

AGREEMENT ON PORT STATE MEASURES TO PREVENT,
DETER, AND ELIMINATE ILLEGAL, UNREPORTED, AND
UNREGULATED FISHING (TREATY DOC. 112-4)

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Mr. MENENDEZ, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany Treaty Doc. 112-4]

The Committee on Foreign Relations, to which was referred the Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (Treaty Doc. 112-4) (the “Agreement”), done at the Food and Agriculture Organization of the United Nations, in Rome, Italy on November 22, 2009, and signed by the United States on that date, having considered the same, reports favorably thereon with one declaration, as indicated in the resolution of advice and consent, and recommends that the Senate give its advice and consent to ratification thereof.

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I. PURPOSE

The Agreement, the first global treaty focused specifically on illegal, unreported and unregulated fishing (IUU), will implement legally binding minimum standards for port states to control port access by foreign fishing vessels, as well as the foreign transport and supply ships that support fishing vessels, and encourages Parties to apply similar measures to their own fishing vessels. The Agreement establishes practical provisions such as standardized ship inspections and better communication between ports concerning vessels associated with illegal fishing, so as to prevent fish from ille-

gal, unreported, and unregulated fisheries from entering the stream of commerce.

II. BACKGROUND

IUU fishing has had a severe impact on the sustainability of marine resources, as well as the ecosystem in which they reside. Developing coastal nations that rely upon fish as a staple food have encountered great difficulty due to the depletion of fish stocks and the resulting loss in local employment. In recent years many countries, either on their own or working through local regional mechanisms, have begun to combat IUU fishing by limiting and regulating vessel access to their ports. The international community organized a collective process through the United Nations Food and Agriculture Organization (FAO) to develop a legally binding instrument to combat IUU fishing. The Agreement was adopted by the Food and Agriculture Conference on November 22, 2009. There were 23 original signatories to the Agreement, including the United States.

III. SUMMARY OF KEY PROVISIONS OF THE AGREEMENT

Overall, the Agreement requires Parties to designate ports to which foreign vessels may request entry, and to deny entry to vessels known to have engaged in IUU fishing. Parties must also inspect enough vessels in their ports to achieve the objectives of the Agreement, take appropriate action against vessels where clear evidence exists of engagement in IUU fishing, and communicate the results of such inspections to other states. The Agreement also seeks to assist developing State Parties in carrying out the Agreement by encouraging assistance from other State Parties. A detailed article-by-article discussion of the Agreement may be found in the Letter of Submittal from the Secretary of State to the President, which is reprinted in full in Treaty Document 112-4. A summary of the key provisions of the Agreement is set forth below.

Article 1 of the Agreement defines “illegal fishing” as fishing conducted by vessels in waters under the jurisdiction of a State, without permission of that State or in contravention of the State’s laws and regulations, in contravention of international laws, or by vessels of a State member of a Regional Fishery Management Organization (RFMO), in contravention of that RFMO’s conservation and management measures. “Unreported fishing” is fishing that has either not been reported, or is misrepresented to the relevant authority. “Unregulated fishing” is fishing done in areas regulated by an RFMO when the vessels do not belong to member states of that RFMO, or in an area where there are no conservation and management measures, and the vessels fail to conserve living marine resources under international law. “Fish” is defined as all species of living marine resources, and “fishing related activities” includes fishing, landing, packaging, processing, transshipping, and provisioning of personnel, fuel, gear and other supplies at sea.

Article 3 requires a Party to apply the Agreement to all vessels not entitled to fly that Party’s flag that are seeking to use its ports, with exceptions in certain circumstances for container vessels, as well as for neighboring state vessels engaged in artisanal fishing for subsistence. A Party is not required to apply the Agreement to

its own flag vessels, and the Agreement does not apply to non-marine areas such as lakes and internal waters. Fishing need only fit one of the IUU categories to be considered IUU fishing. Parties are also required to encourage other entities to apply measures consistent with the Agreement.

Article 4 specifies that the Agreement does not bind Parties to the standards of RFMOs to which they are not members, and does not impact a Party's jurisdiction over its internal and territorial waters, or its rights over its Exclusive Economic Zone and continental shelf.

Article 5 requires Parties to integrate fisheries-related port measures within their existing system of port controls, and to coordinate its port measures with other efforts to combat IUU fishing.

Article 6 obligates a Party to cooperate and exchange information with relevant states, the FAO, and other RFMOs and international organizations, and obligates a Party to take measures in support of conservation and management measures adopted by other States or relevant international organizations.

Article 8 obligates Parties to require from all vessels not entitled to fly the Party's flag information which includes their intended port of call, port state, estimated date and time of arrival, purpose of landing, port and date of last port call, the name and type of the vessel, as well as their contact information and owners, their flag State, their international radio call sign, other appropriate identifications, relevant fishing and transshipment authorizations, as well as the total catch onboard, and total catch to be offloaded.

Article 9 requires a Party, once it has received the relevant information required by Article 8, to make a decision whether or not to authorize entry to a port and communicate that decision to a vessel. When a Party has sufficient proof that a vessel has engaged in IUU fishing, the Party is required to deny that vessel entry. Sufficient proof means, in particular, the vessel's inclusion on a RFMO IUU list. The Party denying entry is required to communicate that decision to the vessel's flag State and any relevant RFMOs and international organizations. However, a Party may allow such a vessel port entry if it is for the purposes of inspecting the vessel and taking any other appropriate action under international law.

Article 11 summarizes circumstances where a Party is required to deny a vessel already within its port the use of that port for fishing related activities and other port services, save for services essential to the safety and health of the crew and the vessel. These circumstances can include lack of authorization for the vessel's activities from its flag State, or failure by the flag State to confirm that the vessel engaged in fishing pursuant to relevant RFMO measures, or reasonable grounds to believe the vessel was engaged in IUU fishing or fishing-related activities.

Article 12 requires Parties to inspect enough vessels in its ports to achieve the objectives of this Agreement, and encourages Parties to agree on minimum levels of inspection through RFMOs, the FAO, or elsewhere. In determining which vessels to inspect, a Party must give priority to vessels denied entry or use of another port in accordance with the Agreement, requests from other relevant Parties, States or RFMOs that particular vessels be in-

spected, and other vessels for which there are clear grounds to suspect IUU fishing.

Article 13 identifies minimum requirements for carrying out inspection, including that the inspectors be properly qualified and examine all relevant areas of the vessel, attempt to avoid undue delay, interference and inconvenience, and ensure that inspections are conducted in a fair, transparent and non-discriminatory manner. The master of the vessel, in turn, must render inspectors all necessary assistance and information.

Article 15 states that Parties shall transmit the results of each inspection to the flag State of the inspected vessel and, if appropriate, to relevant Parties, States, RFMOs, the FAO and other international organizations.

Article 18 states that if, after an inspection, there are clear grounds for believing that a vessel has engaged in IUU fishing, the inspecting Party must promptly notify the flag State and other appropriate entities, and deny the vessel the use of its port for fishing related activities, unless use of the port is essential for the safety or health of the crew or vessel.

Article 19 requires that, upon request, information be provided to an affected vessel with regard to legal recourse under a Party's national laws. Further, in light of any loss or damage, an affected vessel can access information about the right to seek compensation. The Article only requires that information be provided, and does not require any Party to create a right of action.

Article 20 requires that Parties compel cooperation with inspections from vessels entitled to fly their flag. When a flag State has clear grounds to believe that one of its vessels has engaged in IUU fishing activities and is seeking entry to or is in the port of another state, it shall, if appropriate, request that the State inspect the vessel or take other appropriate measures. Each Party must encourage their vessels to fish and conduct related activities in a manner in accordance with this Agreement, and to develop transparent and non-discriminatory procedures for identifying any State not acting in accordance with this Agreement. Each Party shall also report to other Parties, RFMOs and the FAO on the actions taken in respect to vessels entitled to fly its flag that have been determined to have engaged in IUU fishing.

Article 21 requires Parties to assess the special requirements of developing States Parties in enacting this Agreement, and provide assistance to developing State Parties to enhance their ability to implement effective port measures.

Article 22 provides for a Party to seek consultations with any other Party or Parties in the event of a dispute over an interpretation or application of the agreement. If the dispute is not resolved through such consultations, Parties may, with the consent of all parties, refer the dispute to the International Court of Justice, the International Tribunal of the Law of the Sea, or arbitration.

Article 24 requires Parties to utilize the framework of the FAO to ensure regular review and monitoring of the implementation of the Agreement, and to convene the Parties for this purpose 4 years after the Agreement has entered into force.

Article 28 provides for the participation of either a Regional Economic Integration Organization (REIO) or its member states. At the time of signature or accession, the REIO must specify either

that it has competence for some or all matters governed by the Agreement.

Article 29 provides that the Agreement enters into force thirteen days after the twenty-fifth deposit of an instrument of ratification, acceptance, approval or accession.

Articles 30 and 31 preclude making reservations or exceptions, but not declarations or statements to the Agreement, so long as those declarations or statements do not purport to exclude or modify the legal effect of the Agreement's provisions.

Article 33 provides that amendments will be adopted and approved only by Parties to the Agreement. Amendments may be proposed 2 years after the Agreement enters into force, and may be adopted only by consensus. Amendments enter into force for Parties that have ratified, accepted or approved them 90 days after the deposit of instruments of ratification, acceptance or approval from two-thirds of the Parties based on the number of Parties on the date of the amendment's adoption.

IV. IMPLEMENTING LEGISLATION

Legislation will be needed to implement this Agreement. The executive branch has indicated that it will soon provide proposed legislation to the appropriate congressional committees.

V. COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on the Agreement on February 12, 2014, at which it heard testimony from David Balton, the Deputy Assistant Secretary for Oceans and Fisheries at the Department of State, as well as from Russell Smith, the Deputy Assistant Secretary for International Fisheries at the Department of Commerce, and Rear Admiral Frederick J. Kenney, Judge Advocate General and Counsel for the United States Coast Guard. The committee also heard testimony from a panel of private sector witnesses: Mark Gleason, Executive Director of the Alaska Bering Sea Crabbers; Mark P. Lagon, Global Politics and Security Chair of Georgetown University and Adjunct Senior Fellow for Human Rights at the Council on Foreign Relations; and Raymond Kane, Outreach Coordinator for the Cape Cod Commercial Fishermen's Alliance. On March 11, 2014, the committee considered the Agreement and ordered it favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to its ratification.

VI. COMMITTEE RECOMMENDATION AND COMMENTS

The Committee on Foreign Relations believes that the proposed Agreement is in the interest of the United States and urges the Senate to act promptly to give advice and consent to its ratification. The committee believes the Agreement is of direct and critical interest to United States fishing concerns, as well as U.S. conservation organizations, U.S. consumers, and those who reside in vulnerable developing coastal countries.

The Committee on Foreign Relations has included one declaration in the recommended resolution of advice and consent. The declaration states that the Agreement is not self-executing. This statement means that the Agreement will have domestic effect through

implementing legislation and regulations thereunder. Prior to the 110th Congress, the committee generally included such statements in the committee's report, but in light of the Supreme Court decision in *Medellin v. Texas*, 128 S. Ct. 1346 (2008), the committee determined that a clear statement in the Resolution is warranted. A further discussion of the committee's views on this matter can be found in Section VIII of Executive Report 110–12.

VII. TEXT OF RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO A DECLARATION

The Senate advises and consents to the ratification of the Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing, Done at the Food and Agriculture Organization of the United Nations, in Rome, Italy on November 22, 2009, and Signed by the United States on November 22, 2009 (the "Agreement") (Treaty Doc. 112–4), subject to the declaration of section 2.

SECTION 2. DECLARATION

The advice and consent of the Senate under section 1 is subject to the following declaration:

The Agreement is not self-executing.

