



Annex II

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*

Background and scope

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, pursuant to article 25(3), “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. Contributions to the Assistance Fund will be used to support the purposes of the Fund as enumerated in paragraph 16, including through project(s) and programme(s) implemented by the Food and Agriculture Organization (FAO) or the Division for Ocean Affairs and the

* As revised at the fourteenth round of Informal Consultations of the States Parties to the Agreement, New York, 2 to 3 May 2019.

Law of the Sea, Office of Legal Affairs of the United Nations (UN/OLA/DOALOS), acting on behalf of the United Nations, as provided for in paragraph 13.

Establishment of the Assistance Fund

5. The Assistance Fund established pursuant to General Assembly resolution 58/14 will be administered by the FAO.

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.

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

Implementing Office

8. The FAO will administer the Fund and act as the implementing office for the Fund in accordance with its Financial Regulations and other applicable Rules, and in collaboration with UN/OLA/DOALOS.

9. In the administration of the Fund, the FAO and UN/OLA/DOALOS will 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

10. The FAO and UN/OLA/DOALOS 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.

11. UN/OLA/DOALOS 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 13 (projects and programmes) which are to be implemented by UN/OLA/DOALOS, and paragraph 16(g) (proceedings for the settlement of disputes under the Agreement), UN/OLA/DOALOS will review and decide on these applications in accordance with these Terms of Reference.

Contributions to the Assistance Fund

12. The FAO and UN/OLA/DOALOS will 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. Such contributions will be deposited in the Fund referred to in paragraph 7.

13. In addition to general voluntary contributions to the Fund, contributions may also be made through donor agreements for specific activities which meet any of the purposes of the Fund set forth in paragraph 16. Such donor agreements between a donor, the FAO and the UN/OLA/DOALOS, will set out all activities to be undertaken, as mutually agreed upon by them. Such activities will be implemented by the FAO or UN/OLA/DOALOS.

Applications for assistance

14. 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 will 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 will 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 for travel will be submitted to UN/OLA/DOALOS at least one month in advance of the date of the event or activity for which assistance is requested. Applications for assistance for other types of activities will be submitted at least four months in advance of the planned activity.

15. 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

16. 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 and other appropriate international and regional organizations and bodies.

Applications for this purpose will 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) Enhancing the ability of developing States Parties, in particular the least-developed among them and small island developing States Parties, to develop at the national level a legal basis for the implementation of effective flag State measures, in conformity with the provisions of the Agreement and in accordance with international law.

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

f) Facilitating exchange of information and experience on the implementation of the Agreement.

g) 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.

h) 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 47/444 or the financial assistance fund established by the Permanent Court of Arbitration.

Consideration of applications, granting of assistance and conditions

17. Requests for financial assistance will be considered without delay in the order in which they have been submitted. The FAO or UN/OLA/DOALOS, will establish a panel, which may be composed of the Chairs of the Regional Groups of Member States for the month during which the panel is being convened, or their designate, or other independent and

impartial experts of the highest professional standing, to assist in the review of the applications and to make recommendations on the amount of financial assistance to be given in each case. In cases where applications for assistance from the Fund are made against specific activities for which funding has been made available through a donor agreement in accordance with paragraph 13, a representative of the donor(s) that have entered into the said donor agreement will also be invited to participate in the panel.

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

19. Review of applications and decisions will be guided by the purposes of the Fund, the provisions of the Agreement, the financial needs of the requesting developing State Party(ies) and availability of funds, with priority given to least developed countries and small island developing States Parties to the Agreement. The financial assistance will 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 will take into account the size of the Fund and the need for cost effectiveness in its use.

20. In considering applications, the FAO and UN/OLA/DOALOS 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.

21. The FAO will disburse financial assistance from the Fund in an expeditious manner in accordance with paragraphs 17-20 of these Terms of Reference.

22. a) Financial assistance provided from the Fund will 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 will submit an amended application for financial assistance. The amended application will 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 will notify the FAO and UN/OLA/DOALOS as soon as possible and take immediate steps to refund promptly the financial assistance to the FAO. Failure to comply with these requirements may affect the decision concerning any future application for assistance.

Reporting

23. An annual report on the activities of the Fund, including a financial statement of the contributions to, and disbursements from the Fund, will 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 will also be presented at the Review Conference provided for in Article 36 of the Agreement.

24. Additional reports on project(s) and programme(s) referred to in paragraphs 4 and 13 will be presented to the donor by FAO and the UN/OLA/DOALOS, in accordance with any specific reporting requirements set out in the donor agreement, and in accordance with the donor agreement and the Rules and Regulations of FAO and the United Nations, as may be applicable.

25. Recipients of assistance will be required to provide a report on the purpose and outcome of the approved expenditure to the FAO or UN/OLA/DOALOS, as appropriate, for the above-mentioned report(s). The FAO and UN/OLA/DOALOS will share these reports. Failure of the recipients to provide such a report promptly may affect the decision concerning any future application for assistance.

Revision and Review

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

27. The States Parties to the Agreement will 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.

28. Taking into account paragraph 19 of these Terms of Reference, the States Parties to the Agreement may also make recommendations on priorities for the use of the Fund.

Publicity

29. The FAO and UN/OLA/DOALOS will maintain on their websites details of the Fund, including details on application procedures, assistance provided, and links to other relevant websites. The FAO and UN/OLA/DOALOS 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.