

AGREEMENT ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING

PREAMBLE

1. *A* *n*

y c nc n 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,

n c 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,

c n n 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,

c n n that port State measures provide a powerful and cost-effective means of

that, in the exercise of their sovereignty over ports located in their territory, States may adopt more stringent measures, in accordance with international law,

the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, hereinafter referred to as the ‘Convention’,

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,

the need to conclude an international agreement within the framework of FAO, under Article XIV of the FAO Constitution,

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

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 State cooperate to ensure that such vessels do not engage in IUU fishing or related activities in support of such fishing ; and
 - (b) container vessels that are not carrying fish, or carrying fish, only fish that have been previously landed, provided that there are no clear grounds for suspecting that such vessels have engaged in illegal 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 fishing in areas under its national jurisdiction and operating under its authority there. Such vessels shall be subject to measures by the Party which are as effective as those 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 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, ~~high~~ ~~seas~~ 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 the ~~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~~ ~~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~~ ~~laws~~ and standards, including those established through the International Maritime ~~Organization~~, as well as other international instruments.

- (c) take measures to exchange information among relevant international 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 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 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 Article 7 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, information requested in Annex A to be provided before granting entry 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, it shall

6. Where a vessel referred to in paragraph 4 of this Article is in port for any reason, a Party shall deny such vessel the use of ports for landing, transshipping, packaging, and processing of fish and for other services including, inter alia, refuelling and resupplying, maintenance and drying. 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, it shall deny, pursuant to its laws and regulations and consistent with international law

- (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 23 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 or 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 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 and 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.

(b) ensure that, prior to an inspection, inspectors

Article 15

Transmittal of inspection results

Each Party shall transmit the results of each inspection to the flag State of the

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, that State 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, agreements, arrangements and other measures to facilitate such operations.

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

- (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 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.

Article 26

Ratification, acceptance or approval

- (ii) that, for this reason, its member States shall 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

4. Subject to Article 34, any amendment adopted by a 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 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 at which 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

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)											
Identifier		Issued by		Validity		Fishing area(s)		Species		Gear	
20. Relevant transshipment authorization(s)											
Identifier		Issued by			Validity						
Identifier		Issued by			Validity						
21. Transshipment information concerning donor vessels											
Date	Location	Name	Flag State	ID number	Species	Product form	Catch area	Quantity			

22. Total catch onboard

Species

Product form

Catch area

Quantity

23. Catch to be offloaded

Quantity

- h) evaluate whether there is clear evidence ~~for~~ ^{indicating} that a vessel has engaged in IUU fishing or fishing related activities in support ~~of~~ such fishing;

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	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 last port call					YYYY	MM	DD
11. Vessel name							
12. Flag State							
13. Type of vessel							
14. International Radio Call Sign							

15. Certifi7()JTJ /R9 15..5773(t)-4.15818(e)-1.91882()-0.150024(o)10.5773(f)-4.15818()-0.150024(v)8.

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

39. Comments by the master
40. Action taken
41. Master's signature
42. Inspector's signature

Information systems on port State measures

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 verification 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

CERTIFIED TRUE COPY of the English version of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing which was approved on 22 November 2009 at the Thirty-sixth Session of FAO Conference. In accordance with the provisions of paragraph 7 of Article XIV of the FAO Constitution, this has been certified by the Director-General of the Organization and the Chairperson of the Conference.

Jacques Diouf
Director-General
Food and Agriculture Organization of

Kathleen Merrigan
Chairperson of the Conference