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Organisation  
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pour  
l'alimentation  
et  
l'agriculture

Продовольственная и  
сельскохозяйственная  
организация  
Объединенных  
Наций

Organización  
de las  
Naciones  
Unidas  
para la  
Agricultura  
y la  
Alimentación

## COMMITTEE ON FISHERIES

### Twenty-ninth Session

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### **PROGRESS MADE WITH REGARD TO MEASURES AGAINST ILLEGAL, UNREPORTED AND UNREGULATED (IUU) FISHING, INCLUDING PORT STATE MEASURES, FLAG STATE PERFORMANCE, MARKET STATE MEASURES AND DEVELOPMENT OF A COMPREHENSIVE GLOBAL RECORD OF FISHING VESSELS, REFRIGERATED TRANSPORT VESSELS AND SUPPLY VESSELS**

#### SUMMARY

This paper addresses recent initiatives taken to combat illegal, unreported and unregulated (IUU) fishing and related activities. These initiatives are based on the 2001 FAO International Plan of Action (IPOA-IUU) and related instruments including the 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. They address issues such as port State measures, flag State performance, market State measures and the development of a comprehensive Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels. The status of these initiatives are discussed together with planned activities to carry them forward

## INTRODUCTION

1. Illegal, unreported and unregulated (IUU) fishing and related activities continue to be a major problem, *inter alia*, jeopardizing responsible and sustainable fisheries and frustrating attempts to protect the marine environment. All regions of the world and most fisheries are confronting the difficulties and adverse effects associated with, and exacerbated by, IUU fishing. Many of the underlying conditions that enable and promote IUU fishing are fuelled by lack of transparency and financial incentives that allow illegal activities to go undetected. The situation is further aggravated by factors such as inadequate national fishing capacity controls, a lack of resources dedicated to combating IUU fishing, underdeveloped regional cooperation and corruption, resulting in poor fisheries governance and unacceptable outcomes such as serious damage to biological, human, social and environmental frameworks. These conditions must be addressed if governance is to be enhanced, outcomes improved and inroads made to prevent, deter and eliminate IUU fishing.

2. Combating IUU fishing requires the application of different types of tools as envisaged in the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. IUU fishing is a complex problem, varying significantly between fisheries and regions. To address it, different approaches and tools are needed; there is not a single solution to all IUU fishing situations. Development and implementation of appropriate tools and approaches remain vital. Equally important is understanding that in order to maximize their positive impact, the tools cannot be used in isolation. The synergies amongst the various tools must be recognized and utilized. Key issues in combating IUU fishing are the need to improve the likelihood of detection, increase the sanctions and consequences, and reduce the financial incentive for IUU fishers. Tools geared towards these results are best placed to act as disincentives for IUU fishers.

3. FAO and the wider international community are implementing a range of measures to combat IUU fishing. Some of FAO's activities build on past initiatives while others are new in concept and application. FAO's work on these activities is described in this paper.

## PORT STATE MEASURES

4. The FAO Conference on 22 November 2009 approved the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (the Agreement) as an Article XIV instrument under the FAO Constitution. Immediately following its approval, the Agreement opened for signature. It will remain open for one year. As at 7 September 2010, 16 FAO Members had signed the Agreement. It will enter into force 30 days after the date of the deposit of the twenty-fifth instrument of ratification, acceptance, approval or accession with the Depositary, the Director-General of FAO.

5. The Agreement seeks to prevent, deter and eliminate IUU fishing through the implementation of effective Port State measures as a means of ensuring the long-term conservation and sustainable use of living marine resources and marine ecosystems. The intention is that the Agreement will be applied widely and effectively by parties, in their capacities as port States, for vessels not entitled to fly their flags. It will apply to these vessels when seeking entry to parties' ports or while they are in port. Certain artisanal fishing and container vessels will be exempt.

6. Article 21 is an important aspect of the Agreement, addressing the requirements of developing States. The intent of the Article is to promote the effective participation of developing countries in the Agreement and, at the same time, ensure that weak links are minimized in harmonized regional approaches to implementation.

7. Paragraph 6 of Article 21 requires Parties to establish an *ad hoc* working group to report periodically on funding mechanisms. They should address (i) a scheme for contributions; (ii) identification and mobilization of funds; (iii) development of criteria and procedures to guide implementation; and (iv) progress in the implementation of the funding mechanisms. The Article also requires that the *ad hoc* working group take account of a number of other issues concerning developing countries. These issues are listed in the Agreement.

8. FAO has elaborated a comprehensive capacity-development programme, including the drafting of training materials, to support the implementation of the Agreement. This programme will be funded by extra-budgetary resources. The programme will involve a global series of participatory workshops to assist developing countries to implement the Agreement. It is proposed that the training should commence prior to the entry into force of the Agreement so that countries will be prepared to implement the measures it contains.

9. Article 21 requires action to establish the working group and to map out a programme of work. As an initial step, terms of reference for the working group should be elaborated and agreed. There would be considerable merit in having the working group operational prior to the entry into force of the Agreement and the Committee is being invited to provide guidance on this point.

#### **FLAG STATE PERFORMANCE**

10. Recognizing the value of initial Canada-led work on flag State performance, the matter was considered again by the Twenty-eighth session of COFI. The Committee reconfirmed its call for an Expert Consultation on Flag State Performance to be followed by a Technical Consultation on Flag State Performance prior to the Twenty-ninth session of COFI.

11. The Expert Consultation on Flag State Performance was held at FAO Headquarters, Rome, Italy, in June 2009.<sup>1</sup> Its purpose was to consider and make recommendations on:

- criteria for assessing the performance of flag States;
- possible actions against vessels flying the flags of States not meeting the criteria identified;
- role of national governments, regional fisheries management organizations and arrangements (RFMOs), international institutions, international instruments and civil society in implementing the criteria and actions for flag State performance, and;
- assistance to developing countries to assist them in meeting the criteria, taking actions and fulfilling their respective roles as appropriate.

12. Prior to the Expert Consultation and during the meeting, the Experts considered a range of technical papers and the commentaries, all of which had been prepared by the Experts themselves. These documents facilitated the Consultation's work. Importantly, the meeting agreed to recommend the convening of a Technical Consultation to develop international guidelines on criteria for assessing the performance of flag States and possible actions against vessels flying the flags of States not meeting such criteria.

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<sup>1</sup> FAO. 2009. FAO Fisheries and Aquaculture Report No 918. Report of the Expert Consultation on Flag State Performance. FAO. Rome. 94p. The outcome of the 2008 Expert Workshop on Flag State Responsibilities: Assessing Performance and Taking Action that was held in Vancouver, Canada, from 25 to 28 March 2008 informed the FAO Expert Consultation on Flag State Performance.

13. The Expert Consultation recognized that such an assessment process would be an important part of the proposed international guidelines. Noting the basis provided by international law for such assessments, the Consultation agreed on the need for two processes: one for self-assessment and the other for international or multilateral assessment. The meeting stressed that the latter type of assessment should be undertaken in a spirit of international cooperation, consistent with the 1982 UN Convention on the Law of the Sea.

14. The Expert Consultation's outcome was draft criteria for flag State performance, processes for conducting assessments, post-assessment actions and assistance to developing countries to improve their performance as flag States. The Experts considered that these criteria and actions should form an appropriate framework for review by a Technical Consultation.

15. The Technical Consultation on Flag State Performance was scheduled to be held in Rome from 28 June to 2 July 2010. However, the meeting was postponed because insufficient funds were pledged to support the Consultation. Funds for the Consultation have been secured and it will be held from 2 to 6 May 2011. A report on the outcome of the Consultation will be made to the next session of the Committee on Fisheries.

## **MARKET STATE MEASURES**

16. Market State measures are increasingly used to combat IUU fishing. The aim of these measures is to prevent IUU sourced fish and fish products from accessing certain major markets. Fish and fishery products are among the most traded commodities. Approximately 37 percent of global fish harvested from wild capture and aquaculture enters into international trade. Trade measures against IUU fishing can be powerful instruments, without creating unnecessary or hidden barriers to trade (1995 Code of Conduct, 11.2.6).

### **Market state measures against IUU fishing**

17. Market State measures consist of actions directed toward products originating from IUU fishing and may include banning products from States found to be undermining fishery conservation and management measures, or rejecting individual shipments which lack the required documentation of their legal provenance.

18. Until recently trade measures to combat IUU fishing were mainly implemented by (RFMOs). Lately, trade measures have been implemented at the national level by the United States of America (USA) and at the regional level by the European Union (EU).<sup>2</sup>

### **Regional fisheries management organizations or arrangements**

19. One important type of trade-based measure is catch and trade documentation schemes developed by RFMOs<sup>3</sup>. Catch documentation schemes cover all fish from the point of first capture by a flag State, through international trade routes (i.e. imports, exports and re-exports), to the State of final destination. Trade documentation schemes, also referred to as statistical document programs, also document provenance from the point of first capture by a flag State, to the State of final destination, although they only apply to fish entering international trade. The key difference between the two types of schemes is that under trade documentation schemes, documentation is not required for fish that are landed (and not imported) and consumed in the same country.

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<sup>2</sup> Chile has also recently introduced legislation to control trade in IUU fish and fish products.

<sup>3</sup> Documentation schemes have been implemented by the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the Indian Ocean Tuna Commission (IOTC), the Inter-American Tropical Tuna Commission (IATTC), and the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)

20. Some RFMOs also allow for measures to be taken against individual vessels that are found to violate the RFMO's conservation and management measures, including vessels from countries that are not members of the RFMO. Many of the RFMOs blacklist non-member vessels found to have been fishing illegally and apply certain enforcement actions (such as denial of port entry or trade sanctions).

### **IUU legislation of the USA**

21. In January 2009<sup>4</sup> the USA produced its first biennial report of nations identified as having vessels engaged in IUU fishing. This includes a description of efforts taken by listed nations to take appropriate corrective action and a report of progress at the international level to strengthen the efforts of RFMOs against IUU fishing. The USA also seeks to strengthen RFMOs to address IUU fishing through the adoption of IUU vessel lists, stronger port State controls, market-related measures, and other actions.

22. Once a nation has been identified as having vessels engaged in IUU fishing, the USA will work with and encourage the identified nation to take appropriate corrective action to address IUU fishing. The absence of steps by identified nations to address problems of IUU fishing may lead to prohibitions on the importation of certain fisheries products into the USA.

23. In its initial report the USA identified six nations whose fishing vessels were engaged in IUU fishing. The identification has been followed by consultations to urge those nations to adopt corrective measures. Following consultations, the USA will formally certify each of the six nations, either as adopting effective measures to stop IUU fishing, or as having vessels still engaged in IUU fishing. If a nation is found to be still engaged in IUU fishing, that nation's vessels may be denied entry into U.S. ports, and imports of certain fish products from that nation may be prohibited.

### **IUU regulation by the EU**

24. The European Union's regulation to prevent, deter and eliminate IUU fishing (IUU Fishing Regulation) entered into force in January 2010<sup>5</sup>. The regulation provides for a range of control and enforcement measures primarily aimed at keeping illegally caught fish off the European market.

25. The IUU Fishing Regulation aims to ensure that any individual or business wishing to import fish and fish products into the EU can only do so if the country under whose flag the fish was caught can show that it has in place, and enforces, laws and regulations to conserve and manage its marine resources. Among other measures, the regulation allows EU member States to ban fish imports if they:

- are not accompanied by a catch certificate,
- were caught by a vessel that has been found to engage in IUU fishing,
- were caught by a vessel included in the EU's IUU fishing list, or
- were caught by a vessel flying the flag of a non-cooperating third country.

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<sup>4</sup> See Title IV of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MRSA)

<sup>5</sup> Council regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

26. The catch certificate that must accompany any imports of fish and fish products caught by third country fishing vessels is a central element of the regulation. The certificate is issued by the flag State of the vessel that originally caught the fish. Catch certificates of a given flag State will only be accepted once that State has confirmed to the European Union that 'it has in place national arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures'. Trade sanctions can also be imposed on fish caught by vessels found to have engaged in IUU fishing. EU member States can ban imports as an immediate enforcement measure if a vessel has been caught fishing illegally. The European Union can also add a vessel engaged in IUU fishing to an IUU vessel list if the flag State has failed to take action. Imports of fish and fish products from listed vessels to the EU are prohibited.

27. Vessels included in IUU lists of RFMOs will automatically be added to the EU's IUU list. A country can also be blacklisted if it is found to have failed to implement adequate measures to address recurrent IUU fishing activities involving vessels flying its flag, fishing in its waters or using its ports. It must also have adequate measures in place to prevent access for illegally caught fisheries products to its market. In addition, the EU can implement short-term emergency measures if actions by a third State are deemed to undermine the conservation and management measures of RFMOs.

28. The EU IUU regulation will recognize certain RFMO's schemes as complying with its requirements, although fish from unrecognized RFMO schemes will have to provide both RFMO and EU documentation. For this reason, improvements to existing schemes and development of new schemes should take account of and aim to fulfil the requirements of the EU regulation where possible.

#### **Implications for developing countries**

29. Because fish and fish products are traded so extensively the use of appropriate and acceptable trade measures can be a powerful tool to combat IUU fishing without creating unnecessary or hidden barriers to trade as referred to in the 1995 Code of Conduct for Responsible Fisheries. This is also relevant for developing countries, as this accounts for 50 percent of the fish and fish products that enter into international trade. The cost of complying with trade measures can be a handicap for exporting developing countries. For some developing countries, especially those with limited administrative infrastructures, the challenge of meeting the requirements associated with the implementation of trade measures may prove difficult to comply with. Given the importance of developing countries in international fish trade, measures to reduce IUU fishing will be undermined if developing countries do not have the capacity to be active participants in the fight to ensure legal and sustainable fishing practices.

## **DEVELOPMENT OF A COMPREHENSIVE GLOBAL RECORD OF FISHING VESSELS, REFRIGERATED TRANSPORT VESSELS AND SUPPLY VESSELS**

30. Both the Twenty-eighth and Twenty-seventh sessions of COFI supported continuing development of a comprehensive Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels (GR). The GR will be a powerful tool in combating IUU fishing because it will significantly improve transparency, particularly as it relates to fishing vessels and vessel related activity. Through the provision of detailed information on vessel characteristics, ownership and operation and the ability to further link a wide variety of highly relevant vessel related information, a comprehensive information picture will be provided. This transparency will make it much more difficult for IUU activity to escape notice and enable early intervention. The improved information will also significantly enhance the effectiveness of other tools and measures currently used to combat IUU fishing. The GR represents a global response to the global problem of IUU fishing. As it will operate at a global level, the GR is distinguished from national and regional records of fishing vessels and the authorized vessel lists of RFMOs. At its core, the GR will provide information about a vessel and increase the transparency of vessel related information, making it more difficult and more expensive for illegal operators to harvest, transport and sell illegal fish products.

31. The GR's ability to link additional information modules in the future exceeds the capability of most traditional records of fishing vessels. This enhanced global information will add significant value to the core vessel and ownership information and will provide benefit to a wide range of users. One example of additional information might include information required by the 2009 Port State Measures Agreement. The GR is intended to be neutral, allowing all users to determine how best to use the data.

32. A programme of work for the GR was endorsed by the Twenty-eighth session of COFI, leading toward a Technical Consultation, which is now scheduled for 8 to 12 November 2010.<sup>6</sup> Highlights of this GR work programme have included a study to examine options for the most important features of a GR, a unique vessel identifier (UVI) which will stay with a vessel forever, regardless of any changes to the vessel's flag, ownership or status. The UVI was identified as a mandatory prerequisite in the initial feasibility study done by FAO on the GR. COFI directed that a UVI for the GR should try to take advantage of existing numbering schemes.

33. Additional technical studies for the GR regarding options for a phased implementation were done as part of the work programme. The manner and impact of implementation are significant, given the potentially large number of vessels which the GR may include and the time which will be needed for national authorities to obtain and submit the necessary information for a UVI. Technical design studies were also carried out. User needs assessments were carried out at workshops and seminars as funding permitted. Awareness raising was done at a wide variety of events to reach a broad cross section of stakeholders as the GR will be of benefit to many.

34. A pilot project is underway to explore how a GR might function. The pilot was arranged with the cooperation of the International Maritime Organization (IMO), the Northeast Atlantic Fisheries Commission (NEAFC), and IHS-Fairplay, formerly Lloyd's Register-Fairplay. Additional pilot projects, also involving UVIs, were explored with the joint tuna RFMOs.

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<sup>6</sup> The Technical Consultation to Identify a Structure and Strategy for the Development and Implementation of the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels is scheduled to take place at FAO Headquarters, in Rome 8-12 November 2010..

35. A number of possibilities were explored with regard to possible hosts for the GR so realistic assessments of costs and other development considerations could be placed before the Technical Consultation. An informational website on the GR <http://www.fao.org/fishery/global-record/en> was inaugurated to keep member States and all stakeholders informed about the GR.

36. In the Technical Consultation, member States will be asked to consider the following issues:

- scope of the GR,
- development of a suitable UVI scheme,
- the hosting, management and funding of the GR,
- implementation of the GR,
- information access and privacy issues,
- legal issues, and
- developing country needs.

#### **SUGGESTED ACTION BY THE COMMITTEE**

37. The Committee is invited to:

(i) note that the Agreement on Port State Measures was adopted on 22 November 2009 by the FAO Conference and that Members are encouraged to ratify, accept, approve or accede to the Agreement as soon as possible and to make extra-budgetary contributions available to support capacity-development activities to implement the Agreement;

(ii) provide concrete guidance on how Article 21 of the Agreement on Port State Measures should be operationalized, including how the working group should be constituted and the primary focus of its work and activities;

(iii) note the outcome of the Expert Consultation on Flag State Performance, and the rescheduled dates for the Technical Consultation;

(iv) note that market State measures, such as the EU's IUU regulation, are increasingly being used to combat IUU fishing and make recommendations on how to assist developing countries in meeting these requirements; and

(v) review the recommendations of the 2010 Technical Consultation to Identify a Structure and Strategy for the Development and Implementation of the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels and provide guidance on the next steps for the Global Record.