

Assistance Fund under Part 6 of the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

Draft Terms of Reference

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”), 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 technical 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.

Establishment of a trust fund

3. Under Article 21 of the Agreement, a trust fund shall be established for the purpose of assisting developing State Parties in the implementation of the Agreement.

4. This 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 trust fund

5. The FAO shall administer the trust fund and act as the implementing office for the trust fund in accordance with its Financial Regulations and other applicable Rules. All voluntary financial contributions made to the FAO for this purpose shall be deposited by FAO into the trust fund account.

6. In the administration of the trust fund, the FAO shall take into account experience and best practice in the management of other trust funds established within the framework of the 1982 United Nations Convention on the Law of the Sea.

7. The FAO shall, as appropriate, seek to achieve mutual benefits from any arrangements under this 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.

Contributions to the trust fund

8. The FAO invites States, intergovernmental organizations, international financial institutions, regional economic integration organizations, national institutions, non-governmental organizations, as well as natural and juridical persons, to make voluntary financial contributions to the trust fund.

Applications for assistance

9. An application for financial assistance from the trust fund may be submitted by any developing State Party. Such an application may also be submitted on behalf of such a Party by an appropriate sub-regional or regional organization or arrangement.

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

11. All applications for financial assistance shall be submitted to the 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.

12. 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 itemisation of anticipated costs.

Purposes of assistance

13. The purpose of the financial assistance applied for shall be specified and may be sought for the following purposes:

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

(b) Facilitating the participation of developing States Parties in the meetings, and activities concerning implementation of port State measures of relevant regional and sub-regional 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 sub-regional fisheries management organisations or arrangements, including technical experts.

(c) Assisting 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 with human resources development, including 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 meeting the costs involved in proceedings for the peaceful settlement of disputes in accordance with Part 7 of the Agreement.

Consideration of applications and granting of assistance

14. Requests for financial assistance shall be considered without delay in the order in which they have been received. The FAO shall establish a panel of independent and impartial experts of the highest professional standing to review the applications and to make recommendations on the amount of financial assistance to be given in each case. The panel also shall include two official representatives from Parties, one of whom is a donor to the trust fund.

15. In cases of applications for travel related expenses under paragraph 13, the FAO may make decisions on applications without referral to the panel.

16. Review of applications and decisions shall be guided by the purposes of the trust fund, the provisions of the Agreement, the financial needs of the requesting developing State Party and availability of funds, with priority given to least-developed countries and small island developing States Parties. The financial 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 fund shall take into account the size of the fund and the need for cost effectiveness in its use.

17. The FAO shall provide financial assistance from the trust fund in an expeditious manner in accordance with paragraphs 14-16 of these Terms of Reference.

18. Financial assistance provided from the fund shall be applied by the applicant solely for the purpose specified in the application for financial assistance.

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

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

Application of the Financial Regulations and Rules of the FAO

21. The FAO shall establish and manage the trust fund in accordance with its Financial Regulations and other applicable Rules.

Reporting

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

23. A report on the activities of the fund to date, including a financial statement of the contributions to and disbursements from the fund shall be presented to meetings of the *ad hoc* Working Group established pursuant to Article 21, paragraph 6 of the Agreement.

Revision and review

24. These Terms of Reference may be revised if circumstances so require.

25. The *ad hoc* Working Group established pursuant to Article 21, paragraph 6 of the Agreement shall periodically review the activities of the trust fund with a view to assessing and evaluating the effectiveness of the financial assistance provided pursuant to these Terms of Reference.

Publicity

26. The FAO shall maintain on their website details of the fund, including details on application procedures, assistance provided, and links to other relevant websites. The FAO should also explore ways to promote contributions to the fund and knowledge of the fund through regional fisheries management organizations and arrangements, multilateral donor organizations, and international financial institutions.
