



PARLIAMENT OF THE REPUBLIC OF FIJI

STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

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



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CHAIR'S FOREWORD

I am pleased to present this report of the Standing Committee on Foreign Affairs and Defence (SCFAD), on the review of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Agreement).

This report provides a summary and examination of written and oral submissions received by the Committee during its inquiry from the 28th May to 21st June 2018.

The Agreement is a multilateral and legally binding treaty that was negotiated under the auspices of a technical consultation convened by the United Nation (UN) Food and Agriculture Organisation (FAO). This international instrument comprehended by FAO Model Scheme on Port State measures to combat Illegal, Unreported and Unregulated (IUU) fishing with 53 parties to the Agreement as of 2018.

The objective of the Agreement is to prevent, deter and eliminate IUU fishing through the implementation of effective Port State Measures. IUU fishing undermines efforts to sustainably manage fish stocks and has a range of negative environmental impacts, economic and social consequences, including the Fijian fishing industry.

Port State Measures are measures apply to vessels that request entry to port until the time they leave the port, for example, vessel inspections. The Agreement establishes a set of minimum standards on the management of access by foreign flagged fishing vessels (not including foreign flagged charter vessels) and related support vessels to ports¹.

The Agreement fills a gap in the international fisheries governance framework by setting internationally-agreed standards for Port State Measures. If widely implemented, it will reduce the availability of 'ports of convenience' (that is, ports with weak controls in place), making it increasingly difficult and less economic to undertake IUU fishing. A reduction of IUU fishing would have reduce environmental impacts and increases economic and social benefits including economic benefits for Fijian fishers operating in high value international fisheries that are targeted by IUU fishers².

It is proposed that Fiji accede to and ratify the Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing ('Agreement') which entered into force on 5th June 2016.

¹ PSMA Treaty Brief: June 2018.

² *ibid*

Fiji is surrounded by water with a sea area of 1.23 million square km compared to its land area of 18,274 square km. This is a ratio of 70:1 and total coastline of 1,129km which indicates that Fiji's national interest and economic power is maritime related. Two thirds of our national revenue are derived from our blue economy. Having mentioned this briefly, our national security threats and challenges are maritime related. In relation to supporting enforcement of fisheries treaties is linked to the Sustainable Development Goals (SDGs) 14 which is Life below water.

Policing of Fiji's Economic Exclusive Zone (EEZ), Offshore Fishing, Inshore fishing and from a national maritime security, fisheries protection and environmentally sustainable perspective is everyone's responsibility.

IUU fishing is very difficult to assess because it is not reported. The World Wide Fund for Nature (WWF) estimates suggest the global losses of IUU fishing cost up to USD \$36.4 Billion each year³.

IUU fishing is one of the greatest evil of our Ocean today, depleting marine life regardless of species and sizes. IUU fishing have no respect of nature and the life cycle of sea creatures. Those engaged in IUU fishing are blinded by their own greed for money to go to the extent of destroying juvenile sea species and non - targeted species.

Article 30 - Stipulates, No reservations or exceptions may be made to this Agreement.

The signing of the Agreement will be consistent with the Fiji Government's Business Growth Agenda, in particular its objective to build economic growth by sustainably using natural resources. It is also consistent with Fiji's pursuit of international best practices and with Fiji's policy objectives of strengthening international fisheries governance and reducing the occurrence of IUU fishing. The Agreement will also reinforce Fiji's reputation as a responsible fishing State and set a positive precedent for the wider Pacific.

The Committee would like to acknowledge and commend the fourteen (14) submissions received from government ministries and departments, regional and international organisations, private sector, political party and non-government organisations.

³ World Wide Fund for Nature (WWF), IUU Summary, June 2018.

On behalf of the Hon. Members of the Committee I commend this report to Parliament for its consideration.



Hon. Netani B. Rika
Chairman

LIST OF ACRONYMS

COFI	Committee on Fisheries
EU	European Union
FAO	Food and Agriculture Organisation
FFA	Forum Fisheries Agency
FRCS	Fiji Revenue & Customs Service
IUU	Illegal, Unreported, Unregulated Fishing
IPOA	International Plan of Action
IPOA-IUU	International Plan of Action–Illegal, Unreported, Unregulated
MOF	Ministry of Fisheries
MSAF	Maritime Safety Authority of Fiji
MCS	Monitoring, Control and Surveillance
PIDF	Pacific Islands Development Forum
PIFS	Pacific Islands Forum Secretariat
PSMA	Port State Measures Agreement
MCS	Monitoring and Control Surveillance
MoD	Ministry of Defence
RFN	Republic of Fiji Navy
RFMOs	Regional Fisheries Management Organisations and Arrangements
SCFAD	Standing Committee on Foreign Affairs and Defence
SIDS	Small Island Developing States
SO	Standing Orders
TOR	Terms of Reference
UN	United Nation
WWF	World Wide Fund for Nature

RECOMMENDATION

The Committee recommends that:

Parliament to accede to the Port State Measures Agreement to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

PART 1

1.0 INTRODUCTION

The Standing Committee on Foreign Affairs and Defence undertook a review of the proposal by the Government for Parliament to ratify the Port State Measures Agreement to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

The report is divided into four parts:

- Part 1** covers the roles and responsibilities of the Standing Committee and the inquiry process in undertaking a review of the Agreement;
- Part 2** provides brief information of the Agreement;
- Part 3** details the Standing Committee's observations and areas of concern; and
- Part 4** covers the Conclusion to the report.

1.1 The Standing Committee on Foreign Affairs and Defence Roles and Responsibilities

The Committee established under Standing Orders 109(2)(e) of the Parliament of the Republic of Fiji, is mandated to look into matters related to Fiji's relations with other countries, development aid, foreign direct investment, oversight of the military and relations with multi-lateral organisations.

Under SO 110(1)(e) the Committee is also tasked in reviewing international treaties and conventions ratified by the Government and monitor their implementation.

1.2 Committee Members

The Members of the Standing Committee on Foreign Affairs and Defence are:

- i. Hon. Netani Rika (Chairman)
- ii. Hon. Howard R. Politini (Deputy Chairman)
- iii. Hon. Jilila Kumar
- iv. Hon. Ratu Suliano Matanitobua

Alternate Member

- i. Hon. Ro Kiniviliame Kiliraki

1.3 Procedure and Program

The Standing Committee on Foreign Affairs and Defence met in the Parliament Complex on Tuesday 22nd May, 2018 to discuss and plan its strategy for public submissions on the agreement.

List of Oral Submitters

Date	Stakeholders
28/5/18	Ministry of Fisheries
	Republic of the Fiji Navy
29/5/18	Solander (Pacific) Limited
	Maritime Safety Authority of Fiji
5/6/18	Office of the Solicitor-General
	Fiji Ports Corporation Limited
6/6/18	Pacific Island Development Forum
	Food and Agriculture Organisation
	Fiji Police Force-Transnational Organised Crime Unit
7/6/18	British American Tobacco
12/6/18	Pacific Island Forum Secretariat
	Fiji Revenue & Customs Service
	Ministry of Defence and National Security
	National Federation Party
19/6/18	University of the South Pacific-School of Marine Studies

Teleconferencing Submission

Date	Stakeholder
19/6/18	Forum Fisheries Agency

Written Submission

Date	Stakeholder
21/6/18	Oceania Customs Organisation

PART 2

2.0 BACKGROUND

On 17th May, 2018 the treaty was referred by Parliament to the Standing Committee on Foreign Affairs and Defence Committee for review.

Under section 51 of the Constitution, “an international treaty or convention binds the State only after it has been approved by Parliament.”

From 22nd November 2009 to 21st November 2010 the Agreement was opened for signature at FAO to all states and regional economic integration organisations. Pursuant to Article 26 of the Agreement, it is subject to ratification, acceptance or approval by the signatories.

The Agreement on Port State Measures is the first binding international agreement to specifically target IUU fishing. Its objective is to prevent, deter and eliminate IUU fishing by preventing vessels engaged in IUU fishing from using ports and landing their catches. In this way, the agreement reduces the incentive of such vessels to continue to operate while it also blocks fishery products derived from IUU fishing from reaching national and international markets. The provisions of the agreement apply to fishing vessels seeking entry into a designated port of a State which is different to their flag State.

On 5th June this year (2018), was the first day designated by the UN General Assembly as the international day for the fight against IUU fishing because it was the anniversary of the agreement which came into force on 5th June 2016.

As of April 2018 there are 53 States party to the Agreement and one member organisation namely the European Union (EU).

PART 3

3.0 COMMITTEE'S OBSERVATIONS AND AREAS OF CONCERN

3.1 Committee's Observations

- 3.1.1 There was a general agreement by stakeholders that the Committee recommend Parliament to ratify the treaty. The Committee observed and believed if Fiji took ownership and ratified the treaty it would ultimately contribute to the long-term conservation and sustainable use of living marine resources and marine ecosystems.
- 3.1.2 Fiji's laws have already set high standards and acceding to the Port State Measures Agreement will not be an issue. In the Pacific our fisheries laws are at a very high standard compared to the other Pacific countries so it will not be difficult for us as a country to implement the obligations under the Ports state measures because our laws have been reviewed to implement stricter requirements and stricter inspections.

3.2 Gender Analysis

- 3.2.1 The Parliament of Fiji Standing Orders 110(2) specifically states that a Committee shall ensure that full consideration to be given to the principle of gender equality to ensure all matters are considered with regard to the impact and benefit on both men and women equally.
- 3.2.2 The Committee received a total of 14 submissions from relevant stakeholders attended by twenty six (26) males and eleven (11) females.

3.3 Committee's Findings and Areas of Concern

Benefits of accession to the Agreement

- 3.3.1 The Agreement provides a powerful and cost-effective means of preventing, deterring and eliminating IUU fishing and its detrimental impacts upon fish stocks, marine ecosystems, the livelihoods of legitimate fishers, and the increasing need for food security on a global basis⁴.

⁴ PSMA Treaty Brief, June 2018.

- 3.3.2 The role of the Agreement in the adoption of effective measures to promote the sustainable use and the long-term conservation of living marine resources.
- 3.3.3 Through accession to the Agreement it will promote an even playing field for local and overseas registered fishing vessels.
- 3.3.4 This will deter human rights abuses and breaches of International Law as experienced on IUU fishing vessels and fisheries.
- 3.3.5 The Agreement is only one tool in a whole suite of monitoring, control and surveillance (MCS) activities required to address IUU fishing. Fiji already implements a National Plan of Action (POA) on IUU for its vessels and Nationals Management Plans for its fishing fleet within its fisheries waters and beyond and accession to the agreement will strengthen its plan of action against IUU.
- 3.3.6 Port state measures 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 IUU fishing.
- 3.3.7 The Agreement fills a gap in the international fisheries governance framework by setting internationally-agreed standards on Port State Measures. If implemented, it will reduce the availability of 'ports of convenience' that is, ports with weak controls in place, making it increasingly difficult and less economic to undertake IUU fishing.
- 3.3.8 Border security to Fiji's EEZ on both legal and IUU fishing will mean exchange of information on vessel status through coordinated border management which will enhance revenue collection and promotes international best practices. This will bring certainty with modernised and harmonised Port State Measures and security rules. Also voluntary compliance to Port of Entry requirements through monitoring foreign flag fishing vessels.
- 3.3.9 There are no specific social or cultural effects for Fiji anticipated by the treaty action; however, a reduction in IUU fishing will have wider social and economic benefits. In particular, resource rent (licencing) will be maximised and benefits will be shared equally within Fiji, noting the amount of fish and monetary value being removed annually from the region.

- 3.3.10 Fiji companies participate in several international fisheries for high value species that are targeted by IUU fishing, for example tuna and snapper. Economic benefits would be achieved through improved fish stock sustainability, and through the creation of a more even playing field whereby responsible fishers are not undercut in key markets by IUU fishers.
- 3.3.11 Ratifying the treaty will ensure that the risk of IUU fishers reaching our ports is minimised. In turn, this guarantees the international community and our export markets IUU free and sustainably harvested fish, a brand that will see fish bought at premium prices or Fiji's fish being exported to international markets will have a positive impact.
- 3.3.12 Fiji plays a significant role in the UN meetings and the influence and outcomes in Fiji's negotiation leadership and status will be boosted as we take leadership in the region by accession and bringing order into what used to be a problematic environment.
- 3.3.13 Fiji's signing the agreement would reinforce its reputation as a responsible fishing state. This could have spill-over on benefits for the trade of Fiji seafood in a global market where consumers are increasingly demanding responsibly caught product.
- 3.3.14 This will also show that Fiji supports developing a stable and rules based international system. Fiji also supports international efforts to strengthen international fisheries governance and reduce the occurrence of IUU fishing.

Impacts of IUU Fishing

- 3.3.15 *IUU Fishing operations are often linked to other crimes* such as drug trafficking, human trafficking, smuggling of contraband, money laundering, tax evasion; and violation of labour standards. Also, IUU fishing operations contribute to the over exploitation of marine resources, harm the recovery of fish populations which leads to loss in revenue for coastal developing countries and impacts food security of the nation.
- 3.3.16 More closely to home, media reports cite a report by the Pacific Islands Forum Fisheries Agency (FFA) where Fiji is a member of. The report said that IUU fishing in the Pacific estimated that from 2010 to 2015, around 306,440 tonnes were harvested illegally with an estimated cost of US\$616.11 million (\$F1.27 billion). That is an extraordinarily chilling amount of revenue and protein theft, being

stolen out of the pockets and mouths of Fiji's current and future generations.

- 3.3.17 Collectively in the Pacific Region studies are been conducted to try and put a value on IUU fishing before it can then be done nationally from an economic template and model. Fish extracted through IUU in the region has been recorded around US\$550-\$600 million s annually and US\$10-23 billion annually. This shows what Fiji has been deprived off through its shares in that fish as its extracts its fish through fishing from that migratory stock of the region. This problem directly affects the Fiji fishing industry as it participates in fisheries, and competes in international markets, with products derived from high value species that are targeted by IUU fishers.
- 3.3.18 The impact of the Agreement on foreign flagged vessels that use Fiji ports is not expected to be significant. The Port State Measures that Fiji currently applies already exceed the majority of minimum standards set out by the Agreement. In addition, a relatively large number of foreign-flagged vessels visit Fiji ports, the key change will be that Port State Measures will be applied to a wider range of vessels than previously, these includes vessels that fish and vessels that support fishing activities.
- 3.3.19 Stringent port state measures usually drive fishers (foreign vessels) away to ports where MCS is implemented to a lesser extent termed as 'port-shopping'. These vessels would also take away the fish they use to offload in Fiji and so some supply of raw materials will be deprived off and also deprive our small "by-catch" industry.
- 3.3.20 IUU fishing undermines efforts to sustainably manage fish stocks and has a range of negative environmental, economic and social consequences, including on the Fijian fishing industry.

Requirements of ratification of the agreement

- 3.3.21 After ratifying the Agreement, parties must require their vessels to cooperate with measures. Parties must require that their flagged vessels cooperate during inspections in foreign ports. If a party believes one of its vessels has engaged in IUU fishing they must request the port state to inspect the vessel as articulated in Article 20.
- 3.3.22 Parties must comply with inspection procedures where the Agreement sets out an inspection procedure for vessels entering ports (Articles 12-14) which stipulates that if after an inspection there are grounds for believing a vessel has engaged in IUU fishing, parties must notify interested parties of this (for example, parties to relevant RFMOs, relevant coastal states-Article 18).
- 3.3.23 If a flag state authority receives an inspection report that indicates likely IUU fishing activity by one of their flagged vessels, they must investigate and take action (Article 20). So Fiji will be obligated to investigate and take actions against its vessels should it be implicated.
- 3.3.24 Parties must encourage their own vessels fishing outside Fiji to use certain ports. Parties must encourage their flagged vessels to use ports of States who act in accordance with the Agreement (Article 20). This will create a culture of supporting Agreement and the drive against IUU fishing.
- 3.3.25 Fiji acceding to the Agreement qualifies for benefits such as capacity building, legal development assistance etc. offered to Small Island Developing States (SIDS).

IUU Fishing Challenges.

- 3.3.26 The Committee notes breaches in unreported catches from licenced fishing vessels using Fiji's ports to process their catch.
- 3.3.27 The Fisheries Sector is in need of a scientific stock-take of the latest review of Fiji's Fisheries and Marine stock.
- 3.3.28 Due to high levy at Fiji ports approximately four hundred (400) fishing vessels have avoided Fiji as a destination to process their catch.
- 3.3.29 The naval patrols and maritime aerial surveillance of Fiji's EEZ have a limited reach to effective and efficient policing by the relevant authorities.
- 3.3.29 Training fisheries officers and marine science specialists with the relevant enabling technologies is an important priority to sustainably manage Fiji's fish and marine stocks.
- 3.3.30 Making the right connections is essential in local and regional fisheries leadership to better mitigate the IUU challenges of the future.

PART 4

4.0 CONCLUSION

The ratification of the Agreement by Fiji and its subsequent entry into force would assist with the reduction of IUU fishing globally. This would enable Fiji and others, through cooperative efforts, to better ensure long term sustainability of high seas fisheries, for both target and non-target species. IUU fishers often ignore international conservation and management measures relating to the broader marine environment, for example benthic habitats, seabirds and marine mammals, a reduction in IUU fishing would also have wider environmental benefits.

Fiji companies participate in several international fisheries for high value species that are targeted by IUU fishing, for example tuna and snapper. Economic benefits would be achieved through improved fish stock sustainability, and through the creation of a more even playing field whereby responsible fishers are not undercut in key markets by IUU fishers.


The impact of the Agreement on foreign flagged vessels that use Fiji ports is not expected to be significant. The Port State measures that Fiji currently applies already exceed the majority of minimum standards set out by the Agreement. In addition, a relatively large number of foreign-flagged vessels visit Fiji ports the key change will be that port State measures will be applied to a wider range of vessels than previously, that is, vessels in support of fishing activities.

There are no specific social or cultural effects for Fiji anticipated by the treaty action. A reduction in IUU fishing will have wider social implications however, particularly for developing countries where communities are dependent on fishing for their livelihoods. This means there will be less likelihood of our coastal fisheries being plundered by illegal fisheries which means more fish and protein for local communities and local fishermen who rely on fish for a living.

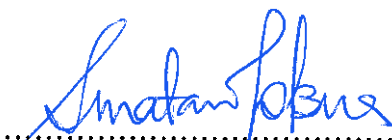
**SIGNATURES OF MEMBERS AND ALTERNATE MEMBER OF THE STANDING
COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE**




**Hon. Netani Rika
(Chairperson)**



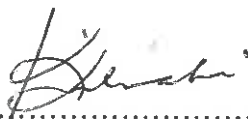
**Hon. Howard Politini
(Deputy Chairperson)**



**Hon. Ratu Suliano Matanitobua
(Member)**



**Hon. Jilila Nalibu Kumar
(Member)**



**Hon. Ro Kiniviliame Kiliraki
(Alternate Member)**

9/07/2018

(Date)

5.0 CONSIDERATION OF CONVENTION ARTICLE BY ARTICLE

The Committee considered the Treaty Article by Article.

A copy of the Treaty is attached as Appendix 1.

APPENDICES

APPENDIX 1

AGREEMENT WRITTEN ANALYSIS & ARTICLE BY ARTICLE

AGREEMENT WRITTEN ANALYSIS

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

WRITTEN ANALYSIS

1.0 INTRODUCTION

- 1.0 It is proposed that Fiji endorse and accede to the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (**'Agreement'**) which entered into force on 5 June 2016.
- 1.1 The Agreement is a multilateral, legally binding treaty that was developed under the auspices of the United Nations Food and Agriculture Organisation (**'FAO'**).
- 1.2 The objective of the Agreement is to prevent, deter and eliminate illegal, unreported and unregulated (**'IUU'**) fishing through the implementation of effective Port State Measures. IUU fishing undermines efforts to sustainably manage fish stocks and has a range of negative environmental, economic and social consequences, including on the Fijian fishing industry.
- 1.3 Port State Measures are measures that Port States apply to vessels from the time they request entry to port until the time they leave that port, for example, vessel inspections. The Agreement establishes a set of minimum standards on the management of access by foreign flagged fishing vessels (not including foreign flagged charter vessels) and related support vessels to ports.
- 1.4 The Agreement fills a gap in the international fisheries governance framework by setting internationally-agreed standards for Port State Measures. If widely implemented, it will reduce the availability of 'ports of convenience' (that is, ports with weak controls in place), making it increasingly difficult and less economic to undertake IUU fishing. A reduction of IUU fishing would have environmental, economic and social

benefits, including economic benefits for Fijian fishers operating in high value international fisheries that are targeted by IUU fishers.

- 1.5 The signing of the Agreement will be consistent with the Fiji Government's Business Growth Agenda, in particular its objective to build economic growth by sustainably using natural resources. It is also consistent with Fiji's pursuit of a stable and rules-based international system and with Fiji's policy objectives of strengthening international fisheries governance and reducing the occurrence of IUU fishing. The Agreement will also reinforce Fiji's reputation as a responsible fishing State and set a positive precedent for the wider Pacific.

2.0 SUMMARY

- 2.1 The Agreement contains 37 Articles and 5 Annexures.

2.2 Article 1- Use of terms

Article 1 provides definition and the use of terms within the Agreement.

- 2.3 It is important to note that definitions reflected under our national laws such as the Offshore Fisheries Management Act 2012 and its Regulation 2014 which govern offshore fisheries and foreign vessels are consistent with the definitions under the Agreement.

2.4 Article 2 – Objective

The objective of this Agreement is to prevent, deter and eliminate IUU fishing through the implementation of effective port State measures, and thereby to ensure the long-term conservation and sustainable use of living marine resources and marine ecosystems.

2.5 Article 3 – Application

This section sets out the role of each party in the application of the Agreement in respect of vessels not entitled to fly its flag that are seeking entry into its ports or are in one of its ports.

- 2.6 It also highlights that a Party may, in its capacity as a port State, decide not to apply this Agreement to vessels chartered by its nationals exclusively for fishing in areas under its national jurisdiction and operating under its authority therein. Such vessels shall be subject to measures by

the Party which are as effective as measures applied in relation to vessels entitled to fly its flag.

2.7 Article 4 - Relationship with international law and other international instruments

This article highlights that nothing in this Agreement shall prejudice the rights, jurisdiction and duties of Parties under international law.

3.7 Article 5 – Integration and coordination at the national level

This article highlights the need to integrate and coordinate fisheries related port State measures with the broader systems of port State controls. It also highlights the need to exchange information within national agencies to help in the implementation of the agreement.

2.8 Article 6 - Cooperation and exchange of information

Further to article 5, article 6 ensures that 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.

2.9 Article 7 - Designation of ports

Article 7 highlights the designation of ports to which vessels may request entry pursuant to this Agreement. This is done through the provision of a list of designated ports to the FAO.

2.10 Article 8 – Advance request for port entry

Highlights that each Party shall require, as a minimum standard, the information requested in Annex A to be provided before granting entry to a vessel to its port. There should be sufficient time given to allow for port states to assess the information provided prior to port entry.

2.11 Article 9 - Port entry, authorization or denial

Article 8 allows a Party to 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 based on information received by the Party to determine where the relevant vessel has engaged in IUU fishing.

2.12 Article 10 - Force majeure or distress

This article indicates that 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.

2.13 Article 11 - Use of ports

This article reflects the issue of vessels entering a designated port while being limited to the activities they can undertake due to national laws. It also reflects the role of port States in notifying flag States on the reasons of denial.

2.14 Article 12 – Levels and priorities of inspection

Sets targets and inspection requirements for Parties to enable them to achieve the objectives of this Agreement. This also includes minimum standards for inspection through regional organisation or requirements under FAO.

2.15 Article 13 - Conduct of inspections

This section reflects the minimum standards for that inspector must undertake in order to meet the requirements under this agreement. It also highlights the training that needs to be developed to build capacity for vessel inspectors.

2.16 Article 14 – Results of Inspections

Article 14 highlights the minimum information that needs to be reported on prescribed forms. The reports are to be populated by inspectors during inspection activities. The minimum standard is set out in Annex C.

2.17 Article 15 - Transmittal of inspection results

The transmission of information to relevant parties is reflected under this article. This includes state of which the vessel master is from, flag state and other states that the vessel may have entered and committed an illegal activity.

2.18 Article 16 – Electronic exchange of information

Highlights the need to establish a communication mechanism that allows for direct electronic exchange of information, with due regard to appropriate confidentiality requirements.

2.19 Article 17 - Training of inspectors

Each Party shall ensure that its inspectors are properly trained taking into account the guidelines for the training of inspectors in Annex E. Parties shall seek to cooperate in this regard.

2.20 Article 18 -Port State actions following inspection

Following inspection and appropriate findings, a Party shall: promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other international organizations, and the State of which the vessel's master is a national of its findings. Denying port use is also reflected under this article.

2.21 Article 19 - Information on recourse in the port State

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 Article 9, 11, 13 or 18.

2.22 Article 20 - Role of flag States

This article highlights the role of flag states which includes requesting a state to conduct inspection on vessels flying its flag, encouraging its flagged vessel to land its catch in a port state member and sending inspection reports to relevant parties.

2.23 Article 21 - Requirements of developing States

Noting the limitation of developing states, article 21 highlights the assistance that is provided to developing states to enable the ability to develop nationally in aspects of capacity building and legal development.

2.24 Article 22 – Peaceful settlement of disputes

This article provides parties with the option of seeking consultation 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.

- 2.25 **Article 23 - Non-Parties to this Agreement**
Highlights the need for Parties to encourage non-Parties to this Agreement to become Parties thereto and/or to adopt laws and regulations and implement measures consistent with its provisions.
- 2.26 **Article 24 - Monitoring, review and assessment**
Sets out provision to ensure the regular and systematic monitoring and review of the implementation of this Agreement as well as the assessment of progress made towards achieving its objective.
- 2.27 **Article 25 – Signature**
Indicate that signatory date by member states.
- 2.28 **Article 26 – Ratification, acceptance or approval**
Role of signatories and the depositary.
- 2.29 **Article 27 – Accession**
Period of accession for state and organisation.
- 2.30 **Article 28 - Participation by Regional Economic Integration Organizations**
In cases where a regional economic integration organization that is an international organization referred to in Annex IX, Article 1, of the Convention has competence over all the matters governed by this Agreement, the following provisions shall apply to participation by the regional economic integration organization in this Agreement.
- 2.31 **Article 29 – Entry into force**
The Agreement shall enter into force thirty days after the date of deposit with the Depositary of the twenty-fifth instrument of ratification, acceptance, approval or accession in accordance with Article 26 or 27.
- 2.32 **Article 30 - Reservations and exceptions**
There are no reservations or exceptions may be made to this Agreement.
- 2.33 **Article 31 - Declarations and statements**
In relation to article 30, the agreement does not preclude a State or regional economic integration organization, when signing, ratifying,

accepting, approving or acceding to this Agreement, from making a declaration or statement, however phrased or named, with a view to, *inter alia*, the harmonization of its laws and regulations with the provisions of this Agreement.

2.34 Article 32 - Provisional application

The provisional application by a State or regional economic integration organization shall terminate upon the entry into force of this Agreement for that State or regional economic integration organization or upon notification by that State or regional economic integration organization to the Depositary in writing of its intention to terminate provisional application.

2.35 Article 33 - Amendments

Amendments can be proposed by any Party to this Agreement after the expiry of a period of two years from the date of entry into force of this Agreement.

2.36 Article 34 – Annexes

This Article refers to the Annexes of the Agreement. The Agreement contains five Annexes which cover–

- (a) A Information to be provided in advance by vessels requesting port entry;
- (b) B Port State inspection procedures;
- (c) C Report on the results of inspection;
- (d) D Information systems on port State measures; and
- (e) Guidelines for the training of inspectors.

2.37 Article 35 – Withdrawal

Any Party may withdraw from this Agreement at any time after the expiry of one year from the date upon which the Agreement entered into force with respect to that Party, by giving written notice of such withdrawal to the Depositary. Withdrawal shall become effective one year after receipt of the notice of withdrawal by the Depositary.

2.38 Article 36 -The Depositary

The Director-General of FAO shall be the Depositary of this Agreement. Articles 36 further describe the roles of the Depositary.

2.39 Article 37 -Authentic texts

States that the Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic version of this Agreement.

3.0 REQUIREMENTS FOR IMPLEMENTATION OF THE AGREEMENT

- 3.1 From 22 November 2009 to 21 November 2010 the Agreement was open for signature at FAO to all States and regional economic integration organizations. Pursuant to Article 26 of the Agreement, the Agreement is subject to ratification, acceptance or approval by the signatories.
- 3.2 Additionally, Pursuant to Article 27 of the Agreement, the Agreement is open for accession by any State or regional economic integration organization that did not sign it within the time frame of 22 November 2009 to 21 November 2010.
- 3.3 Given that Fiji did not sign the Agreement in the time frame given above, upon the approval of the Parliament; Fiji needs to deposit an instrument of accession with the Director-General of FAO who is the Depository of the Agreement.
- 3.4 As at April 2018 there are 53 States parties to the Agreement and one member organisation (the European Union).

4.0 IMPACT OF THE AGREEMENT

- 4.1 Signing of the Agreement by Fiji and its subsequent entry into force would assist with the reduction of IUU fishing globally. This would enable Fiji and others, through cooperative efforts, to better ensure long term sustainability of high seas fisheries, for both target and non-target species. Because IUU fishers often ignore international conservation and management measures relating to the broader marine environment, for example benthic habitats, seabirds and marine mammals, a reduction in IUU fishing would also have wider environmental benefits.
- 4.2 **Economic**
Fiji companies participate in several international fisheries for high value species that are targeted by IUU fishing, for example tuna and snapper. Economic benefits would be achieved through improved fish stock sustainability, and through the creation of a more even playing field

whereby responsible fishers are not undercut in key markets by IUU fishers.

- 4.3 The impact of the Agreement on foreign flagged vessels that use Fiji ports is not expected to be significant. The port State measures that Fiji currently applies already exceed the majority of minimum standards set out by the Agreement. In addition, a relatively large number of foreign-flagged vessels visit Fiji ports the key change will be that port State measures will be applied to a wider range of vessels than previously, that is, vessels in support of fishing activities.

4.4 **Social and Cultural**

There are no specific social or cultural effects for Fiji anticipated by the treaty action. A reduction in IUU fishing will have wider social implications however, particularly for developing countries where communities are dependent on fishing for their livelihoods. This means there will be less likelihood of our coastal fisheries being plundered by illegal fisheries which means more fish and protein for local communities and local fishermen who rely on fish for a living.

5.0 RECOMMENDATION

- 5.1 It is recommended that Fiji endorse and accede to the Agreement on Port State Measures to Prevent, Deter And Eliminate Illegal, Unreported And Unregulated Fishing and submit its instrument of accession to the Depository of the Agreement which is the Director-General of FAO.

AGREEMENT ARTICLE BY ARTICLE

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

PREAMBLE

The Parties to this Agreement,

Deeply concerned 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,

Conscious 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,

Recognizing 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,

Recognizing that port State measures provide a powerful and cost-effective means of preventing, deterring and eliminating illegal, unreported and unregulated fishing,

Aware of the need for increasing coordination at the regional and interregional levels to combat illegal, unreported and unregulated fishing through port State measures,

Acknowledging the rapidly developing communications technology, databases, networks and global records that support port State measures,

Recognizing the need for assistance to developing countries to adopt and implement port State measures,

Taking note of the calls by the international community through the United Nations System, including the United Nations General Assembly and the Committee on Fisheries of the Food and Agriculture Organization of the United Nations, hereinafter referred to as 'FAO', for a binding international instrument on minimum standards for port State measures, based on the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing and the 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing,

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

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

Recalling 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,

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

Have agreed as follows:

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 the attracting, locating, catching, taking or harvesting of fish;

- (d) “fishing related activities” means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;
- (e) “illegal, unreported and unregulated fishing” refers to the activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, hereinafter referred to as ‘IUU fishing’;
- (f) “Party” means a State or regional economic integration organization that has consented to be bound by this Agreement and for which this Agreement is in force;
- (g) “port” includes offshore terminals and other installations for landing, transshipping, packaging, processing, refuelling or resupplying;
- (h) “regional economic integration organization” means a regional economic integration organization to which its member States have transferred competence over matters covered by this Agreement, including the authority to make decisions binding on its member States in respect of those matters;
- (i) “regional fisheries management organization” means an intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish conservation and management measures; and
- (j) “vessel” means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities.

Article 2

Objective

The objective of this Agreement is to prevent, deter and eliminate IUU fishing through the implementation of effective port State measures, and thereby to ensure the long-term conservation and sustainable use of living marine resources and marine ecosystems.

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 flag State cooperate to ensure that such vessels do not engage in IUU fishing or fishing related activities in support of such fishing ; and
- (b) container vessels that are not carrying fish or, if carrying fish, only fish that have been previously landed, provided that there are no clear grounds for suspecting that such vessels have engaged in fishing related 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 for fishing in areas under its national jurisdiction and operating under its authority therein. Such vessels shall be subject to measures by the Party which are as effective as measures 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(e) 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, archipelagic 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 their 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 thereby 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 rules and standards, including those established through the International Maritime Organization, as well as other international instruments.
5. Parties shall fulfil in good faith the obligations assumed pursuant to this Agreement and shall exercise the rights recognized herein in a manner that would not constitute an abuse of right.

Article 5

Integration and coordination at the national level

Each Party shall, to the greatest extent possible:

- (a) integrate or coordinate fisheries related port State measures with the broader system of port State controls;
- (b) integrate port State measures with other measures to prevent, deter and eliminate IUU fishing and fishing related activities in support of such fishing, taking into account as appropriate the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; and

- (c) take measures to exchange information among relevant national 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 other 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 and 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 this Article 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, the information requested in Annex A to be provided before granting entry to a vessel 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, in particular the inclusion of a vessel on a list of vessels having engaged in such fishing or fishing related activities adopted by a relevant regional fisheries management organization in accordance with the rules and procedures of such organization and in conformity with international law, the Party shall deny that vessel entry into its ports, taking into due account paragraphs 2 and 3 of Article 4.
5. Notwithstanding paragraphs 3 and 4 of this Article, a Party may allow entry into its ports of a vessel referred to in those paragraphs exclusively for the purpose of inspecting it and taking other appropriate actions in conformity with international law which are at least as effective as denial of port entry in preventing, deterring and eliminating IUU fishing and fishing related activities in support of such fishing.

6. Where a vessel referred to in paragraph 4 or 5 of this Article is in port for any reason, a Party shall deny such vessel the use of its ports for landing, transshipping, packaging, and processing of fish and for other port services including, *inter alia*, refuelling and resupplying, maintenance and drydocking. 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, a Party shall deny, pursuant to its laws and regulations and consistent with international law, including this Agreement, that vessel the use of the port for landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including, *inter alia*, refuelling and resupplying, maintenance and drydocking, if:

- (a) the Party finds that the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities required by its flag State;
- (b) the Party finds that the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities required by a coastal State in respect of areas under the national jurisdiction of that State;
- (c) the Party receives clear evidence that the fish on board was taken in contravention of applicable requirements of a coastal State in respect of areas under the national jurisdiction of that State;

- (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 2 and 3 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 and 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 its 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 or 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.

PART 4
INSPECTIONS AND FOLLOW-UP ACTIONS

Article 12

Levels and priorities for inspection

1. Each Party shall inspect the number of vessels in its ports required to reach an annual level of inspections sufficient to achieve the objective of this Agreement.
2. Parties shall seek to agree on the minimum levels for inspection of vessels through, as appropriate, regional fisheries management organizations, FAO or otherwise.
3. In determining which vessels to inspect, a Party shall give priority to:
 - (a) vessels that have been denied entry or use of a port in accordance with this Agreement;
 - (b) requests from other relevant Parties, States or regional fisheries management organizations that particular vessels be inspected, particularly where such requests are supported by evidence of IUU fishing or fishing related activities in support of such fishing by the vessel in question; and
 - (c) other vessels for which there are clear grounds for suspecting that they have engaged in IUU fishing or fishing related activities in support of such fishing.

Article 13

Conduct of inspections

1. Each Party shall ensure that its inspectors carry out the functions set forth in Annex B as a minimum standard.
2. Each Party shall, in carrying out inspections in its ports:
 - (a) ensure that inspections are carried out by properly qualified inspectors authorized for that purpose, having regard in particular to Article 17;

- (b) ensure that, prior to an inspection, inspectors are required to present to the master of the vessel an appropriate document identifying the inspectors as such;
- (c) ensure that inspectors examine all relevant areas of the vessel, the fish on board, the nets and any other gear, equipment, and any document or record on board that is relevant to verifying compliance with relevant conservation and management measures;
- (d) require the master of the vessel to give inspectors all necessary assistance and information, and to present relevant material and documents as may be required, or certified copies thereof;
- (e) in case of appropriate arrangements with the flag State of the vessel, invite that State to participate in the inspection;
- (f) make all possible efforts to avoid unduly delaying the vessel to minimize interference and inconvenience, including any unnecessary presence of inspectors on board, and to avoid action that would adversely affect the quality of the fish on board;
- (g) make all possible efforts to facilitate communication with the master or senior crew members of the vessel, including where possible and where needed that the inspector is accompanied by an interpreter;
- (h) ensure that inspections are conducted in a fair, transparent and non-discriminatory manner and would not constitute harassment of any vessel; and
- (i) not interfere with the master's ability, in conformity with international law, to communicate with the authorities of the flag State.

Article 14

Results of inspections

Each Party shall, as a minimum standard, include the information set out in Annex C in the written report of the results of each inspection.

Article 15
Transmittal of inspection results

Each Party shall transmit the results of each inspection to the flag State of the inspected vessel and, as appropriate, to:

- (a) relevant Parties and States, including:
 - (i) those States for which there is evidence through inspection that the vessel has engaged in IUU fishing or fishing related activities in support of such fishing within waters under their national jurisdiction; and
 - (ii) the State of which the vessel's master is a national;
- (b) relevant regional fisheries management organizations; and
- (c) FAO and other relevant international organizations.

Article 16
Electronic exchange of information

1. To facilitate implementation of this Agreement, each Party shall, where possible, establish a communication mechanism that allows for direct electronic exchange of information, with due regard to appropriate confidentiality requirements.
2. To the extent possible and with due regard to appropriate confidentiality requirements, Parties should cooperate to establish an information-sharing mechanism, preferably coordinated by FAO, in conjunction with other relevant multilateral and intergovernmental initiatives, and to facilitate the exchange of information with existing databases relevant to this Agreement.
3. Each Party shall designate an authority that shall act as a contact point for the exchange of information under this Agreement. Each Party shall notify the pertinent designation to FAO.
4. Each Party shall handle information to be transmitted through any mechanism established under paragraph 1 of this Article consistent with Annex D.

5. FAO shall request relevant regional fisheries management organizations to provide information concerning the measures or decisions they have adopted and implemented which relate to this Agreement for their integration, to the extent possible and taking due account of the appropriate confidentiality requirements, into the information-sharing mechanism referred to in paragraph 2 of this Article.

Article 17

Training of inspectors

Each Party shall ensure that its inspectors are properly trained taking into account the guidelines for the training of inspectors in Annex E. Parties shall seek to cooperate in this regard.

Article 18

Port State actions following inspection

1. Where, following an inspection, there are clear grounds for believing that a vessel has engaged in IUU fishing or fishing related activities in support of such fishing, the inspecting Party shall:

- (a) promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other international organizations, and the State of which the vessel's master is a national of its findings; and
- (b) deny the vessel the use of its port for landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including, *inter alia*, refuelling and resupplying, maintenance and drydocking, if these actions have not already been taken in respect of the vessel, in a manner consistent with this Agreement, including Article 4.

2. Notwithstanding paragraph 1 of this Article, a Party shall not deny a vessel referred to in that paragraph the use of port services essential for the safety or health of the crew or the safety of the vessel.

3. Nothing in this Agreement prevents a Party from taking measures that are in conformity with international law in addition to those specified in paragraphs 1 and 2 of this Article, including such measures as the flag State of the vessel has expressly requested or to which it has consented.

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, it 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, fair, transparent and non-discriminatory procedures for identifying any State that may not be acting in accordance with, or in a manner consistent with, this Agreement.
4. Where, following port State inspection, a flag State Party receives an inspection report indicating that there are 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, it shall immediately and fully investigate the matter and shall, upon sufficient evidence, take enforcement action without delay in accordance with its laws and regulations.

5. Each Party shall, in its capacity as a flag State, report to other Parties, relevant port States and, as appropriate, other relevant States, regional fisheries management organizations and FAO on actions it has taken in respect of vessels entitled to fly its flag that, as a result of port State measures taken pursuant to this Agreement, have been determined to have engaged in IUU fishing or fishing related activities in support of such fishing.

6. Each Party shall ensure that measures applied to vessels entitled to fly its flag are at least as effective in preventing, deterring, and eliminating IUU fishing and fishing related activities in support of such fishing as measures applied to vessels referred to in paragraph 1 of Article 3.

PART 6

REQUIREMENTS OF DEVELOPING STATES

Article 21

Requirements of developing States

1. Parties shall give full recognition to the special requirements of developing States Parties in relation to the implementation of port State measures consistent with this Agreement. To this end, Parties shall, either directly or through FAO, other specialized agencies of the United Nations or other appropriate international organizations and bodies, including regional fisheries management organizations, provide assistance to developing States Parties in order to, *inter alia*:

- (a) 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;
- (b) facilitate their participation in any international organizations that promote the effective development and implementation of port State measures; and
- (c) facilitate technical assistance to strengthen the development and implementation of port State measures by them, in coordination with relevant international mechanisms.

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 implementation by the relevant developing States Parties of specific obligations under this Agreement.

3. Parties shall, either directly or through FAO, assess the special requirements of developing States Parties concerning the implementation of this Agreement.

4. Parties shall cooperate to establish appropriate funding mechanisms to assist developing States in the implementation of this Agreement. These mechanisms shall, *inter alia*, be directed specifically towards:

- (a) developing national and international port State measures;
- (b) developing and enhancing capacity, including for monitoring, control and surveillance and for training at the national and regional levels of port managers, inspectors, and enforcement and legal personnel;
- (c) monitoring, control, surveillance and compliance activities relevant to port State measures, including access to technology and equipment; and
- (d) assisting developing States Parties with the costs involved in any proceedings for the settlement of disputes that result from actions they have taken pursuant to this Agreement.

5. Cooperation with and among developing States Parties for the purposes set out in this Article may include the provision of technical and financial assistance through bilateral, multilateral and regional channels, including South-South cooperation.

6. Parties shall establish an *ad hoc* working group to periodically report and make recommendations to the Parties on the establishment of funding mechanisms including a scheme for contributions, identification and mobilization of funds, the development of criteria and procedures to guide implementation, and progress in the implementation of the funding mechanisms. In addition to the considerations provided in this Article, the *ad hoc* working group shall take into account, *inter alia*:

- (a) the assessment of the needs of developing States Parties, in particular the least-developed among them and small island developing States;

- (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 any 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.

PART 8

NON-PARTIES

Article 23

Non-Parties to this Agreement

1. Parties shall encourage non-Parties to this Agreement to become Parties thereto and/or to adopt laws and regulations and implement measures consistent with its provisions.
2. Parties shall take fair, non-discriminatory and transparent measures consistent with this Agreement and other applicable international law to deter the activities of non-Parties which undermine the effective implementation of this Agreement.

PART 9

MONITORING, REVIEW AND ASSESSMENT

Article 24

Monitoring, review and assessment

1. Parties shall, within the framework of FAO and its relevant bodies, ensure the regular and systematic monitoring and review of the implementation of this Agreement as well as the assessment of progress made towards achieving its objective.
2. Four years after the entry into force of this Agreement, FAO shall convene a meeting of the Parties to review and assess the effectiveness of this Agreement in achieving its objective. The Parties shall decide on further such meetings as necessary.

PART 10

FINAL PROVISIONS

Article 25

Signature

This Agreement shall be open for signature at FAO from the Twenty-second day of November 2009 until the Twenty-first day of November 2010 by all States and regional economic integration organizations.

Article 26

Ratification, acceptance or approval

1. This Agreement shall be subject to ratification, acceptance or approval by the signatories.
2. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

Article 27

Accession

1. After the period in which this Agreement is open for signature, it shall be open for accession by any State or regional economic integration organization.
2. Instruments of accession shall be deposited with the Depositary.

Article 28

Participation by Regional Economic Integration Organizations

1. In cases where a regional economic integration organization that is an international organization referred to in Annex IX, Article 1, of the Convention does not have competence over all the matters governed by this Agreement, Annex IX to the Convention shall apply *mutatis mutandis* to participation by such regional economic integration organization in this Agreement, except that the following provisions of that Annex shall not apply:

(a) Article 2, first sentence; and

(b) Article 3, paragraph 1.

2. In cases where a regional economic integration organization that is an international organization referred to in Annex IX, Article 1, of the Convention has competence over all the matters governed by this Agreement, the following provisions shall apply to participation by the regional economic integration organization in this Agreement:

(a) at the time of signature or accession, such organization shall make a declaration stating:

(i) that it has competence over all the matters governed by this Agreement;

- (ii) that, for this reason, its member States shall not 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 this Agreement and its obligations under the Agreement establishing the organization or any acts relating to it, the obligations under this Agreement shall prevail.

Article 29

Entry into force

1. This Agreement shall enter into force thirty days after the date of deposit with the Depositary of the twenty-fifth instrument of ratification, acceptance, approval or accession in accordance with Article 26 or 27.
2. For each signatory which ratifies, accepts or approves this Agreement after its entry into force, this Agreement shall enter into force thirty days after the date of the deposit of its instrument of ratification, acceptance or approval.
3. For each State or regional economic integration organization which accedes to this Agreement after its entry into force, this Agreement shall enter into force thirty days after the date of the deposit of its instrument of accession.
4. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by its Member States.

Article 30

Reservations and exceptions

No reservations or exceptions may be made to this Agreement.

Article 31

Declarations and statements

Article 30 does not preclude a State or regional economic integration organization, when signing, ratifying, accepting, approving or acceding to this Agreement, from making a declaration or statement, however phrased or named, with a view to, *inter alia*, the harmonization of its laws and regulations with the provisions of this Agreement, provided that such declaration or statement does not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that State or regional economic integration organization.

Article 32

Provisional application

1. This Agreement shall be applied provisionally by States or regional economic integration organizations which consent to its provisional application by so notifying the Depositary in writing. Such provisional application shall become effective from the date of receipt of the notification.

2. Provisional application by a State or regional economic integration organization shall terminate upon the entry into force of this Agreement for that State or regional economic integration organization or upon notification by that State or regional economic integration organization to the Depositary in writing of its intention to terminate provisional application.

Article 33

Amendments

1. Any Party may propose amendments to this Agreement after the expiry of a period of two years from the date of entry into force of this Agreement.

2. Any proposed amendment to this Agreement shall be transmitted by written communication to the Depositary along with a request for the convening of a meeting of the Parties to consider it. The Depositary shall circulate to all Parties such communication as well as all replies to the request received from Parties. Unless within six months from the date of circulation of the communication one half of the Parties object to the request, the Depositary shall convene a meeting of the Parties to consider the proposed amendment.

3. Subject to Article 34, any amendment to this Agreement shall only be adopted by consensus of the Parties present at the meeting at which it is proposed for adoption.

4. Subject to Article 34, any amendment adopted by the 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 as 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 where 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 incorporated in this Agreement and enter into force for those Parties that have expressed their acceptance from the date on which the Depositary receives notification of acceptance from one-third of the Parties to this Agreement, based on the number of Parties on the date of adoption of the amendment. The amendment shall thereafter enter into force for each remaining Party upon receipt by the Depositary of its acceptance.

Article 35

Withdrawal

Any Party may withdraw from this Agreement at any time after the expiry of one year from the date upon which the Agreement entered into force with respect to that Party, by giving written notice of such withdrawal to the Depositary. Withdrawal shall become effective one year after receipt of the notice of withdrawal by the Depositary.

Article 36
The Depositary

The Director-General of FAO shall be the Depositary of this Agreement. The Depositary shall:

- (a) transmit certified copies of this Agreement to each signatory and Party;
- (b) register this Agreement, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;
- (c) promptly inform each signatory and Party to this Agreement of all:
 - (i) signatures and instruments of ratification, acceptance, approval and accession deposited under Articles 25, 26 and 27;
 - (ii) the date of entry into force of this Agreement in accordance with Article 29;
 - (iii) proposals for amendment to this Agreement and their adoption and entry into force in accordance with Article 33;
 - (iv) proposals for amendment to the Annexes and their adoption and entry into force in accordance with Article 34; and
 - (v) withdrawals from this Agreement in accordance with Article 35.

Article 37
Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized, have signed this Agreement.

DONE in Rome on this Twenty-second day of November, 2009.

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

22. Total catch onboard				23. Catch to be offloaded
<i>Species</i>	<i>Product form</i>	<i>Catch area</i>	<i>Quantity</i>	<i>Quantity</i>

Port State inspection procedures

Inspectors shall:

- a) verify, to the extent possible, that the vessel identification documentation onboard and information relating to the owner of the vessel is true, complete and correct, including through appropriate contacts with the flag State or international records of vessels if necessary;
- b) verify that the vessel's flag and markings (e.g. name, external registration number, International Maritime Organization (IMO) ship identification number, international radio call sign and other markings, main dimensions) are consistent with information contained in the documentation;
- c) verify, to the extent possible, that the authorizations for fishing and fishing related activities are true, complete, correct and consistent with the information provided in accordance with Annex A;
- d) review all other relevant documentation and records held onboard, including, to the extent possible, those in electronic format and vessel monitoring system (VMS) data from the flag State or relevant regional fisheries management organizations (RFMOs). Relevant documentation may include logbooks, catch, transshipment and trade documents, crew lists, stowage plans and drawings, descriptions of fish holds, and documents required pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- e) examine, to the extent possible, all relevant fishing gear onboard, including any gear stowed out of sight as well as related devices, and to the extent possible, verify that they are in conformity with the conditions of the authorizations. The fishing gear shall, to the extent possible, also be checked to ensure that features such as the mesh and twine size, devices and attachments, dimensions and configuration of nets, pots, dredges, hook sizes and numbers are in conformity with applicable regulations and that the markings correspond to those authorized for the vessel;
- f) determine, to the extent possible, whether the fish on board was harvested in accordance with the applicable authorizations;
- g) examine the fish, including by sampling, to determine its quantity and composition. In doing so, inspectors may open containers where the fish has been pre-packed and move the catch or containers to ascertain the integrity of fish holds. Such examination may include inspections of product type and determination of nominal weight;

- h) evaluate whether there is clear evidence for believing that a vessel has engaged in IUU fishing or fishing related activities in support of such fishing;
- i) provide the master of the vessel with the report containing the result of the inspection, including possible measures that could be taken, to be signed by the inspector and the master. The master's signature on the report shall serve only as acknowledgment of the receipt of a copy of the report. The master shall be given the opportunity to add any comments or objection to the report, and, as appropriate, to contact the relevant authorities of the flag State in particular where the master has serious difficulties in understanding the content of the report. A copy of the report shall be provided to the master; and
- j) arrange, where necessary and possible, for translation of relevant documentation.

ANNEX C

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. Certificate of registry ID			
16. IMO ship ID, if available			
17. External ID , if available			
18. Port of registry			
19. Vessel owner(s)			
20. Vessel beneficial owner(s), if known and different from vessel owner			
21. Vessel operator(s), if different from vessel owner			
22. Vessel master name and nationality			
23. Fishing master name and nationality			
24. Vessel agent			
25. VMS	No	Yes: National	Yes: RFMOs Type:
26. Status in RFMO areas where fishing or fishing related activities have been undertaken, including any IUU vessel listing			
Vessel identifier	RFMO	Flag State status	Vessel on authorized vessel list

27. Relevant fishing authorization(s)						
<i>Identifier</i>	<i>Issued by</i>	<i>Validity</i>	<i>Fishing area(s)</i>	<i>Species</i>	<i>Gear</i>	
28. Relevant transshipment authorization(s)						
<i>Identifier</i>		<i>Issued by</i>		<i>Validity</i>		
<i>Identifier</i>		<i>Issued by</i>		<i>Validity</i>		
29. Transshipment information concerning donor vessels						
<i>Name</i>	<i>Flag State</i>	<i>ID no.</i>	<i>Species</i>	<i>Product form</i>	<i>Catch area(s)</i>	<i>Quantity</i>
30. Evaluation of offloaded catch (quantity)						
<i>Species</i>	<i>Product form</i>	<i>Catch area(s)</i>	<i>Quantity declared</i>	<i>Quantity offloaded</i>	<i>Difference between quantity declared and quantity determined, if any</i>	
31. Catch retained onboard (quantity)						
<i>Species</i>	<i>Product form</i>	<i>Catch area(s)</i>	<i>Quantity declared</i>	<i>Quantity retained</i>	<i>Difference between quantity declared and quantity determined, if any</i>	
32. Examination of logbook(s) and other documentation				<i>Yes</i>	<i>No</i>	<i>Comments</i>
33. Compliance with applicable catch documentation scheme(s)				<i>Yes</i>	<i>No</i>	<i>Comments</i>
34. Compliance with applicable trade information scheme(s)				<i>Yes</i>	<i>No</i>	<i>Comments</i>
35. Type of gear used						
36. Gear examined in accordance with paragraph e) of Annex B			<i>Yes</i>	<i>No</i>	<i>Comments</i>	
37. Findings by inspector(s)						
38. Apparent infringement(s) noted including reference to relevant legal instrument(s)						

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

ANNEX D

Information systems on port State measures

In implementing this Agreement, each Party shall:

- a) seek to establish computerized communication in accordance with Article 16;
- b) establish, to the extent possible, websites to publicize the list of ports designated in accordance with Article 7 and the actions taken in accordance with the relevant provisions of this Agreement;
- c) identify, to the greatest extent possible, each inspection report by a unique reference number starting with 3-alpha code of the port State and identification of the issuing agency;
- d) utilize, to the extent possible, the international coding system below in Annexes A and C and translate any other coding system into the international system.

countries/territories:	ISO-3166 3-alpha Country Code
species:	ASFIS 3-alpha code (known as FAO 3-alpha code)
vessel types:	ISSCFV code (known as FAO alpha code)
gear types:	ISSCFG code (known as FAO alpha code)

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 the validation 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 biological parameters;
10. Identification of vessels and gear, and techniques for the inspection and measurement of gear;
11. Equipment and operation of VMS and other electronic tracking systems; and
12. Actions to be taken following an inspection.

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 the 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
the United Nations

Kathleen Merrigan
Chairperson of the Conference