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Report of the

**FIRST MEETING OF THE AD HOC WORKING GROUP ESTABLISHED
BY THE PARTIES TO THE AGREEMENT ON PORT STATE MEASURES
TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND
UNREGULATED FISHING**

Oslo, Norway, 1–2 June 2017

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ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND
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PREPARATION OF THIS DOCUMENT

This is the final version of the report of the first meeting of the Ad Hoc Working Group established by the Parties to the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing which was held in Oslo, Norway, from 1 to 2 June 2017.

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ABSTRACT

This document contains the report of the first meeting of the Ad Hoc Working Group (Part 6 Working Group) established by the Parties to the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, held in Oslo, Norway, from 1 to 2 June 2017. The Part 6 Working Group discussed the main requirements and priorities of developing States in the implementation of the Agreement and recommended that support should consider legal and policy aspects, institutional set-up and capacity, and operations and procedures. It recognized that assistance should be tailored to accommodate the specific needs of countries and regions, and highlighted the importance of linking individual and institutional capacity building. The important support that existing regional fisheries management organization (RFMO) mechanisms can provide in delivering assistance to developing States Parties was recognized. The Part 6 Working Group agreed on draft Terms of Reference for the funding mechanisms to assist developing States Parties to be considered by the Parties at their next meeting. It was agreed that funding mechanisms shall include contribution schemes toward an Assistance Fund, including for projects in support of the implementation of the Agreement. The important linkage between activities supported by the Assistance Fund and FAO's global capacity development programme in support of the Agreement and complementary instruments was emphasized.

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OPENING OF THE MEETING

1. The first meeting of the Ad Hoc Working Group (hereinafter the Part 6 Working Group) established by the Parties to the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (the Agreement) was held in Oslo, Norway, from 1 to 2 June 2017. The meeting was attended by 32 Parties¹ to the Agreement, and by observers from 11 States, one FAO Associate Member, 10 intergovernmental organizations and four international non-governmental organizations. A list of Parties and observers is attached as Appendix B.

ELECTION OF THE CHAIRPERSON AND VICE-CHAIRPERSON

2. Mr Terje Lobach, Specialist Director, Directorate of Fisheries, Ministry of Trade, Industry and Fisheries, Norway, was unanimously elected Chairperson of the meeting. Mr André Loua, Minister of Fisheries, Aquaculture and Maritime Economy, Guinea, was unanimously elected as Vice-Chairperson.

DESIGNATION OF RAPPORTEUR

3. The Part 6 Working Group entrusted FAO with the responsibilities of rapporteur for the meeting.

ADOPTION OF THE AGENDA AND ARRANGEMENTS FOR THE MEETING

4. The meeting adopted the agenda without modification (Appendix A).

5. The Part 6 Working Group followed the General Rules of the FAO and the Principles and Procedures that govern Conventions and Agreements concluded under Article XIV and XV of the FAO Constitution, and Commissions and Committees established under Article VI of the Constitution.

6. The Part 6 Working Group agreed that FAO assume the role of Secretariat for the meeting.

FUNCTIONING OF THE AD HOC WORKING GROUP

7. The Secretariat introduced PSMA_WG/2017/2 on working arrangements and preliminary tasks and also referred to the document PSMA_WG/2017/Inf.5 related to the Terms of Reference (ToRs) of the Part 6 Working Group adopted by the first meeting of the Parties to the Agreement (Oslo, Norway, 29 to 31 May 2017).

8. The Part 6 Working Group noted its ToRs in particular its specific functions.

¹ Including Japan which deposited its instrument of accession on 19 May 2017. The Agreement shall enter into force 30 days after the deposit of the instrument of accession in accordance with Article 29(3) of the Agreement.

ASSESSMENT OF THE REQUIREMENTS OF DEVELOPING STATES IN THE IMPLEMENTATION OF THE AGREEMENT

9. The Chair opened the discussion and called on Parties to highlight the main requirements and priorities of developing States in the implementation of the Agreement, in order to provide guidance on the use of the funding mechanisms to be set up under Article 21 of the Agreement.

10. The Part 6 Working Group recommended that the support should consider three main areas, namely, legal and policy aspects, institutional set-up and capacity, and operations and procedures, and that these areas should be considered cohesively. The Part 6 Working Group stressed that, prior to the delivery of support, a gap analysis by the States concerned, should be undertaken to assess needs. It was noted that some regions have already undertaken gap analysis to determine capacity needs and to assist States in implementing the Agreement.

11. The Part 6 Working Group recognized that assistance should be tailored to accommodate the specific needs of countries and regions. Results of the gap analyses undertaken in different regions could, inter alia, be utilized to ascertain such needs.

12. The importance of linking individual and institutional capacity building was recognized by the Part 6 Working Group, since this would enhance the effectiveness and sustainability of capacity development efforts.

13. The Part 6 Working Group recognized the important support that existing regional fisheries management organization (RFMO) mechanisms can provide in delivering assistance to developing States Parties and that these should be utilized where possible, noting the significant number of States that are contracting parties of an RFMO.

14. The Part 6 Working Group stressed the need to engage all relevant national agencies involved in the implementation of the Agreement, including port, maritime and border control. Awareness raising among them on the implementation of the Agreement is critical to improve channels of communication and coordination.

15. The Part 6 Working Group noted that national policy and legal frameworks should be reviewed and enhanced to support the institutional framework and operational requirements for the implementation of the Agreement.

OPTIONS FOR THE ESTABLISHMENT OF FUNDING MECHANISMS TO ASSIST DEVELOPING STATES

16. The Secretariat highlighted that, while the Agreement does not specify the types of funding mechanisms to be established to assist developing States Parties, it encompasses broad examples of the types of assistance that might be provided, which affords flexibility in the implementation of the Agreement in light of specific needs at the national or regional level. The Secretariat presented draft terms of reference for funding mechanisms based on an earlier draft prepared by an informal open-ended meeting held in Rome, Italy from 21 to 23 November 2011, and taking into consideration experience and developments of similar funding mechanisms of other international treaties, together with FAO's global capacity

development programme in support of the Agreement and complementary instruments. It was proposed that funding mechanisms shall include contribution schemes toward an Assistance Fund, including for projects in support of the implementation of the Agreement.

17. The Part 6 Working Group emphasized the important linkage between activities supported by the Assistance Fund, which benefits developing States Parties, and FAO's global capacity development programme, which can also support developing non-parties.

18. The Part 6 Working Group expressed support for the framework and flexibility of the proposed Assistance Fund in providing different contribution options for donors. It was noted that, as stated in Article 21 of the Agreement, in addition to the funding mechanisms outlined in the draft Terms of Reference, bilateral and multilateral arrangements, either between Parties directly or through FAO, may be relied upon to support developing States Parties.

19. The Part 6 Working Group acknowledged that since the Assistance Fund is being established to support the needs of developing States Parties, access to the Assistance Fund by developing States Parties should be transparent, equitable, simple and well-coordinated. In this regard, assistance provided should be publicized on the Assistance Fund portal on the FAO website so that donors can align their own programmes to the Assistance Fund.

20. The Draft Terms of Reference for the funding mechanisms to assist developing States Parties set out in Appendix C is recommended for consideration by the Parties at their next meeting.

DATE AND VENUE OF THE MEETING

21. The Part 6 Working Group agreed that the next meeting should be convened prior to the 33rd session of the Committee of Fisheries, preferably back-to-back, at FAO Headquarters in Rome, unless an alternative proposal is put forward by a Party.

ADOPTION OF THE REPORT

22. The Part 6 Working Group recommended that this report be published as an FAO report. The report was adopted 2 June 2017 at 11.00.

CLOSURE OF THE MEETING

23. The meeting was closed on 2 June 2017 at 11.00 hours.

Agenda

1. Opening of the Meeting
2. Election of the Chairperson and Vice-Chairperson
3. Designation of the Rapporteur
4. Adoption of the agenda and arrangements for the Meeting
5. Functioning of the Ad Hoc Working Group
6. Assessment of the requirements of developing States in the implementation of the Agreement
7. Options for the establishment of funding mechanisms to assist developing States
8. Date and venue of the next Meeting
9. Any other matters
10. Closure of the Meeting
11. Adoption of the Report

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Draft Terms of Reference
Funding Mechanisms under Part 6 of the FAO Agreement on Port State Measures to prevent, deter
and eliminate illegal, unreported and unregulated fishing

I. BACKGROUND AND SCOPE

1. Article 21 of the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (hereinafter referred to as “the Agreement”) requires Parties to the Agreement (hereinafter referred to as “Parties”), either directly or through FAO, other specialized agencies of the United Nations or other appropriate international organizations or bodies, including regional fisheries management organizations to provide assistance to developing States Parties in order to, inter alia, 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, facilitate their participation in any international organization that promotes the effective development and implementation of port State measures, and to facilitate assistance that will strengthen the development and implementation of port State measures by them, in coordination with relevant international mechanisms.

2. Article 21 of the Agreement further requires Parties to cooperate to establish appropriate funding mechanisms to assist developing States in the implementation of the Agreement. These mechanisms shall, inter alia, be directed specifically towards developing national and international port State measures, developing and enhancing capacity, including for monitoring, control and surveillance and training at national and regional levels of port managers, inspectors, and enforcement and legal personnel, monitoring, control, surveillance and compliance activities relevant to port State measures, including access to technology and equipment, and assisting developing States Parties in settlement of disputes that result from actions they take pursuant to the Agreement.

3. Funding mechanisms shall include contribution schemes towards an Assistance Fund supporting purposes listed in paragraph 17, including through projects and programmes managed by FAO.

II. THE ASSISTANCE FUND

4. An Assistance Fund is established under Article 21 of the Agreement for the purpose of assisting developing State Parties in the implementation of the Agreement.

5. This Assistance Fund will be one component of assistance that is to be provided in accordance with Article 21 of the Agreement and supplements other sources of assistance.

Administration of the Assistance Fund

6. FAO shall administer the Assistance Fund and act as the implementing office for the Assistance Fund in accordance with its Financial Regulations and other applicable Rules.

7. FAO shall ensure that the standards it applies in the areas of accounting, auditing, internal control and procurement offer warranties equivalent to internationally-accepted standards.

8. In the administration of the Assistance Fund, FAO shall take into account experience and best practice in the management of other assistance funds established, inter alia, within the framework of the 1982 United Nations Convention on the Law of the Sea.

9. FAO shall, as appropriate, seek to achieve mutual benefits from any arrangements under this Assistance Fund with similar activities, including in relation to the promotion and implementation of 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, and the 1995 FAO Code of Conduct for Responsible Fisheries.

10. The ad hoc Working Group established under Article 21 (6) of the Agreement shall monitor the implementation of the Assistance Fund, and periodically report on its progress and make recommendations to the Parties, as appropriate.

Contributions

11. FAO invites States, intergovernmental organizations, international financial institutions, regional economic integration organizations, national institutions, non-governmental organizations, foundations as well as natural and juridical persons, to make voluntary financial contributions to the Assistance Fund. Such contributions may be deposited in a trust fund(s) to be established and administered by FAO, and assistance shall be provided in line with the provisions set out below.

12. Voluntary financial contributions may also be provided, within the framework of the Assistance Fund, for a specific project(s) and programme(s) supporting the implementation of the Agreement in one or more developing States Parties as well as in a particular region(s), in accordance with the objectives of the project(s) and programme(s) agreed with the donor.

Applications for assistance

13. An application for assistance from the Assistance Fund may be submitted by any developing State Party or Parties. Such an application may also be submitted on behalf of, and at the request of, such a Party(ies) by an appropriate subregional or regional organization or arrangement.

14. An application for assistance by a developing State Party(ies) shall be submitted by way of an official communication from the relevant national authority of the applicant. An application for assistance on behalf of a developing State Party(ies) by an appropriate subregional or regional organization or arrangement shall be accompanied by an official communication from the relevant national authority of the developing State Party(ies) confirming that the application is submitted on its behalf.

15. Applications for assistance for travel shall be submitted to the FAO Assistant Director- General, Fisheries and Aquaculture Department, at least one month in advance of the date of the event or activity for which assistance is requested. Applications for assistance for other types of activities shall be submitted at least four months in advance of the planned activity.

16. The application shall specify how it relates to the implementation of the Agreement and include a description of the desired outputs of the project/expenditure and an itemization of anticipated costs.

Purpose of assistance

17. The purpose of assistance shall be to provide for the requirements of developing States Parties consistent with Article 21 of the Agreement:

(a) Enhancing the ability of developing States Parties, in particular the least-developed among them and small island developing States Parties, to develop a legal basis for the implementation of effective port State measures, in conformity with the provisions of the Agreement and in accordance with international law.

(b) Facilitating the participation of developing States Parties, in particular the least-developed among them and small island developing States Parties, in the meetings, and activities concerning implementation of port State measures of relevant regional and subregional fisheries management organizations and arrangements.

Such assistance may include such costs as travel costs and, if appropriate, daily subsistence allowances for delegations participating in relevant regional and subregional fisheries management organisations or arrangements, including technical experts.

(c) Assisting developing States Parties, in particular the least-developed among them and small island developing States Parties, with travel costs, and if appropriate daily subsistence allowances, in relevant meetings concerning port State measures of relevant global organizations.

Applications for this purpose shall include details of how the meeting in question relates to the implementation of the Agreement.

(d) Assisting developing States Parties, in particular the least-developed among them and small island developing States Parties, with human resources development, technical assistance and training of port managers, inspectors, and enforcement and legal personnel.

(e) Monitoring, control, surveillance and compliance activities relevant to port State measures, including access to technology and equipment.

(f) Facilitating exchange of information and experience on the implementation of the Agreement.

(g) Assisting developing States Parties, in particular the least-developed among them and small island developing States Parties, in meeting the costs involved in proceedings for the peaceful settlement of disputes in accordance with Part 7 of the Agreement.

Consideration of applications, granting of assistance and conditions

18. FAO shall establish a panel, in consultation with the Parties, of independent and impartial experts of the highest professional standing, serving in their personal capacities, to review the applications and to make recommendations on the assistance to be given in each case. The panel also shall include two official representatives from Parties, who will be elected by the Ad Hoc Working Group for a period of three years. One of the representatives shall be a donor to the Assistance Fund.

19. Requests for assistance shall be considered without delay in the order in which they have been received.

20. In cases of applications for assistance with travel related expenses under paragraph 17, subparagraphs (b) and (c), FAO may make decisions on applications without referral to the panel. A maximum of sixty percent of funds available at any given time shall be used for such assistance.

21. Review of applications and decisions shall be guided by the purposes of the Assistance Fund, the provisions of the Agreement, the assistance needs of the requesting developing State Party and availability of funds, with priority given to least-developed countries and small island developing States Parties. Assistance shall be provided on an impartial basis. Consideration of applications shall also include an assessment of whether any existing alternative sources of assistance are available. All decisions on assistance from the Assistance Fund shall take into account the size of the Assistance Fund and the need for cost effectiveness in its use.

22. The FAO Assistant Director General, Fisheries and Aquaculture Department, shall take decisions on granting of assistance from the Assistance Fund, taking into account recommendations of the panel referred to in paragraph 18, and FAO shall provide assistance in an expeditious manner in accordance with paragraphs 18–20 of these Terms of Reference.

23. Assistance provided from the Assistance Fund shall be applied by the applicant solely for the purpose specified in the application for assistance.

24. If an applicant wishes to apply such assistance for a purpose other than the purpose for which it is provided, the applicant shall submit an amended application for assistance. The amended application shall be submitted and considered in accordance with these Terms of Reference.

25. If assistance provided from the Assistance Fund is not applied by an applicant for the purpose for which it is approved, the applicant shall notify FAO as soon as possible and take immediate steps to refund promptly the assistance to FAO. Failure to comply with these requirements shall affect the decision concerning any future application for assistance.

26. Recipients of assistance shall be required to provide a report in a standard format to FAO on the purpose and outcome of their approved expenditure. Failure to provide such a report promptly shall affect the decision concerning any future application for assistance.

III. REPORTING

27. A report on the activities of the Assistance Fund, including a financial statement of the contributions to, and disbursements from, the Assistance Fund shall be presented by FAO to meetings of the Ad Hoc Working Group established pursuant to Article 21, paragraph 6 of the Agreement. Additional reports on projects and programmes referred to in paragraph 3 and 12 shall be presented, in accordance with any specific reporting requirements which may be set by the respective donors.

IV. REVISION AND REVIEW

28. The Ad Hoc Working Group may recommend revisions to these Terms of Reference if circumstances so require.

29. The Ad Hoc Working Group shall review periodically the activities of the Assistance Fund, including projects and programmes, with a view to assessing and evaluating the effectiveness of the assistance provided pursuant to these Terms of Reference.

V. PUBLICITY

30. FAO shall maintain on its Web site information on the Assistance Fund, including details on projects and programmes, application requirements and procedures, assistance provided, and links to other relevant Web sites. FAO should also explore ways to promote contributions to the Assistance Fund and knowledge of the Assistance Fund through regional fisheries management organizations and arrangements, multilateral donor organizations and international financial institutions.

This document contains the report of the first meeting of the Ad Hoc Working Group (Part 6 Working Group) established by the Parties to the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, held in Oslo, Norway, from 1 to 2 June 2017. The Part 6 Working Group discussed the main requirements and priorities of developing States in the implementation of the Agreement and recommended that support should consider legal and policy aspects, institutional set-up and capacity, and operations and procedures. It recognized that assistance should be tailored to accommodate the specific needs of countries and regions, and highlighted the importance of linking individual and institutional capacity building. The important support that existing regional fisheries management organization (RFMO) mechanisms can provide in delivering assistance to developing States Parties was recognized. The Part 6 Working Group agreed on draft Terms of Reference for the funding mechanisms to assist developing States Parties to be considered by the Parties at their next meeting. It was agreed that funding mechanisms shall include contribution schemes toward an Assistance Fund, including for projects in support of the implementation of the Agreement. The important linkage between activities supported by the Assistance Fund and FAO's global capacity development programme in support of the Agreement and complementary instruments was emphasized.