

# 1. Code of conduct, conventions and importing country directives

## SUMMARY

There are a number of instruments both voluntary and binding that have a bearing on site selection, construction, facilities, operation, and management of harbours and landing places for fishing vessels, as well as prevention of pollution and port security. The intention within this chapter is to set forth basic principles, some of which are binding, that will be expanded upon in greater technical detail in successive chapters and annexes. In this regard, the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing adopted by the Conference of FAO in November 2009 will, on entry into force, add to the responsibilities of port managers and departments of fisheries alike.

In addition, countries that export seafood and seafood products may also have to address directives of importing countries regarding post-harvest care, levels of hygiene and general cleanliness within work and storage areas and, in particular, the application of the Hazard Analysis and Critical Control Point (HACCP) principle.

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## 1.1 FAO CODE OF CONDUCT FOR RESPONSIBLE FISHERIES

In accordance with the recommendations of the Committee on Fisheries (COFI) at its Nineteenth Session in March 1991 and the subsequent International Conference on Responsible Fishing, held in Cancun (Mexico) in 1992, the Twenty-eighth Session of the Conference of FAO unanimously adopted the FAO Code of Conduct for Responsible Fisheries, 1995 (hereinafter referred to as the Code). The Code was formulated so as to be interpreted and applied in conformity with the relevant rules of international law, as reflected in the United Nations Convention on the Law of the Sea, 1982 (UNCLOS), as well as with 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, 1995, in the light of, *inter alia*, the 1992 Declaration of Cancun and the 1992 Rio Declaration on Environment and Development, in particular Chapter 17 of Agenda 21.

Whereas the Code is voluntary certain parts of it are based on relevant rules of international law, including those reflected in the United Nations Convention on the Law of the Sea of 10 December 1982. The Code also contains provisions that may be or have already been given binding effect by means of other obligatory legal instruments among the Parties such as the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993.

With regard to harbours and landing places for fishing vessels, Article 6.17 sets out that States should ensure that fishing facilities and equipment as well as all fishing activities allow for safe, healthy and fair working and living conditions and meet internationally agreed standards adopted by relevant international organizations. More specifically, Article 8.9 addresses harbours and landing places for fishing vessels.

In adopting the Code, the Conference called for the production of technical guidelines for the implementation of the provisions of the Code. In this regard, this manual draws on the first in the series of FAO Technical Guidelines for Responsible Fisheries, entitled Fishing Operations, and in particular, Section 7, Energy Optimization and Protection of the Ozone Layer, and Section 8, Design, Construction and Modification of Harbours and Landing Places for Fishing Vessels.

In developing the guidelines and its annexes, FAO drew on experience gained over many years of field activities, and in the case of harbours and landing places, how increasing problems associated with the construction of new harbours and landing places for fishing vessels and, in particular, their operation and maintenance, had reached critical levels in some parts of the world. In many instances, the adverse effects of harbour pollution from the activities of fishing vessels as well as those of vendors and processors had been exacerbated by the almost total lack of reception facilities.

Matters had become more serious in the late 1980s with an ever increasing demand for assistance from developing countries to solve specific problems with existing harbours as well as for help in designing new installations.

A classic example was within the Bay of Bengal subregion, where the Bay of Bengal Programme (BOBP), with the cooperation of the International Maritime Organization (IMO) (within its cleaner seas programme) and FAO, commissioned a series of important studies. The results of these studies were presented at a workshop hosted by the Government of Malaysia at Penang, 9–11 December 1991, at which developments with regard to the International Convention for the Prevention of Pollution from Ships (MARPOL) were highlighted by IMO.

In parallel, the United Nations Conference on the Environment and Development (UNCED) deliberated the need for a precautionary and anticipatory approach rather than a reactive approach to prevent degradation of the marine environment. Consequently, in June 1992, UNCED recommended, *inter alia*, the adoption of environmental impact assessment procedures.

Thus, the Code and its Technical Guidelines underline the importance of environmental auditing, attention to the provisions of MARPOL and Article 21 of UNCED.

### 1.2 FAO TECHNICAL GUIDELINES FOR RESPONSIBLE FISHERIES NO. 1

The first in the series of FAO Technical Guidelines for Responsible Fisheries (FAO, 1996) refers to fishing operations and in Section 8 it states that, in general, competent authorities should adopt acceptable standards and follow guidelines for the design, construction, maintenance and management of harbours and landing places for fishing vessels (*reference 8.9 of the Code*) to ensure, *inter alia*:

- safe havens for fishing vessels;
- that freshwater supplies are available;
- the provision of adequate sanitation arrangements;
- that waste disposal systems (including for oil and oily water) are provided;
- that there would be no pollution from external sources (non-fisheries activities);
- that there would not be any pollution arising from fisheries activities;
- the provision of adequate servicing facilities for vessels, vendors and buyers;
- that maintenance programmes include the monitoring of the effects of operations conducted at the facility on the environment;
- compliance with relevant conventions concerning pollution of the aquatic environment;
- integration with other users as in the case of a non-exclusive facility for the fishing industry; and
- that arrangements are made to combat the effects of erosion and siltation.

The Technical Guidelines also expand on the provisions of the Code in relation to the participation of users in the management of ports, harbours and landing places (Section 8, paragraph 115), as well as the removal of offshore structures (Section 8.10 and Annex V) and the development of artificial reefs (Section 8.11).

### 1.3 ANNEX VI OF THE FAO TECHNICAL GUIDELINES FOR RESPONSIBLE FISHERIES NO. 1

#### 1.3.1 General provisions

Annex VI expands on the principles set out in the Code and the Technical Guidelines, covering procedures for the development and management of harbours and landing places for fishing vessels. In addition, within the concepts of responsible fishing operations and the integration of fisheries into coastal area management, it also provides guidance on the conduct of environmental auditing with regard to proposal for new construction and the upgrading of existing facilities.

The annex provides a technical framework for the implementation of procedures as an aid to the management and development of harbours and landing places for fishing vessels.

#### 1.3.2 Scope and objectives of Annex VI

The proposed procedures are global in scope and directed towards all persons, whether in government or the private sector, involved in the planning, design, construction, maintenance and management of harbours, harbour infrastructure and landing places for fishing vessels.

The objective is an enhanced capacity of States to ensure the adoption of environmentally sound development, management and conservation practices through:

- better standards of management in harbours and landing places for existing and future facilities;
- the establishment of environmental auditing procedures and design criteria related to future fisheries infrastructure projects; and
- appropriate training and education in environmental awareness.

It should be recalled, however, that although the Code is voluntary, some provisions of it may be or have already been given binding effect by means of legal instruments. The same statement effectively applies to this annex, since it contains references to legally binding instruments such as UNCLOS 82, the Montreal Protocol and MARPOL 73/78.

The full text of Annex VI is set out in Annex I.

## 1.4 INTERNATIONAL CONVENTIONS

### 1.4.1 United Nations Convention on the Law of the Sea, 1982

The United Nations Convention on the Law of the Sea (UNCLOS) sets up a legal regime for the sea and oceans and thus represents the attempt by the international community to regulate all aspects of the resources of the sea and uses of the ocean. In terms of the environment, UNCLOS establishes material rules concerning environmental standards and enforcement provisions regarding pollution of the marine environment.

The convention addresses ports, baselines, roadsteads and charts, as well as standards, criteria and indicators for assessing protected areas.

### 1.4.2 Montreal Protocol to the Vienna Convention for the Protection of the Ozone Layer

The Convention recognizes that worldwide emissions of certain substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment.

Substances that are required to be controlled, referred to as “controlled substances”, are listed in Annexes A, B, C or Annex E to the Montreal Protocol, on Substances that Deplete the Ozone Layer, whether existing alone or in a mixture, and provisions are made for the gradual phasing out of such substances, for example, certain refrigerants.

### 1.4.3 International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78)

The Convention desires to achieve the complete elimination of intentional pollution of the marine environment by oil and other harmful substances and the minimization of accidental discharge of such substances. Of particular interest to harbours and landing places for fishing vessels is Annex V and its guidelines, particularly in relation to shoreside facilities for operational waste including fishing gear.

### 1.4.4 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 and 1996 Protocol Thereto (London Convention)<sup>1</sup>

The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, the “London Convention” for short, is one of the first global

<sup>1</sup> The Joint Group of Experts on Scientific Aspects of Marine Environmental Protection (GESAMP) is an advisory body, established in 1969, that advises the United Nations (UN) system on the scientific aspects of marine environmental protection. At present it is jointly sponsored by eight United Nations organizations (*IMO, FAO, UNESCO-IOC, WMO (since 1968), IAEA (since 1969), UN (since 1971), UNEP (since 1977), and UNIDO (since 2006)*) with responsibilities relating to the marine environment as a mechanism for coordination and collaboration among them. GESAMP functions are to conduct and support marine environmental assessments, to undertake in-depth studies, analyses, and reviews of specific topics, and to identify emerging issues regarding the state of the marine environment. GESAMP itself consists of ideally 25–30 experts, drawn from a wide range of relevant disciplines, who act in an independent individual capacity.

conventions to protect the marine environment from human activities and has been in force since 1975. Its objective is to promote the effective control of all sources of marine pollution and to take all practicable steps to prevent pollution of the sea by dumping of wastes and other matter.

In 1996, it was agreed to further modernize the Convention and, eventually, replace it. Under the Protocol all dumping is prohibited, except for possibly acceptable wastes on the so-called “reverse list”. The Protocol entered into force on 24 March 2006.

#### **1.4.5 United Nations Framework Convention on Climate Change**

The convention on climate change is important in that, along with ozone loss, climate change is the embodiment of global environmental change. Global warming is what most scientists currently think will happen as the effect of the additions humankind has made to the natural mixture of the atmosphere. The International Panel on Climate Change (IPCC) has presented a series of research reports on the mechanisms of climate change and the likely rate of future warming. The IPCC has indicated that one likely result of global warming is an increase in the rate of sea level rise. This is not the result of melting of the major ice caps, but of the melting of the smaller glaciers and the thermal expansion of the warming oceans. These two effects will cause the sea level to rise by about 5 mm per year in the future compared with a rate of a little more than 1 mm per year today. The predicted contribution of the melting ice caps is only about 12 percent. The cumulative predicted sea level rise of about 300 mm by 2050 is not large, but it will make the problems of erosion and tidal flooding more difficult to solve and should be addressed when planning harbours and landing places for fishing vessels.

#### **1.4.6 International Convention for the Safety of Life at Sea, 1974**

The Conference of Contracting Governments to the International Convention for the Safety of Life at Sea (SOLAS), 1974 (London, 9 to 12 December 2002), adopted amendments to the Annex to the Convention, as amended, in particular, new chapter XI-2 on special measures to enhance maritime security; and, the new International Ship and Port Facility Security Code (ISPS Code).

#### **1.4.7 International Ship and Port Facility Security Code**

The International Ship and Port Facility Security Code (ISPS Code) is a two-part document describing minimum requirements for security of ships and ports. Part A provides mandatory requirements; Part B provides guidance for implementation. The ISPS Code applies to ships on international voyages (including passenger ships, cargo ships of 500 gross tonnage (GT) and upwards, and mobile offshore drilling units) and the port facilities serving such ships.

The main objectives of the ISPS Code are to:

- detect security threats and implement security measures;
- establish roles and responsibilities concerning maritime security for governments, local administrations, ship and port industries at the national and international level;
- to collate and promulgate security-related information; and
- to provide a methodology for security assessments so as to have in place plans and procedures to react to changing security levels.

Whereas the ISPS Code does not specify specific measures that each port and ship must take to ensure the safety of the facility, it outlines a standardized, consistent framework for evaluating risk, enabling governments to offset changes in threat with changes in vulnerability for ships and port facilities.

For port facilities, the requirements include port facility security plans, security officers and certain security equipment. In addition, further requirements for ships and for port facilities include monitoring and controlling access, monitoring the activities of people and cargo and ensuring that security communications are readily available.

Chapter XII-2 of SOLAS and the ISPS Code apply to cargo ships of 500 GT and upwards engaged on an international voyage, thus ships engaged in unloading or loading fish or fish products would be covered.

#### **1.4.8 Convention on Facilitation of International Maritime Traffic (FAL), 1965**

The purpose of the Convention is to facilitate maritime transport by simplifying and minimizing the formalities, documentary requirements and procedures associated with the arrival, stay and departure of ships engaged on international voyages.

#### **1.4.9 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing**

The Agreement was adopted by the Conference of FAO in November 2009. The aim of the Agreement is to provide a mechanism to combat illegal, unreported and unregulated (IUU) fishing. Key measures that parties to the Agreement will commit include:

- Foreign fishing vessels wishing to dock will be required to request permission from designated ports ahead of time, transmitting information on their activities and the fish they have on board.
- Port States will conduct regular inspections of ships according to a common set of standards. Reviews of ship papers, surveys of fishing gear, examining catches and checking a ship's records can often reveal if it has engaged in IUU fishing.
- They also must ensure that ports are adequately equipped and inspectors properly trained.
- When a vessel is denied access, port States must communicate that information publicly and national authorities of the country whose flag the vessel is flying must take follow-up action.
- These measures apply to foreign fishing vessels not flying the flag of the port State; however, the port State can also apply such measures to their own fishing fleets.

The Agreement sets out that, to the greatest extent possible, Parties shall:

- (a) integrate or coordinate fisheries related port State measures with the broader system of port State controls<sup>2</sup>;
- (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.

#### **1.4.10 Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991)**

The purpose of the Convention is to enable contiguous countries to either, individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities. This Convention comes into play when contaminated dredged spoil from a fishing port needs to be dumped offshore close to international boundaries.

<sup>2</sup> Such as Memoranda on Port State Control.

### 1.5 IMPORTING COUNTRY DIRECTIVES

The Code also addresses post-harvest practices and trade within Article 11. Article 11.1.3 sets out that States should set minimum standards for safety and quality assurance and to make sure that these standards are effectively applied throughout the industry. They should promote the implementation of quality standards agreed within the context of the FAO/World Health Organization Codex Alimentarius Commission and other relevant organizations or arrangements.

The first edition of a “Code of practice for fish and fishery products” (2009), under Codex Alimentarius, will assist all those who are engaged in the handling and production of fish and fish products or are concerned with their storage, distribution, export, import and sale in attaining safe and wholesome products that can be sold on national or international markets and meet the requirements of the Codex Standards.

The issue, however, is how to control the food in international trade. At the point of entry the regulatory agency may not always know whether the incoming food was produced under hygienic conditions and the application of HACCP principles. In this situation some criteria would be needed that would have to be established according to the principles described in the Codex documents. An alternative approach may be to allow control of foodstuffs in international trade to be based on signed agreements between internationally recognized and competent bodies.

Consequently, many importing countries impose conditions for the importation of fish and fishery products that translate into conditions to be met by the exporting country and these relate not only to safety in health but also to responsible fishing practices.

An example in this regard are a number of directives issued by the European Commission (EC) that set criteria both for the exporting and importing countries and it maintains an inspection service to monitor and assist exporting countries. Other major importing countries (not members of the European Community) have also set criteria to be met by exporting countries.

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