status of the investigation and action taken within 6 months of receiving the report or explain reasons why.	CPCs to make a range of requirements for their vessels, and investigate their vessels as provided in the FAO Agreement. <sup>262</sup>	

<sup>257</sup> Paragraphs 22-25.<sup>255</sup> Resolution on the implementation of a CCSBT CDS.<sup>258</sup> Section 28.<sup>259</sup> Section 29.<sup>260</sup> Paragraph 28.<sup>262</sup> Section 17.

	CCSBT <sup>191</sup>	IATTC <sup>192</sup>	ICCAT <sup>193</sup>	IOTC <sup>194</sup>	WCPFC <sup>195</sup>
			Secretariat to publish in secure part of website.  CPCs to include in Annual Report status of investigations. <sup>261</sup>		
19. Requirements of developing CPCs	Members are encouraged to assess the special requirements of developing Members concerning implementation of the Resolution. <sup>263</sup>		CPCs to provide assistance to developing CPCs in relation to a port inspection scheme for specific matters; an MCS Fund has been established. <sup>264</sup>	IOTC to provide assistance to developing CPCs for specific matters as provided in the FAO Agreement. <sup>265</sup>	
20. Role of Secretariat	Maintain a register of Members' points of contact for receiving prior notifications of entry into port and inspection reports. <sup>266</sup>  Publish information on notification period prior to entry into port where it differs from 72 hours. <sup>267</sup>		Develop model formats for prior notification and inspection reports, taking into account FAO Agreement and other RFMOs. <sup>269</sup>	Requirements for posting specified information on the website, including port inspection reports, and transmitting inspection reports to relevant RFMOs.	

<sup>261</sup> 12-13. Revised guidelines for the preparation of the Annual Reports.

<sup>263</sup> Section 26.

<sup>264</sup> Paragraph 26, and Recommendation 14-08 to support effective implementation of recommendation 12-07 by ICCAT for an ICCAT scheme for minimum standards for inspection in port which establishes an MCS Fund to provide technical assistance to port inspectors and other relevant enforcement personnel from developing CPCs.

<sup>265</sup> Section 18.

<sup>266</sup> Sections 2 and 3.

<sup>267</sup> Section 12.

<sup>269</sup> Paragraph 30.

	<b>CCSBT<sup>191</sup></b>	<b>IATTC<sup>192</sup></b>	<b>ICCAT<sup>193</sup></b>	<b>IOTC<sup>194</sup></b>	<b>WCPFC<sup>195</sup></b>
	Executive Secretary to compile the inspection information into an electronic database, and release information to a Member requesting information relating to another member's inspection records with the consent of the latter. <sup>268</sup>				

<sup>268</sup> Section 30.



## ANNEX VI

## CONSERVATION AND MANAGEMENT MEASURES RELEVANT TO PORT STATE MEASURES — SELECT RFMOS

	CCAMLR <sup>270</sup>	GFCM <sup>271</sup>	NAFO <sup>272</sup>	NEAFC <sup>273</sup>	SEAFO <sup>274</sup>
1. Species and application	<p><i>Dissostichus spp.</i><sup>275</sup></p> <p>For the purposes of this conservation measure, 'fishing vessel' means any vessel of any size used for, equipped to be used for or intended for use for the purposes of fishing or fishing related activities, including support ships, fish-processing</p>	<p>All living marine resources in the Convention area.</p> <p>Applies to vessels within the GFCM Area, and foreign vessels seeking entry into or in a CP port.</p> <p>Definitions incorporated from FAO Agreement: fishing, fishing related</p>	<p>Most fishery resources of the Northwest Atlantic except salmon, tunas/marlins, cetacean stocks managed by the International Whaling Commission and sedentary species of the continental shelf.</p> <p>Provisions under Chapter VII on Port State Control apply to</p>	<p>Resources of fish, molluscs, crustaceans and including sedentary species, excluding, in so far as they are dealt with by other international agreements, highly migratory species listed in Annex I of the United Nations Convention on the Law of the Sea of 10 December 1982,</p>	<p>Resources of fish, molluscs, crustaceans and other sedentary species within the Convention Area, excluding:</p> <ul style="list-style-type: none"> <li>• sedentary species subject to the fishery jurisdiction of coastal States pursuant to article 77 paragraph 4</li> </ul>

<sup>270</sup> All references are to Conservation Measure 10-03 (2014) Port inspections of fishing vessels carrying Antarctic marine living resources, unless otherwise referenced. It is available at <https://www.ccamlr.org/en/conservation-and-management/browse-conservation-measures>.

<sup>271</sup> All references are to REC.MCS-GFCM/32/2008/1 Regional scheme on port state measures to combat illegal, unreported and unregulated fishing activities in the GFCM area, unless otherwise noted. It is available at <http://www.fao.org/3/a-ax881e.pdf>. In 2015, the Compliance Committee invited the GFCM Secretariat was invited to work on a revised draft Recommendation GFCM/2008/32/1 on Port State Measures, in order to align it with the 2009 FAO Port State Measures Agreement. It suggested that this could be done during the preparatory work for the revision of the GFCM Compendium. The revised recommendation would be submitted to the Commission for adoption. Report of the Ninth Session of the Compliance Committee, para. 41. Available at [http://www.fao.org/fileadmin/user\\_upload/gfcm/docs/GFCM-FinalReport-Commission-39-en.pdf](http://www.fao.org/fileadmin/user_upload/gfcm/docs/GFCM-FinalReport-Commission-39-en.pdf). A Proposal for a GFCM recommendation on a regional scheme on port State measures to combat illegal, unreported and unregulated fishing activities in the GFCM area of application was prepared for introduction at the Fortieth Session of GFCM in 2016.

<sup>272</sup> All references are to Serial No. N6272 NAFO/FC Doc. 14/1 Northwest Atlantic Fisheries Organization Conservation and Enforcement Measures. Chapter VII Port State Control, unless otherwise noted. At the time of writing, the Chapter was under review by the NAFO Standing Committee on International Control Ad Hoc Working Group on Port State Control Alignment which, in the absence of consensus, had sought guidance from the Commission on the way forward at the 37<sup>th</sup> Annual Meeting of NAFO in September, 2015. The Commission referred the issue back to STACTIC to continue the work. The task of the Ad Hoc Working Group was to identify amendments to the Port State Control Chapter that were necessary to align it with the FAO Agreement.

<sup>273</sup> All references are to the 2016 NEAFC Scheme of Control and Enforcement, Chapter V Port State Control of Foreign Fishing Vessels, and Chapter VII Measures to Promote Compliance by non-Contracting Parties unless otherwise noted. It is available at <http://neafc.org/system/files/NEAFC%20Scheme%20of%20Control%20and%20Enforcement%202016-PDF.pdf>. The Scheme was amended by the 32nd and 33rd Annual Meeting - November 2013 & 2014 as required by NEAFC Recommendation 09 2014, as amended by Recommendation 12: 2015 and have been in place from July 2015. The report of the 2015 Annual Meeting noted that the expansion of the scope of the port state control system (PSC) had worked well, without any significant problems arising. The observer from FAO welcomed the fact that with the expanded scope the PSC was now fully aligned with the 2009 FAO Port State Measures Agreement. [http://www.neafc.org/system/files/AM-2015-report-final\\_o.pdf](http://www.neafc.org/system/files/AM-2015-report-final_o.pdf).

<sup>274</sup> All references are to the SEAFO System of Observation, Inspection, Compliance and Enforcement, Chapter VI Port State Control, unless otherwise noted. It is available at [file:///C:/Users/Judith%20Swan/Downloads/SEAFO\\_SYSTEM\\_2015%20\(1\).pdf](file:///C:/Users/Judith%20Swan/Downloads/SEAFO_SYSTEM_2015%20(1).pdf).

<sup>275</sup> The Convention as a whole applies to the populations of finfish, molluscs, crustaceans, and all other species of living organisms, including birds, found south of the Antarctic Convergence.

ANNEX VI — CONSERVATION AND MANAGEMENT MEASURES — SELECT RFMOs

	CCAMLR <sup>270</sup>	GFCM <sup>271</sup>	NAFO <sup>272</sup>	NEAFC <sup>273</sup>	SEAFO <sup>274</sup>
	<p>vessels, vessels engaged in transshipment and carrier vessels equipped for the transportation of fishery products except container vessels and excluding Members' marine science research vessels.</p> <p>For carrier for vessels equipped for transportation of fishery products, CPs to conduct a preliminary assessment of the relevant documentation, and if it raises concerns regarding compliance with CCAMLR CMMs, an inspection is required under this CMM.<sup>276</sup></p> <p>Purpose of inspection is to determine compliance with CCAMLR CMMs for harvesting activities, and for landing/transshipment activities to ensure catch documentation and that the information is verified.<sup>277</sup> However, other vessels may be inspected.<sup>278</sup></p>	<p>activities, vessel, port, IUU fishing and RFMO, therefore measures applicable to related activities and carrier etc vessels as well as fishing activities.</p> <p>CPs to take additional measures, as necessary, to reinforce effective jurisdiction and control over the fishing and fishing related activities of vessels flying its flag.<sup>279</sup></p>	<p>landings or transshipments:</p> <ul style="list-style-type: none"> <li>• in ports of CPs by fishing vessels flying the flag of another CP;</li> <li>• of fish caught in the Regulatory Area, or fish products originating from such fish, that have not been previously landed or offloaded at a port.</li> </ul>	<p>and anadromous stocks. Provisions under Chapter V on Port State Control of Foreign Fishing Vessels apply to "landings or transshipments in ports of Contracting Parties by fishing vessels with frozen catch on board of fisheries resources that have been caught in the Convention Area by foreign fishing vessels and that have not been previously landed or transhipped at a port."<sup>280</sup></p>	<p>of the 1982 Convention; and</p> <ul style="list-style-type: none"> <li>• highly migratory species listed in Annex I of the 1982 Convention.</li> </ul> <p>Applied to all Contracting Party's ports; within the coastal States, which have areas of national jurisdiction adjacent to the Convention Area. 2. Each Contracting Party which does not have areas of national jurisdiction adjacent to the Convention Area shall endeavour to apply this Chapter.<sup>281</sup></p> <p>All vessels that have been engaged in fishing or fishing related activities in the Convention Area, except container vessels that are not carrying fishery resources or, if carrying fishery resources, only fishery resources that have been previously landed,</p>

<sup>276</sup> Note 3.

<sup>277</sup> Paragraph 1.

<sup>278</sup> Paragraph 3.



	CCAMLR <sup>270</sup>	GFCM <sup>271</sup>	NAFO <sup>272</sup>	NEAFC <sup>273</sup>	SEAFO <sup>274</sup>
					provided that there are no clear grounds for suspecting that such a vessel has engaged in fishing related activities in support of IUU fishing.
2. Integration and coordination at the national level		To the greatest extent possible, Contracting Parties to integrate port State measures into a broader system of port State controls and with other measures to combat IUU fishing, and take measures to share information among and coordinate activities of relevant national agencies in implementation of Resolution. <sup>282</sup>			
3. Designation of port	CPs may designate ports to which fishing vessels may seek entry, and notify the Secretariat.  Secretariat to post information regarding	CPs to designate and publicize ports to which foreign vessels may be permitted access for the purpose of landing or transshipment, transmit a list to the GFCM Secretariat	CPs to designate ports to which fishing vessels may be permitted access for the purpose of landing or transshipment and transmit a list to the Executive Secretary. <sup>286</sup>	CPs to designate ports where landings or transshipment operations are permitted, and send the list of ports to the Secretary, who puts list on website. <sup>287</sup>	CPs to designate and publicize ports to which foreign vessels may request entry, and notify Executive Secretary. <sup>288</sup>

<sup>279</sup> Paragraphs 3, 4 and 5.

<sup>280</sup> Article 20.

<sup>281</sup> Article 26.

<sup>282</sup> Paragraph 6.

ANNEX VI — CONSERVATION AND MANAGEMENT MEASURES — SELECT RFMOs

	CCAMLR <sup>270</sup>	GFCM <sup>271</sup>	NAFO <sup>272</sup>	NEAFC <sup>273</sup>	SEAFO <sup>274</sup>
	designated ports on the website. <sup>283</sup>	and to greatest extent possible ensure sufficient capacity for inspections and take other port State measures. <sup>284</sup>  Secretariat to keep a register of designated and publicized ports, and publish on website. <sup>285</sup>			To greatest extent possible, CPCs to ensure sufficient capacity for inspection and take other measures in accordance with SEAFO obligations. <sup>289</sup>  Executive Secretary to keep a register of designated ports and accompanying information. <sup>290</sup>
4. Request for entry	Notification at least 48 hours in advance.  Notification to include information in Annex 10-03/A.	Notification by masters to be at least 72 hours before estimated time of arrival or another time as specified.  Notification to include information in Annex A and a written declaration that they have not engaged in or supported IUU fishing in the Convention Area and have	Notification to be 3 working days before estimated time of arrival or another time as notified to the Executive Secretary. <sup>292</sup>  Notification to be accompanied by the form provided for in Annex II.L. <sup>293</sup>  Port State to forward prior notifications to the flag States	Notification by masters or their representatives of information in Annex XV at least 3 working days before estimated time of arrival or another time as notified to the Secretary. <sup>295</sup>  Port State to forward prior notifications to the flag States of the vessel and of	CP to require information in Annex VI at least 48 hours before the estimated time of arrival or another time as notified to the SEAFO Executive Secretary who will put information on website. <sup>296</sup>

<sup>286</sup> Article 43.1.

<sup>287</sup> Article 21.

<sup>288</sup> Article 20.1.

<sup>283</sup> Paragraph 4.

<sup>284</sup> Paragraph 10 and 11.

<sup>285</sup> Paragraph 12.

<sup>289</sup> Article 20.2.

<sup>290</sup> Article 20.3.

	CCAMLR <sup>270</sup>	GFCM <sup>271</sup>	NAFO <sup>272</sup>	NEAFC <sup>273</sup>	SEAFO <sup>274</sup>
		complied with relevant CCAMLR requirements. <sup>291</sup>	of the vessel and of donor vessels (where transshipment has occurred) and the Executive Secretary. <sup>294</sup>	donor vessels (where transshipment has occurred) and the NEAFC Secretary who will put it on the website.	
5. Denial of entry into port	<p>Port access to be denied, in accordance with national laws and international law, to foreign fishing vessels that are</p> <ul style="list-style-type: none"> <li>• on the CCAMLR IUU Vessel List;</li> <li>• declare that they have been involved in IUU fishing; or</li> <li>• fail to provide advance notice or make a required declaration that they have not engaged in IUU fishing in the CCAMLR Area and have</li> </ul>	<p>CP to communicate to master in written form the denial for access to the port for landing, transshipping or processing.<sup>297</sup></p> <p>CPs and NCPs to prohibit the entry into their ports of vessels included on the IUU Vessel list, except in case of <i>force majeure</i>.<sup>298</sup></p>	<p>Vessels on the IUU Vessel List to be prohibited from entering port and landing.</p> <p>CPs to encourage prohibition of imports from such vessels, where traceable, and importers, transporters and other sectors concerned to refrain from negotiating and transshipping fish caught by such vessels.<sup>299</sup></p>	Parties to prohibit the entry into their ports of vessels on the IUU 'B' list. <sup>300</sup>	CP to decide whether to authorize or deny entry, and to deny entry where sufficient proof that vessel has engaged in IUU fishing or related activities including on an IUU Vessel List. <sup>301</sup>

<sup>292</sup> Article 43.2.<sup>293</sup> Article 45.1<sup>295</sup> Article 22.<sup>296</sup> Article 21.<sup>291</sup> Paragraph 4.<sup>294</sup> Article 43.5.<sup>297</sup> Paragraph 14.<sup>298</sup> REC.MCS-GFCM/33/2009/8 on the establishment of a list of vessels presumed to have carried out IUU fishing in the GFCM area repealing recommendation GFCM/30/2006/4.<sup>299</sup> Serial No. N6272 NAFO/FC Doc. 14/1 Northwest Atlantic Fisheries Organization Conservation and Enforcement Measures. Chapter VIII, Non-Contracting Party Scheme, Article 55.<sup>300</sup> NEAFC Scheme of Control and Enforcement, Article 45.2.<sup>301</sup> Article 22.4.

ANNEX VI — CONSERVATION AND MANAGEMENT MEASURES — SELECT RFMOs

	CCAMLR <sup>270</sup>	GFCM <sup>271</sup>	NAFO <sup>272</sup>	NEAFC <sup>273</sup>	SEAFO <sup>274</sup>
	complied with CCAMLR requirements.				
6. Authorization		<p>CP to communicate to master in written form the authorization of access to the port for landing, transhipping or processing.</p> <p>Master to present the authorization upon arrival before commencing authorized activities.<sup>302</sup></p>	<p>Flag State of vessel to confirm, by sending a required form, that the fishing vessel had sufficient quota, quantities have been reported and taken into account for calculating applicable catch or effort limitations, fishing vessels held relevant authorizations and VMS data has verified the presence of the vessel in the area of catch.<sup>303</sup></p> <p>Authorization to be given only after flag State confirmation received, and landing or transhipment may then commence. Conditions for authorization in absence of confirmation.<sup>304</sup></p> <p>Port State to notify on a prescribed form its decision whether or not to authorize landing to the master and Executive Secretary.<sup>305</sup></p>	<p>Flag State of vessel to confirm, by sending a required form, that the fishing vessel had sufficient quota, quantities have been reported and taken into account for calculating applicable catch or effort limitations, fishing vessels held relevant authorizations and VMS data has verified the presence of the vessel in the area of catch.</p> <p>Authorization to be given only after flag State confirmation received, and landing or transhipment may then commence. Conditions for authorization in absence of confirmation.</p> <p>Port State to notify on a prescribed form its decision whether or not to authorize landing to the master and</p>	<p>CP to communicate to authorization to master or vessel's representative, who must present it upon arrival at port.<sup>307</sup></p>

<sup>302</sup> Paragraph 14.

<sup>303</sup> Articles 43.6 and 44.2.

<sup>304</sup> Article 43.6 and 43.7.

<sup>305</sup> Article 43.8.

	CCAMLR <sup>270</sup>	GFCM <sup>271</sup>	NAFO <sup>272</sup>	NEAFC <sup>273</sup>	SEAFO <sup>274</sup>
				Secretary, who puts information on website. <sup>306</sup>	
7. Conditional entry into port (inspection, <i>force majeure</i> )	Vessels on the CP-IUU Vessel List should be denied access to ports unless for the purpose of enforcement action or for reasons of force majeure or for rendering assistance to vessels, or persons on those vessels, in danger or distress. <sup>308</sup>	Nothing to affect the access of vessels to port in accordance with international law for reasons of <i>force majeure</i> or distress. <sup>309</sup>			Entry may be allowed, including for IUU vessels, exclusively for inspection and taking other actions, but the use of port will be denied. <sup>310</sup>  CPs not to deny port services essential to safety, health of crew or safety of vessel, or for scrapping. <sup>311</sup>
8. Denial of use of port prior to inspection for specified reasons	(See above "5. Denial of entry into port". The Resolution denies "access" to port, which may be interpreted as entry or use).	CP to deny use for landing, transhipping or processing if: <ul style="list-style-type: none"> <li>the vessel was: (a) fishing in the GFCM Area and not a CP flag vessel; or sighted as being engaged in or supporting IUU fishing in the GFCM Area, unless proved that the catch was taken consistently with</li> </ul>	(Landing or transhipping without an authorization is to be considered a "serious offence" and the provisions of Article 40 apply which require CPs annually to report the name of each fishing vessel issued with a notice of infringement and the action it has taken concerning infringements notified to it by a CP or in a surveillance report,	Contracting Parties shall take all the necessary measures, under their applicable legislation, in order that vessels appearing on the IUU lists: <ul style="list-style-type: none"> <li>are inspected in accordance with the provisions of Article 40 when they enter their ports;</li> </ul>	Use of port to be denied where <ul style="list-style-type: none"> <li>vessel does not have authorization for fishing or related activities required by flag State;</li> <li>flag State does not confirm fish were taken in accordance with SEAFO requirements;</li> </ul>

<sup>307</sup> Article 22.1 and 22.2.<sup>306</sup> Article 23.<sup>308</sup> Conservation Measure 10-06 (2008) Scheme to promote compliance by Contracting Party vessels with CCAMLR conservation measures, Paragraph 18(4).<sup>309</sup> Paragraph 35.<sup>310</sup> Article 22.5 and 22.6.<sup>311</sup> Article 23.2.

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	CCAMLR <sup>270</sup>	GFCM <sup>271</sup>	NAFO <sup>272</sup>	NEAFC <sup>273</sup>	SEAFO <sup>274</sup>
		<p>relevant GFCM CMMs;<sup>312</sup></p> <ul style="list-style-type: none"> <li>the vessel is on an RFMO IUU Vessel List;<sup>313</sup></li> <li>reasonable grounds that the vessel does not hold an authorization.<sup>314</sup></li> </ul> <p>In above situations, CP to deny access to port services including inter alia refueling and resupplying services but not services essential to health, welfare, safety of crew.<sup>315</sup></p> <p>Denial of use of port to be notified to vessel and others as specified, including the Secretariat.</p>	<p>including the terms of penalties imposed).<sup>316</sup></p>	<ul style="list-style-type: none"> <li>are not authorised to land or tranship in the waters under their jurisdiction;</li> <li>are not given assistance in any way or allowed to participate in any transhipment or joint fisheries operations by fishing vessels, support vessels, refuel vessels, mother-ships and cargo vessels flying their flag;</li> <li>are not supply with provisions, fuel or other services.<sup>317</sup></li> </ul>	<ul style="list-style-type: none"> <li>CP has reasonable grounds to believe vessel engaged in IUU fishing, including supporting activities, unless it can prove otherwise (can also apply to post-inspection situation).<sup>318</sup></li> </ul>

<sup>312</sup> Paragraph 15.

<sup>313</sup> Paragraph 16. This is linked to REC.MCS-GFCM/33/2009/8 on the establishment of a list of vessels presumed to have carried out IUU fishing in the GFCM area repealing recommendation GFCM/30/2006/4. Among other things, CPs and NCPs are to ensure that IUU vessels are not authorized to land, refuel, re-supply or engage in other commercial transactions, and to prohibit the imports, or landing and/or transhipment, of any fish from vessels included in the IUU Vessel List.

<sup>314</sup> Paragraph 17.

<sup>315</sup> Paragraph 17.

<sup>316</sup> Article 47.

<sup>317</sup> NEAFC Scheme of Control and Enforcement, Article 45.1.

<sup>318</sup> Article 23.1.

	CCAMLR <sup>270</sup>	GFCM <sup>271</sup>	NAFO <sup>272</sup>	NEAFC <sup>273</sup>	SEAFO <sup>274</sup>
9. Inspection levels	<p>Contracting Parties are to</p> <ul style="list-style-type: none"> <li>undertake inspections of all fishing vessels carrying <i>Dissostichus</i> spp. which enter their ports.<sup>319</sup></li> <li>inspect at least 50% of fishing vessels that enter their ports carrying species other than <i>Dissostichus</i> spp. that were harvested in the Convention Area and that have not been previously landed or transhipped at a port.<sup>320</sup></li> </ul>	<p>At least 15% of the total number of port entries of vessels in the previous year.<sup>321</sup></p>	<p>At least 15% of landings or transhipments during each reporting year.<sup>322</sup></p>	<p>At least 15% of landings or transhipments in ports during each reporting year.<sup>323</sup></p> <p>Each Contracting Party shall carry out inspections of at least 5% of landings or transhipments of fresh fish and at least 7.5% of frozen fish in its ports during each reporting year, on the basis of risk management that takes into consideration the general guidelines</p>	
10. Inspection priorities	<p>Vessels carrying <i>Dissostichus</i> spp (see “Species” above).</p> <p>Other species, taking into account:</p> <p>(i) whether a vessel has previously been denied entry or use of a port in accordance with this or</p>	<p>Vessels engaged in fishing related activities that enter port without prior authorization to be automatically subject to inspection.<sup>324</sup></p> <p>Priority for: vessels that have previously been denied the use of a port</p>			

<sup>319</sup> Paragraph 1.

<sup>320</sup> Paragraph 2.

<sup>321</sup> Paragraph 23.

<sup>322</sup> Article 43.1

<sup>323</sup> Article 25.

<sup>324</sup> Paragraph 22.

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	CCAMLR <sup>270</sup>	GFCM <sup>271</sup>	NAFO <sup>272</sup>	NEAFC <sup>273</sup>	SEAFO <sup>274</sup>
	<p>any other CMM;</p> <p>(ii) requests from other CPs; and</p> <p>(iii) whether clear grounds exist for suspecting that a vessel has engaged in IUU fishing, or fishing-related activities including information derived from RFMOs.</p> <p>CPs to inspect fishing vessels – described above under section 5. Denial of entry to port – that are granted port access for the purposes of inspection, enforcement action or emergency or that enter port without authorization.</p>	<p>under the Recommendation; or requests from other relevant States or RFMOs.<sup>325</sup></p>			
11. Inspection procedures	<p>Inspections to be carried out in accordance with international law, and conducted within 48 hours of port entry in an expeditious fashion.</p> <p>Inspections shall impose no undue burdens on the vessel or its crew and be guided by</p>	<p>Inspections to be conducted in accordance with procedures in Annex B.</p> <p>Inspectors to make all possible efforts to avoid unduly delaying a vessel and that the vessel suffers the minimum interference and inconvenience, and that degradation of the</p>	<p>Inspections to be conducted by authorized Contracting Party inspectors who shall present credentials to the master of the vessel prior to the inspection.<sup>328</sup></p> <p>The port State Contracting Party may invite inspectors of other Contracting Parties to accompany their own</p>	<p>Inspections to be conducted by authorised CP officials knowledgeable of NEAFC Recommendations.</p> <p>Prior to an inspection, the inspector shall present to the master of the vessel an appropriate identity document.</p>	<p>Inspections to be conducted in accordance with procedures in Annex VIII.<sup>334</sup></p> <p>Inspectors to make all possible efforts to avoid unduly delaying a vessel and that the vessel suffers the minimum interference and inconvenience, and</p>

<sup>325</sup> Paragraph 24.



	CCAMLR <sup>270</sup>	GFCM <sup>271</sup>	NAFO <sup>272</sup>	NEAFC <sup>273</sup>	SEAFO <sup>274</sup>
	<p>the CCAMLR System of Inspection.</p> <p>Collection of information during a port inspection to be guided by the template in Annex 10-03/B.<sup>326</sup></p>	<p>quality of the fish is avoided.<sup>327</sup></p>	<p>inspectors and observe the inspection of landings or transhipment operations.<sup>329</sup></p> <p>Comprehensive inspection procedures involving monitoring, cross-checking and verification.<sup>330</sup></p> <p>CP to make all possible efforts to avoid unduly delaying a vessel and that the vessel suffers the minimum interference and inconvenience, and that degradation of the quality of the fish is avoided.<sup>331</sup></p>	<p>The Port State may invite inspectors of other Contracting Parties to accompany their own inspectors and observe the inspection of landings or transhipment operations of fisheries resources caught by foreign fishing vessels.<sup>332</sup></p> <p>Comprehensive inspection procedures involving monitoring, cross-checking and verification.</p> <p>Inspectors to make all possible efforts to avoid unduly delaying a vessel and that the vessel suffers the minimum interference and inconvenience, and that degradation of the quality of the fish is avoided.<sup>333</sup></p>	<p>that degradation of the quality of the fish is avoided.<sup>335</sup></p>

<sup>328</sup> Article 43.11

<sup>334</sup> Article 24.3.

<sup>326</sup> Paragraph 5.

<sup>327</sup> Paragraph 27.

<sup>329</sup> Article 43.12.

<sup>330</sup> Article 43.13.

<sup>331</sup> Article 43.16.

<sup>332</sup> Article 24.

<sup>333</sup> Article 25.

<sup>335</sup> Article 24.5.

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	CCAMLR <sup>270</sup>	GFCM <sup>271</sup>	NAFO <sup>272</sup>	NEAFC <sup>273</sup>	SEAFO <sup>274</sup>
12. Responsibility of operator, master etc			The master of a fishing vessel to: (a) co-operate with and assist in the inspection of the fishing vessel conducted in accordance with these procedures and shall not obstruct, intimidate or interfere with the port State inspectors in the performance of their duties; (b) provide access to any areas, decks, rooms, catch, nets or other gear or equipment, and provide any relevant information which the port State inspectors request including copies of any relevant documents.	Comprehensive provisions in Article 19 apply, as applicable: "Obligation of the Vessel master during the Inspection Procedure".	
13. Results of inspections	<p>Inspection report to consist of completed template in Annex 10-03/A, and if harvesting activities were in Convention Area to include completed template in Annex 10-03/B.</p> <p>Secretariat to convey denial of port access or permission to land or tranship fish to all CPs and non-CPs participating in the catch documentation scheme for <i>Dissostichus</i> spp.<sup>336</sup></p>	Inspection report to include the information in Annex D, <sup>337</sup> and be signed by inspector and master, copy to be given to master. <sup>338</sup>	Inspection report form provided in Each inspection shall be documented by completing form PSC 3 in Annex IV.C to be signed by inspectors and master, copy to be given to master.	Inspection report form provided in Annex VI, to be signed by inspectors and master, copy to be given to master.	On completion of the inspection, CPs to complete a report in the format provided in Annex D. <sup>339</sup>

<sup>336</sup> Paragraph 9.

	CCAMLR <sup>270</sup>	GFCM <sup>271</sup>	NAFO <sup>272</sup>	NEAFC <sup>273</sup>	SEAFO <sup>274</sup>
14. Transmittal of inspection results	CPs to provide report of each inspection to Secretariat within 30 days of inspection or as soon as possible where compliance issues have arisen. Secretariat to convey report to flag State of vessel. <sup>340</sup>	Where reasonable evidence for believing a vessel has engaged in or supported IUU fishing activities, port State to transmit results of inspection to flag State, GFCM Secretariat and other CPs. <sup>341</sup>	Inspection report ... to be transmitted to the flag State Contracting Party and to the flag State of any vessel that transhipped catch to the inspected fishing vessel, and to the Executive Secretary. <sup>342</sup>	Inspection report ... to be transmitted to the CP of the inspected vessel, the flag State or donor vessel where transshipment occurred, and to the Secretary.  Secretary to put copies on websites.  Secretary to compile annual report analyzing all reports from CPs to present to the Permanent Committee for Control and Enforcement (PECCOE). <sup>343</sup>	CPs to include information in Annex IX in the written report, and forward it to the flag State and the Executive Secretary. <sup>344</sup>
15. System for electronic exchange of information		CPs to ensure, to the extent possible, that national fisheries related information systems allow for the direct electronic exchange of information on port State inspections between them and with the GFCM Secretariat, with due			

<sup>337</sup> Paragraph 28.<sup>338</sup> Paragraph 29.<sup>339</sup> Paragraph 13.<sup>340</sup> Paragraph 8.<sup>341</sup> Paragraph 31.<sup>342</sup> Article 43.15.<sup>343</sup> Article 27.<sup>344</sup> Article 24.6.

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	CCAMLR <sup>270</sup>	GFCM <sup>271</sup>	NAFO <sup>272</sup>	NEAFC <sup>273</sup>	SEAFO <sup>274</sup>
		regard to appropriate confidentiality requirements. <sup>345</sup>			
16. Training of inspectors		CPs to ensure that requirements are established for the certification of its Inspectors and that they take into account the elements for the training of inspectors in Annex C. <sup>346</sup>			Training programs to take into account elements in Annex VII. <sup>347</sup>
17. Denial of use of port after inspection, follow-up	Where evidence that the vessel has fished in contravention of CCAMLR CMMs, in particular when the fishing vessel is included in the CCAMLR IUU Vessel List, CP to prohibit the vessel from landing or transhipping the catch, or take other MCS or enforcement action of equivalent or greater severity in accordance with international law.	Where reasonable evidence for believing a vessel has engaged in or supported IUU fishing activities, port State to deny use of port for landing, transhipping or processing. <sup>349</sup>	<i>(Landing or transhipping without an authorization is to be considered a "serious offence" and the provisions of Article 40 apply which require CPs annually to report the name of each fishing vessel issued with a notice of infringement and the action it has taken concerning infringements notified to it by a CP or in a surveillance report, including the terms of penalties imposed).</i> <sup>350</sup>	<i>(Each Contracting Party shall ensure that the appropriate measures be taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where NEAFC measures have not been respected.)</i> <sup>351</sup>	Where CP has reasonable grounds to believe vessel engaged in IUU fishing, including supporting activities, unless it can prove otherwise (appears to apply to pre and post-inspection situations). <sup>352</sup>

<sup>345</sup> Paragraph 8.

<sup>346</sup> Paragraph 26.

<sup>347</sup> Article 24.1.

<sup>349</sup> Paragraph 31. Denial of use of port for port services, including, *inter alia*, refuelling and resupplying, do not apply to post-inspection situations under paragraph 18, but only to vessels that qualify for denial of use of port after entry and before inspection as set out in paragraphs 15, 16 and 17.

<sup>350</sup> Article 47.

	CCAMLR <sup>270</sup>	GFCM <sup>271</sup>	NAFO <sup>272</sup>	NEAFC <sup>273</sup>	SEAFO <sup>274</sup>
	CP to inform the Flag State of the vessel of its inspection findings and cooperate with the flag State in taking appropriate action to investigate the alleged infringement and, if necessary, apply appropriate sanctions in accordance with national legislation. <sup>348</sup>				
18. Role of the flag State		<p>Flag State to cooperate with other CPs.<sup>353</sup></p> <p>Where reasonable grounds to believe its flag vessel has engaged in IUU fishing and is seeking entry or in port of another CP, flag State to request vessel inspection and advise of results.<sup>354</sup></p> <p>CPs to ensure flag vessels use port services in other CPs that act in accordance or consistent with Recommendation.<sup>355</sup></p> <p>CP to ensure masters of</p>			<ul style="list-style-type: none"> <li>• CP to require its flag vessels to cooperate with the port State;</li> <li>• Where CP has clear grounds to believe its vessel has engaged in IUU fishing, it shall as appropriate request port State CP to inspect the vessel;</li> <li>• CP to take enforcement action where, as flag State, it receives an inspection report indicating clear grounds that its flag</li> </ul>

<sup>351</sup> Article 31.

<sup>352</sup> Article 23.1.

<sup>348</sup> Paragraph 7.

<sup>353</sup> Paragraph 36.

<sup>354</sup> Paragraph 37.

<sup>355</sup> Paragraph 38.

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	CCAMLR <sup>270</sup>	GFCM <sup>271</sup>	NAFO <sup>272</sup>	NEAFC <sup>273</sup>	SEAFO <sup>274</sup>
		<p>flag vessels cooperate and assist in inspection, provide access to areas, documents etc.<sup>356</sup></p> <p>If master refuses inspection, he must explain, and port inspection authorities to notify fishing vessel authorities and the GFCM.<sup>357</sup></p> <p>If master does not comply with inspection request, flag State to be requested to suspend the vessel's authorization to fish and order the vessel to remain in port or take other measures. Flag State to notify port inspection authorities and GFCM of action taken.<sup>358</sup></p>			<p>vessel has engaged in IUU fishing;</p> <ul style="list-style-type: none"> <li>• CP to report to Executive Secretary action taken as a flag State in respect of its vessels determined to have engaged in IUU fishing.<sup>359</sup></li> </ul>
19. Requirements of developing CPCs					
20. Role of Secretariat	Duties of the Secretariat include posting designated	GFCM to develop a regional information system to	Duties of the Executive Secretary include posting	Duties of the Secretary include putting on the NEAFC	Duties of the Executive Secretary include

<sup>356</sup> Paragraph 39.

<sup>357</sup> Paragraph 40.

<sup>358</sup> Paragraph 41.

<sup>359</sup> Article 25.

	CCAMLR <sup>270</sup>	GFCM <sup>271</sup>	NAFO <sup>272</sup>	NEAFC <sup>273</sup>	SEAFO <sup>274</sup>
	ports on the CCAMLR website, <sup>360</sup> conveying inspection reports to the Flag State of the inspected vessel <sup>361</sup> and conveying reports of any vessels denied port access or permission to land or tranship <i>Dissostichus spp.</i> or any other species harvested in the Convention Area, to all Contracting Parties and to any non-Contracting Party participating in the Catch Documentation Scheme for <i>Dissostichus spp.</i> <sup>362</sup>	better monitor and control the GFCM Area. <sup>363</sup>	specified comprehensive information on the NAFO website. <sup>364</sup>	website information on authorizations and denial of entry into port <sup>365</sup> and copies of the inspection reports. <sup>366</sup>  The Secretary must compile an annual report analysing all reports received from Contracting Parties under the Chapter on port control for presentation to the Permanent Committee for Control and Enforcement. <sup>367</sup>	establishing a register of designated ports, with accompanying information, and publishing it on the SEAFO website, <sup>368</sup> and receiving information concerning the required notification period prior to entry, <sup>369</sup> denial of entry, <sup>370</sup> denial of use of port <sup>371</sup> and action taken by flag States. <sup>372</sup>

<sup>360</sup> Paragraph 4.

<sup>361</sup> Paragraph 8.

<sup>362</sup> Paragraph 9.

<sup>363</sup> Paragraph 34. The duty is on the Commission, but the Secretariat would be involved in supporting the development and maintenance of the regional information system.

<sup>364</sup> Article 46.

<sup>365</sup> Article 23.4.

<sup>366</sup> Article 27.4.

<sup>367</sup> Article 27.5.

<sup>368</sup> Article 20.3.

<sup>369</sup> Article 21.

<sup>370</sup> Article 22.3.

<sup>371</sup> Article 23.3.

<sup>372</sup> Article 25.4.

This document provides legislative templates to implement port State measures as agreed in the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing and the Indian Ocean Tuna Commission Resolution 10/11, and explains the broader context of port State measures.

The legislative templates present a framework for implementing the core provisions of these legal instruments into national legislation, as well as supporting provisions that reflect best practices and relate to areas such as enforcement, information and evidence. The templates are generic and may be adapted to different legal systems, institutions and instruments. They are accompanied by explanatory notes.

The development of port State measures, a framework for national procedures and the role of regional fishery management organizations are also elaborated.

