

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.