



E

FIRST MEETING OF THE PARTIES TO THE FAO AGREEMENT ON PORT STATE MEASURES

Oslo, Norway, 29-31 May 2017

REQUIREMENTS OF DEVELOPING STATES AND FUNDING MECHANISMS¹

The Parties are invited to:

- Establish the ad hoc working group under Part 6, Article 21(6) of the Agreement (Part 6 Working Group), and review and adopt its Terms of Reference.
- Address the requirements of developing States in the implementation of the Agreement and identify assistance priorities.
- Call upon the Part 6 Working Group to review the draft terms of reference for the funding mechanisms to be established under Article 21 of the Agreement, as contained in document PSMA/2017/Inf.6.

¹ This document is to facilitate discussion at the meeting of the Parties and is without prejudice to the views or interpretation of the Agreement and international law and decisions on implementation of the Agreement by the Parties.

*This document can be accessed using the Quick Response Code on this page;
an FAO initiative to minimize its environmental impact and promote greener communications.
Other documents can be consulted at www.fao.org/fishery/nems/40910/en*



I. INTRODUCTION

1. In accordance with Article 21 in Part 6 of the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (hereinafter referred to as “the Agreement”), “the Parties shall give full recognition to the special requirements of developing States Parties in relation to the implementation of port State measures consistent with the Agreement”. It calls upon Parties, directly or through FAO, other international agencies, organizations and bodies, including Regional Fisheries Management Organizations (RFMOs), to provide assistance to developing States Parties to the Agreement in: (i) enhancing their ability to develop a legal basis for the implementation of effective port State measures; (ii) facilitating their participation in international organizations that promote port State measures; and (iii) facilitating technical assistance to strengthen the development and implementation of port State measures, in coordination with relevant international mechanisms.

II. THE PART 6 WORKING GROUP

2. Paragraph 6 of article 21 of the Agreement requires the Parties to establish an ad hoc working group that shall periodically report and make recommendations to the Parties on funding mechanisms.

3. At its Twenty-ninth Session in 2011, the Committee on Fisheries (COFI) requested FAO to form an open-ended working group to draft terms of reference for the ad hoc working group (hereinafter referred to as “the Part 6 Working Group”) referred to in Article 21 of the Agreement². In response, FAO convened an informal open-ended technical meeting in Rome, Italy, from 21 to 23 November 2011 (PSMA/2017/Inf. 3), which developed draft terms of reference for the Part 6 Working Group and draft terms of reference for an appropriate funding mechanism referred to in Article 21 of the Agreement to assist developing States implement the Agreement. The meeting developed draft terms of reference for the Part 6 Working Group under Article 21 of the Agreement and considered that, once established, the Part 6 Working Group may wish to have more detailed arrangements than those included in the terms of reference, including on specific issues such as: (i) the size of the Part 6 Working Group; (ii) the quorum for meetings; (iii) election and re-election of the chairperson and vice-chairperson(s); (iv) number of vice-chairperson(s) and; (v) regional representation (in terms of group representation and geographic balance). Finally, the meeting recommended that the draft terms of reference for a funding mechanism should be reviewed by the Part 6 Working Group, once the latter is established³.

4. The draft Terms of reference for the Part 6 Working Group, as endorsed by COFI at its Thirtieth Session in 2012, are contained in the Appendix to this document and are submitted to be Parties for consideration⁴. The Parties are invited to review the draft Terms of reference and consider whether the specific issues listed in paragraph 3 above would require further specification.

² FAO. 2011. Report of the 29th session of the Committee on Fisheries. Food and Agriculture Organization of the United Nations, Rome. Available at: www.fao.org/docrep/014/i2281e/i2281e00.pdf

³ FAO. 2011. FAO Fisheries and Aquaculture Report No 989. Report of the informal open-ended technical meeting to review draft terms of reference for the ad-hoc working group referred to in paragraph 6 of Article 21 of the 2009 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (the Agreement) and draft terms of reference for an appropriate funding mechanism referred to in Article 21 of the Agreement to assist developing States implement the Agreement. Food and Agriculture Organization of the United Nations, Rome. Available at: www.fao.org/docrep/015/mc882e/mc882e00.pdf

⁴ FAO. 2013. Report of the 30th session of the Committee on Fisheries. Food and Agriculture Organization of the United Nations, Rome. Available at: www.fao.org/3/a-i3105e.pdf

5. The Parties are invited to establish the Part 6 Working Group and adopt its Terms of reference. Once established, the Part 6 Working Group will meet periodically and report and make recommendations to the Parties on the establishment of funding mechanisms (see section IV of this document), the development of criteria and procedures to guide their implementation, and on progress in the implementation of the funding mechanisms. The first meeting of the Part 6 Working Group is scheduled to take place after this meeting following its formal establishment by the Parties.

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

6. Paragraph 3 of Article 21 of the Agreement sets out that the Parties shall, either directly or through FAO, assess the special requirements of developing States Parties concerning the implementation of the Agreement.

7. During the informal open-ended technical meeting, it was agreed that the developing States Parties would assess their capacity development needs in order to identify funding priorities. To assist the developing States Parties in this regard, FAO conducted a global series of regional workshops to support the uptake of the Agreement. During the informal open-ended technical meeting, the participants recognized that deliberations in these regional workshops would provide an assessment of priorities that could be transmitted to the Part 6 Working Group for consideration. From April 2012, various representatives of FAO Members, regional fisheries bodies, intergovernmental and non-governmental organizations participated in these regional workshops and identified the most relevant and common constraints for implementing the provisions of the Agreement, which include: (i) shortcomings in national policies and laws; (ii) weak institutional and operational capacities, particularly with regard to monitoring, control and surveillance (MCS) systems; and (iii) poor cooperation and coordination nationally, among States, as well as at regional level. FAO is also currently engaged in assisting a number of developing States Parties in conducting an assessment of their legal, institutional and operational capacity to implement the Agreement and complementary instruments.

IV. OPTIONS FOR THE ESTABLISHMENT OF FUNDING MECHANISMS TO ASSIST DEVELOPING STATES

8. Paragraph 4 of Article 21 of the Agreement requires Parties to establish appropriate funding mechanisms to assist developing States in the implementation of the Agreement, and Paragraph 6 of Article 21 of the Agreement requires that the Part 6 Working Group makes recommendations to the Parties on the establishment of such funding mechanisms, including a scheme for contributions, identification and mobilization of funding.

9. The Agreement does not specify the types of funding mechanisms to be established. However, the Agreement does encompass 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 and regional level. The draft terms of reference for a funding mechanism prepared by the informal open-ended technical meeting in 2011 have been reviewed by the Secretariat to take into account experience and developments of similar funding mechanisms of other international treaties concluded under Article XIV of the FAO Constitution and other international instruments, such as the United Nations 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 (UNFSA). The reviewed draft of the terms of reference for funding mechanisms (PSMA/2017/Inf. 6), as prepared by the Secretariat, could be

used as a basis for further discussion and the Parties may wish to invite the Part 6 Working Group to review it further with the aim of developing a final draft for consideration by the Parties.

10. Parties may wish to note that FAO has developed and initiated a global capacity development Programme to support the implementation of the Agreement and complementary instruments to combat illegal, unreported and unregulated (IUU) fishing (PSMA/2017/Inf. 5). The FAO Programme has been designed to support: (i) the formulation or review of relevant fisheries policies and laws, with a view to ensuring compliance with the Agreement and other relevant international instruments; (ii) the strengthening of MCS institutions and systems; (iii) the enhancement of capacity to improve flag State performance, to undertake inspections in port, apply port State measures and to more effectively take action against persons and entities engaged in IUU fishing; and (iv) the development and implementation of market access measures.

11. Paragraph 1 of Article 21 of the Agreement includes the option for Parties to provide assistance to developing States Parties through FAO and other international agencies, organizations and bodies. In this context, FAO's Programme may be taken into consideration in further developing the terms of reference for the funding mechanisms and Parties may wish to consider the possibility of using the Programme as an overall framework for the administration and management of these funding mechanisms.

V. SUGGESTED ACTION BY THE PARTIES

12. Parties are invited to:

- Establish the ad hoc working group under Part 6, Article 21(6) of the Agreement (Part 6 Working Group), and review and adopt its Terms of Reference.
- Address the requirements of developing States in the implementation of the Agreement and identify assistance priorities.
- Call upon the Part 6 Working Group to review the draft terms of reference for the funding mechanisms to be established under Article 21 of the Agreement, as contained in document PSMA/2017/Inf.6.

APPENDIX**Draft terms of reference****Ad Hoc Working Group under Part 6 of the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing****Background**

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”) to give full recognition to the special requirements of developing States Parties in relation to the implementation of port State measures consistent with the Agreement. Paragraph 6 of the said article requires Parties to establish an Ad Hoc working group that shall periodically report and make recommendations to the Parties on funding mechanisms.

Establishment of the Ad Hoc Working Group

2. The Ad Hoc Working Group is established pursuant to Article 21 (6) of the Agreement.
3. The Ad Hoc Working Group shall consist of representatives of the Parties.
4. The Ad Hoc Working Group shall, if consensus is not reached, elect by simple majority of the Parties present and voting, its chairperson and vice-chairperson(s) from among the Parties for a term of two years, with one of them representing a developing State Party.
5. The FAO Fisheries and Aquaculture Department shall provide services to the Ad Hoc Working Group.

Observers

6. The following shall be eligible to participate as observers in meetings of the Ad Hoc Working Group:
 - (a) signatories and all other non-Parties having an interest in becoming a Party to the Agreement;
 - (b) intergovernmental organizations whose mandates include addressing port State measures; and
 - (c) international non-governmental organizations that have demonstrated an interest in the Agreement by participating in the Technical Consultation to Draft a Legally-binding Instrument on Port State Measures, June 2008–August 2009.
7. Observers may address the Ad Hoc Working Group at the discretion of the Chairperson.
8. Observers shall not participate in decision making.

Functions of the Ad Hoc Working Group

9. The Ad Hoc Working Group shall report and make recommendations to Parties on:

- (a) the establishment of a funding mechanism;
- (b) priorities for the use of the funding mechanism; and
- (c) identification of States, intergovernmental organizations, international financial institutions, regional economic integration organizations, national institutions, non-governmental organizations, foundations, as well as natural and juridical persons, that shall be approached by FAO to make voluntary financial contributions to the funding mechanism.

Meetings of the Ad Hoc Working Group

10. The first meeting of the Ad Hoc Working Group shall be convened at FAO Headquarters between 90 and 120 days after the Agreement has entered into force, and shall thereafter meet at least every other year, preferably back-to-back with meetings of the FAO Committee on Fisheries at FAO Headquarters. A Party may request additional meetings of the Ad Hoc Working Group, which shall be convened if one third or more of the Parties agree to that request.

Expenses

11. Participants shall meet their own expenses or obtain the financial resources necessary to attend meetings of the Ad Hoc Working Group. The attendance of representatives of developing States Parties to the Agreement may be funded by the mechanism referred to in paragraph 9 (a).

12. The administrative expenses of the Ad Hoc Working Group shall be covered by the funding mechanism referred to in paragraph 9 (a).

13. The FAO Fisheries and Aquaculture Department shall prepare and submit reports to the Ad Hoc Working Group on the use of the expenses referred to in paragraph 12.

Language

14. In principle, the meetings of the Ad Hoc Working Group shall be conducted in the English language, and documents related to the work of the Ad Hoc Working Group shall be prepared in the English language.

General reporting on the activities of the Ad Hoc Working Group

15. A general report prepared by the FAO Fisheries and Aquaculture Department on the activities of the Ad Hoc Working Group shall be presented to meetings of the FAO Committee of Fisheries.

Decision making

16. Notwithstanding the procedure for the election of the chairperson and vice-chairperson(s) under paragraph 4, decisions of the Ad Hoc Working Group shall be taken by consensus of the Parties present at the Ad Hoc Working Group meeting.

Revision and review

17. These Terms of Reference may be revised by the Parties if circumstances so require.

18. The Parties shall, within the framework of Article 24 of the Agreement, review the activities of the Ad Hoc Working Group with the view to assessing and evaluating the effectiveness of the implementation of these Terms of Reference.

Publicity

19. The FAO Fisheries and Aquaculture Department shall maintain on the FAO's website information on the Ad Hoc Working Group including the report provided in accordance with paragraph 15 of these Terms of Reference.