

January 2008

E



منظمة الأغذية
والزراعة
للأمم المتحدة

联合国
粮食及
农业组织

Food
and
Agriculture
Organization
of
the
United
Nations

Organisation
des
Nations
Unies
pour
l'alimentation
et
l'agriculture

Organización
de las
Naciones
Unidas
para la
Agricultura
y la
Alimentación

COMMITTEE ON FISHERIES

SUB-COMMITTEE ON FISH TRADE

Eleventh Session

Bremen, Germany, 2 – 6 June 2008

TRADE RELATED MEASURES FOR SUSTAINABILITY: PROGRESS ON A BINDING INSTRUMENT ON PORT STATE MEASURES

SUMMARY

This paper provides a summary of progress towards the negotiation and adoption of a binding instrument on port State measures to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing. It commences with general information relating to IUU fishing and then describes the processes within FAO to develop the 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing and the draft binding instrument on port State measures. Information relating to FAO's capacity building initiative to support the implementation of port State measures in developing countries is also outlined. Issues relating to the use of port State measures and their possible implications for international trade are addressed. Finally, the Sub-Committee is invited to offer comments and guidance, as appropriate, relating to the development of a binding instrument on port State measures to combat IUU fishing.

For reasons of economy, this document is produced in a limited number of copies. Delegates and observers are kindly requested to bring it to the meetings and to refrain from asking for additional copies, unless strictly indispensable.
Most FAO meeting documents are available on Internet at www.fao.org

W0000

INTRODUCTION

1. Illegal, unreported and unregulated (IUU) fishing undermines national and regional efforts to sustainably manage fisheries and inhibits progress towards improving oceans governance. The main, but not only cause of IUU fishing is a lack of effective flag State control over fishing vessels, because flag States are either unable or unwilling to exercise control over vessels flying their flags, in accordance with international law.
2. The international community recognizes that IUU fishing must be addressed in a comprehensive and multi-pronged manner, as evidenced by the approach taken in developing the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU)¹. While not losing sight of the IPOA-IUU “toolbox” as a whole, international attention is now focussing more intensely on the role of the port State in preventing IUU-caught fish entering international trade, thereby depriving IUU fishers from benefiting financially from their criminal activity. It is reasoned that if IUU fishers are unable to tranship or land IUU-caught product or if the transaction costs associated with trying to launder such product for sale through legitimate market channels are sufficiently high, the financial incentive to engage in IUU fishing will decline. This situation should, in turn, have a positive impact on the state of resources that have been targeted by IUU fishers.

CONSIDERATION OF PORT STATE MEASURES BY THE FAO COMMITTEE ON FISHERIES

3. The implementation of tighter and more effective port State measures are central to blocking IUU-caught fish from entering international markets. For this reason, the FAO Committee on Fisheries (COFI) addressed the use of these measures to combat IUU fishing at its 2005² and 2007³ Sessions. On both occasions the Committee recognized the need to enhance port States measures as part of international efforts to contain and reduce IUU fishing.
4. In 2005 COFI recognized that a lack of binding port State measures provided a loophole for IUU fishers. As a first step it endorsed the 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing (Model Scheme)⁴ and encouraged countries to implement measures to operationalize the Scheme, which addressed inspections, actions, information, results of inspections, training of inspectors and an information system on port State inspections. The Model Scheme was developed to elaborate the port State provisions of the IPOA-IUU and as a means of giving effect to other international calls, such as those contained in United Nations General Assembly (UNGA) resolutions⁵, to strengthen port State measures in the fight against IUU fishing.
5. COFI agreed in 2007 that there was an urgent need to take a step further and to develop a new legally-binding instrument based on the IPOA-IUU and the Model Scheme. COFI endorsed a tight timetable for the work to be undertaken so that a draft text would be ready for presentation to the 2009 Session of the Committee. It recognized that the new instrument would represent minimum standards for port States, with States, either acting alone or through regional fishery

¹ FAO. 2001. International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. FAO. Rome. 23p.

² FAO. 2005. Report of the twenty-sixth Session of the Committee on Fisheries. FAO Fisheries Report no. 780. FAO. Rome. 88p.

³ FAO. 2007. Report of the twenty-seventh Session of the Committee on Fisheries. FAO. Rome. 74p.

⁴ FAO. 2005. Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing. FAO. Rome. 46p.

⁵ See for example, UNGA resolutions 60/31 (2005), 61/105 (2006) and 62/215 (2007).

management organizations or arrangements (RFMOs), having the flexibility to adopt more stringent measures.

ELABORATION OF A BINDING INSTRUMENT ON PORT STATE MEASURES

6. In September 2007 FAO convened an Expert Consultation to Draft a Legally-binding Instrument on Port State Measures in Washington, D.C., USA.⁶ The purpose of the Consultation was to elaborate a draft text for a legally-binding instrument on port State measures, based on the IPOA-IUU and the Model Scheme. On the basis of an initial FAO draft, the Expert Consultation developed a draft agreement. However, owing to time constraints, the Experts were unable to review its Preamble, Final Clauses and Annexes. They recommended that prior to the Technical Consultation, FAO review them and present them to the Technical Consultation, with the Annexes appearing in a revised format.

7. Acting upon the Expert Consultation's recommendation and drawing on technical input from the International Maritime Organization (IMO) and the North East Atlantic Fisheries Commission (NEAFC), FAO has reviewed and revised the Preamble, Final Clauses and Annexes, the text of which will be incorporated into the consolidated draft text of the Agreement to be submitted to the Technical Consultation to Draft a Legally-binding Instrument on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing that will be convened at FAO Headquarters in June 2008. The outcome of the Technical Consultation will be forwarded to the twenty-eighth Session of COFI in March 2009 for consideration.

CAPACITY BUILDING TO SUPPORT THE IMPLEMENTATION OF PORT STATE MEASURES

8. COFI in 2007 commended FAO for its initiative to promote capacity building in developing countries for implementing the Model Scheme and enhancing and strengthening the implementation of port State measures in the fight against IUU fishing. FAO's global series of workshops support the calls in UNGA resolutions relating to "... the critical need for cooperation with developing countries to build their capacity ... (in port State measures).⁷ Capacity building is especially important because developing countries as well as their developed country counterparts should have allied, if not equivalent, capacities to address IUU fishing in a similar and consistent manner. At the regional level, approaches and action to address IUU fishing will be as strong only as the weakest link in the regional chain.

9. The purpose of FAO's regional workshops is to develop national capacity and promote bilateral, sub-regional and/or regional coordination so that countries will be better placed to strengthen and harmonize port State measures and, as a result, implement the relevant IPOA-IUU "tools" and the Model Scheme, and contribute to the development and subsequently implement a legally-binding instrument on port State measures. The workshops are convened in partnership with regional fishery bodies or arrangements (RFBs), with a view to ensuring that there is a degree of follow-up and continuity after the training exercises are completed. They also seek, as appropriate, to facilitate understanding within RFBs in the development of regional schemes on port State measures and support ongoing port State initiatives such as the Regional Plan of Action

⁶ FAO. 2007. Report of the Consultation to Draft a Legally-binding Instrument on Port State Measures. FAO Fisheries Report No. 846. FAO. Rome. 22p.

⁷ See, for example, the preamble to UNGA resolution 61/105.

to Promote Responsible Fishing Practices in South East⁸ Asia and Ministerial-level initiatives in other regions⁹.

10. In the three workshops that have been held up to 2007, participants from 48 FAO Member States have taken part in the training exercises. The initial workshop was held in September 2006 in the Pacific Islands region. It was followed in June 2007 by a workshop in the Indian Ocean and by another workshop in December 2007 for the Mediterranean Sea. In January 2008 a further workshop was held in Southern Africa and in March 2008 a workshop was conducted in South East Asia. Depending on the availability of extra-budgetary funding, additional workshops are planned in 2008 for other regions.

PORT STATE MEASURES AND THEIR IMPLICATIONS FOR INTERNATIONAL FISH TRADE

11. International efforts to address IUU fishing and its deleterious impact on fisheries resources have been initiated at national, regional and global levels. However, the high and growing incidence of IUU fishing around the world, both within zones of national jurisdiction and on the high seas, is being fuelled and supported by the ability of IUU fishers to tranship, land and launder their illicit catches. From all accounts IUU fishing continues to be a highly profitable undertaking and for this reason it is anticipated that it will not diminish until it becomes less profitable and operationally more difficult to sell catches.

12. Central to reducing the profitability of IUU fishing is the need to make the movement of IUU-caught product from the vessel to shore and onto the consumer's plate more onerous. Port States have a front-line role in ensuring that only legally harvested fish is landed and that opportunities and loopholes for the laundering of illegal catch are closed. States must ensure that they exercise effective port State controls and that they do not permit IUU fishing vessels to use their ports for any purpose or for IUU-caught fish to be transhipped or landed in their ports. Moreover, States should discourage actively other States in a region from operating "ports of convenience" as they undermine, frustrate and neutralize efforts to prevent, deter and eliminate IUU fishing.

13. The implementation of more effective port State measures should reduce the volume of IUU-caught fish being transhipped, landed and laundered. This situation is unlikely to have a significant adverse impact on trade volumes in the medium- to longer-terms. On the other hand, if unsustainable IUU fishing practices on stocks are not eradicated, trade volumes may well drop as supply levels decrease.

SUGGESTED ACTION BY THE SUB-COMMITTEE

14. The Sub-Committee is invited to note the background to, and progress achieved in the development of a binding instrument on port State measures to prevent, deter and eliminate IUU fishing and to offer comments and guidance, as appropriate.

⁸ Governments of Indonesia and Australia. The Regional Ministerial Meeting on Promoting Responsible Fishing Practices in the Region: Regional Plan of Action and Joint Ministerial Meeting. Jakarta. Government of Indonesia. 20p.

⁹ For example, in the Pacific Islands and Southern Africa.