EUROPEAN COMMISSION

Brussels, 10.1.2011
COM(2010) 792 final

2010/0389 (NLE)

Proposal for a

COUNCIL DECISION

on the approval of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

EXPLANATORY MEMORANDUM

Port State measures have been identified as a key tool in the fight of the international community against IUU fishing. This resulted in particular in the adoption in 2005 by the FAO of the Model Scheme on Port State Measures to Combat IUU Fishing. That Model Scheme provides for minimum standards which should underpin the adoption of measures by States in order to monitor, control and inspect foreign-flagged fishing vessels wishing to use their harbours. It is a voluntary and non-binding instrument.

In addition, some Regional Fisheries Management Organisations (RFMOs) have put in place binding Port State mechanisms which shall be applied by Parties to these Organisations in order to monitor the legality of landing, transhipment and other operations in their ports. Specific rules have also been enacted in some RFMOs aiming to deny port access to vessels listed by the organisation as having engaged or supported IUU fishing activities.

The EU is a member of the FAO as well as of 13 RFMOs. Port State mechanisms adopted within RFMOs have been implemented into EU law, which also provides for general rules applying to the landing of fisheries products by third country vessels in Community ports by way of Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999[1].

At the 2007 meeting of the FAO Committee for Fisheries, it was agreed that an international legally binding instrument on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IUU Fishing) should be elaborated.

An expert consultation on this issue took place in Washington in September 2007. In June 2008, the Council adopted a decision authorising the Commission to conduct negotiations for the elaboration of such an instrument on behalf of the European Community.

FAO has subsequently held four technical consultations, open to all FAO Parties, with the aim of finalizing the draft international instrument on Port State measures. At the 36th Conference of FAO in Rome from 18-23 November 2009, the final Agreement was adopted and opened for signature. The Agreement was signed in Rome on 22 November 2009 on behalf of the European Community in accordance with Council Decision of 20 November 2009[2], subject to its conclusion at a later date.

The fight against IUU fishing constitutes an essential component of the Common Fisheries Policy and the EU should be able to foster international cooperation on this matter by participating actively and constructively in the adoption on an international instrument on Port State measures. The EU has participated in this process from the start and has played an active and constructive role in the drafting of the Agreement.

The proposal intends to approve the Agreement on behalf of the European Union.

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1 OJ L 286, 29.10.2008, p. 1

2 Note from the General Secretariat of the Council of the European Union of 20 November 2009 (16430/09)

The Council is requested to adopt this proposal as soon as possible following the consent of the European Parliament.

2010/0389 (NLE)

Proposal for a

COUNCIL DECISION

on the approval of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43, in conjunction with Article 218(6)(a), thereof

Having regard to the proposal from the Commission[3],

Having regard to the consent of the European Parliament[4],

Whereas:

(1) The European Union is competent to adopt measures for the conservation, management and control of fisheries resources and to enter into agreements with third countries and within the framework of international organisations.

(2) The European Union is a Contracting Party to the United Nations Convention on the Law of the Sea of 10 December 1982, which inter alia requires all members of the international community to cooperate in managing and conserving the biological resources of the sea.

(3) The European Union is a contracting party to the 1995 Agreement on the implementation of the provisions of the United Nations Convention of the Law of the Sea, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, which entered into force on 11 December 2001.

(4) The Thirty Sixth session of the Food and Agriculture Organisation (FAO) Conference, held in Rome between 18-23 November 2009 adopted the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (the Agreement) under Article XIV of the FAO Constitution.

(5) The Agreement was signed on 22 November 2009 on behalf of the European Community in accordance with Council Decision of 20 November 2009[5], subject to its conclusion at a later date.

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3 OJ C , , p. .
4 OJ C , , p. .

(6) The European Union is a major player in international fisheries and one of the main global markets for fishery products and it is in its interest to play an effective role in the implementation of the Agreement and its approval by all parties.

(7) The Agreement should therefore be approved.

HAS ADOPTED THIS DECISION:

Article 1

The Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (the Agreement) as set out in Annex I is hereby approved.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union, to deposit the instrument of approval with the Director-General of the Food and Agriculture Organisation of the United Nations acting in his capacity as Depositary of the Agreement in accordance with Article 26 of the Agreement, together with the declaration of competences set out in Annex II.

Article 3

This Decision shall enter into force on the day of its adoption. It shall be published in the *Official Journal of the European Union.*

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President

[5] Note from the General Secretariat of the Council of the European Union of 20 November 2009 (16430/09)

ANNEX I

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, refueling 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:

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;
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. Enach 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, refueling 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*, refueling 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 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 the flag 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 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*, refueling 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 Article 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 Article 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) listing 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.

6. 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.

7. 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 mobilisation 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 the 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)					
Identifier	*Issued by*	*Validity*	*Fishing area(s)*	*Species*	*Gear*

20. Relevant transshipment authorization(s)					
Identifier		*Issued by*		*Validity*	
Identifier		*Issued by*		*Validity*	

21. Transshipment information concerning donor vessels								
Date	*Location*	*Name*	*Flag State*	*ID number*	*Species*	*Product form*	*Catch area*	*Quantity*

22. Total catch onboard				**23. Catch to be offloaded**
Species	*Product form*	*Catch area*	*Quantity*	*Quantity*

ANNEX B

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*	*Vessel on IUU vessel list*

27. Relevant fishing authorization(s)

Identifier	*Issued by*	*Validity*	*Fishing area(s)*	*Species*	*Gear*

28. Relevant transshipment authorization(s)

Identifier		*Issued by*		*Validity*	
Identifier		*Issued by*		*Validity*	

29. Transshipment information concerning donor vessels

Name	*Flag State*	*ID no*	*Species*	*Product form*	*Catch area(s)*	*Quantity*

30. Evaluation of offloaded catch (quantity)

Species	*Product form*	*Catch area(s)*	*Quantity declared*	*Quantity offloaded*	*Difference between quantity declared and quantity determined, if any*

31. Catch retained onboard (quantity)					
Species	*Product form*	*Catch area(s)*	*Quantity declared*	*Quantity retained*	*Difference between quantity declared and quantity determined, if any*

32. Examination of logbook(s) and other documentation	*Yes*	*No*	*Comments*
33. Compliance with applicable catch documentation scheme(s)	*Yes*	*No*	*Comments*
34. Compliance with applicable trade information scheme(s)	*Yes*	*No*	*Comments*

35. Type of gear used	

36. Gear examined in accordance with paragraph e) of Annex B	*Yes*	*No*	*Comments*

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)

ANNEX E

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.

ANNEX II

DECLARATION CONCERNING THE COMPETENCE OF THE EUROPEAN UNION WITH REGARD TO MATTERS GOVERNED BY THE AGREEMENT ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING

(Declaration made pursuant to point (a) of Article 28(2) of the Agreement)

1. Point (a) of Article 28(2) of the Agreement stipulates that in cases where a regional economic integration organisation has competence over all the matters governed by this Agreement, at the time of signature or accession, such organisation shall make a declaration to this effect.

8. Pursuant to point (h) of Article 1 of the Agreement a "regional economic integration organisation" means a regional economic integration organisation to which its member States have transferred competence over matters covered by the Agreement, including the authority to make decisions binding on its member States in respect of those matters.

9. The European Union is considered a regional economic integration organisation in accordance with the above quoted Articles.

10. Consequently, the European Union hereby declares that:

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

    (ii) for this reason, its Member States shall not become State Parties, except in respect of their territories for which it has no responsibility.

    The current Member States of the European Union are: the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland;

    (iii) the European Union accepts the rights and obligations of States under the Agreement.

11. The European Union states that, in the event of the occurrence of a conflict as referred to in Article 28(2)(c) of the Agreement, it will apply the obligations stemming from that provision in accordance with the Treaty establishing the European Community as interpreted by the European Court of Justice.