

**JAPAN**

Japan’s comments on the Draft Technical Consultation to Deter a Legally-Binding Instruments on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

September 15, 2008

I . Japan’s comments on the Draft Agreement

1. General Comments

Firstly Japan considers that all of us should recall that “many members stressed that the new instruments would represent minimum standards for port States” at the last Committee of Fisheries of FAO. However, it was regrettable that some members aimed to make “high-standard agreement” at the first Technical Consultation held last June at FAO headquarters. This approach was wrong as it is inconsistent with the purpose of this Agreement. We would like to take this opportunity to reiterate our position that the scope of term “vessels” should be limited to catching boats and vessels directly engaged in fishing operations. We believe that it is not general understanding that the scope of vessels in fishery agreements can include cargo vessels or fuel supply vessels. The management measures for navigation and port access of cargo vessels or fuel supply vessels are treated by the International Maritime Organization (IMO).

At the same time, other some members tried to make many exemptions for developing countries. We have to stress that it is not appropriate to make such exemptions for developing countries because the objective of agreement is to make a minimum-standard agreement feasible for all the countries “to prevent, deter and eliminate IUU fishing.”

The greatest efforts should be made in order that each State and RFMO can take effective port State measures by the minimum-standard agreement.

Hence, Japan considers that many provisions of articles under the draft text should be modified accordingly.

2. Specific comments

We listed all the comments for your information.

<p><u>TECHNICAL CONSULTATION TO DRAFT A LEGALLY-BINDING INSTRUMENT ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING</u></p>	<p>Explanatory Note</p>
<p><b>PART 1 GENERAL PROVISION</b></p> <p><b>Article 1 Use of terms</b>                  (d) “fishing related activities” means any operation <b>directly</b> in support of, or in preparation for, fishing, including the processing, transshipment or transport of fish that have not been previously landed and offloaded at a port;</p>	<p>There is rational reason to limit catching boat and vessels inseparable in fishing operations to define “vessels”, since a cargo vessel could have one-off contract to transport fish caught by IUU fishing in good intention. We should not condemn such cargo vessel which is victim in good will. We believe that “fishing related activities” stipulated in the article 1(d)(revised from (g)) should focus on operations directly in support or in preparation for fishing. We can’t accept the actual draft in which</p>

(k)“port State measures” means measures set forth in this Agreement to be taken by a port State; while port state control focuses on the safety of ships and crew members taken by a port state

Article 7 Designation of ports

1. Each Party shall designate and publicize ports to which vessels not entitled to fly its flag may request access for landing, transshipping, packaging or processing fish].

**PART 3 ACCESS [,ENTRY] AND USE OF PORTS**

Article 9 [Denial of] access [, entry and] use of port  
1.[Where a Party allows a vessel to enter its port, it][A Party] shall not allow[that][a] vessel to use its ports for landing, transshipping packaging or processing of fish or other [fishing related activities]]if, at the relevant time, the vessel:

**PART 4 INSPECTIONS AND FOLLOW-UP ACTIONS**

*Article 11 Levels and priorities for inspection*

1. Each Party may endeavour to inspect in accordance with a number of vessels in its ports required to reach an annual level of inspections necessary to achieve the objective of this Agreement.

2. In determining which vessels to inspect, a Party shall take into account priority to:

(a) vessels that have been denied the use of a port in accordance with Articles 9 or 17 of this Agreement;

ambiguous and broad scope of vessels are subject to PSM.

Japanese Delegation proposed adding of word “directly” in front of “in support” and deletion of “as well as the provision of personnel, fuel, gear and other supplies at sea;”

However, Japanese proposal was not supported by other Delegations. Therefore, Japanese Delegation reserved its position which was taken note by the Chair.

Japanese delegation proposed a revision of 1(k) with a view to making clear the difference between PSM and PSC. However, Japanese proposal was not supported by other Delegations. Then, the absence of this definition caused confusion to interpret the article 5 (integration of PSM into PSC).

Japanese delegation pointed out that a port State can’t refuse access to port services for cargo vessels or fuel vessels in accordance with the relevant IMO regulations.

The same reason as above

Japan proposes to replace the term "shall" with "may" to be consistent with paragraph 2 of article 23 of UNFSA.

Since each port State should prioritize inspection,

<p>(b) requests from other relevant States or regional fisheries management organizations that particular vessels be inspected.</p>	<p>taking into account its circumstances, Japan suggests that “give” should be replaced with “take into account”.</p>
<p><i>Article 12 Conduct of inspections</i></p> <p>1. Each Party shall ensure that the inspection procedures taking into account Annex B as a minimum standard.</p> <p>2. Each Party shall, in carrying out inspections in its ports:</p> <p>(j) do not interfere with the master’s ability to communicate with the authorities of the flag States during the boarding and inspection.</p> <p>(k) promptly leave the vessels following completion of the inspection if they find no evidence of a serious violation.</p> <p>(l) avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstruction in the execution of their duties, The degree of force used shall not exceed that reasonably required in the circumstances.</p> <p><i>Article 13 Results of inspections</i></p> <p>Each Party shall, as a minimum standard, require the information taking into account Annex C in the report of the results of each inspection.</p> <p><i>Article 17 Port State actions following inspection</i></p> <p>1. When, following an inspection, there is reasonable evidence for believing that a vessel has engaged in, or supported, illegal, unreported and unregulated fishing which can include, but is not limited to, the following:</p> <p>(l) without nationality and harvest fish transshipping or processing of fish, if these measures have not already been taken in respect of the vessel.</p>	<p>In order to make brief and effective procedures, which are feasible for the majority of states, Japan suggests that each state should make inspection procedures taking into account its circumstance and for this reason Annex B should be used as a guideline.</p> <p>It is not feasible for many countries, particularly developing countries, to deploy language skilled inspectors. Therefore, paragraph (g) should be deleted.</p> <p>Some of the important components are lacking in the draft, which are essential elements for the inspected vessels and clearly described in the paragraph 1(c), (e) and (f) of article 22 of UNFSA. Therefore, Japan suggests that these paragraphs should be added in the text of this Agreement.</p> <p>For the same reason as we gave in the article 12. In order to make brief and effective procedures, which is feasible for the majority of states, Japan suggests that each state should require the information regarding inspection result on a case-by-case basis, Annex C should be used as a guideline.</p>

2. A Party shall, in appropriate situations, deny a vessel referred to in paragraph 1 of this Article, access to port services, including, *inter alia*, refuelling and resupplying but not including services essential to safety of ships and the safety, health and welfare of the crew.

3. A Party may take measures in addition to those specified in paragraphs 1 and 2 of this Article that are consistent with international law where there is evidence that a vessel has engaged in one or more of the activities set forth in paragraph 1, provided that:

or

(d) the additional measures gives effect to a decision of a regional fisheries management organization or is taken pursuant to other international agreements.

#### *Article 19 Compensation*

Each Party shall ensure that the owner or operator of a vessel is entitled to compensation for any loss or damage suffered as a consequence of unlawful action. In any instance of alleged delay, the burden of proof lies with the owner or operator of the vessel.

### **PART 7 DISPUTE SETTLEMENT**

#### *Article 23 Peaceful settlement of disputes*

3. With the content of all parties any party to a dispute of this character not so resolved may refer the dispute for settlement to the International Court of Justice, to the International Tribunal for the Law of the Sea or to arbitration.

### **PART 10 FINAL PROVISION**

#### *Article 34 Amendments*

1. A meeting of Parties shall make every effort to reach agreement on any amendment by way of consensus. If all efforts at consensus have been exhausted, amendments to this Agreement shall enter into force [ninety (90)] days after notification of acceptance or approval to the Depository by [two-thirds] of the Parties.

Amendments involving new obligations for Parties,

To be consistent with conservation measures by other RFMOs, the “without nationality” should not be treated as serious violation reason. Therefore, the term “harvest fish” should be added to “without nationality”.

The refuelling of vessels should be allowed for safety of ships.

Subparagraph ( c ) should be deleted for the reason above mentioned.

The right to compensation should be provided for only damage resulting from unlawful action. This is clearly described in paragraph 18 of article 21 of UNFSA.

It is not appropriate if one of parties will be able to refer a dispute to the court. The term “with the content of all parties” should be added to consistent with the paragraph 3 of Article 9 of the FAO Compliance Agreement.

In principle, we should make every effort to reach agreement on any amendment by way of consensus as UNFSA and WCPFC adopted. And if all efforts at consensus have been exhausted, the agreement should be made by majority voting. Even in this case, amendments involving new

however, shall come into force in respect of each Party only on acceptance or approval by it [ninety (90)] days after notification of such acceptance or approval.

*Article 35 Annexes*

1. The Annexes shall be treated as guidelines to this Agreement, and a reference to this Agreement shall constitute a reference to the Annexes.

obligations for Parties, however, shall come into force in respect of each Party only on acceptance or approval by it.

Since all the Annexes contain technical and too detail items which are obviously not feasible for developing countries, Japan suggests that all the annexes should be treated as a guideline, not integral part of this agreement.

\*Please note that the comments contained in this paper are provisional and subject to further changes.