

Assistance Fund under Part VII of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks

Terms of Reference *

Reasons for establishing the Assistance Fund

1. Article 25 of Part VII of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (hereinafter referred to as “the Agreement”) requires States Parties to cooperate either directly or through subregional, regional and global organizations to enhance the ability of developing States, in particular the least-developed among them and small island developing States, to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks; to enable their participation in high seas fisheries for such stocks, including facilitating access to such fisheries subject to articles 5 and 11 of the Agreement; and to facilitate the participation in subregional and regional fisheries management organizations and arrangements.

2. Article 25 of the Agreement further provides that cooperation with developing States for the purposes of that article shall include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, including through joint venture arrangements, and advisory and consultative services. Such assistance shall inter alia be directed specifically towards improved conservation and management of straddling fish stocks and highly migratory fish stocks through collection, reporting, verification, exchange and analysis of fisheries data and related information as well as stock assessment and scientific research and monitoring control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.

3. Under Article 26 of the Agreement, States are required to cooperate to establish special funds to assist developing States in the implementation of the Agreement, including assisting developing States to meet the costs involved in any proceedings for the settlement of disputes to which they may be parties.

4. This fund is one component of assistance to be provided in accordance with Part VII of the Agreement and supplements other sources of assistance.

Establishment of the Assistance Fund

5. The Fund is established pursuant to General Assembly resolution A/58/14.

* As revised at the seventh round of Informal Consultations of the States Parties to the Agreement, New York, 11-12 March 2008.

6. The purpose of the Fund is to provide financial assistance to developing States Parties to the Agreement to assist in the implementation of the Agreement in accordance with Part VII of the Agreement.

Implementing Office

7. The Food and Agriculture Organization (FAO) will administer the Fund and act as the implementing office for the Fund. The FAO will establish a Trust Fund account for the purpose of the Fund in collaboration with the United Nations. All voluntary financial contributions made to the FAO for this purpose shall be deposited by FAO into the Trust Fund account.

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

Collaboration between the United Nations and the Food and Agriculture Organization

9. The United Nations and the FAO will collaborate with each other and will make available to each other all information and assistance as may be required in relation to the administration and operation of the Fund. In particular they will, as appropriate, seek to achieve mutual benefits from any arrangements under this Fund with similar activities, including in relation to the promotion and implementation of the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas and the 1995 FAO Code of Conduct for Responsible Fisheries.

10. The United Nations will receive applications, ensure that the agreed procedural requirements are met, and then forward them expeditiously to the FAO for review and decision, in accordance with these Terms of Reference. In the case of applications for assistance under paragraph 14(g) of these Terms of Reference concerning proceedings for the settlement of disputes under the Agreement, the United Nations will review and decide on these applications.

Contributions to the Assistance Fund

11. The United Nations and FAO invite States, intergovernmental organizations, international financial institutions, national institutions, non-governmental organizations, as well as natural and juridical persons, to make voluntary financial contributions to the Fund.

Applications for assistance

12. a) An application for financial assistance from the Fund may be submitted by any developing State Party to the Agreement. Such an application may also be submitted on behalf of the Party by an appropriate sub-regional or regional organization or arrangement;

b) An application for financial assistance by a developing State Party to the Agreement shall be submitted by way of an official communication from the relevant national authority of the applicant. An application for financial assistance on behalf of a developing State Party by an appropriate sub-regional or regional organization or arrangement shall be accompanied

by an official communication from the relevant national authority of the developing State Party confirming that the application is submitted on its behalf;

c) All applications for financial assistance shall be submitted to the United Nations (Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs) at least one month in advance of the date of the event or activity for which assistance is requested.

13. The application should specify how it relates to the implementation of the Agreement and include a description of the desired outputs of the project/expenditure and an itemisation of anticipated costs.

Purposes of assistance

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

a) Facilitating the participation of representatives from developing States Parties, in particular the least-developed among them and Small Island developing States Parties to the Agreement, in the meetings and activities of relevant regional and subregional fisheries management organizations and arrangements.

Such assistance may include such costs as travel costs and, if appropriate, daily subsistence allowances for delegations participating in relevant regional and subregional fisheries management organisations or arrangements, including technical experts.

b) Assisting with travel costs, and if appropriate daily subsistence allowances, associated with the participation of developing States Parties, in particular the least-developed among them and small island developing States Parties to the Agreement, in relevant meetings concerning high seas fisheries of relevant global organizations, such as the United Nations Development Programme, the Food and Agriculture Organization and other specialised agencies, the Global Environment Facility, the Commission on Sustainable Development and other appropriate international and regional organizations and bodies.

Applications for this purpose shall include details of how the meeting in question relates to implementation of the Agreement.

c) Supporting ongoing and future negotiations to establish new regional or subregional fisheries management organizations and arrangements in areas where such bodies are not currently in place, to renegotiate founding agreements for such organizations and arrangements and to strengthen existing subregional and regional fisheries management organizations and arrangements in accordance with the Agreement.

A condition for such support is that reference to implementing the Agreement is made in founding documents and/or work programmes of the regional or subregional fisheries management organizations or arrangements and in the national fisheries policies and/or management plans of States Parties.

d) Building capacity for activities in key areas such as effective exercise of flag State responsibilities, monitoring, control and surveillance, data collection and scientific research relevant to straddling and highly migratory fish stocks on a national and/or regional level.

- e) Facilitating exchange of information and experience on the implementation of the Agreement.
- f) Assisting developing States Parties to the Agreement, in particular the least-developed among them and small island developing States, with human resources development, technical training, and technical assistance in relation to conservation and management of straddling and highly migratory fish stocks and development of fisheries for such stocks, consistent with the duty to ensure the proper conservation and management of such stocks.
- g) Assisting in meeting the costs involved in proceedings for the settlement of disputes between States Parties to the Agreement concerning the interpretation or application of the Agreement in accordance with Part VIII of the Agreement or proceedings concerning the interpretation or application of a subregional, regional or global fishery agreement relating to straddling fish stocks or highly migratory fish stocks to which they are parties, including any dispute concerning the conservation and management of such stocks and complementary to any assistance provided under the ITLOS Trust Fund established by General Assembly resolution 55/7 or the Trust Fund for the International Court of Justice established by General Assembly resolution A/47/444 or the financial assistance fund established by the Permanent Court of Arbitration.

Consideration of applications and granting of assistance

15. Requests for financial assistance shall be considered without delay in the order in which they have been submitted. FAO will establish a panel of independent and impartial experts of the highest professional standing to review the applications and to make recommendations on the amount of financial assistance to be given in each case. The panel also will include two official representatives from States Parties to the Agreement, one of whom is a donor to the Fund, as well as technical experts and a representative from the United Nations, as required.

16. In cases of applications for travel related expenses under paragraph 14, the FAO may make decisions on applications without referral to the panel.

17. Review of applications and decisions shall be guided by the purposes of the Fund, the provisions of the Agreement, the financial needs of the requesting developing State Party and availability of funds, with priority given to least developed countries and Small Island developing States Parties to the Agreement. The financial assistance shall be provided on an impartial basis. Consideration of applications will also include an assessment of whether any existing alternative sources of assistance are available. All decisions on assistance from the Fund shall take into account the size of the Fund and the need for cost effectiveness in its use.

18. In considering applications, the United Nations and the FAO should also work together to inform relevant regional fisheries management organizations and UN bodies about applications under the Fund in order that they may comment if they so choose.

19. The United Nations and the FAO, as appropriate, will provide financial assistance from the Fund in an expeditious manner in accordance with paragraphs 15-18 of these Terms of Reference.

20. a) Financial assistance provided from the Fund shall be applied by the applicant solely for the purpose specified in the application for financial assistance.

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

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

Application of the Financial Regulations and Rules of the Food and Agriculture Organization

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

Reporting

22. An annual report on the activities of the Fund, including a financial statement of the contributions to and disbursements from the Fund, shall be included in the report of the Secretary-General of the United Nations on “Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments”. A report on the activities of the Fund to date, including a financial statement of the contributions to and disbursements from the Fund shall also be presented at the Review Conference provided for in Article 36 of the Agreement.

23. Recipients of assistance shall be required to provide a report on the purpose and outcome of the approved expenditure to the FAO for the above-mentioned report. The United Nations and the FAO shall share these reports. Failure to provide such a report promptly may affect the decision concerning any future application for assistance.

Revision and Review

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

25. The States Parties to the Agreement shall periodically review the activities of the Fund with a view to assessing and evaluating the effectiveness of the financial assistance provided pursuant to these Terms of Reference.

26. Taking into account paragraph 17 of these Terms of Reference, the States Parties to the Agreement may also make recommendations on priorities for the use of the Fund.

Publicity

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