

Agenda

Opening of the Workshop

The role of the port State in combating IUU fishing and promoting long-term sustainability in fisheries

Port State control – international developments

The FAO Model Scheme on port State measures and regional approaches

Port State measures, issues and experiences at regional level

WCP/FFA regional considerations and priorities

FFA regional operational issues

WCPFC regional operational issues

Findings and conclusions of the field study on port State measures in select major SIDS fishing ports in the Western Central Pacific region

Case study/studies of successful port State controls – prosecutions

Approaches to implement the FAO Model Scheme in key WCPFC developed member countries and cooperating non parties

Case study: port State measures and activities in US territories and application of the FAO Model Scheme

Formation of the Working Groups and their reports on conclusions and recommendations

- Practical application of port State measures
- Case study: the Bold Beauty
- Review of the FAO Model Scheme with a view to developing standards for the Pacific Islands

Closure of the Workshop

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Documentation presented

Agenda

Prospectus

2005 FAO Model Scheme on Port State Measures to Combat IUU Fishing

The role of the port State in combating IUU fishing and promoting long-term sustainability in fisheries (Doulman)

Port State control – International developments (Swan)

Port State measures to combat IUU fishing: Information paper on the FAO Model Scheme, and major issues in key RFMOs in implementing port State measures (Lobach)

Regional operational issues in the West and Central Pacific Fisheries Commission (WCPFC)

Field study on port State measures in select WCP Small Island Developing States (Brown)

The following documents were made available to participants at the workshop

1993 FAO Compliance Agreement

1995 FAO Code of Conduct for Responsible Fisheries

2001 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

FAO Technical Guidelines No. 9, IPOA-IUU

South Pacific Model National Plan of Action to Combat IUU Fishing (NPOA-IUU)

Opening statement

by

Mr Vili A. Fuavao

FAO Subregional Representative for the Pacific
Apia, Samoa

on behalf of

Mr Ichiro Nomura

Assistant Director-General
FAO Fisheries Department
Rome, Italy

Ladies and Gentlemen:

It is my pleasure to extend a warm welcome to you on the occasion of the opening of the inaugural FAO regional workshop to promote the full and effective implementation of port State measures to combat IUU fishing. The meeting marks the beginning of a new era in FAO's efforts to promote the strengthening and harmonization of port State measures, in parallel with the intensification of efforts by the international community towards that goal.

It was only five years ago that the International Plan of Action to combat IUU fishing was adopted by the FAO, and one year ago that the Model Scheme on Port State Measures was endorsed by the FAO Committee on Fisheries, declaring that Members should put a priority on operationalizing the Scheme. As you are aware, the Model Scheme was developed as a result of consultations convened by FAO between 2002 and 2004. I am sure you are all aware that last year, the Sixth Meeting of the FAO South West Pacific Ministers for Agriculture expressed its ongoing concern about the growing problem of IUU fishing in the region, and agreed on the need for collaborative regional efforts to address the problem.

Now, with mounting concern from the international community that port State control is one of the weakest points in our efforts to combat IUU fishing, we are on the threshold of a new era in addressing IUU fishing.

With the FAO Model Scheme providing a common framework for countries and regional fishery bodies (RFBs) to strengthen their port State measures and to coordinate them through regional schemes, capacity development and coordination of measures are vital at this juncture in order to reinforce national efforts and deter the operation of "ports of convenience", where countries are unable or unwilling to apply port State measures.

The international community increasingly values port State measures as a key compliance tool and a fundamental link to other actions that can be taken to combat IUU fishing, in particular the implementation of internationally agreed market-related measures. It has recognized the need to move swiftly and with certainty and has done so in a number of fora including the 2005 Asia-Pacific Economic Cooperation (APEC) Ocean-Related Ministerial Meeting, the Ministerially-led High Seas Task Force and earlier this month the Ministerial Round Table Conference on IUU Fishing and Port State Control, arising from the 2006 meeting of the Nordic Council of Ministers for Agriculture, Forestry, Fisheries and Food. Significantly, UN General Assembly resolutions and the report of the 1995 UN Fish Stocks Review Conference have each called for the application of the FAO Model Scheme at the national and regional levels and even urged States to consider, when appropriate, the possibility of developing a binding international instrument on port State control.

I am sure you are also aware that in this region the members of the West and Central Pacific Fisheries Commission (WCPFC) are also on a threshold, having agreed at its annual session in 2005 to develop a regional scheme on port State measures based on the FAO Model Scheme. This initiative promises to be a beacon for similar initiatives in other regions of the world.

In response to mounting international attention to the essential role of port State measures, the TrainFish component of the FAO FishCode Programme is, with this workshop, initiating a series of regional workshops to develop national capacity and promote regional coordination. It is expected that countries will be better placed to strengthen and harmonize their port State measures and, as a result, meet the requirements of RFBs and implement the relevant IPOA-IUU tools and the FAO Model Scheme on port State measures.

FAO notes the relevant programmes and activities already undertaken by the Pacific Islands Forum Fisheries Agency, our partners in this workshop, that will better position its small island developing member countries, most of whom are also WCPFC Members, to develop their human capacity for the task ahead. I extend my thanks to the Agency's Director, Feleti Teo, the legal counsel, Transform Aqorau and all other staff who have worked to assist in the coordination and presentation of this workshop.

Bringing this workshop to fruition has been a true team effort: I also wish to thank the West and Central Pacific Fisheries Commission and the Western Pacific Regional Fisheries Management Council, the Governments of New Zealand and the United States of America, the International MCS Network and the MCS Programme of the Indian Ocean Commission for their support and input. My thanks also go to the countries that cooperated in the field study undertaken to provide comprehensive information to the participants. Finally, let me acknowledge the excellent work of our FAO colleagues in the FAO Subregional Office for the Pacific Islands. Without their backstopping support it would have been very difficult to mount this workshop.

I wish you all a full and very productive week at this inaugural Workshop on port State measures and the implementation of the FAO Model Scheme.

Opening statement

by

Mr Feleti Teo

Director-General

Forum Fisheries Agency (FFA)

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Good morning and nisa bula to you all;

Dr Vili Fuavao, FAO Subregional Representative, at FAO Office for the Pacific Islands
Distinguished workshop participants; resource personnel to this workshop
Staff of the FAO and FFA present this morning
Ladies and gentlemen

Let me first of all thank the organisers of the workshop for the privilege and honour accorded to me this morning to also address the participants and those present at this, the opening of the FFA and FAO regional workshop to promote the full and effective implementation of port state measures as a mean to combat IUU fishing.

It is indeed a pleasure and a timely opportunity for the FFA to collaborate with FAO in putting together this regional workshop. When I was approached by FAO last year to consider co-organising this regional workshop, I and my colleagues had no hesitation in grasping this opportunity to collaborate with FAO on this timely and significant initiative not only for members of FFA but also for the wider regional membership.

As mentioned by Dr Vili, the WCPFC Commission to which all FFA members are also members of, has recently sanctioned the development of a regional scheme on port states measures based on the FAO model scheme. The issue of a regional scheme on port states measures for the WCP region will be the subject of intense discussions and negotiations at the forthcoming meeting of the Technical and Compliance Committee (TCC) of the WCPFC towards the end of next month in Brisbane, Australia. That meeting of the TCC will be preceded by the FFA MCS Working Group meeting which will consider a wide range of MCS issues including the issue of a possible regional scheme on port states measures.

So this workshop this week could not be more timely and strategic as it will lead into other regional meetings tasked to, consider amongst other things, develop a regional scheme on port state measures for presentation at the third meeting of the WCPFC in December this year, in Apia, Samoa.

Illegal Unreported and Unregulated fishing as alluded to in the FAO address is now a global phenomena and one of the largest threat to responsible fishing in the world, and unless strenuous efforts and concerted international actions are taken to deter and eliminate IUU fishing, efforts to manage sustainably the world's fish stocks will continue to be severely undermined. IUU fishing knows of no limit and boundary and is occurring all over the world and no region of the world is immune to it, including the western and central pacific region. Although the exact extent of the economic impact of IUU fishing in the western and central pacific region has not been definitively determined, estimates placed it well in excess of the amount of returns coastal states in this region receive from access to its fisheries resources, heavily exploited by fishing nations. The FFA, by the way has sanctioned a work that will assist us determine the economic impact of IUU fishing in the WCPO, especially within the waters under the national jurisdictions of our members.

As we have heard, there are already comprehensive international and regional legal frameworks and guidelines that purport to address IUU fishing. They contain several measures and tools that are designed, in one way or another, to address the various facets of IUU fishing. One of those tools is the exercise of port state responsibilities through the imposition of port state measures to combat IUU fishing activities and provide disincentives for those that engage in related IUU fishing activities.

The programme that has been set out for this week's workshop will provide participants with an overview and background to those international and regional instruments that address IUU fishing, and related provisions and guidelines on the scope and parameters for the imposition of port state measures. The challenge for the participants is to be able through your discussions and sharing this week to develop mechanisms and arrangements that will effectively operationalise those port states measures.

It goes without saying that one of the enormous challenges encountered by coastal states and territories in this region is the limited or lack of capacity to effectively monitor and enforce fisheries conservation and management measures. Most of the coastal states and territories in this region have incredibly large marine zones to monitor and policy. They simply do not have the surveillance capabilities and resources to be out there in the ocean to monitor and surveillance fishing activities at fishing grounds within their national waters. It is simply too expensive and beyond the means and resources of island states.

In the last decade or so, the FFA has focused its efforts on the development and promotion of coordinated and cooperative surveillance arrangements to allow our members to pool their surveillance resources together and cooperate and collaborate in the surveillance of their national waters through joint surveillance operations. Just on Friday last week, such a joint surveillance cooperative operation called the Kurukuru operation that involved Fiji, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu was concluded. That operation was undertaken under the auspices of the Niue Treaty on Fisheries Surveillance and Law Enforcement Cooperation, a regional cooperative framework that has been in existence for the last 14 years.

With significant costs and resources needed for effective surveillance of fishing activities, port state measures offer a low cost and effective tool to verify compliance with relevant conservation and management measures. So this is a very attractive tool that is within the resource range of Pacific island states and if properly managed and implemented should be an effective tool to combat IUU fishing. The challenge for our Pacific Island States, obviously, is to improve their national capacity and regional coordination to implement port State measures effectively.

The FFA continues to assist its member governments in this regard and undertake an extensive training programme in this area through in-country and regional Prosecution and Dockside Boarding workshops and the placement of MCS officers at the FFA secretariat headquarters to get exposure and appreciation of those issues from a regional perspective. The FFA has also been instrumental in promoting harmonised and coordinated MCS schemes and arrangements. One of the most significant achievement in this regard is the adoption and application by FFA members of regionally agreed harmonised minimum terms and conditions (MTCs) for fishing access. Two significant aspects of those MTCs are the maintenance by FFA of a Regional Register of Fishing Vessels and a centrally located vessel monitoring system. No foreign fishing vessel may be licensed by any FFA member unless it is in good standing on the FFA Vessel Register and must also have an operative Automatic Location Communicator (ALC) that allow it to be tracked by the FFA vessel monitoring system. Transshipment at sea is also prohibited under the MTC, a matter that may have direct relation to port state measures.

The Western and Central Pacific region, as mentioned by Dr Vili, was designated by FAO for this workshop because of the decision by the Western and Central Pacific Fisheries Commission last December to develop a regional scheme for port state measures based on the FAO Model Scheme on port state measures to combat IUU fishing.

The First Regular Session of the Technical and Compliance Committee of the Western and Central Pacific Fisheries Commission, which also met in December 2005, noted the importance of port State measures and port inspections in meeting the objectives of the Convention, and further noted the benefits of developing a harmonised scheme and standards.

The TCC also required its members to report to the Commission on their existing port state and or port inspection schemes and how they relate to the FAO model scheme. Hence, this workshop is timely as it provides an opportunity for our members and others to better understand the FAO Model Scheme and to work towards fulfilling this obligation to the Commission.

The FFA is glad to partner and cooperate with FAO in the delivery of the workshop with the ultimate objective of enabling participating states and territories develop their national capacity and promote regional coordination so they be better placed to strengthen and harmonise port State measures and at the same time satisfy their requirements for the WCPFC and implement the relevant IPOA-IUU tools and the FAO Model Scheme.

In concluding, may I join Dr Vili in wishing you all a very fruitful and successful workshop and I wish the outcomes of this workshop will contribute significantly to other regional processes that will consider a regional scheme on port states measures for the WCP region.

Role of the port State in combating IUU fishing and promoting long-term sustainability in fisheries

David J. Doulman¹

ABSTRACT

This paper focuses on the role of port States in combating IUU fishing. The introduction reviews the elaboration of the 2001 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA–IUU) and the role of national plans of action (NPOAs–IUU) to give effect to the IPOA–IUU. The next section considers the progressive extension and strengthening of port State measures in international fisheries law commencing in 1982 with the UN Convention on the Law of the Sea. A review of port State measures adopted by countries in their NPOAs–IUU follows. A brief historical perspective of IUU fishing in the Pacific Islands Subregion is then presented together with discussion of FAO’s recent capacity-building efforts in the Subregion. The question is posed: are port State measures in the Pacific Islands already being applied effectively? The paper concludes that the intensity and scope of IUU fishing is not abating and that regionally agreed and adopted port State measures are a critical tool to assist in combating IUU fishing.

1. INTRODUCTION

In 2000, prior to much of the international discussion and debate about illegal, unreported and unregulated (IUU) fishing, FAO observed in one of its flag ship publications that “... IUU fishing has many facets and motivations, through the most obvious underlying motivations are driven by economic considerations.² A key consideration in addressing IUU fishing is the need to achieve effective flag State control over the operations of fishing vessels. Other considerations likely to contribute to IUU fishing include the existence of excess fleet capacity, the payment of government subsidies (where they maintain or increase capacity), strong market demand for particular products, weak national fishery administration (including weak reporting systems), poor regional fisheries management, and ineffective monitoring, control and surveillance (MCS) including the lack of vessel monitoring systems (VMS)”³.

The international community now ranks IUU fishing⁴ as being one of the most significant issues impeding the achievement of sustainable fisheries. In recent years IUU fishing has been part of all major discussions relating to fisheries. For example, concern about the growth, extent and impact of IUU fishing is addressed in annual United Nations General Assembly (UNGA) resolutions,⁵ at the

¹ The author is Senior Fishery Liaison Officer, Fisheries Department, FAO, Rome, Italy. The views expressed in this paper are those of the author. They do not necessarily reflect the views of FAO or any of its Members. The author has benefited from comments on parts of the paper by Judith Swan (FAO, Italy), Gail Lugten (University of Tasmania, Australia) and Paul Ortiz (NOAA, USA). However, the usual disclaimer applies in that the author alone is responsible for any errors or shortcomings in the paper.

² The issue of economic considerations or ‘economic drivers’ figured significantly in the work of the OECD High Seas Task Force between 2003 and 2006.

³ FAO. 2000. The State of World Fisheries and Aquaculture. FAO. Rome. 142p.

⁴ The scope of IUU fishing as set forth in the IPOA–IUU is broad, ranging from fishing in areas under national jurisdiction without the authorization of the coastal State; fishing that contravenes or undermines conservation and management; failure to exercise effectively the required jurisdiction or control over vessels and nationals; and failure to fully and accurately meet fishery and fishing vessel data collection and reporting requirements.

⁵ UNGA resolution 60/31 of 29 November 2005 noted that the Assembly emphasized “... *once again its serious concern* that illegal, unreported and unregulated fishing remains one of the greatest threats to marine ecosystems and continues to have serious and major implications for the conservation and management of ocean resources, and renews its call upon States to

biennial sessions of the FAO Committee on Fisheries (COFI) and in special Ministerial-level meetings, in sessions of regional fishery bodies or arrangements (RFBs)⁶ and in other international and regional fora. The issue has also been considered at length at the national level as countries strive to deal with IUU fishing and redress its adverse impacts.

Despite the international focus on IUU fishing in marine industrial fisheries, it should be noted that IUU fishing occurs in all capture fisheries. IUU fishing is not confined to certain types or categories of capture fisheries: to a greater or lesser extent it is to be found in both marine and inland fisheries. IUU fishing has achieved crisis proportions in some fisheries because it seriously undermines efforts to conserve and manage fish stocks and inhibits the rebuilding of stocks where overfishing has already occurred. In the extreme, IUU fishing can render national and regional management efforts to be futile as gains from management are eroded by fishers (both members and non-members of RFBs) who act solely in self-interest outside national and regional management parameters.

To promote concerted and coordinated efforts against all forms of IUU fishing, FAO Members in 2001 adopted the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA–IUU).⁷ A voluntary instrument concluded within the framework of the 1995 FAO Code of Conduct for Responsible Fisheries (Code of Conduct),⁸ the IPOA–IUU seeks to galvanize international action to confront the root causes of IUU fishing in a transparent and innovative manner, providing flexibility for States and RFBs to adopt measures that most suit their particular circumstances and needs.

The IPOA–IUU foresees action against IUU fishing by States categorized by function. These four categories, which are not mutually exclusive in character, consist of:

- all States (that should undertake certain fundamental activities irrespective of their geographic location and role in the fisheries sector);
- flag States (that have direct responsibility for the operation of their flag vessels);
- coastal States (that should implement measures to discourage and prevent IUU fishing in their EEZs); and
- port States (that should exercise their rights to prevent IUU caught product from being landed or transhipped in their ports).

In addition, the IPOA–IUU encourages States to implement internationally agreed market-related measures as a means of trying to block, or at least impede, trade in IUU caught product. This is an important issue because if trade in IUU caught product is thwarted then revenue flows to IUU fishers will be reduced, along with the incentive to engage in such fishing. In a simplistic manner Figure 1 illustrates the relationship between the four categories of States referred to in the IPOA–IUU.

comply fully with all existing obligations and to combat such fishing and urgently to take all necessary steps to implement the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the Food and Agriculture Organization of the United Nations;”

⁶At various times RFBs have reported to FAO that IUU fishing is undermining their capacity to conserve and manage fisheries and as a consequence have taken action to address it through initiatives such as the development and dissemination of vessel lists etc.

⁷FAO. 2001. International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. FAO. Rome. 24p. The implementation of the IPOA–IUU is supported by a Code of Conduct Technical Guideline. See FAO. 2002. FAO Technical Guideline for Responsible Fisheries 9. Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. FAO. Rome. 122p. A further Technical Guideline addressing IUU fishing in inland fisheries is in preparation.

⁸FAO. 1995. Code of Conduct for Responsible Fisheries. FAO. Rome. 41p.

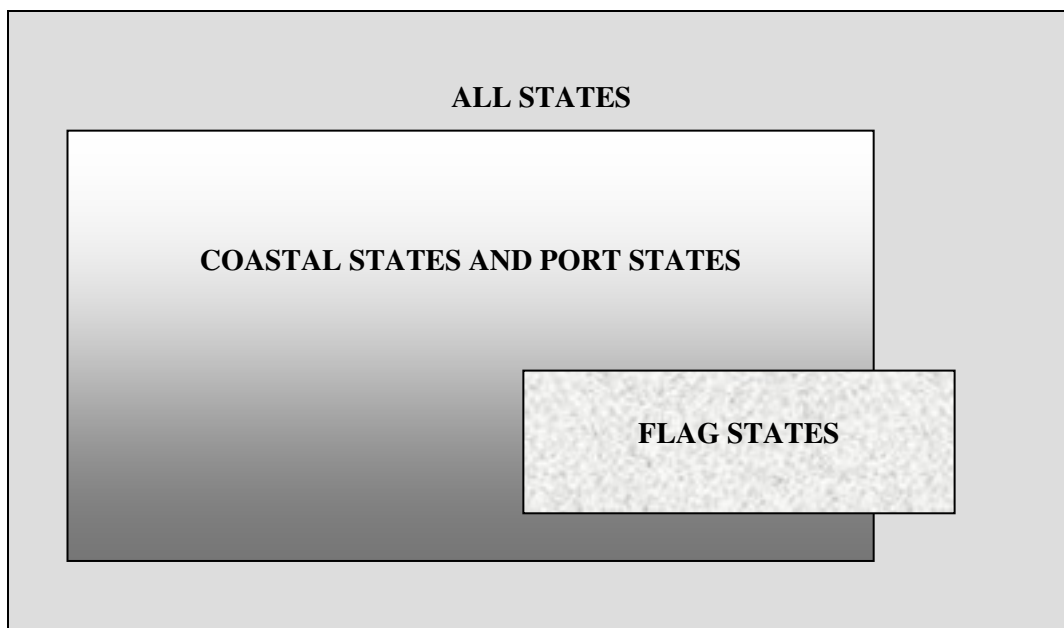


Figure 1: Illustration of the relationship among different categories of States in the IPOA–IUU

A fundamental aspect of the IPOA–IUU is the need for States to promote regional cooperation against IUU fishing by promoting the implementation of sound region-wide standards and practices.⁹ It has been noted in many fora that a failure to promote and agree on regional approaches and measures to combat IUU fishing has created gaps that enable IUU fishing to flourish. For example, the inability or failure of States to implement regional port State measures has led to the development of so-called ‘ports of convenience’ where IUU fishing vessels operate with virtual impunity. A port State that fails to implement and enforce regionally-agreed standards against IUU fishing is likely to undermine the work of an entire region through providing port access and facilities to IUU fishing vessels.¹⁰

A central element of the IPOA–IUU is the elaboration of national plans of action to combat IUU fishing (NPOAs–IUU). These plans, intended to provide comprehensive and coherent national and regional responses to IUU fishing, are expected to build on, and strengthen, ongoing efforts to promote sustainability in fisheries. The NPOAs–IUU are also intended to have a regional dimension so as to ensure that regional collaborative action is facilitated and that States do not attempt to address IUU fishing alone.

The IPOA–IUU encouraged States and RFBs to develop national and regional plans prior to June 2004. However, the rate of development of NPOAs–IUU has been slow and on the basis of

⁹Measures that States might adopt through RFBs to combat IUU fishing include institutional strengthening; development of compliance measures; mandatory reporting; cooperation in the exchange of information; development and maintenance of records of fishing vessels; using trade information to monitor IUU fishing; MCS, boarding and inspection schemes and observer programmes; market-related measures; definition of circumstances in which vessels are deemed to have engaged in IUU fishing; education and public awareness programmes; development of regional plans of action to combat IUU fishing; examination of fishing vessel chartering arrangements; exchange of information on an annual basis among RFMOs; estimation of the extent, magnitude and character of IUU fishing in an RFBs convention area, and maintenance of records of vessels authorized to fish and records of vessels engaged in IUU fishing.

¹⁰There is a temptation for States, and especially for developing countries, not to enforce regionally agreed port State measures because of the economic benefits they are likely to forego by denying port access to IUU fishing vessels and their support vessels. This is a real issue for some countries, and especially small island developing States, as the economic benefits generated by vessel visits are substantial.

information available to FAO less than 20 NPOAs–IUU were elaborated and disseminated before the date indicated in the IPOA–IUU. As at June 2006 there were less than 25 NPOAs–IUU developed.¹¹

The slow rate of development of NPOAs–IUU appears to stem principally from a limited number of considerations:

- In the case of developing countries there is an ongoing capacity issue: many countries are strained as they attempt to implement the large number of fisheries instruments that have been concluded since the 1992 United Nations Conference on Environment and Development (UNCED).¹² Recognizing the need to operationalize these instruments and the strain that they were imposing on countries, the 1995 session of COFI agreed to adopt a ‘decade of implementation’¹³ with respect to existing instruments with tacit agreement that the elaboration of new instruments would be put on hold.¹⁴
- For developed countries the reasons for the slow pace of development of NPOAs–IUU are less clear, especially since some of the countries that promote action against IUU fishing have not yet developed and disseminated their NPOAs–IUU.

Feedback received by FAO from countries that have developed their NPOAs–IUU has been interesting in that they have indicated that the exercise has been most worthwhile. Apart from the direct benefits of elaborating a document where intended actions against IUU fishing are spelled out transparently, coherently and clearly as a package, some countries have advised FAO that the exercise has also highlighted national and regional shortcomings. In this respect the exercise has had a secondary benefit of permitting countries and RFBs to assess policies and practices and, as needed, to take corrective action to plug existing gaps.

In their biennial reporting on the Code of Conduct countries, RFBs and international non-governmental organizations (INGOs) are invited to report on progress with the implementation of the IPOA–IUU. The information provided to FAO enables the Organization to prepare for COFI a global progress report on implementation. This report, supplemented by a detailed statistical annex, enables FAO and the international community to obtain a better understanding of the difficulties countries are facing in the efforts to implement the Code and the instruments concluded within its framework.

2. PORT STATES MEASURES TO COMBAT IUU FISHING

Port State measures in support of fisheries management have been extended since 1982 when negotiations for the UN Convention on the Law of the Sea (1982 UN Convention) were concluded and when it opened for signature. This development in international law as it relates to the conservation

¹¹FAO is aware that the following countries have elaborated their NPOAs–IUU: Australia, Canada, Chile, Federated States of Micronesia, Gambia, Ghana, Korea Rep. of, Mexico, Namibia, New Zealand, Seychelles, Spain, Tanzania, Tonga, Tuvalu, United Kingdom and United States of America. In addition, Japan has disseminated a statement on its activities to address IUU fishing and the European Community has promulgated a community action plan for the eradication of IUU fishing. To assist Pacific Island countries in developing their NPOAs–IUU FAO has published a model plan but it could be easily adapted to other regions of the world. FAO is currently working with several countries to develop their NPOAs–IUU.

¹²UN. 1992. Agenda 21: United Nations Programme of Action from Rio. UN. New York. 294p. The 2002 World Summit on Sustainable Development, with a focus on implementation, sought in part to ensure that goals and aspirations expressed in Agenda 21 were translated into action. This focus on implementation put a further strain on many countries as they sought to give life to Agenda 21. See UN. 2003. Johannesburg Declaration on Sustainable Development and Plan of Action of the World Summit on Sustainable Development. UN. New York. 88p.

¹³The report of the session noted that “The Committee commended FAO on its report on the implementation of the Code of Conduct for Responsible Fisheries and its associated instruments and called for a “decade of implementation” of the various instruments developed to ensure responsible fisheries.” FAO. Report of the twenty-sixth session of the Committee on Fisheries. Rome, 7–11 March 2005. *FAO Fisheries Report*. No. 780. Rome, FAO. 2005. 88p.

¹⁴The issue of the strain on countries to implement international instruments concluded since 1992 has been discussed by Cochrane and Doulman. See Cochrane, K. L. and D. J. Doulman. 2005. “The rising tide of fisheries instruments and the struggle to keep afloat”. In *Philosophical Transaction of the Royal Society: Biological Sciences* 360, The Royal Society. London. pp. 77–94.

and management of fisheries resources reflects an evolution in international thinking that has been influenced by a number of contemporary fisheries issues, including:

- a better understanding of the status of some fish stocks and, despite an increased focus on management, a significant lack of improvement in their status over the 1990s and into the new Millennium.
- international agreement in the post-UNCED era that all natural resources should be utilized in a long-term sustainable manner.
- the growth in, spread and dynamism of IUU fishing.
- the proliferation of vessels flying ‘flags of convenience’ (FOC).¹⁵ Certain countries have been unable or unwilling to take responsibility, in accordance with international law, for the operations and activities of the vessels they had flagged. So serious is the fishing impact by FOC vessels that the European Community has pointed out that fishing by these vessels represents a considerable threat to the survival of fisheries worldwide.¹⁶
- the growth of ‘ports of convenience’ where States for economic or other reasons intentionally or unwittingly supported IUU fishing.
- the widespread recognition that flag State control over fishing vessels, as provided for in international law, was essential, but insufficient, to ensure that fishing vessels did not operate in a manner contrary to their authorizations to fish. Indeed, it was also recognized that flag States encountered difficulties in meeting their international obligations when their vessels operated long distances from national ports.¹⁷ Consequently, port States have been called upon to play a more prominent fisheries role by helping ensure that vessels did not infringe and undermine national and international conservation and management measures.

Article 218 of the 1982 UN Convention addresses port State measures narrowly and only in the context of marine pollution, while the relevant articles of the 1993 FAO Compliance Agreement,¹⁸ 1995 UN Fish Stocks Agreement¹⁹ and the Code of Conduct, all of which were negotiated roughly in parallel between 1992 and 1995, extended the notion of port States playing a more proactive role in support of fisheries conservation and management.

¹⁵UNGA resolution 60/31 adopted on 29 November 2005 reaffirmed “... the appeal made by the Ministers of Fisheries of the Food and Agriculture Organization of the United Nations in their 2005 Rome Declaration on Illegal, Unreported and Unregulated Fishing, including for further international action to eliminate illegal, unreported and unregulated fishing by vessels flying “flags of convenience” as well as to require that a “genuine link” be established between States and fishing vessels flying their flags, and calls upon States to implement the Declaration as a matter of priority;”.

¹⁶Commission for the European Communities. 2002. Communication from the Commission: Community action plan for the eradication of illegal, unreported and unregulated fishing. European Commission. Brussels. 11p.

¹⁷The draft report of the Review Conference for the 1995 UN Fish Stocks Agreement stressed the important role of flag States for the effective implementation of the Agreement, drawing attention to the threat posed, both to fisheries and developing coastal States, in terms of loss of revenue, by lack of will or capacity of flag States to properly ensure compliance by vessels flying their flag with the obligations imposed upon them by the Agreement and other relevant international instruments. In this regard, it was emphasized that flag States must also ensure compliance with subregional, regional and global conservation measures. It was recalled that all States have the right to fish in the high seas pursuant to the 1982 UN Convention but that this right was conditional upon compliance by their nationals with measures for the conservation of living resources in the high seas adopted through bilateral or multilateral cooperation, including through RFBs.

¹⁸The 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (1993 FAO Compliance Agreement) is an integral component of the Code, even though it has a different legal status. The purpose of the 1993 FAO Compliance Agreement is to provide an instrument for countries to take effective action, consistent with international law, to ensure compliance with applicable international conservation and management measures for living marine resources of the high seas. The Agreement stipulates the special responsibility of flag States to this end, in particular with respect to granting authorization to fish on the high seas. They may do so only when satisfied that they are able to exercise effectively their responsibilities and they must comply with the detailed provisions of the Agreement concerning the granting of such authorization to vessels previously registered in the territory of another State. Such authorization should, as a result, enhance flag State control in high seas fisheries, enable these fisheries to be more effectively managed and contribute to a reduction in the incidence of illegal, unreported and unregulated fishing on the high seas. Importantly, the 1993 FAO Compliance Agreement also provides for the creation of an international database of information concerning high seas fishing vessels, to be maintained by FAO, which will be of great value to States and regional fishery management organizations or arrangements.

¹⁹FAO and UN. 1998. International Fisheries Instruments with Index. UN. New York. pp. 1-37.

Article V of the 1993 FAO Compliance Agreement contains provisions to the effect that the port State shall promptly notify the flag State if it has reasonable grounds for believing that a fishing vessel has been used for an activity that undermines the effectiveness of international conservation and management measures. By agreement with the flag State arrangements can be made for the port State to investigate whether the vessel has operated contrary to the provision of the Agreement. Action by the port State is predicated on collaboration with the flag State and hence it falls under Article V of the Agreement dealing with International Cooperation.²⁰

Article 23 of the 1995 UN Fish Stocks Agreement states that, in accordance with international law, a port State has ‘the right and the duty’ to take measures to promote the effectiveness of fisheries conservation and management measures. The concept of the ‘right’ of the port State to act in the interest of fisheries management extends the notion of cooperation between the flag and port States in the 1993 Compliance Agreement. In the 1995 UN Fish Stocks Agreement types of measures that can be taken by the port State when a vessel is voluntarily in its port. The port State may prohibit landings and transshipments of fish where it has been established that the catch has been taken in a manner which undermines the effectiveness of high seas conservation and management measures. This provision, reflected in the IPOA–IUU, is an important means of preventing trade in IUU caught product.

Port State duties are the subject of Article 8.3 of the Code of Conduct. This Article encourages in a non-discriminatory manner port States to take measures to achieve, and to assist other States in achieving, the objectives²¹ of the Code and to publicize measures taken. The Code also encourages port States to assist flag States, if requested, in respect of non-compliance with conservation and management measures or certain other internationally agreed minimum standards. This is a very real and practical consideration given the geographic dislocation between many flag States and the fishing grounds where their flag vessels operate.

The IPOA–IUU, negotiated several years after the Code of Conduct and in a somewhat different international fisheries environment, placed heavy and broader reliance on port State measures to achieve the objective of the IPOA–IUU, which is “... to prevent, deter and eliminate IUU fishing by providing all States with comprehensive, effective and transparent measures by which to act, including through appropriate regional fisheries management organizations established in accordance with

²⁰ The term ‘international cooperation’ in relation to port State measures may infer that the port State is not at liberty to take measures it sees fit, in accordance with international law, when a vessel is voluntarily in its port. For this reason the 1993 FAO Compliance Agreement is seen to be ‘softer’, and possibly less effective, than the 1995 UN Fish Stocks Agreement. Moreover, it might be argued that there is no duty on fishing vessels to do anything under the 1999 Agreement, so logically they cannot act contrary to its provisions. All of the duties in the Agreement are assumed by the Parties and many of the duties relate to allowing/authorizing fishing vessels to be used for fishing on the high seas. Article III.2 of the 1993 Agreement states that an authorized fishing vessel is permitted to fish “... in accordance with the conditions of authorization.” However, in treaty law it is the parties to a treaty that incur legal obligations as is the case with the Compliance Agreement. It therefore follows that the Article III.2 ‘duty’ is not directly binding on fishing vessels. It is the Parties who must ensure that conservation and management measures are not undermined, so the provision should read that arrangements can be made for the port State to investigate, e.g., “whether the vessels has a valid authorization, have fished in accordance with the authorization, or have undermined international conservation and management measures”.

²¹ The objectives of the Code are to: a) establish principles, in accordance with the relevant rules of international law, for responsible fishing and fisheries activities, taking into account all their relevant biological, technological, economic, social, environmental and commercial aspects; b) establish principles and criteria for the elaboration and implementation of national policies for responsible conservation of fisheries resources and fisheries management and development; c) serve as an instrument of reference to help States to establish or to improve the legal and institutional framework required for the exercise of responsible fisheries and in the formulation and implementation of appropriate measures; d) provide guidance which may be used where appropriate in the formulation and implementation of international agreements and other legal instruments, both binding and voluntary; e) facilitate and promote technical, financial and other cooperation in conservation of fisheries resources and fisheries management and development; f) promote the contribution of fisheries to food security and food quality, giving priority to the nutritional needs of local communities; g) promote protection of living aquatic resources and their environments and coastal areas; h) promote the trade of fish and fishery products in conformity with relevant international rules and avoid the use of measures that constitute hidden barriers to such trade; i) promote research on fisheries as well as on associated ecosystems and relevant environmental factors; and j) provide standards of conduct for all persons involved in the fisheries sector.

international law.”²² Indeed, the international community now recognizes that in order to attempt to make additional inroads into curbing IUU fishing there must be a heavy emphasis on the implementation of port State measures together with the implementation of internationally agreed market-related measures.

The text relating to port State measures from the 1982 UN Convention, the 1993 FAO Compliance Agreement, the 1995 UN Fish Stocks Agreement, the Code of Conduct and the 2001 IPOA–IUU are reproduced in Annex 1 for ease of reference and comparison.

International fisheries instruments concluded since UNCED see port States as having a ‘front line’ role to play in promoting sustainability in fisheries by:

- assisting flag States meet their obligations under international law with respect to their flag vessels, and
- detecting and preventing the unloading and transshipment of fish that has been harvested by IUU fishers.

Aware of the critical role of port States in combating IUU fishing FAO has placed increasing importance on bolstering the role of these States. In 2002 FAO convened an Expert Consultation²³ to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing. The Consultation recommended that FAO:

- convene a Technical Consultation addressing principles and guidelines for the establishment of regional Memoranda of Understanding on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing;
- elaborate and implement programmes of assistance to facilitate human resource development and institutional strengthening, including legal assistance, in developing countries so as to promote the full and effective implementation of port State measures to combat IUU fishing, and
- consider the establishment of a database concerning relevant port State measures.

The report of the Expert Consultation was reviewed by COFI in 2003 and it was agreed to convene Technical Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing²⁴ in 2004. Its objectives were to address substantive issues relating to the role of the port State in combating IUU fishing and to address principles and guidelines for the establishment of regional memoranda on port States measures to prevent, deter and eliminate IUU fishing. The Technical Consultation:

- approved a Model Scheme on Port State Measures to Combat IUU Fishing;
- strongly supported the proposed Programme of Assistance to facilitate human development and institutional strengthening in developing countries to promote the full and effective implementation of port States measures to combat IUU fishing, and
- supported the establishment of a database concerning relevant port State measures.

In 2005 COFI acknowledged that there was a need to strengthen port State measures as a means of combating IUU fishing because the lack of agreed, binding measures provided a loophole. Some Members proposed that these measures be promoted in RFBs for the development or improvement of the port State aspects of regional control schemes. In endorsing the report and the recommendations of the Technical Consultation, COFI agreed that follow-up work on the 2004 Technical Consultation

²²FAO. 2001. International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. FAO. Rome. p. 4.

²³FAO. 2002. FAO Fisheries Report. No. 692. Report of the Expert Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing. FAO. Rome. 22p.

²⁴FAO. 2004. FAO Fisheries Report. No. 759. Report of the Technical Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing. FAO. Rome. 34p.

should be undertaken, especially with respect to operationalizing the Model Scheme agreed at the Consultation.

The possibility of developing a binding instrument on port State measures was mooted at the 2002 FAO Expert Consultation and it has been discussed informally since that time with some considerable international support. For example, the US NPOA–IUU stated that it would support continued work in FAO on the development of a binding agreement on port State measures as contained in the report of the Expert Consultation.²⁵

In 2005 the issue of a binding agreement on port State measures was raised in UNGA resolution 60/31²⁶ when the Assembly recognized, *inter alia*, the need for enhanced port State controls to combat IUU fishing. In the resolution States were encouraged to apply at national and regional levels the FAO model scheme on port State measures and for RFBs to promote its application and to consider the possibility of developing a legally binding instrument.

At the 2006 Review Conference of the 1995 UN Fish Stocks Agreement²⁷ the Government of Norway introduced the issue of developing within FAO a binding agreement on port State measures, building on progress already achieved with the model scheme. This proposal found support in the meeting. In discussions on port State issues it was pointed out that port State jurisdiction may remedy the failures of inadequate enforcement by flag States and countries called for more extensive and coordinated efforts on port States measures, in compliance with article 23 of the 1995 UN Fish Stocks Agreement. Countries also noted that a global legally binding instrument on port State measures was a necessary step against ports operating as “ports of convenience”.²⁸ They noted further that the FAO Model Scheme on Port State Control was considered as the international minimum standard for port State control and a necessary reference point for the development of a global instrument.

The weight of international opinion has swung behind the proposal to develop a binding international instrument on port State measures for the purpose of combating IUU fishing. It is anticipated that the issue will be considered at the next session of COFI in 2007 and consensus will be reached on the development of such an instrument. It is also expected that the relevant 2006 UNGA fisheries resolution will again refer to the desirability of concluding a binding instrument on port State measures, adding further international impetus and weight for FAO to facilitate the conclusion such an instrument.

3. PORT STATE MEASURES AS REFLECTED IN CERTAIN NPOAS-IUU

Countries that have elaborated and disseminated their NPOAs–IUU have included references to port State measures to combat IUU fishing. The first column of Annex 2 provides a list of the IPOA–IUU paragraphs from 52 to 64 concerning port measures that States should implement. The second column provides a list of actions, by country, that will be taken to implement the NPOAs–IUU.²⁹

²⁵USA.2003. Draft National Plan of Action of the United States of America to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. US Department of State. Washington DC.

²⁶UNGA resolution 60/31 adopted on 29 November 2005 entitled 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.

²⁷Taken in part from “Advance, unedited draft report of the Review Conference on 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 (New York, 22 to 26 May 2006), prepared by the President of the Conference with the assistance of the Secretariat.” (To be issued as A/CONF.210/2006/15).

²⁸Countries also called for the development of international standards and guidelines to prevent the emergence of “ports of convenience” resulting from the existence of weaker regimes in some port States. They supported the development of an electronic database of port State measures.

²⁹It should be noted that not all countries have addressed all paragraphs of the IPOA–IUU and in some cases there is not a clear correspondence between the IPOA–IUU paragraphs and the planned national action. In these cases some interpretation was required to match the IPOA–IUU paragraphs with national actions.

The list of national actions in Annex 2 is provided for information purposes only: no attempt has been made to compare and analyze port State measures for fishing vessels among countries or between national measures and those outlined in the IPOA–IUU. Even though there are common global trends in IUU fishing, a comparison of measures would be inappropriate because national and regional IUU fishing characteristics and conditions vary in scope and intensity. Moreover, the IPOA–IUU was designed specifically so that countries could adopt a flexible approach in elaborating their NPOAs–IUU and, as a result, draw upon different ‘tools’ in the IPOA–IUU ‘toolbox’.

Although the IPOA–IUU provides a framework for the development of NPOAs–IUU, no standard methodology or ‘blueprint’ is prescribed for their development. However, the intended actions relating to port State measures extracted from the NPOAs–IUU in Annex 2 permits a number of observations to be made, including that:

- countries are taking steps, in accordance with international law, to implement the port State measures to combat IUU fishing;
- foreign fishing vessels in most, if not all countries, are required to have ‘prior approval’ if they wish to enter ports for the purposes of refueling, re-supplying, transshipping of catches etc.
- it would appear that some countries do not require fishing vessels to provide documents relating to their fishing activities (which is necessary to ascertain whether a vessel has been engaged in IUU fishing);
- some countries will deny port access to vessels suspected of, engaging in or supporting, IUU fishing while other countries intend to develop procedures to permit the denial of port access;
- some countries are publicizing the ports that foreign vessels can enter and countries have indicated an intention to intensify vessel inspections;
- most countries have a strong commitment to remit to flag States or relevant RFBs information concerning IUU fishing collected during port inspections;
- some countries will establish and publicize a national strategy for port State controls of fishing vessels;
- some countries are already cooperating to establish compatible port State measures and procedures to combat IUU fishing (e.g. Pacific island countries) and will cooperate further to exchange information etc; and
- most countries have indicated that they will support and respect port State measures adopted by RFBs.

4. IUU FISHING IN THE PACIFIC ISLANDS SUBREGION

The early 1950s saw the rise of industrial fishing in the Pacific Islands and the commercial exploitation of valuable tuna fisheries³⁰ combined with an influx of fishing vessels and crews from countries outside the Subregion, principally from Asia and in the 1980s from North America. These fisheries, while generating important economic benefits for some island States also presented challenges in terms of IUU fishing and, in some cases, unsustainable fishing practices both in exclusive economic zones (EEZs) and on the high seas.³¹ The initial international focus in the 1990s³² on IUU fishing in the Pacific Islands was on unauthorized fishing in zones of national jurisdiction.³³ A 1995 UNGA report³⁴ noted that “...Small island developing States face particular problems with

³⁰Using longline, pole-and-line, purse-seine and, to a lesser extent, troll gears.

³¹For example, the deployment of non-selective large-scale pelagic driftnets.

³²As indicated below, there was a regional focus on IUU fishing by Pacific Island States well before the 1990s. Part of the rationale for the establishment of the FFA can be traced to the need to address IUU fishing within the Subregion. See Gubon, F. ‘History and Role of the Forum Fisheries Agency’. In Douman, David J. (ed). 1987. Tuna Issues and Perspectives in the Pacific Islands Region. East-West Center. Honolulu. pp. 245-256.

³³The issue of IUU fishing figured for a longer period of time in regional discussions and meetings.

³⁴UN. 1995. Unauthorized fishing in zones of national jurisdiction and its impact on the living marine resources of the world’s oceans and seas”. Doc. A/50/549. UN. New York 20p. FAO contributed to these annual UN reports.

respect to the monitoring of unauthorized fishing within their exclusive economic zones. This is because the exclusive economic zones of these States normally harbour pelagic and other resources of high commercial value, their exclusive economic zones are very large relative to their land areas and the States individually have limited resources to monitor fishing activities within their exclusive economic zones.”

The report continued that “... South Pacific States have identified unauthorized fishing in their region by Asian distant-water fishing nation fleets as being a major obstacle to rational fisheries conservation and management (e.g., Kiribati and Papua New Guinea). Moreover, in December 1994, at the Multilateral High-level Conference on South Pacific Tuna Fisheries, it was pointed out that ‘there is ample evidence that foreign fishermen have systematically contravened coastal State regulations for many years and that, because of the high cost of surveillance, it has been very easy for them to escape detection’. In response to this situation regional MCS cooperation in the South Pacific has reached an advanced level, and the Treaty on Cooperation in Fisheries Surveillance and Law Enforcement, commonly known as the Niue Treaty, signed in July 1992 by the FFA member States, gives effect to this cooperation.”

It might be observed that by the early 1990s Pacific Island States had already taken measures to adopt regionally-binding agreements to curb IUU fishing. This action indicated the severity of the problem in the Subregion. It also pushed the Subregion ‘ahead of the curve’ by:

- seeking innovative and enduring ways to combat IUU fishing;
- attempting to minimize financial losses from stolen fish³⁵, and
- encouraging resource exploitation within a long-term sustainable framework.³⁶

It was reported at a 1994 international MCS conference sponsored by the US Department of State that under-reporting and non-reporting of catches by distant-water fishing nation fleets in the Pacific Islands posed significant constraints on scientific and economic assessments of the tuna fisheries in the Subregion.³⁷ It was further reported that depending on the flag of vessels, under-reporting ranged from 15 to 79 percent of total catches and non-reporting from 5 to 75 percent of catches.³⁸ The paper also addressed port State enforcement, pointing out that it offered an effective mechanism to ensure compliance with regionally- or subregionally-agreed conservation and management mechanisms.

³⁵Access fee payments by DWFN fleets in the Pacific Islands were predicated generally on a lump sum basis for a maximum number of vessels or for individual vessel on a per trip basis. Both methods of calculating payments involved consideration of the value of catches (i.e. total catches (by fleet or vessel) and fish prices). In cases of unreporting and non-reporting of catches taken within EEZs, countries were denied revenue for the fish harvested.

³⁶Unreported and non-reported catches have important implications for scientific assessments undertaken by Secretariat of the Pacific Community (SPC). The lack of complete and reliable data for scientific work probably meant that estimates concerning the status of stocks did not reflect their true state.

³⁷Wright, Andrew. 1995. “Monitoring, control and surveillance in the South Pacific” In US Department of State. Report of the Global Fisheries Enforcement Workshop. Washington DC (25-27 October 1994). US Department of State. pp. 144-160.

³⁸It has been reported verbally in some regional meeting that the incidence of unreporting and non-reporting of catches in the Pacific Islands has purse seiners has declined substantially but that the situation for long-line vessels was not as impressive. Brown made the point that:

“... it appears that the level of fishing by unlicensed vessels has decreased significantly in recent years. RMI reported that there had not been an arrest of an unlicensed vessel in years. This has been largely due to the increased level of aerial and surface surveillance as well as the increased level of cooperation between FFA member countries particularly with respect to joint surveillance and enforcement operations, application of MTCs and the involvement of US enforcement agencies. As well, it would appear that heavy penalties imposed in past years, has had a deterrent effect guiding foreign fishing vessels to become more compliant.

While the incidence of fishing by unlicensed fishers appears to have declined, prosecutions involving licensed vessels failing to comply with conditions of licence, continues. Recent prosecutions have involved violations associated with reporting, non-target species, closed area encroachment, VMS tampering, and at-sea transshipment.”

“The view of national enforcement agencies as well as FFA enforcement personnel, is that catch reporting violations present the biggest challenge because of the volume of work and analytical skill needed to verify daily log sheet data with other sources of information including VMS information, zone entry/exit/weekly reports, landing and reports as well as observer reports.” See Brown, C. 2006. Field Study on Port State Measures for the FAO/FFA Regional Workshop to promote the Full and Effective Implementation of Port State Measures to Combat IUU Fishing. FAO. Rome. 59p.

Wright's forward looking paper also highlighted some of the issues that were addressed later in the IPOA-IUU. It noted that: "... Port State control should cover elements such as reciprocal rights to inspect documents, logbooks and licenses, the catch on board, to enforce the rules and regulations of other parties to an arrangement, which ideally should be regional or sub-regional in scope, and provide for enforcement action against fishing vessels that infringe coastal State laws when the flag State fails to do so within a limited time period. FFA member countries have supported a clear elaboration of port State enforcement in the outcome of the United Nations Conference of Straddling Fish Stocks and Highly Migratory Fish Stocks. In the future, all FFA member countries are likely to, individually and as a group, develop comprehensive legislation relating to port State enforcement."

FAO has been concerned about IUU fishing and its impact on developing countries for a decade or more, underscoring the issue in its fisheries reporting to the UN Secretary General. FAO has sought to mitigate the effects of IUU fishing by contributing to capacity building in these countries. In the Pacific Islands Subregion, FAO convened workshops in 2003 and 2005 to promote and strengthen the implementation of the Code of Conduct³⁹ and the IPOA-IUU.⁴⁰ In the initial workshop port State issues were addressed but the issue was not treated in detail because of the workshop's broader and more general focus. However, in the second workshop greater emphasis was placed on the role of port States in combating IUU fishing, as reflected in paragraphs 52 to 64 of the IPOA-IUU.

In an interactive exercise in the IPOA-IUU workshop participants were invited to indicate and rank the most important IUU fishing issues affecting fisheries in their countries. The national results were then combined and converted to a Subregional ranking, the results of which are in Annex 3.

The priority list of issues for the Pacific Islands Subregion does not mention the lack of port State measures as being a handicap in combating IUU fishing. This could reflect inadequate emphasis on port States measures in combating IUU fishing in the presentations and in the exercises in the workshop. One might ponder whether this is the case or alternatively, whether port State measures in the Subregion are already being applied effectively and for this reason did not rank as a priority issue.

5. CONCLUSION

Information available to FAO and the international community indicates that the incidence of IUU fishing is high and rising and that there is a lack of political will and capacity by some governments to deal effectively with it.⁴¹ These sentiments, underscoring the serious nature of IUU fishing, were also reflected in the 2005 FAO Ministerial Declaration on Illegal, Unreported and Unregulated Fishing,⁴² in recent UNGA resolutions⁴³ and other international fora and initiatives such as the OECD Ministerial High Seas Task Force on IUU Fishing.⁴⁴ In addition, RFBs have been addressing IUU fishing so as to minimize its impacts on their work.⁴⁵ There is widespread agreement that IUU fishing and its effects on resource management is a longer-term issue that requires consistent and on-going action.

The full and effective implementation of the IPOA-IUU by States and RFBs is a critical step in addressing IUU fishing. The IPOA-IUU provides a framework for the elaboration of national and

³⁹FAO. 2003. Workshop on the Implementation of the 1995 FAO Code of Conduct for Responsible Fisheries in the Pacific Islands: A Call to Action. FAO. Rome. 151p.

⁴⁰FAO. 2005. Report of the FAO Regional Workshop on the Elaboration of National Plans of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing – Pacific Islands Subregion. FAO. Rome. 74p.

⁴¹FAO Conference Resolution 6/2003 adopted on 9 December 2006 "Progress Report on Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) Fishing"

⁴²FAO 2005 Rome Declaration on Illegal, Unreported and Unregulated Fishing. Adopted by the FAO Ministerial Meeting on Fisheries, Rome, 12 March 2005.

⁴³See, for example, Section IV of UNGA resolution 60/31 adopted on 29 November 2005.

⁴⁴RFBs have taken a number of important steps to address IUU fishing including revising their constitutions, adopting resolutions, establishing vessel lists, strengthening MCS operations, facilitating greater regional and inter-regional cooperation etc.

⁴⁵OECD Task Force on IUU Fishing on the High Seas. 2006. Closing the Net: Stopping illegal fishing on the high seas. DEFRA. London. 112p.

regional plans of action while giving flexibility to select those ‘tools’ that are most appropriate to national and regional needs. The process of developing NPOAs–IUU also affords countries the opportunity to check for policy and operations gaps that could unwittingly permit IUU fishing to flourish.

Port State measures in support of fisheries conservation and management were not prescribed in the 1982 Convention. However, subsequent international fisheries instruments, recognizing the important fisheries role to be played by port States, addressed these measures to a greater or lesser extent. Indeed, the international community now views port State measures as a cost-effective and essential means for promoting rational resource use. Moreover, it has been demonstrated that in the absence of effective port State measures implemented in a coordinated manner within and across regions that the chances of curbing IUU fishing by more conventional means⁴⁶ will be low.

NPOAs–IUU developed and disseminated to date address port State measures. Reflecting national circumstances some countries have devoted more attention to them than others. Nonetheless, it seems that all countries recognize the importance of using their ports to promote fisheries conservation and management and to combat IUU fishing.

The Pacific Islands Subregion has a long history of IUU fishing in its tuna fisheries. Over nearly three decades the countries have demonstrated their commitment to regional cooperation and action to address common fisheries problems including through the conclusion of binding regional instruments. For some island countries IUU fishing has been a ‘bread and butter’ issue because it denied them revenue from the tuna harvested illegally in their EEZs. Regional practices and approaches to combat IUU fishing, initiated well before the negotiation of the IPOA–IUU, were generally consistent with, and reinforce, those internationally-agreed policies and measures designed to curb IUU fishing.

In March 2006 a senior FAO official⁴⁷ provided guidance on the road ahead for dealing with IUU fishing. He noted, *inter alia*, that: “... IUU fishing is one of the most pressing and difficult issues facing the sustainable utilization of world fisheries. My assessment is that this situation has not changed and FAO urges the international community to maintain and intensify its efforts to combat IUU fishing. Importantly, these efforts should focus more sharply on depriving IUU fishers and their associates from benefiting from their ill-gotten gains. To be successful this will require, first and foremost, that market opportunities be obstructed, if not blocked completely. Consequently, I propose that while maintaining a balanced and sensible approach to IUU fishing, it would be both appropriate and timely to give greater emphasis to strengthening port State measures and implementing more stringent internationally-agreed market related measures, as envisaged in the IPOA–IUU”.

⁴⁶ For example, such as relying solely on control by the flag State.

⁴⁷ Statement by Mr Ichiro Nomura, Assistant Director General for Fisheries, FAO, Rome, at the OECD Roundtable on Sustainable Development on the occasion of the presentation of the final report of the of the High Seas Task Force, Paris, 2-3 March 2006.

Port State provisions of certain international instruments

<p>1982 UN Convention on the Law of the Sea</p>	<p>Article 218 Enforcement by port States</p> <p>1. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State may undertake investigations and, where the evidence so warrants, institute proceedings in respect of any discharge from that vessel outside the internal waters, territorial sea or exclusive economic zone of that State in violation of applicable international rules and standards established through the competent international organization or general diplomatic conference.</p> <p>2. No proceedings pursuant to paragraph 1 shall be instituted in respect of a discharge violation in the internal waters, territorial sea or exclusive economic zone of another State unless requested by that State, the flag State, or a State damaged or threatened by the discharge violation, or unless the violation has caused or is likely to cause pollution in the internal waters, territorial sea or exclusive economic zone of the State instituting the proceedings.</p> <p>3. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State shall, as far as practicable, comply with requests from any State for investigation of a discharge violation referred to in paragraph 1, believed to have occurred in, caused, or threatened damage to the internal waters, territorial sea or exclusive economic zone of the requesting State. It shall likewise, as far as practicable, comply with requests from the flag State for investigation of such a violation, irrespective of where the violation occurred.</p> <p>4. The records of the investigation carried out by a port State pursuant to this article shall be transmitted upon request to the flag State or to the coastal State. Any proceedings instituted by the port State on the basis of such an investigation may, subject to section 7, be suspended at the request of the coastal State when the violation has occurred within its internal waters, territorial sea or exclusive economic zone. The evidence and records of the case, together with any bond or other financial security posted with the authorities of the port State, shall in that event be transmitted to the coastal State. Such transmittal shall preclude the continuation of proceedings in the port State.</p>
<p>1993 FAO Compliance Agreement</p>	<p>Article V International Cooperation</p> <p>2. When a fishing vessel is voluntarily in the port of a Party other than its flag State, that Party, where it has reasonable grounds for believing that the fishing vessel has been used for an activity that undermines the effectiveness of international conservation and management measures, shall promptly notify the flag State accordingly. Parties may make arrangements regarding the undertaking by port States of such investigatory measures as may be considered necessary to establish whether the fishing vessel has indeed been used contrary to the provisions of this Agreement.</p>
<p>1995 UN Fish Stocks Agreement</p>	<p>Article 23 Measures taken by a port State</p> <p>1. A port State has the right and the duty to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures. When taking such measures a port State shall not discriminate in form or in fact against the vessels of any State.</p>

	<p>2. A port State may, <i>inter alia</i>, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.</p> <p>3. States may adopt regulations empowering the relevant national authorities to prohibit landings and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas.</p> <p>4. Nothing in this article affects the exercise by States of their sovereignty over ports in their territory in accordance with international law.</p>
<p>1995 FAO Code of Conduct for Responsible Fisheries</p>	<p>8.3 Port State duties</p> <p>8.3.1 Port States should take, through procedures established in their national legislation, in accordance with international law, including applicable international agreements or arrangements, such measures as are necessary to achieve and to assist other States in achieving the objectives of this Code, and should make known to other States details of regulations and measures they have established for this purpose. When taking such measures a port State should not discriminate in form or in fact against the vessels of any other State.</p> <p>8.3.2 Port States should provide such assistance to flag States as is appropriate, in accordance with the national laws of the port State and international law, when a fishing vessel is voluntarily in a port or at an offshore terminal of the port State and the flag State of the vessel requests the port State for assistance in respect of non-compliance with subregional, regional or global conservation and management measures or with internationally agreed minimum standards for the prevention of pollution and for safety, health and conditions of work on board fishing vessels.</p> <p>Port State Measures</p> <p>52. States should use measures, in accordance with international law, for port State control of fishing vessels in order to prevent, deter and eliminate IUU fishing. Such measures should be implemented in a fair, transparent and non-discriminatory manner.</p> <p>53. When used in paragraphs 52 to 64, port access means admission for foreign fishing vessels to ports or offshore terminals for the purpose of, <i>inter alia</i>, refuelling, re-supplying, transshipping and landing, without prejudice to the sovereignty of a coastal State in accordance with its national law and article 25.2 of the 1982 UN Convention and other relevant international law.</p> <p>54. Notwithstanding paragraphs 52, 53 and 55; a vessel should be provided port access, in accordance with international law, for reasons of force majeure or distress or for rendering assistance to persons, ships or aircraft in danger or distress.</p> <p>55. Prior to allowing a vessel port access, States should require fishing vessels and vessels involved in fishing related activities seeking permission to enter their ports to provide reasonable advance notice of their entry into port, a copy of their authorization to fish, details of their fishing trip and quantities of fish on board, with due regard to confidentiality requirements, in order to ascertain whether the vessel may have engaged in, or supported, IUU fishing.</p> <p>56. Where a port State has clear evidence that a vessel having been granted access to its ports has engaged in IUU fishing activity, the port State should not allow the vessel to land or transship fish in its ports, and should report the matter to the flag State of the vessel.</p>
<p>2001 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing</p>	

57. States should publicize ports to which foreign flagged vessels may be permitted admission and should ensure that these ports have the capacity to conduct inspections.
58. In the exercise of their right to inspect fishing vessels, port States should collect the following information and remit it to the flag State and, where appropriate, the relevant regional fisheries management organization:
- 58.1 the flag State of the vessel and identification details;
 - 58.2 name, nationality, and qualifications of the master and the fishing master;
 - 58.3 fishing gear;
 - 58.4 catch on board, including origin, species, form, and quantity;
 - 58.5 where appropriate, other information required by relevant regional fisheries management organizations or other international agreements; and
 - 58.6 total landed and transshipped catch.
59. If, in the course of an inspection, it is found that there are reasonable grounds to suspect that the vessel has engaged in or supported IUU fishing in areas beyond the jurisdiction of the port State, the port State should, in addition to any other actions it may take consistent with international law, immediately report the matter to the flag State of the vessel and, where appropriate, the relevant coastal States and regional fisheries management organization. The port State may take other action with the consent of, or upon the request of, the flag State.
60. In applying paragraphs 58 and 59, States should safeguard the confidentiality of information collected, in accordance with their national laws.
61. States should establish and publicize a national strategy and procedures for port State control of vessels involved in fishing and related activities, including training, technical support, qualification requirements and general operating guidelines for port State control officers. States should also consider capacity-building needs in the development and implementation of this strategy.
62. States should cooperate, as appropriate, bilaterally, multilaterally and within relevant regional fisheries management organizations, to develop compatible measures for port State control of fishing vessels. Such measures should deal with the information to be collected by port States, procedures for information collection, and measures for dealing with suspected infringements by the vessel of measures adopted under these national, regional or international systems.
63. States should consider developing within relevant regional fisheries management organizations port State measures building on the presumption that fishing vessels entitled to fly the flag of States not parties to a regional fisheries management organization and which have not agreed to cooperate with that regional fisheries management organization, which are identified as being engaged in fishing activities in the area of that particular organization, may be engaging in IUU fishing. Such port State measures may prohibit landings and transshipment of catch unless the identified vessel can establish that the catch was taken in a manner consistent with those conservation and management measures.
64. States should enhance cooperation, including by the flow of relevant information, among and between relevant regional fisheries management organizations and States on port State controls.

A listing of the provisions of the IPOA–IUU relating to port State measures and those measures contained in certain NPOAs–IUU

IPOA–IUU provisions relating to port State measures	Actions by States to implement port State measures through their NPOAs–IUU
<p>52. States should use measures, in accordance with international law, for port State control of fishing vessels in order to prevent, deter and eliminate IUU fishing. Such measures should be implemented in a fair, transparent and non-discriminatory manner.</p>	<p>Australia: Under applicable international law, a port State has freedom to implement port State measures at its discretion with respect to foreign vessels, including foreign fishing vessels, that it allows to enter its ports. These port State measures may include measures arising from international maritime conventions and agreements, including – in Australia’s case – regional port State measures under the <i>Memorandum of Understanding on Port State Control in the Asia-Pacific Region</i> (‘Tokyo MoU’). With the exception, however, of some aspects of vessel safety in Chapter V of the <i>International Convention for the Safety of Life at Sea</i> (‘SOLAS’), port State measures derived from maritime law do not apply to fishing vessels and – even if they did – would not deal explicitly with fisheries management violations.</p> <p>Australia has been working, with other countries, including through FAO and IMO, to review port State measures on the international plane with the object of providing for the implementation of port State measures that could assist in combating IUU fishing. An Australian expert participated in an <i>Expert Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing</i> (FAO, Rome, November 2002) and Australia will participate in a <i>Technical Consultation to Address Substantive Issues Relating to the Role of the Port State to Prevent, Deter and Eliminate IUU (Illegal, Unreported and Unregulated) Fishing</i>, in Rome in September 2004. In principle, there is no reason why a system of regional MoUs on port State measures to combat IUU fishing could not be developed and adopted.</p> <p>Australia will continue to take a leading role in FAO, the IMO and relevant RFMOs in pressing for strengthened port State measures, including the development of regional MoUs, to combat IUU Fishing and complete (and implement as appropriate the recommendations from) the current review of Australia’s policy and procedures for access to its ports by and the landing of catch from foreign fishing vessels, having regard to the need to combat IUU fishing.</p> <p>Chile: Pursuant to international law and domestic legislation, a reasonable and transparent procedure has been implemented to control fishing vessels flying foreign flags intending to land their catches in Chilean ports. Under this scheme, vessels flying foreign flags cannot land nor transship ocean resources fished in the Pacific or Atlantic Ocean subject to restriction measures applied to the Chilean fleet.</p> <p>European Community: Objective: to define the rights and responsibilities of port States regarding access for fishing vessels to port facilities in order to carry on business, transit or first marketing operations, involving fishery products coming directly from fishing grounds.</p>

	<p>Justification: the rights and responsibilities of States on this matter are not defined in any international convention. This legal vacuum encourages the existence of ports of convenience just as flags of convenience exist. The absence of international rules governing access to and controls at ports does not foster the development of international cooperation in this area. It serves, furthermore, as an alibi for countries which do not wish to be too rigorous to avoid checking the origin of products that sustain their port operations.</p> <p>Means: a Community diplomatic initiative to convene an international conference to negotiate an international agreement defining the rights and responsibilities of port States concerning access by fishing vessels to port facilities.</p> <p>Spain: Insofar as concerns those measures that may be introduced by the Port State, it is necessary to reinforce its role in such a way as to entitle it to prohibit the admission into or departure from port, the access to port services or the landing or transshipping of catches, whenever there are indications of engagement in activities of illegal fishing. Furthermore, it would be necessary to have a rapid response system for authorising or refusing landings, simple mechanisms for the authorisation of landing, adequate and efficient systems of inspection and procedures designed to prohibit, where appropriate, landing or transshipping.</p> <p>The allocation of other powers to the Port State will increase control and the possibility of boarding and retaining a vessel whenever situations are detected on board that are clearly hazardous for the health and safety of human life, which occurs all too often in flag of convenience vessels. The implementation of certain harmonised procedures and mechanisms amongst all Port States will avoid unfair competition between ports.</p> <p>Tanzania: All industrial and semi-industrial fishing vessels using Tanzania ports require permission from the port authorities.</p> <p>USA: U.S. law generally prohibits foreign vessels from landing or transshipping fish in U.S. ports. The primary exception to this rule concerns ports in U.S. territories in the Pacific Ocean. With respect to those ports, at least, the provisions of the IPOA are relevant to the United States.</p> <p>Australia: Domestically, Australia restricts port access by and the landing of catch from foreign fishing vessels to combat IUU fishing. In summary, the current requirements are for foreign fishing vessels to seek prior permission to enter any Australian port (except in cases of <i>force majeure</i> or distress) and to obtain separate Ministerial level approval to be exempt from a general prohibition on landing catch. Applicants for foreign fishing vessel port access or catch landing are required to give reasonable notice and to provide other information generally consistent with IPOA-IUU paragraph 55. In recent years, some foreign fishing vessels suspected by Australia to have engaged in IUU fishing, having initially sought port access in Australia and having been asked to provide details as to their catch, subsequently decided not to pursue gaining port access any further. Also, on several occasions, Australian fisheries authorities and fishers have photographed foreign fishing vessels suspected of IUU fishing on the high seas sector of the CCAMLR area and passed this and related information to the CCAMLR secretariat for use in making representations to port States where these vessels may seek port access. Australian diplomatic representations have supported these actions to close ports and markets to IUU catches.</p> <p>On 29 January 2004, the Australian Minister for Fisheries, Forestry and Conservation announced a review of</p>
<p>53. When used in paragraphs 52 to 64, port access means admission for foreign fishing vessels to ports or offshore terminals for the purpose of, <i>inter alia</i>, refuelling, re-supplying, transshipping and landing, without prejudice to the sovereignty of a coastal State in accordance with its national law and article 25.2 of the 1982 UN Convention and other relevant international law.</p>	

Australia's policy on the landing in Australia of catch from foreign fishing vessels and new applications to land catch will only be granted in exceptional circumstances until the review is completed. Current port access guidelines for foreign fishing vessels will also be reviewed. The review will take account of Australia's overall objectives to better combat IUU fishing, including the provisions in paragraphs 52-64 of the IPOA-IUU. One specific approach to be considered in relation both to port access by foreign fishing vessels and the landing of catch from such vessels is to decide that approval for either of these purposes will in future be limited to vessels flagged to States whose intention to implement effective flag State control over their vessels is demonstrated by their having become party to all relevant global and regional international agreements.

Chile: Prior to a report issued by the Fisheries Under-Secretariat and consultations with the Ministry of Foreign Affairs, Ministry of Economy and Energy, through a Supreme Decree may prohibit landings, supply and any other type of direct and indirect services provided to vessels in the ports of Chile and in the entire EEZ and the territorial sea, where there are grounded reasons that indicate that the Landings and transshipments requested by shipowner of vessels flying foreign flags must comply with the procedures established by the National Fisheries Service.

Japan: Any non-Japanese fishing vessel, which intends to transship or to land their catch (any fish species) at Japanese ports, shall obtain the landing permit, along with the port-call permit, by the Japanese Minister of Agriculture, Forestry and Fisheries. Through this permit system, IUU fishing vessels are denied their access to the Japanese ports. Their landing and transshipment of fish at Japanese ports are totally prohibited. The maximum penalty for the violations of those regulations is 3-year imprisonment and/or a fine of Yen 4,000,000. Any non-Japanese vessel transporting fish may land its freight only when it carries an official document issued by the flag state government certifying that the fish have been landed at and exported from the flag state. Landing is not allowed if the fish were transshipped at sea, even if the landing vessel is not directly involved in fishing activities.

Spain: The adoption of Royal Decree 1797/1999 of 26 November, on the control of the fisheries operations of the fishing vessels of third countries, meant the creation of the regulatory instrument for consolidating control as a Port State. On the basis of this provision, the requirement is introduced whereby authorisation has to be obtained to land or tranship in Spanish territory, as well as the need to provide proof of the origin of the catches, within the objective of ensuring that respect is upheld for the measures of conservation and management adopted by the regional fisheries organisations. Accordingly, an administrative system is introduced for the systematic monitoring and control of fisheries operations undertaken by vessels from third States upon which the inspection is conducted. Combined with the draft text of the "Royal Decree for the application of measures in the event of non-compliance with International Treaties", it will enable to refuse ports access for those vessels identified by RFBs as engaged in illegal, unrecorded and unregulated fishing. Applying the annual Resolutions on "Instructions for the eradication of the illegal fishing of tuna and swordfish in Spanish ports". Based on the list of States that have a quota in the Atlantic, the computation of the same and the documentary evidence that proves the area where the catches have been caught, authorisation is granted or refused to the landing or transshipping of the fisheries products in Spain.

	<p>Inspection of the cargo of all vessels of the Contracting Parties to the International Commission for the Conservation of the Atlantic Tuna, as well as of Non-Contracting Parties.</p> <p>This measure complements the application of the recommendation of the ICCAT whereby a ban is imposed on the import of swordfish, red tuna and bigeye tuna from Equatorial Guinea, Honduras and Belize.</p> <p>Nevertheless, this instrument of control for Spanish ports does not guarantee that illegal catches do not reach the Spanish market. Due to the effect of the free movement within the Community's internal market, illegal catches reach the Spanish market from Member States that have not introduced suitable instruments of port control. Spain proposes to encourage the application of similar measures throughout the entire European Community.</p>
<p>54. Notwithstanding paragraphs 52, 53 and 55; a vessel should be provided port access, in accordance with international law, for reasons of force majeure or distress or for rendering assistance to persons, ships or aircraft in danger or distress.</p>	<p>Chile: 2.0 Regulation of access to ports, resources and authorized activities</p> <p>2.1 Port Access</p> <p>a) For victualing or movements of crewmembers or others Vessels flying foreign flags may request authorization to access national ports for victualing purposes, change of crew, fuel reloading or any other operation other than the movement of their catches on board. Without prejudice of the above, if the holds of the vessel contain one or more Ocean resource, subject to a specific management scheme in Chile, the master shall be required to demonstrate that vessel has operated outside Chile's EEZ, through the VMS records maintained on board. Access to national ports shall be granted in accordance to international law, in cases of force majeure, to provide relief or assistance to people, vessels or aircraft that are in danger or facing difficulties.</p> <p>b) For transshipments and landings</p> <p>Vessels with foreign flags may request authorization to access national ports in order to transship or land their catches and by-products thereof, and shall have authorization provided that they comply with the relevant procedures established by the National Fisheries Service and the General Direction of Maritime Territory and Merchant Navy.</p> <p>2.2. Of Ports</p> <p>a) Victualing operations or movement of crewmembers or others. Vessels flying foreign flags that wish to access Chilean ports for victualing, change of crew, fuel reloading and reasons of force majeure, or seeking to provide relief or aid to persons, vessels or aircrafts that are in danger or facing difficulties, other than the movement of catches on board, pursuant to international law, may use any port of Chile, in compliance to the requirements established by the competent authorities.</p> <p>b) Transshipments and landings</p> <p>For transshipment and landing purposes of catches and by-products thereof, access to ports in the extreme southern and northern regions of Chile is authorized. (Arica and Iquique in I Region, Punta Arenas and Puerto Williams in the XII Region). The same requirement is applied to fishing or merchant vessels that transship Ocean resources fished on the high seas by other foreign vessels.</p> <p>2.3 Submission and approval of request</p> <p>Foreign fishing vessels wishing to engage in landing or transshipment operations in national ports must request authorization at least 72 hours prior to arrival, to allow the National Fisheries Service and the General Direction of Maritime Territory and Merchant Navy to examine the background information. Authorization shall be granted prior to the examination of the documents that demonstrate the permission to engage in fishing and the relevant fishing areas.</p>

	<p>Transshipments and landings shall be forbidden where ocean resources (or their by-products) are subject to management measures in jurisdictional waters.</p> <p>Transshipment or landing permits for ocean resources or by-products thereof, shall be subordinate to prior submission of the information required by the competent authorities (National Fisheries Service), and shall be granted once established:</p> <ol style="list-style-type: none"> a. That the vessel did not engaged in IUU fishing. b. The areas where the vessel engaged in fishing and that they are beyond the EEZ. c. That the transshipped targeted species is not subject to management measures in Chile. d. That the vessel shall only use the ports in the I and XII Regions. e. That the importation is covered by the appropriate health certifications. f. That the shipowner provided the complete set of required information.
<p>55. Prior to allowing a vessel port access, States should require fishing vessels and vessels involved in fishing related activities seeking permission to enter their ports to provide reasonable advance notice of their entry into port, a copy of their authorization to fish, details of their fishing trip and quantities of fish on board, with due regard to confidentiality requirements, in order to ascertain whether the vessel may have engaged in, or supported, IUU fishing.</p>	<p>Canada: Foreign vessels seeking port access in Canada are required to provide reasonable advance notice of entry into port, a copy of authorization to fish, and details of the fishing trip and quantities of fish on board. Other vessels engaged in fishing-related activities are also required to provide the aforementioned information. Foreign vessels in Canadian ports are also required to provide information regarding:</p> <ul style="list-style-type: none"> • the flag State of the vessel, its name, nationality, and identification details; • qualifications of the master and the fishing master; • types of fishing gear; • catch on board, including the origin of catch, species, form, and quantity; and • other information required by relevant RFMOs and international agreements. <p>If a vessel intends to land or transship fish in Canadian ports, then a port inspection will be carried out subject to relevant international agreements and laws. However, if no fish is to be landed or transshipped, then access may be provided for the purposes of refuelling and re-supply even at a time when an inspection cannot be carried out.</p> <p>Where there are reasonable grounds for suspecting IUU fishing, Canada will:</p> <ul style="list-style-type: none"> • prohibit landings and transshipments from the IUU vessel in port; • immediately report the matter to relevant authorities in the flag State, and as appropriate, to an RFMO or other State where the IUU fishing occurred. <p>In the past, Canada has had to take action against foreign vessels in port with the consent of the flag State because of fishing violations. Canada has been an active and cooperative participant in the efforts of RFMOs to adopt and/or strengthen schemes to prevent landings and transshipments of IUU caught fish, and to prohibit landings by non-members' vessels where there is a presumption of IUU fishing, based on identification by an RFMO.</p> <p>FSM: Terms and conditions of access require any fishing vessel wishing to enter the FSM EEZ to give 24 hours notice of its intention to do so, the proposed point of entry and the purpose for which entry is requested. A request to enter or depart from a port also requires at least 24 hours notice. Once in port, all fishing and fishing support vessels are inspected to ascertain whether the vessel may have engaged in IUU fishing.</p> <p>Legislation relating specifically to ports of entry, requires all vessels authorised to enter the FSM and wishing to call at an official port of entry, to obtain clearance from that authorised port of entry, file a manifest and be subject to inspection.</p>

Any fishing vessel wishing to transit the FSM EEZ must do so with all geared stowed and without delay. The regional VMS allows FSM to monitor VMS compliant vessels and appropriate surveillance and enforcement action will be taken if considered necessary.

Consistent with international law, FSM allows port access to foreign flagged vessels for reasons of *force majeure* or distress or for rendering assistance to persons, ships or aircraft in danger or distress.

Gambia: The Gambia, by regulation, requires foreign fishing vessels to provide advance notification in seeking port access. Measures will be taken to strengthen compliance with this regulation in collaboration with the Gambia Ports Authority. However, fishing vessels will be required to give their identity and details about their cargo and recent fishing activities.

Ghana: By regulation (Customs, Excise and Preventive Service (CEPS) Law – PNDCL 330, and the Ghana Ports and Harbours (GPHA) Establishment Act), all vessels including industrial fishing vessels are required to provide a minimum of 48 hours advance notification in seeking port access.

Namibia: Namibia will continue to ensure compliance with regulations requiring both national and foreign fishing vessels to provide advance notification in seeking access to either Walvis Bay or Lüderitz ports. For reasons of *force majeure* or distress or for rendering assistance to persons, ships or aircraft in danger or distress vessel, vessels will automatically be provided port access, in accordance with international law.

New Zealand: Under the Fisheries Act, prior approval is required from the Ministry of Fisheries to possess fish within New Zealand fisheries waters on a foreign flagged vessel, unless the fish was already landed elsewhere, or was legally taken or received by that vessel within New Zealand fisheries waters. Foreign flagged vessels seeking access to New Zealand ports are captured by this approval requirement.

The approval must be issued prior to entry into New Zealand fisheries waters and is issued subject to conditions. In most cases the approval requires the vessel to carry and operate a Ministry of Fisheries-approved Automatic Location Communicator (ALC) immediately prior to, and at all times during, the trip. Other conditions apply such as a requirement to submit catch and effort reports to the Ministry of Fisheries; a requirement to notify the Ministry of Fisheries of entry into/departure from the New Zealand EEZ; a prohibition on fishing within New Zealand fisheries waters; a prohibition on transshipment; a requirement that landings must be supervised; a requirement to land or dispose of fish only to licensed fish receivers; and compulsory vessel inspection.

The master of the vessel must give the Ministry of Fisheries at least 72 hours warning of the intention to bring the vessel into internal waters. Details of quantity, state, and species of fish onboard must be provided. It would be beneficial for New Zealand to review its procedures for approving port access for foreign flagged vessels. In particular, it would be useful if the Fisheries Act specified a timeframe for seeking prior approval.

Tanzania: All fishing vessels using Tanzania ports require permission from the port authorities in advance.

	<p>Tonga: The master of any foreign fishing vessel that wishes to enter Tongan waters must give at least 72 hours notice of his intention to do so and 24 hours notice prior to port entry. All locally based foreign fishing vessels are required to be inspected and cleared by a fisheries officer after each port call, before any cargo or personnel can be off-loaded.</p> <p>Consistent with international law, Tonga provides port access to foreign flagged vessels for reasons of <i>force majeure</i> or distress or for rendering assistance to persons, ships or aircraft in danger or distress.</p> <p>Tuvalu: Given the lack of a deep harbour and minimal port and re-supply facilities at Funafuti, it is unlikely that fishing vessels not licensed to fish in Tuvalu, would seek port access. However, it is standard operating procedure that vessels seeking port access are required to give prior notice of entry to the Tuvalu EEZ. Once in port, all fishing and fishing support vessels will be inspected to ascertain whether the vessel may have engaged in IUU fishing.</p> <p>Any fishing vessel wishing to transit the Tuvalu EEZ must do so with all geared stowed and without delay. The regional VMS allows Tuvalu to monitor VMS compliant vessels and appropriate surveillance and enforcement action will be taken if considered necessary.</p> <p>Consistent with international law, Tuvalu allows port access to foreign flagged vessels for reasons of <i>force majeure</i> or distress or for rendering assistance to persons, ships or aircraft in danger or distress.</p> <p>The Marine Resources Bill, does not stipulate a “prior notice of access” regime and would benefit from such a regime which should include a minimum period of notice, purpose of desired entry and the option to deny entry based on any IUU history of the vessel.</p> <p>Seychelles: The requirement for advance notification will be reinforced and regulations will be introduced if it is felt necessary. Cooperation between the Port Authorities and the Seychelles Fishing Authority will be improved.</p> <p>USA: The U.S. Coast Guard requires an Advanced Notice of Arrival (ANOA) 96 hours prior to entry into U.S. ports for all vessels greater than 300 gross tons. This requirement does not presently capture most fishing vessels, as they are usually less than 300 gross tons. It would be desirable to extend this requirement to cover fishing vessels, or at least to cover foreign fishing vessels seeking access to U.S. ports. Given that at least some foreign fishing vessels below 300 gross tons land or transship fish in U.S. ports, it would also be desirable to extend the ANOA system to cover them as well. Finally, it would be desirable to require all foreign fishing vessels seeking access to U.S. ports to provide a copy of their authorization to fish, details of their fishing trip and quantities of fish on board.</p>
<p>56. Where a port State has clear evidence that a vessel having been granted access to its ports has engaged in IUU fishing activity, the port State should not allow the vessel to land or transship fish in its ports, and should report the matter to the flag State of the vessel.</p>	<p>FSM: If a vessel is in port and following inspection, there is clear evidence that the vessel has been involved in IUU fishing, an offence is considered to have been committed in FSM and legal action can be taken. In such a case, FSM would inform the flag State (through the resident agent if the vessel is licensed under an access arrangement) and FFA of the details of the case as well as any FFA member State affected.</p> <p>If the vessel is flagged to a State that is a party to the WCPF Convention, notification and investigation procedures can be implemented under the convention and appropriate sanctions applied.</p>

<p>Gambia: Procedures will be developed to allow the denial of port access to foreign vessels suspected of engaging or supporting IUU fishing.</p> <p>Where evidence is found indicating that a foreign vessel in port has encouraged or supported IUU fishing, a procedure will be developed to enable effective measures to be taken, including prohibition on landing or transshipment, and arrest and prosecution.</p> <p>Ghana: Procedures will be developed to allow the denial of port access to foreign vessels suspected of engaging in or supporting IUU fishing. Any information relating to such vessels will be communicated to the appropriate national agency such as GPHA, CEPS and Immigration Service.</p> <p>Where evidence is found indicating that a foreign vessel in port has encouraged or supported IUU fishing, a procedure will be developed (by the Fisheries Regulations) to enable effective measures to be taken, including prohibition on landing or transshipment.</p> <p>Seychelles: Tuna fishing vessels known to be engaged in IUU activities or which are not listed on the IOTC white list of vessels are denied port access. Legal advice will have to be sought concerning action to take against non-tuna fishing vessels which have been found to engage in IUU activities following a port inspection.</p> <p>New Zealand: If the Ministry of Fisheries is satisfied that a foreign flagged vessel entering New Zealand fisheries waters with fish on board has undermined international conservation and management measures, the vessel may be directed not to enter the internal waters of New Zealand. If such a vessel enters New Zealand internal waters after being instructed not to, the master is liable for penalties under the Fisheries Act. This does not apply if a vessel enters New Zealand internal waters to obtain food, fuel, and other goods and services necessary to enable the vessel to proceed safely and directly to another port outside New Zealand.</p> <p>Foreign flagged vessels that are not registered on the New Zealand Fishing Vessel Register are not permitted to transship fish within New Zealand's EEZ.</p> <p>In addition to the above measures, New Zealand also implements any additional requirements consistent with its obligations under RMFOs. For example, all vessels carrying toothfish that enter New Zealand ports must be inspected, and if there is evidence that the vessel has fished in contravention of CCAMLR Conservation Measures, or if the fish is not accompanied by a valid CCAMLR Catch Document, the landing is prohibited.</p> <p>If there is evidence that a foreign flagged vessel has engaged in unauthorised fishing activity within New Zealand fisheries waters, the vessel is directed to port and liable for penalties under the Fisheries Act, including a fine of up to NZ\$500 000, and forfeiture of the vessel, fish, and fishing gear.</p> <p>If a vessel is denied access to New Zealand ports on the basis that it has undermined international conservation and management measures, or prosecuted under New Zealand law, New Zealand reports the matter to the flag State of the vessel, and relevant RFMO.</p> <p>Tanzania: IUU fishing vessels and fishing vessels of bad standing are denied port access.</p>
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	<p>Tonga: Any foreign fishing vessel that is suspected of contravening international conservation and management measures may be denied entry into internal waters and if it has entered internal waters, directed to leave those waters.</p> <p>If a vessel is in port and following inspection, there is clear evidence that the vessel has been involved in IUU fishing, an offence is considered to have been committed in Tonga and legal action can be taken. In such a case, Tonga would inform the flag State and FFA of the details of the case as well as any FFA member State affected.</p> <p>Tuvalu: If a vessel is in port and following inspection, there is clear evidence that the vessel has been involved in IUU fishing, an offence is considered to have been committed in Tuvalu and legal action can be taken. In such a case, Tuvalu would inform the flag State and FFA of the details of the case as well as any FFA member State affected. In 2003, the licensed Taiwan fishing vessel <i>Man Chung Shun</i> called in to Funafuti to off-load a sick crew member. Upon inspection it was found that the vessel had no fishing logs and was not properly marked. The government of Taiwan representative resident in Funafuti, was informed of this breach of license and the matter was settled out of court.</p> <p>If the vessel is flagged to a State that is a party to the WCPF Convention, notification and investigation procedures can be implemented under the convention and appropriate sanctions applied.</p> <p>USA: If the United States has sufficient evidence of IUU fishing in waters <i>within U.S. jurisdiction</i> by a foreign flag vessel and the vessel evades apprehension initially, the vessel would be arrested if it subsequently entered a U.S. port. The United States would notify the flag State. If the fisheries violation involved a stock that is within the purview of a RFMO, the United States might also inform the RFMO as well, depending on the circumstances.</p> <p>If a foreign vessel is suspected of IUU fishing in waters <i>beyond U.S. jurisdiction</i> and subsequently seeks access to a U.S. port, the United States would first determine whether the elements of the Lacey Act have been met. If so, the United States would ask the other State(s) involved to investigate the matter and to see if they would support a U.S. prosecution. International cooperation through various means, such as the MCS Network and Interpol, may also come into play, as United States works with other States in documenting and prosecuting cases against IUU fishers who cross jurisdictional lines.</p> <p>The United States generally informs flag States of the outcome of U.S. prosecutions in such cases. This information is typically passed through diplomatic channels.</p> <p>FSM: The following are the authorised maritime ports of entry for the FSM: Yap State: Yap, Ulithi, Wjoleai, Satawal Chuuk State: Weno, Satowan Pohnpei: Mesenieng, Kapingamarangi, Temwen Kosrae: Lelu, Okat (Inspection of foreign fishing vessels in port (including those that are not licensed to fish but come for resupply or repair) is undertaken by NORMA port samplers and officers of the Maritime Surveillance Wing. All port samplers are regionally certified having undertaken FFA and SPC training as part of the regional Observer and Port Sampling programmes. In 2004, approximately 600 fishing vessel inspections were conducted. As the WCPF Commission begins its work and possibly adopts catch certification schemes, a future priority will be to develop inspection capacity and train inspectors concerning any relevant documentation requirements.</p>
57. States should publicize ports to which foreign flagged vessels may be permitted admission and should ensure that these ports have the capacity to conduct inspections.	

	<p>Ghana: As the MCSE Unit is strengthened, a strategy will be developed to ensure that foreign vessels are inspected in port, and that the inspectors are trained to inspect catch certification documentation agreed in ICCAT and other relevant RFMOs.</p> <p>Seychelles: Seychelles will abide to IOTC resolution 02/01 on the establishment of an IOTC programme of inspection in port. The inspection of foreign fishing vessels, both licensed and unlicensed by Seychelles will be intensified. There will, however, be a need for more staff and more training.</p> <p>Tanzania: The port authorities have publicized ports which can be used.</p> <p>Tonga: Tonga has two ports of entry: Vava'u and Nuku'alofa. Tonga reserves the right to inspect any fishing vessel in port. Inspection of foreign vessels in port (including those that are not licensed to fish but come for duty free fuel or repair) will be intensified, following impending training on boarding and inspection by the regional organizations. As the WCPF Commission begins its work and possibly adopts catch certification schemes, a future priority will be to develop inspection capacity and train inspectors concerning any relevant documentation requirements. In the immediate term, Tonga's ability to conduct at port inspections will be enhanced with the addition of personnel under-going training in 2004 and could be further enhanced with the use of TDS personnel. For the longer term it would be beneficial to have at port inspectors trained to a regional standard and FFA would be the logical organization to implement such a programme along similar lines to the Observer Programme.</p> <p>Tuvalu: Funafuti is the only port of entry for Tuvalu.</p> <p>Inspection of foreign vessels in port (including those that are not licensed to fish but are in port for resupply or repair) will be undertaken.</p> <p>As the WCPF Commission begins its work and possibly adopts catch certification schemes, a future priority will be to develop inspection capacity and train inspectors concerning any relevant documentation requirements. It would be beneficial to have at port inspectors trained to a regional standard and FFA would be the logical organisation to implement such a programme along similar lines to the Observer Programme.</p>
<p>58. In the exercise of their right to inspect fishing vessels, port States should collect the following information and remit it to the flag State and, where appropriate, the relevant regional fisheries management organization:</p> <p>58.1 the flag State of the vessel and identification details;</p> <p>58.2 name, nationality, and qualifications of the master and the fishing master;</p>	<p>Chile: Control by the Port State. Establishment of fishing areas: Vessels flying foreign flags must demonstrate their area of operation through the data produced by a Vessel Monitoring System (VMS), which must be submitted to the Monitoring Center operated by the National Fisheries Service and the National Direction of the Maritime Territory and Merchant Navy, to monitor the entire fishing trip during which the species to be landed or transshipped were caught.</p> <p>Alternatively, when a vessel flying a foreign flag is monitored through a VMS by the Flag State, the establishment of the operation area can be made through the certification by the competent authority of such State. Establishment of origin and health status:</p>

<p>58.3 fishing gear;</p> <p>58.4 catch on board, including origin, species, form, and quantity;</p> <p>58.5 where appropriate, other information required by relevant regional fisheries management organizations or other international agreements; and</p> <p>58.6 total landed and transshipped catch.</p>	<p>The importation of Ocean resources or by-products thereof, from vessels flying foreign flags, must comply with the health certification requirements of the country of origin. The importation of Ocean resources of fishing products that are introduced by air or land, must also establish the health certification issued by the official authority of the country of origin.</p> <p>Those Ocean resources that are subject to restrictions established by international regional organizations (CCAMLR, ICCAT) and that are intended for transshipment or importation to Chile for reprocessing and reexportation purposes, must be covered by a commercial certification issued by the Flag State of the vessel that engaged in fishing.</p> <p>Gambia: The officials of the MCS Unit of the Fisheries Department and other institutions concerned will ensure that foreign vessels are inspected in port.</p> <p>Namibia: The Ministry's Inspectorate staff will continue to ensure that all foreign fishing vessels entering Namibian ports are thoroughly inspected to ensure that they have not contravened national laws and regulations of Namibia or other states, or conservation and management measures developed by RFMOs. Data and information to be collected during routine inspections include: (a) the vessel's flag State and identification details; (b) name, nationality, and qualifications of the master and senior officers; (c) fishing gear on board; (d) catch on board, including origin, species, form, and quantity; (e) where appropriate, other information required by relevant regional fisheries management organizations or other international agreements; and (f) total landed and transshipped catch.</p> <p>New Zealand: New Zealand exercises the right to inspect foreign flagged vessels within New Zealand fisheries waters for the purpose of ensuring compliance with international conservation and management measures adopted by a global or regional arrangement to which New Zealand is party. In order for New Zealand to inspect a foreign flagged vessel, the vessel must be flagged to a State party to the 1995 UN Fish Stocks Agreement or an RFMO that has established boarding and inspection procedures.</p> <p>New Zealand fisheries officers are authorized to inspect the vessel, the vessel's authorization to fish or transport fish, the vessel's fishing gear and equipment, the vessel's facilities, fish on board, records and other relevant documents. A report of the inspection is provided to the master of the vessel and to the flag State.</p> <p>New Zealand also implements any specific boarding and inspection procedures established by RFMOs to which New Zealand is party, such as CCAMLR. In the case of inspections of foreign flagged CCAMLR vessels, a report of the inspection is also provided to CCAMLR.</p> <p>USA: The United States does not currently require foreign fishing vessels seeking access to U.S. ports to have a logbook on board. A logbook helps establish where the vessel has been, and where and when it was fishing. This sort of evidence is critical in certain types of cases involving IUU fishing, especially in the absence of universal VMS requirements. Accordingly, the United States should consider adopting this requirement, so that the absence or destruction of a logbook will be a violation.</p>
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	<p>NMFS boards some foreign vessels in U.S. ports to examine and verify fish landings, but the number of such inspections could be increased and the system for determining which vessels to inspect could be improved. Both actions would require additional resources.</p>
<p>59. If, in the course of an inspection, it is found that there are reasonable grounds to suspect that the vessel has engaged in or supported IUU fishing in areas beyond the jurisdiction of the port State, the port State should, in addition to any other actions it may take consistent with international law, immediately report the matter to the flag State of the vessel and, where appropriate, the relevant coastal States and regional fisheries management organization. The port State may take other action with the consent of, or upon the request of, the flag State.</p>	<p>Chile: Inspection in Ports: Fishing vessels flying foreign flags authorized to transship in Chilean ports, are required to comply with the enforcement officers shall perform inspections. If, as a result of the Inspection, the vessel is presumed to have engaged in IUU fishing, the authorization shall be annulled and this situation shall be notified to the Flag State. Likewise, if the operation occurred in waters subject to an international agreement to which Chile or the Flag State are party to, the procedure and sanctions set forth in the rules that govern the agreement shall be applied.</p> <p>The shipowner may submit new information to eliminate the presumption of IUU fishing and obtain authorization to transship or land their catches or products. If the vessel is caught fishing in jurisdictional waters, it shall be detained and taken to port, where the procedures established in the domestic legislation shall be applied (Art. 162 of the Fisheries Law). For inspection purposes, the background of vessels flying foreign flags shall be thoroughly consulted by the inspectors in order to verify, to their complete satisfaction, in respect of the lawfulness of the products that they intend to land or transship.</p> <p>Vessels flying foreign flags that intend to transship or land species of cod or by-products thereof, are required to demonstrate their origin by way of the certification established by CCAMLR Conservation Measure MC 10-05 (2002) under the Catch Documentation System (CDS).</p> <p>Authorized ports and procedures for operations of transshipment and landings by vessels flying foreign flags have been widely disseminated to Shipping Agencies, representatives of the shipowner when the vessel enters the country.</p> <p>FSM: Will continue its policy of informing the flag State of a vessel, if it has reasonable grounds to suspect any of its vessels has engaged in or supported IUU fishing. Reports will also be made to FFA and the WCPF Commission as appropriate. Where evidence is found indicating that a foreign vessel in port has encouraged or supported IUU fishing, enforcement action can be taken including if IUU fish has been imported or if an offence has been committed in another State or in an area of the high seas subject to RFMO management. If the offence took place in a State with which FSM has a joint and reciprocal surveillance and enforcement arrangement, prosecution in FSM may be possible.</p> <p>Namibia: Where evidence is found indicating that a foreign vessel in port has engaged in or supported IUU fishing, measures will be taken to prohibit landing or transshipment of catch in Namibia ports and arrest of the officers and crew and seizure of the vessel and all she contains. Any such action taken will be promptly reported to the flag State of the vessel, as well as RFMOs and other States, as appropriate.</p> <p>New Zealand: If, as a result of an inspection, a New Zealand fishery officer believes that the vessel has committed a serious violation against international conservation and management measures of a global or regional arrangement to which New Zealand is party, New Zealand will notify the vessel's flag State authorities as soon as practicable. Where appropriate, the RFMO is also notified.</p>

	<p>If, within 3 working days, the flag State fails to respond to the notification from New Zealand, or fails to take action under its own laws, the Fisheries Act allows New Zealand to bring the vessel to a New Zealand port. Consistent with New Zealand's rights under the 1995 UN Fish Stocks Agreement New Zealand can investigate the alleged violation with the consent of the flag State of the vessel.</p> <p>Tanzania: There is a mechanism for cross checking Vessels suspected to be engaging in IUU fishing. For artisanal fishing, radio communication network with patrol units is in place.</p> <p>Tonga: Tonga will continue its policy of informing the flag State of a vessel, if it has reasonable grounds to suspect any of its vessels has engaged in or supported IUU fishing. Reports will also be made to FFA and the WCPF Commission. Where evidence is found indicating that a foreign vessel in port has encouraged or supported IUU fishing, enforcement action can be taken particularly if IUU fish has been imported or if an offence has been committed in another State or in an area of the high seas subject to RFMO management or if the vessel is subject to a joint and reciprocal surveillance and enforcement arrangement in place with Tonga.</p> <p>Tuvalu: Tuvalu will continue its policy of informing the flag State of a vessel, if it has reasonable grounds to suspect any of its vessels has engaged in or supported IUU fishing. Reports will also be made to FFA and the WCPF Commission. Where evidence is found indicating that a foreign vessel in port has encouraged or supported IUU fishing, enforcement action can be taken particularly if IUU fish has been imported or if an offence has been committed in another State or in an area of the high seas subject to RFMO management or if the vessel is subject to a joint and reciprocal surveillance and enforcement arrangement in place with Tuvalu.</p>
<p>60. In applying paragraphs 58 and 59, States should safeguard the confidentiality of information collected, in accordance with their national laws.</p> <p>61. States should establish and publicize a national strategy and procedures for port State control of vessels involved in fishing and related activities, including training, technical support, qualification requirements and general operating guidelines for port State control officers. States should also consider capacity-building needs in the development and implementation of this strategy.</p>	<p>Namibia: Namibia will ensure that Fisheries Inspectors are properly trained in ensuring compliance with catch documentation schemes developed by RFMOs such as ICCAT and CCAMLR. Namibia will establish a national strategy and procedures for port State control of vessels involved in fishing and related activities, including training, technical support, qualification requirements and general operating guidelines for Fisheries Inspectorate staff. Support and assistance from RFMOs and regional programmes may be sought in developing capacity and for implementation of this strategy.</p> <p>New Zealand: New Zealand's procedures for port State control of vessels involved in fishing and related activities are set out in detail in the Fisheries Act. In addition, fishery officers are trained in standard inspection procedures. It may be useful to set out New Zealand's port State requirements and procedures on the Ministry of Fisheries website so that they can be easily accessed by foreign flagged fishing vessels intending to enter New Zealand fisheries waters. There could also be a link to the Ministry of Fisheries website from the Maritime Safety Authority website.</p>

<p>62. States should cooperate, as appropriate, bilaterally, multilaterally and within relevant regional fisheries management organizations, to develop compatible measures for port State control of fishing vessels. Such measures should deal with the information to be collected by port States, procedures for information collection, and measures for dealing with suspected infringements by the vessel of measures adopted under these national, regional or international systems.</p>	<p>USA: There are very few U.S. ports in which foreign vessels can land or transship fish. Accordingly, it may not be necessary for the United States to establish a “national” strategy and procedures for port State control in this context. However, it may be desirable for the United States to develop a more coordinated approach to ensure that foreign vessels do not land or transship IUU-caught fish in those ports that are open to them. A more coordinated approach would include extension of the ANOA requirements to cover such vessels and strengthening of the scheme for inspecting such vessels upon arrival in port.</p> <p>FSM: As a member of FFA and in accordance with regionally accepted MTCs and MCS operating procedures, FSM has established port State controls that are consistent with other FFA member States. In addition, as a party to the WCPF Convention, FSM will work with other party States to further develop appropriate port State controls.</p> <p>Ghana: Ghana will cooperate with neighbouring coastal States (e.g. through the African Union and ECOWAS protocols or RFMOs) to agree on mechanisms and information exchange to combat IUU fishing.</p> <p>New Zealand: All foreign flagged vessels arriving in, or departing from New Zealand must report to a place that is both an approved port of first arrival (as required under the Biosecurity Act 1993) and a Customs place (as required under the Customs Act 1996). Ministry of Fisheries fishery officers have the capacity to conduct port inspections at all New Zealand ports. In addition, the monitored or supervised transshipment of fish may be carried out in any New Zealand port.</p> <p>Seychelles: Seychelles will continue to cooperate mainly through regional organizations with other island and coastal port States to agree on mechanisms and information exchange to combat IUU fishing.</p> <p>USA: The United States would certainly support efforts by port States to coordinate their activities in combating IUU fishing. However, because so few U.S. ports are open to foreign vessels for landing or transshipping fish, the involvement of the United States in such efforts may not be very great. One exception to this might involve the Central and Western Pacific region. Foreign vessels are permitted to land or transship fish in several U.S. ports in this region. The United States should actively promote the development of coordinated port State controls to combat IUU fishing in this region, including through the Central and Western Pacific Fisheries Commission that is in the process of being established.</p> <p>Although the United States is not a major port State for fisheries in other regions, we are interested in pursuing the possibility of developing agreements for those regions on port State measures. Ideally, such agreements would involve members of any RFMO as well as non-members whose ports are known to be used for landing or transshipping fish regulated by the RFMO.</p> <p>The United States believes that RFMOs could also formalize their co-operation on this issue. Such cooperation would be essential in areas where IUU fishing is the concern of two or more RFMOs. For example, the conservation and management of fish resources in the Atlantic Ocean is the responsibility of several RFMOs, which are already cooperating and exchanging information regarding IUU fishing in their respective convention areas.</p>
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<p>63. States should consider developing within relevant regional fisheries management organizations port State measures building on the presumption that fishing vessels entitled to fly the flag of States not parties to a regional fisheries management organization and which have not agreed to cooperate with that regional fisheries management organization, which are identified as being engaged in fishing activities in the area of that particular organization, may be engaging in IUU fishing. Such port State measures may prohibit landings and transshipment of catch unless the identified vessel can establish that the catch was taken in a manner consistent with those conservation and management measures.</p>	<p>A comprehensive port State system would mean that IUU fishing within the area of responsibility of one RFMO should trigger action by port States that are members of other RFMOs.</p> <p>A regional system of port State measures could also entail common procedures for inspection, qualification requirements for inspection officers and agreed consequences for vessels found to be in non-compliance. Possible common elements could also include, in addition to denial of port access and/or landing and transshipment of catch, denial of requests for fishing access to coastal State waters and denial of requests for vessel registration.</p> <p>Gambia: The Gambia will implement port state measures adopted by relevant RFMOs, with a priority on measures adopted by SRFC.</p> <p>Ghana: Ghana will implement port State measures adopted by relevant RFMOs, with a priority on measures adopted by ICCAT and CECAF.</p> <p>Namibia: Legislative authority to deter IUU fishing that undermines conservation and management measures adopted or recommended by any RFMO to which Namibia is party is provided for under Section 37 of the Act. For the purpose of any fisheries agreements entered into, or any international agreements to which Namibia is a party, the Minister may make such regulations necessary or expedient for giving effect to the provisions of such agreements. The port State measures adopted by relevant RFMOs to which Namibia is a member shall be reviewed and regulations proposed, as required. In particular, provisions will be considered that would prohibit any person from landing, importing, exporting, selling, buying etc. any fish taken contrary to international conservation and management measures adopted a RFMO to which Namibia is party. Sanctions would be severe, including high fines, and forfeiture as applicable.</p> <p>In addition, cooperation with the catch certification schemes developed by ICCAT and CCAMLR will be intensified to facilitate detection and the fisheries legislation will be reviewed to ensure the appropriate inspection and reporting requirements are sufficient, and the sanctions provide an adequate deterrent.</p> <p>Seychelles: Seychelles will continue to implement measures that will be adopted by the IOTC such as the resolution mentioned at 4.1.2 and other relevant RFMOs. Other relevant IOTC resolutions include: Resolution 02/04 on establishing a list of vessels presumed to have carried out illegal, unregulated and unreported fishing in the IOTC area, and Resolution 02/05 concerning the establishment of an IOTC record of vessels over 24 metres authorized to operate in the IOTC area.</p> <p>Tanzania: Tanzania collaborates with other Member States of RFMOs e.g. SWIOFC and LVFO.</p> <p>Tuvalu: As a member of FFA and in accordance with regionally accepted MTCs and MCS operating procedures, Tuvalu is establishing port State control of fishing vessels that are consistent with other FFA member States. In addition, as a party to the WCPF Convention, Tuvalu will work with other party States to further develop appropriate port State controls.</p> <p>Through the US Multilateral Treaty on Fishing as well as through MCS programmes established at FFA, Tuvalu has developed a useful working relationship with NMFS.</p>
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	<p>The establishment of a formal bilateral relationship with NMFS aimed particularly at monitoring vessel activities and unloadings at the ports of Guam and Pago Pago, would be a valuable enhancement towards the elimination of IUU fishing. Regular information exchanges between Tuvalu and officials at the major unloading and re-supply ports in the region, including Suva, Guam and Pago Pago, is a necessary part of effective MCS.</p> <p>USA: In the field of marine safety, the U.S. Coast Guard administers a Program that could serve as a model for a more robust system of targeting and boarding foreign fishing vessels in U.S. ports for the purpose of determining compliance with fisheries conservation regulations. The Port State Control Program, which covers commercial vessels greater than 300 gross tons, begins with the ANOA. Upon receipt of an ANOA, the U.S. Coast Guard assesses the vessel's owner, flag, classification society, vessel type and history to determine their boarding priority. Vessels are assigned points in each of these categories and are boarded and inspected for compliance with vessel safety standards according to their priority. NMFS could develop a similar targeting system to determine which foreign fishing vessels are likely to have engaged in IUU fishing and therefore which ones should be a higher priority for inspection.</p>
<p>64. States should enhance cooperation, including by the flow of relevant information, among and between relevant regional fisheries management organizations and States on port State controls.</p>	<p>Gambia: The Gambia will cooperate with neighboring coastal states to agree on mechanisms and information exchange to combat IUU fishing.</p>

Priority listing of IUU fishing issues in the Pacific Islands Subregion⁴⁸

	Cook Islands	Federated States of Micronesia	Fiji	Kiribati	Niue	Palau	Papua New Guinea	Tonga	Tuvalu	Samoa	Vanuatu	Average	Rank
IUU fishing issues in offshore industrial fisheries													
Non-reporting and misreporting of catches and other activities	1	5	4	5	5	5	1	2	2	3	1	3.1	1
Unauthorized fishing	2	2	1	2	8	8	3	6	4	12	3	4.6	2
Fishing by unregistered and unlicensed vessels including FOC vessels	3	1	2	3	3	6	4	7	7	7	11	4.9	3
Encroachment by foreign fishing vessels into EEZs	13	7	5	1	1	1	15	3	3	1	4	4.9	3
Inadequate MCS operations to combat IUU fishing	5	8	12	7	2	4	8	1	1	15	2	5.9	5
Fishing for unauthorized species and undersized species	14	3	14	6	4	2	2	9	14	6	14	8.0	6
Inadequate legislation to deal with IUU fishing and for MCS	12	9	9	9	7	3	12	10	6	4	7	8.0	6
Use of prohibited gears and fishing methods	4	6	13	4	9	9	7	11	5	13	12	8.5	8
Lack of subregional cooperation on IUU fishing issues	11	11	10	12	11	10	10	4	9	8	9	8.6	9
Lack of coordination and communications between agencies in national administrations	10	10	11	8	6	7	11	8	8	14	8	9.2	10
Lack of international cooperation on IUU fishing issues	7	15	7	11	10	15	9	5	10	2	10	9.2	10
Lack of documentation verification mechanisms at the national level	8	14	3	13	12	13	5	13	13	5	6	9.5	12
Difficulties in accessing information about the IUU fishing history of suspect vessels	6	13	6	14	15	14	6	12	11	11	5	10.3	13
Fishing endangered and protected species	15	4	15	10	13	11	13	14	15	10	13	12.1	14
Use of unseaworthy vessels	9	12	8	15	14	12	14	15	12	9	15	12.3	15

⁴⁸Extracted from FAO. 2005. Report of the FAO Regional Workshop on the Elaboration of National Plans of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing – Pacific Islands Subregion. FAO. Rome. 74p. It should be noted that the information contained in this table was collected and collated during a workshop exercise and that it does NOT represent national and subregional positions and priorities on IUU fishing.

PORT STATE MEASURES INTERNATIONAL AND REGIONAL DEVELOPMENTS

Judith Swan¹

ABSTRACT

The intensified global attention to the pivotal role of the port State in combating IUU fishing is described in this paper. The way forward in the battle against IUU fishing has become clearer as countries continue to progressively strengthen the role of the port State through international instruments and initiatives to strengthen and expand regional governance. The synergies between port State measures and other key compliance tools are highlighted by considering linkages with international and regional information systems, trade and market-related measures and flag State responsibilities. The surge of support by the international community in the UN system and by Ministerially led initiatives/meetings for a two-track approach of implementing the FAO Model Scheme on Port State Measures to Combat IUU Fishing (FAO Model Scheme) and in parallel developing a binding international instrument is considered

1. INTRODUCTION

In recent years, international recognition of the value of port State measures in combating illegal, unreported and unregulated (IUU) fishing has been intensifying. All fish that has been harvested at sea must be landed, and a coordinated system of controls at port – including requirements for vessels, information systems, inspections and training – increasingly can be used to detect and enforce against IUU-caught fish. There is also an important cost-benefit consideration: the use of port State controls does not necessarily entail significant resources, and they represent a promising avenue for implementation by developing States. Operationally, the measures can be integrated into a wider system of port controls extending to areas such as health, safety and security.

The concept of coordinated port State control for merchant vessels is not new. Comprehensive regimes and requirements relating to vessel safety, labour conditions and pollution prevention have been progressively developed for over two decades. Key among these were the following.

- The 1982 Paris Memorandum of Understanding on Port State Control (the Paris MOU), which established a coordinated control system with respect to vessel safety and pollution prevention standards and equipment.²

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² The Paris MOU aims at eliminating the operation of sub-standard ships through a harmonized system of port State control. Annually, over 20,000 inspections take place on board foreign ships in the Paris MOU ports, ensuring that these ships meet international safety, security and environmental standards, and that crew members have adequate living and working conditions. It is implemented by 25 maritime administrations, and has been amended several times to accommodate new safety and marine environment requirements stemming from the International Maritime Organization (IMO) as well as other important developments such as the various EU Directives which address marine safety. Its provisions include targeting of ships for inspection, databases, inspection, officers and detention. An inspection database is maintained. See <http://www.parismou.org/>.

- MOUs establishing regional port State regimes around the world, which incorporate universal standards and were inspired by procedures agreed under the Paris MOU.³
- The International Maritime Organization's (IMO) technical conventions, many of which contain provisions for ships to be inspected when they visit foreign ports to ensure that they meet IMO requirements.⁴ Although it is acknowledged that the primary responsibility for ships' standards rests with the flag State, it is considered that port State control provides a "safety net" to catch substandard ships.
- IMO's global strategy for port State control, incorporating the professional profile, training and qualification requirements and general operating guidelines for control officers. This is to ensure that, while the systems may be regional, the standards applied will be universal.

There has been progressive development of port State measures in international fisheries instruments since 1982, but particularly since 1995. The instruments have tended to focus on the role of the port States individually or through regional fishery bodies (RFBs), rather than through the mechanism of specific regional MOUs such as those developed for merchant ships.

Most recently, the endorsement in March, 2005 by the FAO Committee on Fisheries (COFI) of the Model Scheme on Port State Measures to Combat IUU Fishing (FAO Model Scheme) built upon the preceding international instruments, and paved the way for international consensus that a binding instrument on port State measures, based on the FAO Model Scheme, be developed.⁵ Key fisheries instruments are noted below.⁶

The **1982 UN Convention on the Law of the Sea** (1982 Convention) contains minimal reference to port State measures in general,⁷ and in the context of regulating foreign fishing vessels allows the coastal State to make laws and regulations regarding the landing of catch in its ports.

The **1993 FAO Compliance Agreement**⁸ (Compliance Agreement) refers to situations where the port State has reasonable grounds to believe that a fishing vessel voluntarily in its port has been used to undermine management measures of a regional fishery management organization (RFMO). The port State is to notify the flag State, and they may then arrange for investigatory measures by the port State.

The **1995 UN Fish Stocks Agreement**⁹ took a stronger approach than the Compliance agreement, and referred to the "right and duty" of a port State to take non-discriminatory measures in accordance with international law to promote the effectiveness of sub-regional, regional and global conservation and management measures. It also provided that States may, among other things, inspect documents, fishing gear and catch on board fishing vessels, when

³ Port State regimes are currently operated in Australia, the Asia-Pacific region, the Black Sea, the Caribbean Region, the Indian Ocean, Mediterranean, Latin America and West and Central Africa, involving more than 90 countries.

⁴ These inspections were originally intended to be a back up to flag State implementation, but experience has shown that they can be extremely effective, especially if organized on a regional basis. A ship going to a port in one country will normally visit other countries in the region before embarking on its return voyage and it is to everybody's advantage if inspections can be closely co-ordinated. This ensures that as many ships as possible are inspected but at the same time prevents ships being delayed by unnecessary inspections. See <http://www.imo.org/home.asp>.

⁵ The issue of an international binding agreement is addressed in Part 3 of this paper, and by Doullman, David J., Role of the port State in combating IUU fishing and promoting long-term sustainability in fisheries, paper prepared for the FAO/FFA Regional Workshop to Promote the Full and Effective Implementation of Port State Measures to Combat IUU Fishing, 28 August – 1 September 2006, Nadi, Fiji.

See http://www.fao.org/fi/NEMS/events/detail_event.asp?event_id=34648.

⁶ For details of provisions in the international instruments, see Doullman, David J., *ibid*.

⁷ Reference is primarily in the context of marine pollution, Articles 218-220 assumes that ports are subject to the sovereignty of the coastal State because they are considered as internal waters.

⁸ Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High seas.

⁹ Agreement for the Implementation of the Provisions of the United Nations Convention for the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

they are voluntarily in its ports or at its offshore terminals, and empower their authorities to prohibit landings and transshipments where the catch was taken in a manner which undermines high seas conservation and management measures.

The **1995 FAO Code of Conduct for Responsible Fisheries**, in the context of fishing operations, recommends¹⁰ that port States should take non-discriminatory measures to achieve and assist others in achieving the objectives of the Code of Conduct, and inform other States. Port States should provide assistance to flag States when a fishing vessel is voluntarily in port or at an offshore terminal, and the flag State requests assistance in respect of non-compliance with conservation and management measures, or agreed minimum standards for the prevention of pollution and for safety, health and conditions of work on board fishing vessels.

The **2001 FAO International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing (IPOA-IUU)** contains guidelines for port State access,¹¹ information to be collected from fishing vessels and the process for actions to be taken where IUU fishing is suspected. States are also encouraged to establish and publicize a national strategy and procedures for port State control of vessels involved in fishing and related activities, including training, for port State control officers, and are further encouraged to consider capacity-building needs in the development and implementation of the strategy.

Cooperation to develop compatible measures is encouraged, and guidelines for the measures included. Prohibition of landings and transshipment on vessels presumed under RFMO procedures to be undertaking IUU fishing is also encouraged. RFMOs are encouraged to consider establishing comprehensive port State measures for fishing vessels. The IPOA-IUU offers minimum requirements for the RFMO measures and procedures, including of mandatory inspection in port of all non-member vessels and information dissemination.

The FAO Technical Guidelines to implement the IPOA-IUU describe actions and measures that can be taken to implement the IPOA-IUU, and provide examples of port State measures that can be used as precedent.¹²

The **2005 FAO Model Scheme on Port State Measures to Combat IUU Fishing**, endorsed by COFI in 2005, provides voluntary minimum standards for port State measures, including the responsibilities of a port State, inspections, follow-up actions, information requirements for vessels, inspection, and information. The annexes contain details on information to be provided in advance by foreign fishing vessels, port State inspection procedures of foreign fishing vessels, results of port State inspections, training of port State inspectors and an information system on port State inspections.

The instruments have contributed to the realization that port State measures are not only cost-effective in ensuring compliance with national law and regional conservation and management measures, but can result in a compelling array of enforcement tools by the port State, flag State and/or third States, including:

- denial of port access altogether;
- prohibiting the landing, transshipment and/or processing of catch;
- seizure and forfeiture of catch;
- prohibiting the use of port services, such as refuelling, resupplying, repairs;
- prohibiting the sale, trade, purchase, export, import of IUU caught fish;
- initiating criminal, civil or administrative proceedings under national law;

¹⁰ Under Articles 8.3.1 and 8.3.2.

¹¹ Paragraphs 52-64.

¹² FAO. Fisheries Department Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. *FAO Technical Guidelines for Responsible Fisheries*. No. 9. Rome, FAO. 2002.

- cooperating with the flag State and/or members of an RFMO on enforcement and/or deterrence.

However, not all States are currently prepared to implement port State measures. One reason is based on the fact that industrial IUU fishing is often highly organized, driven by high stakes and high profits. It is an activity that falls in the realm of environmental crime. In some cases, IUU interests may offer economic or other incentives or disincentives to a port State to avoid the implementation of controls; in others, the necessary capacity, policy, law and institutional arrangements are not in place.

This has resulted in many IUU vessels seeking to offload their catch and resupply in ports that do not have or do not implement controls, sometimes referred to as “ports of convenience”. As noted, there are different reasons why a State may not exercise controls, and the need to agree on a definition of “ports of convenience”, was underscored at the UN Fish Stocks Review Conference in May, 2006.¹³

Another major problem occurs where vessels identified by a RFMO as having engaged in IUU fishing are not allowed to land their catches in the ports of the member states and the services they are allowed to receive is limited. This has often proved to be ineffective in practice. The vessels simply tranship their catches to transport vessels at-sea before they arrive in port and therefore have no need to land their catches. The ban on services has also proved difficult to enforce properly once a vessel is in port, and has consequently been ineffective in such situations. One solution that has been identified as effective is to prohibit entry into port of vessels that have been identified as engaged in or supporting IUU fisheries.¹⁴

Despite such challenges, the way forward has become clearer as: countries continue to progressively strengthen the role of the port State through international instruments; the pivotal role of the port State is realized in relation to relevant regional activity, information systems and linkages with other IPOA–IUU tools; and international fora firmly support stronger and deeper action based on the FAO Model Scheme. These elements are described below.

2. LINKAGES WITH REGIONAL GOVERNANCE AND OTHER IPOA–IUU TOOLS

Of all the tools in the IPOA–IUU toolkit, it is said that port State measures is the “last untapped area” in efforts to combat IUU fishing. The spotlight had been directed to a greater extent at the flag State, having primary responsibility for compliance, and the coastal State, having sovereign rights over its fishery resources. Port State measures did not reach the forefront until 2005, when the emergence of the FAO Model Scheme provided a launching pad for strengthened and coordinated approaches.

Significantly, broader forces described below have also assisted in driving the crescendo of international activity encompassing port State measures. Foremost among these is intensified governance at regional level, involving the unprecedented rapid increase in the number of regional fishery bodies (RFBs) being established, and efforts to strengthen governance in existing bodies.

¹³ Report of the Review Conference on 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. New York, 22 to 26 May 2006 A/CONF.210/2006/15. 3 July 2006. paragraph 82.

¹⁴ Address given on behalf of the Icelandic Minister of Fisheries at the Round Table Ministerial Conference on Measures against IUU Fishing, Trondheim, Norway, 7 August 2006. However the address given by the State Secretary of the Federal Ministry for Food, Agriculture and Consumer Protection noted that even the denial of access to ports of contracting parties of a RFMO to IUU vessels alone will not solve the problem. There is still the possibility of these vessels landing in ports of non-contracting parties. The catch can therefore arrive ultimately on the market of contracting parties by land transport. It is therefore essential that such non contracting states are involved in the combat of IUU-fishing. The Conference was attended by the Ministers responsible for fisheries from Norway, Portugal, Morocco, Sweden and the Scottish Executive, and representatives from Iceland, Germany, UK and the European Commission. The Minister referred to the new NEAFC rules, where vessels that have been identified as engaged in or supporting IUU fisheries are not allowed to enter the port of any NEAFC member state, and the conclusion this year of the North Atlantic Fisheries Ministers Conference that this new NEAFC approach should be used in other RFMOs.

At international level, the development and strengthening of international information systems will input to effective implementation of port State measures, and conversely information obtained from port inspections will contribute to the information systems so other countries may be alerted. Finally, because the IPOA–IUU is to be applied in a holistic and integrated manner, linkages with other key compliance tools demonstrate the synergies contributing to the essential role of port State measures.

2.1 The rapidly increasing number of new RFBs

The international community recognizes the continuing need to strengthen international cooperation and institutions that work on a regional basis and to increase the coverage of the oceans by RFBs. This would ensure that their global coverage encompassed the conservation and management of high seas fisheries resources and would allow greater management of interactions between fisheries and the environment as a whole.¹⁵

Consequently, the family of RFBs – already numbering thirty-eight including seventeen bodies with a management mandate – is rapidly expanding. As described below, in the past three years no less than five RFBs have been or are being established. This will result in a growing body of international conservation and management measures for which strengthened and coordinated compliance tools will be essential. In this regard, it is foreseen that port State measures will play an increasingly significant role.

RFMOs established in recent years include the South East Atlantic Fisheries Organization (2003) and the Western and Central Pacific Fisheries Commission (2004). The respective conventions of these RFMOs refer to port State measures, building upon provisions in the UN Fish Stocks Agreement.¹⁶

The South Indian Ocean Fisheries Agreement (SIOFA) was signed in July 2006 to establish a body with a mandate over fishery resources other than tuna in areas that fall outside national jurisdictions.¹⁷ Among other things, parties have agreed to implement joint conservation and management measures and conduct inspections of ships visiting ports of the parties to verify they are in compliance with SIOFA regulations, and to deny landing and discharging privileges to those that do not comply.

Negotiations to establish the South Pacific Regional Fisheries Management Organisation were initiated at the first meeting, held in February 2006. Participants agreed to work to establish, as a matter of priority, a legally binding instrument for the conservation and management of living marine resources, other than species listed in Annex I of the 1982 UN Convention, in the high seas of the South Pacific Ocean.¹⁸ It was also agreed that the second meeting, scheduled for November 2006,

¹⁵ See the Report of the UN Fish Stocks Review Conference, note 13, *supra*. Paragraph 61.

¹⁶ Article 27 of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean and Article 15 of the Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean. They each build upon Article 23 of the UN Fish Stocks Agreement.

¹⁷ Six countries (the Comoros, France, Kenya, Mozambique, New Zealand and Seychelles) and the European Community signed the Agreement, aimed at ensuring the long-term conservation and sustainable use of fishery resources other than tuna in areas that fall outside national jurisdictions. A number of concrete actions must be taken under the Agreement, including: establishing effective mechanisms to monitor fishing in the SIOFA; providing annual reports on fishing operations, including amounts of captured and discarded fish; and conducting inspections of ships visiting ports of the Parties to verify they are in compliance with SIOFA regulations, and denying landing and discharging privileges to those who do not comply. Other joint actions include undertaking regular studies of the state of fish stocks and the impact of fishing on the environment, implementing joint management and conservation measures, and establishing rules for member countries to decide which operators are allowed to fish in the SIOFA area.

¹⁸ Report of the First International Meeting on the Establishment of the Proposed South Pacific Regional Fisheries Management Organization, held in Wellington, New Zealand, 14-17 February 2006. Participants understood that conservation and management includes the sustainable utilization of resources and the protection of the marine environment, and that the new instrument should, as far as possible, avoid duplication and overlap with existing international instruments and should be consistent with international law relating to law of the sea. The meeting was attended by representatives from 26 states and regional economic integrated organizations, including coastal states and states with a historical fishing interest in accordance with FAO statistics. Eleven international and regional fisheries organizations, and eight non-governmental organizations and industry groups also participated as observers at the meeting.

will consider the adoption of interim arrangements to apply prior to the entry into force of the instrument, in light of the information and advice provided by the working groups and participants.

Another initiative is underway to establish an RFMO in the North Western Pacific Ocean to regulate bottom trawl fishing, including through the development of interim measures for the management of bottom trawling and for the conservation of vulnerable marine ecosystems.¹⁹

Three of the above organizations - WCPFC, SEAFO and SIOFA – have given early indication of the importance with which they regard the role of port State measures in their regions. In particular, the WCPFC is developing its regional scheme based on the FAO Model Scheme and SIOFA has agreed to carry out port inspections. The other two RFBs under negotiation have considered applying interim measures, but, at the time of writing, had not yet addressed the content of such measures.

2.2 Strengthened governance in RFMOs

Members of RFMOs, recognizing the benefits of strengthened governance, have agreed on a number of actions and measures that will improve governance and compliance with management measures. Consequently, port State measures, already adopted by many RFMOs,²⁰ will be strengthened and integrated with a broad range of other compliance tools.

A key trend in strengthened governance is the increasing coordination among RFMOs at regional and international levels,²¹ resulting, among other things, in enhanced information sharing and harmonization of information systems (see section 2.4 of this paper). This builds upon new and improved regional surveillance and information systems in many RFMOs.

Parties to the UN Fish Stocks Agreement agreed that there is a duty of non-members to cooperate in the conservation and management of fish stocks.²² To this end, RFMOs have worked towards enhanced participation by cooperating non-members, and the role of non-members could usefully be considered in the context of regional port State schemes.

A number of RFMOs have developed regional plans of action to combat IUU fishing,²³ and port State measures and/or regional schemes would be an important component of these plans.

¹⁹ Participants are the Republic of Korea, Japan and the Russian Federation. The three States have agreed to cooperate in the compilation, analysis and exchange of data on bottom trawling in this region.

²⁰ See the report of the High Seas Task Force, "Port States Measures Final Report - Promoting Responsible Ports", <http://www.high-seas.org/>. Port State measures taken by key RFMOs, including the following, are described: Commission for the Conservation of Antarctic Marine Resources (CCAMLR), the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the Inter-American Tropical Tuna Commission (IATTC), the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Indian Ocean Tuna Commission (IOTC), the Northwest Atlantic Fisheries Organization (NAFO), the North-East Atlantic Fisheries Commission (NEAFC) and the South East Atlantic Fisheries Organisation (SEAFO). Also see Lobach, T., Port State Measures to Combat IUU Fishing: The FAO Model Scheme on Port State Measures, paper prepared for the FAO/FFA Regional Workshop to Promote the Full and Effective Implementation of Port State Measures to Combat IUU Fishing, 28 August – 1 September 2006, Nadi, Fiji. See http://www.fao.org/fi/NEMS/events/detail_event.asp?event_id=34648

²¹ For example, see FAO. Report of the Fourth Meeting of Regional Fishery Bodies. Rome, 14–15 March 2005. FAO Fisheries Report. No. 778. Rome, FAO. 2005. 29p. It was agreed that RFBs should actively promote linkages among themselves, paragraph 25. This would build upon linkages already established, e.g. among Atlantic RFBs (ICCAT, ICES, NAFO) and tuna organizations (e.g. see notes 31 and 32, below).

²² Article 17.1 of the UN Fish Stocks Agreement provides: "A State which is not a member of a subregional or regional fisheries management organization or is not a participant in a subregional or regional fisheries management arrangement, and which does not otherwise agree to apply the conservation and management measures established by such organization or arrangement, is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and management of the relevant straddling fish stocks and highly migratory fish stocks."

²³ See Swan, J. International action and responses by regional fishery bodies or arrangements to prevent, deter and eliminate illegal, unreported and unregulated fishing. FAO Fisheries Circular. No. 996. Rome, FAO. 2004. 64p. Of the RFBs polled for the publication, six had reported developing action plans to combat IUU fishing (CCSBT, CTMFM, IBSFC, ICCAT, NASCO, NPAFC) and another three reported having the issue under review.

Many RFMOs have adopted resolutions to support MCS measures that have similar requirements and are linked with port State measures, including:

- regional schemes for boarding and inspection, observer coverage and monitoring transshipments;
- presumptions of IUU fishing by non-member vessels; and
- vessel lists for IUU and authorized vessels.

Information obtained from the above could usefully be integrated into port control operations, and vice-versa.

A number of RFMOs have recently adopted VMS requirements or schemes, enabling detection of IUU fishing and fishers before a vessel enters into port.²⁴ Flag States of these RFMOs are increasingly implementing the use of VMS to monitor the fishing vessels under their control. In order to promote the transmission of “real time” information, relevant systems (including VMS, trade documentation and other catch reporting) are generally moving steadily towards a system where all data will be transmitted electronically.

The international community underlined the importance attached to the use of VMS on the high seas in the March, 2006 UN General Assembly Resolution on Sustainable Fisheries. It urged flag States to require that all their large-scale fishing vessels operating on the high seas be fitted with vessel monitoring systems no later than December 2008, or earlier if so decided by the flag State or any relevant regional fisheries management organizations or arrangements, as called for in the 2005 Rome Declaration on Illegal, Unreported and Unregulated Fishing.²⁵ An expert consultation will address this issue in October 2006, and this will probably lead to a FAO technical consultation on the subject in 2007 or 2008.

Catches are generally registered routinely in a logbook, in landing declarations and in sales notes and cross-checked with VMS-data to allow an effective management of the quota uptake. Port State controls can contribute to the verification of this information.

2.3 Strengthened international information systems

2.3.1 FAO databases

FAO maintains information systems with databases useful for combating IUU fishing as described below, and the international community has identified fresh needs for more FAO databases relevant to IUU fishing activities and vessels – and, consequently, port State measures. Identification of IUU vessels and catch at port can contribute to information on the databases, and conversely information on the database can contribute to the activation of port controls with respect to relevant vessels.

²⁴ ICCAT requested its Contracting Parties to implement VMS on all vessels over 24 metres by 1 November 2005. IOTC initiated a Pilot Programme of VMS in 2002 and IATTC initiated a programme in June 2004. CCAMLR has adopted Conservation Measure 10-04 (2005) concerning Automated Satellite linked Vessel Monitoring System. The CCSBT is due to hold its first meeting of the Compliance Committee in October 2006. In addition WCPFC is considering adding VMS and trade documentation to its MCS functions. However, these are flag State systems where countries report to the RFMO, and the extent to which real-time data will be available varies. NEAFC and NAFO have well established MCS systems whereby vessels transmit regular reports to the flag States, which then report the data to the RFMOs. They also have systems that facilitate the exchange of information between MCS units and require vessels to submit entry and exit reports when entering and exiting the Regulatory Area.

²⁵ Paragraph 45.

Information on IUU fishing vessels is kept in the FAO High Seas Vessel Authorization Record (HSVAR) database. It contains descriptive elements of high seas fishing vessels as well as information on registration and authorization status, infringements and other relevant information. Access to the database is granted by FAO to countries that provide data.²⁶

FAO receives data on tuna catches from several countries which do not return information to the tuna agencies or are not members of these organizations. In recent years, some regional tuna bodies²⁷ have been considering the inclusion of some of these data obtained by FAO in their databases, after the scrutiny and approval of their relevant working groups.

In March, 2006 the UN General Assembly, in its Resolution on Sustainable Fisheries,²⁸ encouraged and supported the development of a comprehensive global record within FAO of fishing vessels, including refrigerated transport vessels and supply vessels, that incorporates available information on beneficial ownership, subject to confidentiality requirements in accordance with national law. This “comprehensive global record” is being developed under the guidance of a task force, taking into account relevant developments in the International Maritime Organization (IMO), including the use of long range tracking identifiers.²⁹ Potential synergies between the proposed global record and port State inspections are being considered. A report will be prepared for consideration by the 2007 Session of the FAO Committee on Fisheries.

The Twenty-sixth session of COFI in 2005 expressed support for the establishment of a database for port State measures within FAO and in consultation with Members. Establishment of the database is under review.

2.3.2 International MCS Network

There have been recent efforts to strengthen the International Monitoring, Control and Surveillance (MCS) Network for Fisheries Related Activities, which has an agreed protocol for information exchange that could be used to support port State controls.³⁰ It consists of a network of national organizations and institutions formed to coordinate efforts to prevent, deter and eliminate IUU fishing. The objectives of the International MCS Network are to improve the efficiency and effectiveness of fisheries-related MCS activities through enhanced cooperation, coordination, information collection and exchange among national organizations/institutions responsible for fisheries-related MCS. It is intended to give agencies support in meeting national fisheries responsibilities as well as international and regional commitments in relation to the U.N. Convention on the Law of the Sea, the Code of Conduct, the Fish Stocks Agreement, and the IPOA–IUU.

The strengthening of the MCS Network was recommended by the Organization for Economic Cooperation and Development (OECD) High Seas Task Force, and is supported by the current UK IUU Action Plan.³¹

²⁶ See Garibaldi L., Kebe, P., Discrepancies between the FAO and ICCAT Databases for Tuna Catches in the Mediterranean, SCRS/2004/081 Col. Vol. Sci. Pap. ICCAT, 58(2): 644-661 (2005).

²⁷ e.g., IATTC, ICCAT, IOTC.

²⁸ A/RES/60/31, paragraph 45.

²⁹ Global security concerns are propelling international agreement on this type of requirement, which otherwise might not be advancing as rapidly.

³⁰ See Report: Illegal, Unreported and Unregulated Fishing, 1st Chatham House Update and Stakeholder Consultation Meeting, Chatham House, 10 St James’s Square, London SW, Tuesday 9th May 2006.

http://www.illegal-fishing.info/item_single.php?item=document&item_id=91&approach_id=

³¹ www.high-seas.org/docs/Media/B%20-%20International%20MCS%20Network.pdf; www.illegal-fishing.info. At the time of writing, a pilot project proposal was scheduled to be put to the MCS network members, which would enable the network to improve its services and expand its membership beyond the current 50 countries. It would involve dedicated resources, an analytical capability and the ability to provide more training and support, particularly to developing countries.

2.4 Strengthened regional information systems – RFMOs, members

There has been increased harmonization of information systems among members of RFMOs and among the RFMOs themselves. A clear example is seen in the experience of the regional tuna bodies. Seven years ago, in July, 1999, at the first meeting of the tuna commission secretariats,³² regional tuna bodies noted the difficulties of tracking vessels as they change flags and areas of operation, frequently several times each year. It was decided that each commission should identify licensing requirements for tuna fishing vessels and establish a registry of such vessels active in their areas of competence, including documentation of licenses held by the vessels. It was also decided that the Commissions should exchange the information in the registries and also with FAO, to facilitate tracking of vessels moving between oceans.

At the sixth annual meeting of the tuna body secretariats, held on 21 May 2006, the agenda reflected the great strides made by the regional tuna bodies since their initial meeting in 1999, especially with respect to developing cooperation regarding information systems. It covered topics such as a resource monitoring system, an update on trade documentation, an addition to a global list of tuna-fishing vessels and a website. Also covered were the issues of international observers for fishing and reefer vessels, standard codes for dealing with data, and next year's meeting of tuna commissions in Kobe, Japan. Among the highlights of accomplishments since 1999 was the compilation of a global list of fishing vessels that would be made available for members' consideration later in the year.

A website for the tuna organizations has been established to serve as an informal framework for sharing information from tuna RFMOs.³³ It contains information on positive vessel lists, IUU vessel lists and meetings. This information will be useful in feeding into countries' port control systems, which in turn can be effectively used to detect IUU caught fish.

2.5 Trade and internationally agreed market-related measures to combat IUU fishing

The pivotal role played by ports as points of entry into a country of fish and fish products can contribute to effective use of the IPOA–IUU tools aiming at diminishing the economic incentive for IUU fishing through preventing IUU caught fish from entering trade. In turn, these efforts are also buttressed by ecolabelling initiatives, trade monitoring under the Convention on International Trade in Endangered Species (CITES) and requirements for traceability including agreement on rules of origin taken through the World Trade Organization (WTO). In this regard, the IPOA–IUU provides encouragement for internationally agreed market-related measures to be taken at the national, bilateral and regional levels.³⁴

An increasing number of RFMOs have adopted such measures.³⁵ The IPOA–IUU encourages States to take all steps necessary, consistent with international law, to prevent fish caught by vessels identified by the relevant RFMO as having been engaged in IUU fishing from being traded or imported into their territories.³⁶ To address this situation, many RFMOs have developed catch certification and trade documentation schemes³⁷ which enable identification of the vessel that harvested a particular fish.

³² Attended by representatives of the CCSBT, IATTC, ICCAT, IOTC, and SPC.

³³ <http://www.tuna-org.org/>. The organizations are CCSBT, IATTC, ICCAT, IOTC and WCPFC.

³⁴ Paragraphs 65 – 76.

³⁵ For information on the RFBs that have taken trade and market-related measures to combat IUU fishing, see Swan, J., International action and responses by Regional Fishery Bodies or Arrangements to prevent, deter and eliminate illegal, unreported and unregulated fishing.

FAO Fisheries Circular. No. 996. Rome, FAO. 2004. 64p.

³⁶ Paragraph 66.

³⁷ For a thorough analysis of such schemes, see Miyake, P. 2001. Catch certifications and feasibility of harmonizing certifications among regional fisheries management bodies. Paper presented at a meeting of FAO and non-FAO Regional Fishery Bodies or Arrangements, 9-11 January 2002.

These schemes require that fish and fish products must be accompanied by forms indicating, for example, when and where the fish were harvested and by whom. Catch certification schemes typically require such forms to accompany all fish and fish products to which they apply, whether or not they become part of international trade. Trade documentation schemes cover only fish and fish products that enter international trade. The planned 2007 meeting of the tuna RFMOs in Japan will review the issue of documentation schemes. Inspection at port would serve to assist in verification of information required under the schemes, and therefore play a major role in their success.

At national level, many countries have adopted legislation based on the US Lacey Act,³⁸ prohibiting activities such as the import, export, sale, purchase, or acquisition of IUU caught fish, and port State measures figure prominently in the enforcement of such legislation.³⁹

The IPOA IUU also calls upon states to deter importers, transhippers, buyers, consumers, equipment suppliers, bankers, insurers and other service suppliers within their jurisdiction from doing business with vessels engaged in IUU fishing, including adopting laws to make such business illegal.⁴⁰ Efforts are being made in a number of quarters to increase awareness of the detrimental effects of doing business with vessels engaged in IUU fishing by identifying marketing and sales routes of fish derived from IUU activities.⁴¹ Information obtained through port inspections would assist with the identification of such routes, and conversely identification of the routes would alert enforcement officers as to the ports used for landing.

Port State measures could also contribute to efforts⁴² to target businesses involved in IUU fishing, prevent laundering of catches by IUU vessels and to take actions against businesses involved in IUU fishing and other cooperative actions with countries where the businesses are based.⁴³

2.6 Flag State Responsibility

In encouraging a comprehensive and integrated approach, the IPOA–IUU encourages States to

“embrace measures building on the *primary responsibility of the flag State* and using all available jurisdiction in accordance with international law, including port State measures, coastal State measures, market-related measures and measures to ensure that nationals do not support or engage in IUU fishing. States are encouraged to use all these measures, where appropriate, and to cooperate in order to ensure that measures are applied in an integrated manner.”⁴⁴

Although the flag State has primary responsibility, this has often proved ineffective due to the practice of IUU fishing vessels using flags of non-compliance, or the inability or unwillingness of some flag States to effectively exercise control over their fishing vessels. In such cases, the port State is seen as the next line of defence to combat IUU fishing.

³⁸ The Act makes it unlawful for any person subject to the jurisdiction of the United States to “import, export, transport, sell, receive, acquire, or purchase ... any fish or wildlife taken, possessed, transported or sold in violation of any law or regulation of any State or in violation of any foreign law.” 16 United States Code Section 3371 et seq.

³⁹ See Ortiz, Paul A., An overview of the US Lacey Act Amendments of 1981 and a proposal for a model port State fisheries enforcement act, prepared for the Ministerially Led Task Force on Illegal, Unreported and Unregulated Fishing on the High Seas, November 2005.

⁴⁰ Paragraphs 73 and 74.

⁴¹ For a recent statement on cooperative activities, see the Communiqué from the 11th Conference of North Atlantic Fisheries Ministers held in Trondheim, Norway 8-9 June 2006: <http://odin.dep.no/fkd/english/news/news/047041-990029/dok-bn.html>.

⁴² e.g., by ICCAT.

⁴³ ICCAT has undertaken activities in this regard. An example at national level is Iceland, which initiated a campaign to increase awareness of the IUU problem within the fisheries sector itself by writing letters to over a thousand companies that were involved in the fisheries sector. In the letters, they companies were encouraged to be alert to avoid getting involved in supporting IUU activities in any way. It is believed that almost all fisheries companies want to avoid being in any way linked to these illegal activities and welcome help in avoiding involvement. Speech delivered on behalf of the Icelandic Minister responsible for fisheries, see note 14, *supra*.

⁴⁴ Paragraph 9.3. Emphasis added.

The following are key interactions involving port States and flag States described in the IPOA–IUU. They encourage the port State to report to the flag State where there is clear evidence of IUU activity and where IUU fishing took place beyond the coastal State’s jurisdiction. Finally, there is no requirement to report to the flag State if the vessel is presumed to have engaged in IUU fishing under measures adopted by an RFMO.

- The port State should report the matter to the flag State if it has clear evidence that a vessel that has been granted access to its ports has engaged in IUU fishing activity. In addition, the port State should not allow the vessel to land or transship fish in its ports.⁴⁵
- If, in the course of an inspection, it is found that there are reasonable grounds to suspect that the vessel has engaged in or supported IUU fishing in areas beyond the jurisdiction of the port State, the port State should, in addition to any other actions it may take consistent with international law, immediately report the matter to the flag State of the vessel and, where appropriate, the relevant coastal States and regional fisheries management organization. The port State may take other action with the consent of, or upon the request of, the flag State.⁴⁶
- States should consider developing within relevant regional fisheries management organizations port State measures building on the presumption that fishing vessels entitled to fly the flag of States not parties to a regional fisheries management organization and which have not agreed to cooperate with that regional fisheries management organization, which are identified as being engaged in fishing activities in the area of that particular organization, may be engaging in IUU fishing. Such port State measures may prohibit landings and transshipment of catch unless the identified vessel can establish that the catch was taken in a manner consistent with those conservation and management measures.⁴⁷

The above paragraphs build upon Article 23 in the UN Fish Stocks Agreement, which includes the following provisions, based on the voluntary presence of a fishing vessel in port or at an offshore terminal:

- A port State may...inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.
- States may adopt regulations empowering the relevant national authorities to prohibit landings and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas.
- Nothing ... affects the exercise by States of their sovereignty over ports in their territory in accordance with international law.

Under the Lacey Act, the United States also prosecutes foreign vessels that are voluntarily in its ports for having fished in waters under the jurisdiction of another State in violation of that other State’s laws or regulations.⁴⁸

⁴⁵ Paragraph 56.

⁴⁶ Paragraph 59.

⁴⁷ Paragraph 63.

⁴⁸ The Lacey Act, *supra* note 21, allows the United States Government to prosecute persons subject to U.S. jurisdiction for harvesting fish in violation of foreign law.

The policies and procedures adopted by countries and RFMOs involving the refusal of port calls against certain flag vessels has varied.⁴⁹ For the most part, the vessels themselves are targeted and not the flag States. Vessels that have undermined conservation and management measures of an RFMO to which a country is party are refused entry into port,⁵⁰ as are foreign fishing vessels that have taken part in an unregulated fishery on the high seas.⁵¹

However, permission to offload can be denied to non-flag vessels in general if the fish were caught on the high seas and it not shown that the fish were caught outside the area of an applicable RFMO or in compliance with its management measures.⁵²

Port calls have also been prohibited for vessels flying certain flags if an RFMO has identified those States as diminishing the effectiveness of resource management measures.⁵³

RFMOs take different approaches in their application of port State measures, with some only requiring measures in respect of non-members and others including all members and national vessels. This could be an area for further coordination and strengthening.

3. ERA OF THE FAO MODEL SCHEME: SOME RESPONSES AND NEXT STEPS

There has been a swift and significant response by the international community to the endorsement by COFI of the FAO Model Scheme in March 2005. Prior to that time, the need for strengthened port State controls had been recognized by a number of international organizations and fora.⁵⁴ Since the adoption of the Model Scheme, the response – rapid, global and high-level - is indicative that the scheme was long overdue, and that much work remains to be done at all levels.

Some examples of actions, decisions and recommendations of the international community in relation to the FAO Model Scheme are described below, including consideration of next steps by fora in the UN system and outcomes of Ministerial initiatives and fora.

3.1 The UN system

3.1.1 UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS)

In its July, 2005 report to the General Assembly, UNICPOLOS promoted the FAO Port State Model Scheme, and suggested the possibility of a legally binding instrument:⁵⁵

9. The lack of effective implementation and enforcement of flag State responsibilities is still a critical shortcoming in the effectiveness of overall oceans governance and a serious impediment to the contribution of responsible fisheries to sustainable development. It was proposed that the General Assembly...

⁴⁹ For some examples, see FAO Fisheries Department. Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. *FAO Technical Guidelines for Responsible Fisheries*. No. 9. Rome, FAO. 2002. 122p.

⁵⁰ e.g., Canada.

⁵¹ e.g., Norway.

⁵² e.g., the European Union.

⁵³ e.g. Japan's actions in relation to tuna longline vessels from countries identified by ICCAT.

⁵⁴ Including the FAO Committee on Fisheries (COFI), the FAO Conference, FAO RFMOs and elsewhere in the UN System: the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS), the UN General Assembly, the International Maritime Organization (IMO), and the International Labour Organization (ILO).

⁵⁵ General Assembly. Report on the work of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea at its sixth meeting Letter dated 7 July 2005 from the Co-Chairpersons of the Consultative Process addressed to the President of the General Assembly. A/60/99. 7 July 2005. paragraph 9.

(e) Encourage States to apply the FAO Port State Model Scheme at the national and regional levels, promote its application through regional fisheries management organizations and consider the possibility of adopting a legally binding instrument...

The recommendation was made in the context of considering fisheries and their contribution to sustainable development. It is significant that, only four months after COFI endorsed the FAO Model Scheme, there was already a call for the possibility of adopting a legally binding instrument. The call was to be amplified, as described below.

3.1.2 UN General Assembly (UNGA) Resolutions on Sustainable Fisheries

Four months after the UNICPOLOS report, the UNGA, at its Sixtieth session in November, 2005 carried forward the momentum supporting a binding instrument in its Resolution on Sustainable Fisheries. Earlier that year, prior to the endorsement of the Model Scheme by COFI, the UNGA Resolution on Sustainable Fisheries had recognized the need for enhanced port State controls and encouraged the elaboration a draft model scheme.⁵⁶

Importantly, in the November 2005 Sustainable Fisheries Resolution, the UNGA encouraged States to apply the FAO Model Scheme, promote its application through RFBs and to “consider, when appropriate, the possibility of developing a legally binding instrument”.⁵⁷

The November Resolution continued the two-track approach encouraged by UNICOPLOS, recognizing that the value of the voluntary scheme, but the need for a binding instrument. In this regard, the legally binding nature and effectiveness of the binding port State control measures developed under the Paris MOU and the auspices of the IMO is noteworthy.

3.1.3 UN Fish Stocks Agreement Review Conference

Six months later, in May, 2006, the momentum for the two-track approach was reinforced, and a new and more immediate call for a binding instrument was put forward by the Review Conference for the UN Fish Stocks Agreement. The Report noted the following in connection with the review and assessment of the Conference on matters relating to Monitoring, Control and Surveillance and Compliance and Enforcement:⁵⁸

52. A number of port States and RFMOs have developed measures or schemes to prevent the landing and transshipment of illegally caught fish in order to promote compliance with RFMO conservation and management measures. However, there is still much to be done in developing such measures or schemes. In particular, a more coordinated approach among States and RFMOs is required.

To address this, the Conference recommended that States individually and collectively through RFMOs.

⁵⁶ General Assembly. 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 17 January 2005. A/RES/59/25.

⁵⁷ General Assembly. 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 (not yet issued). A/RES/60/31. 17 November 2005. “42. *Recognizes* the need for enhanced port State controls to combat illegal, unreported and unregulated fishing, urges States to cooperate, in particular at the regional level and through regional and subregional fisheries management organizations and arrangements, and encourages States to apply the model scheme on port State measures endorsed by the Food and Agriculture Organization of the United Nations Committee on Fisheries at its twenty-sixth session in March 2005 at the national and regional levels, promote its application through regional fisheries management organizations and arrangements and bodies and consider, when appropriate, the possibility of developing a legally binding instrument...”

⁵⁸ Report of the Review Conference, note 13 *supra*.

“58. Adopt all necessary port State measures, consistent with article 23 of the Agreement, particularly those envisioned in the 2005 FAO Model Scheme on Port State Measures to Combat IUU Fishing, and promote minimum standards at the regional level. In parallel, initiate, as soon as possible, a process within the FAO to develop, as appropriate, a legally binding instrument on minimum standards for port State measures, building on the FAO Model Scheme and the IPOA–IUU.”

It is clear that the international community is moving forward in an increasingly strong manner not only to enhance port State measures at all levels and apply the FAO Model Scheme, but to develop a legally binding instrument sooner rather than later.

3.2 Ministerial Initiatives and Fora

The outcomes of three Ministerial meetings or conferences and one Ministerially-led initiative between September 2005 and August 2006 are described below. The first, a meeting of Asian-Pacific Economic Commission Ministers, prioritized port State measures in their efforts to combat IUU fishing. The second, the Ministerially-led High Seas Task Force (HSTF) established under the Organization for Economic Cooperation and Development (OECD), included port State Measures in its recommendations and featured the FAO Model Scheme.

Significantly, two Ministerial meetings that have taken place since the UN Fish Stocks Review Conference endorsed its recommendation for a process to be initiated within FAO as soon as possible to develop, as appropriate, a legally binding instrument on minimum standards for port State measures.

3.2.1 Second APEC Ocean-Related Ministerial Meeting (AOMM2), September 2005

The Second APEC Ocean-Related Ministerial Meeting, held in Bali 16-17 September 2005 and involving 20 member economies, adopted the Bali Plan of Action Towards Healthy Oceans and Coasts for the Sustainable Growth and Prosperity of the Asia-Pacific Community. Elaborating their plan to ensure the sustainable management of the marine environment and its resources, the Ministers committed, where appropriate, to undertake certain actions including to:

“strengthen efforts to combat IUU fishing including by pursuing the use of at-sea, port-state and trade-related measures, in accordance with international law, as key compliance tools, through APEC capacity building and sharing of best practices, and strengthen efforts to collaborate through MCS regimes and the MCS network.”⁵⁹

They did not refer specifically to the FAO Model Scheme, but it is significant that port State measures figured as one of the three priority compliance tools.

3.2.2 Ministerially-led High Seas Task Force (HSTF), February 2006

The Ministerially-led HSTF⁶⁰ had an overall goal of setting priorities among a series of practical proposals for confronting the challenge of IUU fishing on the high seas. The end result was an action plan currently being implemented under the leadership of the UK Minister responsible for Fisheries.⁶¹

⁵⁹ Paragraph I.c.v.

⁶⁰ Member countries were the Governments of Australia, Canada, Chile, Namibia, New Zealand, and the United Kingdom.

⁶¹ See www.illegal-fishing.info. The UK Action Plan was published 9 May 2006 and set out action the UK will take to: advance specific proposals internationally – for example, take action to support developing countries to combat illegal fishing; implement the High Seas Task Force’s proposals domestically – including entering into dialogue with UK Overseas Territories to explore how they might contribute; and facilitate the wider coordination and implementation of the report’s recommendations. The UK is committing approx \$1 million, most of which will come from the Government’s World

The HSTF, in its report on port State measures⁶² reviewed the measures adopted by Task Force members and RFMOs⁶³ and compared them to the Model Scheme. The report also made recommendations to strengthen both national port State measures and develop regional arrangements on port State controls.

An outcome of the High Seas Task Force was its proposal in February, 2006 to support greater use of port and trade measures by promoting the FAO Model Scheme as the international minimum standard for regional port State controls and to support the proposal by COFI that FAO develop an electronic database of port State measures.⁶⁴

3.2.3 11th Conference of North Atlantic Fisheries Ministers (NAFMC), June 2006

At the 11th Conference of North Atlantic Fisheries Ministers,⁶⁵ held on 8 and 9 June 2006, Ministers focused their discussions on fighting IUU fishing in the North Atlantic and on the progress made to strengthen RFMOs.

They also agreed to focus future activities on strengthening Port State Control, through the development of a legally binding instrument as advised by the 2006 UNFSA Review Conference, and to consider the potential for a comprehensive regional scheme for Port State control, based on the outcome of the NEAFC process.⁶⁶

3.2.4 Ministerial Round Table Conference on Measures Against IUU Fishing, August 2006

A Round Table Conference on Measures against IUU Fishing was held at Trondheim, Norway, 7 August 2006, and attended by Ministers or their representatives from eight countries and the European Commission.⁶⁷

The Conference arose from the 2006 meeting of the Nordic Council of Ministers for Agriculture, Forestry, Fisheries and Food. The Nordic Council had asked the Danish, Norwegian and Swedish governments what steps they are taking at national and international level to stop illegal fishing and the sale of illegally landed fish. In their replies, the three governments stressed the importance of introducing official management of ports.

Round Table Conference participants stressed that IUU fishing is nothing short of theft from legitimate fishermen which undermines conservation and management of fish stocks. They also stressed the value of continuing cooperative efforts to combat IUU fishing in particular through closer cooperation between relevant RFMOs.⁶⁸

Summit on Sustainable Development Implementation Fund. A Coordination Unit has been established to facilitate and monitor the implementation of the proposals over the next two years.

⁶² www.high-seas.org "Port States Measures Final Report - Promoting Responsible Ports"

⁶³ See Note 20, *supra*.

⁶⁴ *High Seas Task Force (2006). Closing the net: Stopping illegal fishing on the high seas.* Governments of Australia, Canada, Chile, Namibia, New Zealand, and the United Kingdom, WWF, IUCN and the Earth Institute at Columbia University.

⁶⁵ The Conference was attended by the fisheries ministers of Greenland, the Faroe Islands, Iceland, and Norway and the Commissioner for Fisheries and Maritime Affairs of the European Union. Canada and the Russian Federation were represented by senior fisheries officials.

⁶⁶ See communiqué of the Conference at <http://odin.dep.no/fkd/english/news/news/047041-990029/dok-bn.html>

⁶⁷ Details regarding Ministers and other representatives in attendance are in note 14, *supra*.

⁶⁸ Communiqué of the Conference.

In particular, participants agreed to look at future activities on strengthening Port State Control, through the development of a legally binding instrument as advised by the 2006 United Nations Fish Stocks Agreement Review Conference, and to consider the potential for a comprehensive regional scheme for port State control, based on the FAO Model.

4. CONCLUSION

The overdue FAO Model Scheme has been repeatedly and increasingly adopted at all levels as a framework for further development of port State measures. At the same time, the two-track approach recommended by UNICPOLOS, the General Assembly and the UN Fish Stocks Review Conference and endorsed at Ministerial meetings and conferences has attracted considerable energy and support in a short space of time. Why is this so?

On the one hand, it could be considered that the FAO Model Scheme is still in its infancy and is already being used as the basis for national and regional measures, so all efforts should be put into building on its recommended standards. Supporting this is the perception of implementation fatigue: the 1990s was the decade of developing international fisheries instruments, and this is the decade of implementation, not of creating more binding instruments. Laws, institutions, policies and human capacity need to be developed to implement the instruments that have already been agreed. It could be questioned whether a binding instrument would make any difference to environmental crime – would “ports of convenience” not continue to exist?

On the other hand, there are a number of reasons to respond sooner rather than later to the call for a binding instrument. Generally, the Model Scheme, although a sound document that reflects international consensus on a range of minimum standards, was developed and concluded in one FAO Technical Consultation. An achievement, to be sure.

The FAO Model Scheme could be regarded as a stepping-stone; a broader process, involving a full complement of players, could build on and as appropriate expand the current standards. Unlike more general voluntary fisheries instrument, the FAO Model Scheme is highly technical and specific, building on the IPOA–IUU. The next step could result in more comprehensive and universal technical standards that could be adapted regionally.

Experience to date in implementing the FAO Model Scheme could benefit the process to develop a binding instrument; strengths, constraints and gaps uncovered in the process to implement the Model Scheme could be addressed. Such a process could accommodate the increasing commitment of the international community in combating IUU fishing.

More specifically, agreement on a process to develop a legally binding instrument would recognize the following:

- the importance of port State controls in efforts to combat IUU fishing, and that it is currently viewed as the weakest, but potentially among the most effective and central links in the web of compliance tools;
- the increasing need for harmonization and cooperation not only at regional level, but globally among relevant RFMOs, particularly in view of the increasingly strengthened fisheries governance at regional level;
- the linkages and synergies with other compliance tools, including the potential contribution of binding measures to the standardization of requirements for certain technological aspects of compliance, such as VMS and information systems, to trade and market-related measures and flag State responsibilities;
- the efficiency and effectiveness of port State controls, including cost-effectiveness and potential integration with port inspection systems that also cover safety, health and security;

- the value and effectiveness of binding port State controls under the 1982 Paris MOU and the IMO Technical Conventions;
- the relatively rapid and repeated expressions of firm support for the two-track approach in the United Nations system and at Ministerial level.

Implementation of the Model Scheme would not preclude development of a binding instrument but could enhance the final outcome. Although an agreed binding instrument could mean that port controls based on the FAO Model Scheme will need to be updated, the fact that the measures are binding would strengthen the prospects for strong and coordinated efforts to combat IUU fishing.

It is anticipated that the issue will be considered in the next session of COFI in March, 2007. By that time the international community will have had further opportunities to express its views on the subject, including in the next General Assembly Resolution on Sustainable Fisheries. In the meantime, in many quarters, exemplary progress is being made in implementing the FAO Model Scheme at national and regional levels.

**Port State measures to combat IUU fishing:
The FAO Model Scheme on port State measures**

Terje Lobach¹

ABSTRACT

This paper emphasizes the background and requirements of the FAO Model Scheme on Port State Measures as well as ongoing implementation work of the scheme at regional levels. The paper also describes some general regional systems in force as well as specific port State measures established by regional fisheries management organizations linked to listing of fishing vessels and catch documentation requirements. Finally the paper examines a possible role of the FAO Model Scheme in the Western Central Pacific.

1. INTRODUCTION

Several international instruments have been agreed concerning the management of world fishery resources, including addressing the issue of illegal, unreported and unregulated (IUU) fishing. In this context the 1995 UN Fish Stocks Agreement,² the FAO Compliance Agreement³ and the International Plan of Action on IUU Fishing (IPOA–IUU)⁴ should be mentioned. Many States in the Western Central Pacific Region are parties to the UN Fish Stocks Agreement,⁵ while only a few have ratified or acceded to the FAO Compliance Agreement.⁶ The IPOA–IUU contains several suggested measures for combating IUU fishing, including those to be used by flag States, coastal States, port States and regional fisheries management organisations (RFMOs). Despite the efforts by global organisations, by many regional bodies and States, IUU fishing continues to persist and is in fact increasing in some areas. IUU fishing has been identified as a major threat to fisheries conservation and marine biodiversity. It can lead to collapse of a fishery, which in turn may cause adverse consequences for the livelihood of people depending on them. IUU fishing occurs in all fisheries, whether they are conducted within areas under national jurisdiction or on the high seas.

The failure of flag States to effectively control the fishing operations of vessels flying their flags is the core of the problem of IUU fishing. Reliance on the implementation of flag State duties to prevent IUU fishing has proved to be insufficient, and enhanced port State control is thus crucial in combating IUU fishing.

The UN Fish Stocks Agreement puts a duty on port States to take measures to promote the effectiveness of sub-regional, regional and global conservation and management measures.⁷ Although the UN Fish Stocks Agreement applies to straddling fish stocks and highly migratory fish stocks, it could be argued that these duties are common standards that apply to all fish stocks. Relevant measures include the inspection of documents, fishing gear and catch on board the vessel. The

¹ International Legal Consultant, Norway.

² 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.

³ Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas.

⁴ FAO International Plan of Action to Prevent, deter and Eliminate Illegal, Unreported and Unregulated Fishing.

⁵ Australia, Cook Islands, Fiji, France (with respect to French Polynesia, New Caledonia and Wallis and Futuna), Kiribati, Marshall Islands, Micronesia (FSM), Nauru, New Zealand, Papua New Guinea, Palau, Samoa, Solomon Islands and Tonga.

⁶ Australia, France (with respect to French Polynesia, New Caledonia and Wallis and Futuna) and New Zealand.

⁷ Article 23 of the UN Fish Stocks Agreement.

IPOA–IUU calls upon port States to take a number of measures as to prevent deter and eliminate IUU fishing.⁸ Following the entering into force of the UN Fish Stocks Agreement and the 1993 FAO Compliance Agreement as well as the adoption of the IPOA–IUU, FAO took up the task of developing minimum standards for control in fishing ports.

2. DEVELOPMENT OF THE FAO MODEL SCHEME

Coordinated international work addressing port State control of fishing vessels commenced at the Expert Consultation on IUU fishing in 2000, which was the first working session in the process of developing the IPOA–IUU.⁹ Many of the elements concerning port State control suggested by the Expert Consultation were carried over by the FAO Technical Consultation, which produced an agreed text for a draft IPOA–IUU to be considered by the FAO Committee on Fisheries (COFI) in 2001.¹⁰ It should be mentioned that the said Expert Consultation agreed that “States should elaborate a binding agreement on port State controls to deter IUU fishing and related activities”. This was, however, not included in the final text of the IPOA–IUU. The issue has now been taken up again as the Review Conference on the UN Fish Stocks Agreement agreed to initiate a process within FAO to develop, as appropriate, a binding instrument for port State measures.¹¹

For many years, harmonized, minimum standards for port control have been applied to the merchant shipping fleet, under the auspices of the International Maritime Organization (IMO). It is recognized that the majority of fishing vessels are not covered by IMO instruments because fishing vessels are specifically excluded, are outside the size limitations or the flag States are not parties to the relevant instruments. It has further been noted that it might be difficult to introduce port State inspection procedures for fisheries management purposes within existing instruments.¹²

FAO consequently initiated work to describe basic and minimum port State measures for fishing vessels by convening an Expert Consultation in November 2002, which suggested a draft Memorandum of Understanding (MOU) for subsequent implementation at a regional level.¹³ The Expert Consultation recommended that FAO follow-up by, among other things, convening a Technical Consultation addressing principles and guidelines for the establishment of regional MOUs. The Technical Consultation, held in the summer of 2004, elaborated further the draft MOU and changed the terminology to a Model Scheme.¹⁴ It highlighted that concerted action at the regional level should be encouraged and that these principles and guidelines do not prevent the adoption of additional and eventually stricter measures.

The FAO Committee on Fisheries (COFI) endorsed in March 2005 the Model Scheme on Port State Measures to Combat IUU Fishing. It described basic and minimum port State measures for subsequent action to be taken either through adoption of regional MOU, through RFMOs or at the level of individual port States. COFI expressed strong support in principle for programmes of assistance to facilitate human development and institutional strengthening, including legal assistance, in developing countries to promote the full and effective implementation of port State measures.

⁸ Paragraphs 52-64 of IPOA–IUU.

⁹ See paragraphs 44-53 of the Report of the Expert Consultation on illegal, unreported and unregulated fishing organized by the Government of Australia in cooperation with FAO (Sydney, Australia, 15-19 May 2000).

¹⁰ FAO Technical Consultations on IUU Fishing, Rome, 2-6 October 2000 and 22-23 February 2001.

¹¹ Means of strengthening the implementation of the UN Fish Stocks Agreement, agreed at the Review Conference on the UN Fish Stocks Agreement, New York 22-26 May 2006.

¹² See Report of a joint FAO/IMO Working Group on illegal, unreported and unregulated fishing and related matters, Rome, 9-11 October 2000.

¹³ See Report of the Expert Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing, Rome, 4-6 November 2002.

¹⁴ See Report of Technical Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing, Rome, 31 August-2 September 2004.

3. ELEMENTS OF THE FAO MODEL SCHEME

The objective of the FAO Model Scheme is to counteract IUU fishing, as defined in paragraph 3 of the IPOA–IUU. The scheme is, however, limited to “foreign fishing vessels”, and thereby excludes vessels flying the flag of the port State. It is anticipated that the port State has several others means available for controlling their own vessels seeking access to their ports. In the Model Scheme, reference to ports includes all installations used for or intended to be used for landing or transshipment operations of fish and fishery products as well as refuelling or re-supplying. The latter includes supplies of food, equipment and bait as well as change of crew.

The Model Scheme targets fishing vessels, including support ships, carrier vessels and other vessels directly involved in fishing operations. This reference is very close to the definition of “fishing vessel” used in the Compliance Agreement, although the Compliance Agreement refers to “commercial exploitation of living marine resources” instead of “fishing” and “mother ships” instead of “support ships and carrier vessels”.¹⁵ This implies that the FAO Model Scheme has a broader application than the Compliance Agreement as vessels which bring catches to ports (e.g. cargo vessels) are specifically included.

Pursuant to paragraph 2.2 of the FAO Model Scheme, port State measures shall promote “the effectiveness of relevant conservation and management measures”. It is suggested that a list of such measures might be required. IUU fishing may take place, *inter alia*, by foreign vessels in waters under the jurisdiction of a port State and on the high seas by vessels flying the flag of parties or non-parties to an RFMO. Port States should thus carry out controls related to at least these three situations. In addition a port State should inspect vessels flying the flag of another State when fishing activities took place within the waters of that flag State. This last point is particularly important when conservation and management measures concerning shared stocks have been agreed upon between two or more States. Sometimes fishing is conducted within the national waters of a party to such arrangements, but landed in the port of another State (due to distance from fishing grounds, port facilities etc.). In these cases it is most likely that a given fishing vessel would leave the waters of a coastal State without being inspected to determine whether the fishing has been conducted in accordance with applicable legislation or conditions.

The FAO Model Scheme suggests the designation of particular ports where foreign fishing vessels may be permitted access. This is important for States with extensive coastlines, several possible landing spots and/or limited inspection capacity. The exclusion of some ports from a list of designated ports might, however, have some trade related implications.

The FAO Model Scheme contains detailed provisions concerning i) information to be provided prior to entering a port, ii) port inspection procedures, iii) results of inspections, iv) training of inspectors, and v) information system, which are set out in annexes and constitute an integral part of the scheme.

The FAO Model Scheme suggests that port States should require all foreign vessels to provide a notification before being granted port access. Such a notice should be submitted at a reasonable time prior to the intention to use the port facilities, allowing the port authorities to examine the information given and be prepared to undertake a possible inspection upon arrival. Even though not explicitly mentioned, it seems quite clear that failure to provide satisfactory information submitted in the prior notification might be a reason for denial of access to port.

The scheme suggests, however, the *de facto* denial of port access (i.e., that no landing, transshipping, refuelling or re-supplying should be allowed) where there are clear grounds for believing that a vessel has been involved in IUU fishing outside its national waters. Landings and transshipments should not be allowed when:

¹⁵ See Article I (a) of the Compliance Agreement.

- a non-party vessel of an RFMO has been observed fishing in areas managed by a particular RFMO or in waters under jurisdiction of a coastal State unless the vessel can establish that the fish were caught outside these areas or in conformity with relevant conservation and management measures (thus, in this situation the vessel should be allowed into port, giving the master of the vessel the possibility to rebut the presumption of IUU fishing); or
- a vessel has been identified as an IUU vessel by an RFMO.

These two situations should consequently only result in the refusal of landings and transshipments, but the vessel is entitled to receive fuel and other supplies. It is difficult to find any justification for treating these differently and there is a question whether this was deliberately agreed or just inconsistent drafting. It should be noted that in cases of distress and force majeure vessels have a right to entry to ports under customary international law.

In principle all foreign fishing vessels should be inspected in port, in particular they discharge fish and fishery products. However, the FAO Model Scheme recognises that random checks also is a way forward, and suggests that parties to a control system should agree upon an annual total number of inspections corresponding to at least a certain percentage of the number of individual vessels. It should be mentioned that for the merchant fleet the target in the North Atlantic region is 25%.¹⁶

As mentioned above, the FAO Model Scheme contains detailed inspection procedures, including means of verifying the vessel's identification and authorisations by examining official documents, making appropriate contacts with the flag State and through other sources of information. There are also detailed provisions for the examination of fish and fishery products, enabling the inspector to determine whether these derive from IUU fishing or not. The FAO Model Scheme further includes an extensive list of result indicators that should guide the inspections in port (a check list), such as vessel identification, fishing authorization (licenses/permits), trip information, results of inspection on discharge and possible quantities retained on board.

In order to obtain fair, transparent and equal treatment of foreign fishing vessels, the importance of having properly qualified inspectors is recognised. Consequently, the FAO Model Scheme sets out some basic elements of training programs of port State inspectors.

Paragraph 3 of the FAO Model Scheme contains guidelines for the establishment or amendment of port State legislation to reflect certain obligations on masters of fishing vessels and port State inspectors. Such legislation should, among other things, "ensure" that the inspector is granted access by the master of the fishing vessel to all areas, documents and gear relevant for the inspection as well as assisting the inspector. The inspector on the other hand should be required to avoid delays, refrain from harassment and ensure that a report is completed and signed by both parties.

As indicated above, IUU fishing is defined in paragraph of the IPOA-IUU. The FAO Model Scheme in paragraph 4 lists several specific activities that in this context are regarded as IUU fishing. This is not an exhaustive list and is to a great extent drawn upon the activities that are characterised as serious violations in the UN Fish Stocks Agreement.¹⁷ If a port State finds that there is reasonable evidence for believing that a foreign fishing vessel has been involved in any of the listed activities, it shall notify the flag State and if relevant the coastal State and RFMOs.

Pending the reply and/or actions by the flag State, the port State may react. If the port State is not satisfied with the response, the vessel should not be allowed to land or tranship in port. The vessel can thus receive supplies, and similar to the discussion above it is hard to find any justification for this lenient treatment. The question arises again whether this was deliberately agreed or just sloppy drafting.

¹⁶ See section 1.2 of the Paris MOU on port State control.

¹⁷ See Article 21.11 of the UN Fish Stocks Agreement.

As rapid exchange of information is crucial, data from port inspections should be transmitted through a communication facility that allows for a direct, computerised exchange of messages between States, between States and RFMOs and between RFMOs. The FAO Model Scheme contains an outline of such a system, including identification codes and possible data elements.

4. CURRENT GENERAL REGIONAL SCHEMES

In fact it was in the South Pacific that port State control of fishing vessels was introduced at a regional level for the first time with the adoption of the Wellington Convention on Drift-nets.¹⁸ The Convention provides for restriction of both access to the ports and the use of service facilities in the ports of parties for vessels involved in drift-net fishing.

RFMOs have a crucial role concerning the management of fisheries, particularly in areas beyond national jurisdiction of any State. There are nine key RFMOs, of which the Western and Central Pacific Fisheries Commission (WCPFC) is one.¹⁹

Many RFMOs have established regulations providing for the refusal of landing of catches resulting from fishing by non-parties. These measures can be taken by any State individually and do not require collective action. Such measures are included in schemes targeting non-party vessels engaged in fishing activities in the area of competence of a particular RFMO. It is presumed that a non-party vessel observed fishing in that area is undermining applicable conservation and management measures. Such vessels must be inspected before they are allowed to unload. No landings or transshipments are permitted in the port of a party unless vessels can establish that the fish were caught outside the area of application or in conformity with relevant conservation and management measures.

Comprehensive port control schemes, which include inspection procedures, result indicators and possible follow-up actions are rather rare. Most RFMOs do not have in place full-fledged port control schemes as envisaged in the FAO Model Scheme. However, some have references to port inspections.

ICCAT has established a port inspection scheme²⁰ which includes some minimum standards in order to monitor landings and transshipments, check compliance with ICCAT management measures, including quotas, and collect data and other information. Later it was agreed to ban landings and transshipments from vessels of non-parties identified as having committed a serious infringement.²¹ ICCAT parties are encouraged to enter into bilateral agreements/arrangements that allow for an inspector exchange program designed to promote co-operation, share information and educate each party's inspectors on strategies and operations that promote compliance with ICCAT's management measures.

The IOTC has also established a program of inspection in port, instructing members to inspect documents, fishing gear and catch on board fishing vessels in port and to adopt regulations in accordance with international law to prohibit landings and transshipments by non-party vessels. This program was superseded in 2005 by another program, putting some more specific obligations on

¹⁸ The Convention for the Prohibition of Fishing with Long Drift-nets in the South Pacific, November 1989 (entered into force 20 October 1990).

¹⁹ The others are: the Commission for the Conservation of Antarctic Marine Resources (CCAMLR), the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the Inter-American Tropical Tuna Commission (IATTC), the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Indian Ocean Tuna Commission (IOTC), the Northwest Atlantic Fisheries Organization (NAFO), the North-East Atlantic Fisheries Commission (NEAFC) and the South East Atlantic Fisheries Organisation (SEAFO). The mandates of CCAMLR, NAFO, NEAFC and SEAFO are to manage straddling fish stocks and high seas discrete fish stocks, while those of CCSBT, IATTC, ICCAT, IOTC and WCPFC are to manage highly migratory fish stocks.

²⁰ ICCAT Recommendation 97-10.

²¹ ICCAT Recommendation 98-11.

parties,²² which include follow-up actions towards a flag State of IUU vessels detected during port inspections, and landing information to be submitted to the IOTC secretariat.

NAFO has established measures for port inspection procedures obliging port States to inspect vessels landing fish taken from the NAFO Convention Area. Such an inspection includes: i) verification of the species and quantities caught; (ii) cross-checking with the quantities recorded in logbooks, catch reports on exit from the NAFO area, and reports of any inspections carried out; and (iii) verification of mesh size of nets on board and size of fish retained on board.

5. CURRENT SPECIFIC PORT STATE REGULATIONS AT REGIONAL LEVELS

Several RFMOs have adopted market-related measures aimed at combating IUU fishing, including catch documentation systems and listings of authorised vessels and IUU vessels. These RFMOs have implicit port State control regimes in which members are not to allow the landing and/or import of fish unless it is accompanied by a valid catch document and must refuse to allow landings of fish caught by non-authorised vessels or by identified IUU vessels.

5.1 Listing of fishing vessels (black & white)

Several RFMOs have established specific schemes in an attempt to combat IUU fishing, involving the listing of vessels determined to be involved in such activities within areas under their competence, so-called negative lists or “black lists”. CCAMLR was the first to adopt such schemes to promote compliance with its conservation measures, one concerning parties to CCAMLR and another targeting non-parties.²³ The schemes set out procedures for the establishment and maintenance of lists of fishing vessels found to have engaged in fishing activities in a manner that has diminished the effectiveness of CCAMLR measures. Furthermore, parties to CCAMLR have agreed to take appropriate domestic action against vessels appearing on these lists, such as the refusal to authorise landing or transshipment in ports. IATTC, ICCAT, IOTC, NAFO and NEAFC later established similar systems.²⁴ All RFMOs have established a policy of transmitting their lists to other RFMOs, and they are put on their respective websites.²⁵

Many of these schemes set out activities that should be taken into account when a vessel is considered for the inclusion on a list. The reeling off these activities is not, however, exhaustive as they also include a paragraph referring to “engagement in fishing activities contrary to any other conservation and management measures.” The following activities are relevant for a possible inclusion on one of the lists:

- being sighted while engaged in fishing activities
- fishing with a vessel not registered on a required register
- having been denied port access, landing or transshipment pursuant to relevant measures
- fishing without a quota, catch limit or effort allocation
- failing to report or record catches (or making false reports)
- violating fish size regulations
- fishing during closed seasons or in closed areas
- using prohibited fishing gear
- transshipping with vessels on the IUU vessel list
- having no nationality

²² IOTC Resolution 05/03.

²³ CCAMLR Conservation Measure 10-07 (2003).

²⁴ IATTC Resolution C-05-07, IOTC Resolution 02/04, ICCAT Recommendation 02-23, chapter VI of the NAFO Conservation and Enforcement Measures, NEAFC Scheme to Promote Compliance by Non-contracting Party Vessels with Recommendations established by NEAFC.

²⁵ See the following: www.ccamlr.org/pu/E/sc/fish-monit/iuu-vessel-list.htm, www.iccat.es/iuu.htm, www.iotc.org/English/iuu/search.php, www.neafc.org/measures/iuu_b.htm

It should be noted that most of these activities also are regarded as “serious violations” by the UN Fish Stocks Agreement.²⁶

All schemes contain actions that should be taken against vessels on the respective lists. Parties shall take all necessary measures, to the extent possible in accordance with their applicable legislation, in order to ensure, among other things, that the vessels are not authorized to land or tranship in their ports. It should be mentioned that parties to NAFO and NEAFC are to prohibit in their ports the supply of provisions, fuel or other services to blacklisted vessels. Parties to RFMOs shall also encourage importers, transporters and other sectors concerned to refrain from transactions and from transshipment in relation to any species caught by black listed vessels.

So-called positive lists or “white lists” have been established by RFMOs that manage highly migratory species. ICCAT was the first RFMO to adopt such a measure concerning by the establishment of a record of large scale fishing vessels authorized to operate within their area of competence.²⁷ The record is based on information submitted by parties and co-operating non-parties. Vessels not entered into the record are deemed not to be authorized to fish for, retain on board, tranship or land tuna and tuna-like species. Parties to ICCAT are required to take a number of measures, among them, to prohibit the transshipment and landing of tuna and tuna-like species by large scale fishing vessels that are not entered into the ICCAT record. CCSBT, IATTC and IOTC have adopted similar measures.²⁸

5.2 Catch documents

CCAMLR has established a Catch Documentation Scheme (CDS) designed to track the landings and trade flows of *Dissostichus* spp (Patagonian toothfish) caught in the CCAMLR area.²⁹ The objective of the CDS is to enable the Commission to identify the origin of toothfish entering the markets of all parties to the scheme, and help determine whether the fish are caught in a manner consistent with CCAMLR’s measures. The system requires control by port States.³⁰ A fishing vessel must provide a prior notification, including a declaration that they have not been engaged in IUU fishing, which also shall be confirmed by the flag State of the vessel. Fishing vessels failing to make such a declaration shall be denied port access. If there is evidence that the vessel has fished in contravention of CCAMLR conservation measures, the catch shall not be allowed to be landed or transhipped.

ICCAT has introduced a Statistical Documentation Program (SDP) for Atlantic bluefin tuna, bigeye tuna and swordfish. ICCAT implements multilateral, transparent trade measures against parties undermining the effectiveness of conservation measures. CCSBT requires a statistical document to be completed for all imports of Southern bluefin tuna. Trade documents will not be validated, or imports accepted from, vessels not appearing on the positive list.³¹ IATTC has introduced an SDP for bigeye tuna, which requires all bigeye imported into a party to have a statistical document to be validated by the flag State. Furthermore, IATTC has adopted a resolution concerning the use of trade measures to promote compliance.³² IOTC has agreed on an SDP for frozen bigeye tuna, which is required together with a prior authorization for at-sea or in-port transhipments.

5.3 Listing of flag States

An indirect consequence of the black lists is the identification of States notorious for having flagged vessels engaged in IUU fishing. This has been addressed by CCAMLR, which has adopted a resolution on “Flag of Non-Compliance” (FONC) implying that parties should prohibit landings and

²⁶ See Article 21, paragraph 11.

²⁷ ICCAT Recommendation 02-22 (entered into force 3 June 2003).

²⁸ CCSBT 10 Resolution (2003), IATTC Resolution C-03-07 and IOTC Resolution 02/06.

²⁹ CCAMLR Conservation Measure 10-06 (2005) and Conservation Measure 10-07(2005).

³⁰ CCAMLR Conservation Measure 10-03 (2002).

³¹ CCSBT Resolution.

³² IATTC Resolution C-05-04.

transhipments of fish and fish products from vessels flying a FONC.³³ This implies that all fishing vessels flying a FONC should be regarded as IUU vessels when operating in the CCAMLR area.

6. ONGOING IMPLEMENTATION WORK OF THE FAO MODEL SCHEME

A few processes are currently under way in implementing the FAO Model Scheme at regional levels. At this stage initiatives have been taken within at least RFMOs as NEAFC, SEAFO and WCPFC are considering new port State measures. It should be mentioned that the FAO Model Scheme has been presented in NAFO for the possible implementation, but NAFO agreed to await the outcome of the initiative in NEAFC, its sister-organisation in the North Atlantic, as a possible harmonization of port State measures between NAFO and NEAFC is also under consideration.

6.1 NEAFC

NEAFC is in a process of developing a comprehensive and harmonized scheme on port State control for the Northeast Atlantic region, based upon the FAO Model Scheme. The work was initiated at the annual meeting in November 2004, following the outcome of the FAO Technical Consultation held in August 2004. Currently NEAFC has adopted two different schemes addressing compliance issues, one for parties and another for non-parties.³⁴ The latter contains some port State obligations for parties when a non-party vessel is seeking their ports, in particular concerning blacklisted vessels. Currently there are no port State obligations concerning vessels flagged to parties of NEAFC. The control committee of NEAFC has met in three sessions to address the issue,³⁵ and there have been several informal meetings.

It is proposed to merge the two current schemes, and to include a comprehensive set of port State measures in this new scheme. All controversial issues seem to have been solved, and the work is now in its final stages. A last meeting in the compliance committee is scheduled for October, and the goal is to adopt the new scheme at the annual meeting of the Commission in November this year. Consequently the following description is based on the draft scheme.

While the general provisions of the scheme apply only to areas beyond national jurisdiction (the Regulatory Area) and to “regulated resources”,³⁶ the provisions for port State control have a much broader scope as they apply the whole Convention Area and to all fisheries resources in that area. Parties to NEAFC shall designate ports where landings and transhipment operations are permitted, which shall be notified to the NEAFC secretariat and put on the NEAFC website. A prior notice of entry into port is required at least three working days in advance. However, a party may establish a shorter notification period due to the distance between the fishing ground and its ports.³⁷ The notification shall at least include the following vessel information: the vessel name, external identification number, international radio call sign and flag State. The catch information shall include total catch onboard and catch to be landed (by species, live weight in kilo and area of capture). Authorisation to land or tranship shall only be given if the flag State of the vessel confirms in writing that the vessel has caught the fish within a sufficient quota, the quantities have been duly reported, the vessel was authorised to fish within the area of capture and that the presence in that particular area has been verified by VMS data.

³³ CCAMLR Resolution 19/XXI.

³⁴ The Scheme of Control and Enforcement in Respect of Fishing Vessels Fishing in Areas Beyond the Limits of National Fisheries Jurisdiction in the Convention Area and the Scheme to Promote Compliance by non-Contracting Party vessels with Recommendations Established by NEAFC.

³⁵ Meetings of the Permanent Committee on Control and Enforcement (PECCOE) in April and October 2005, and in April 2006.

³⁶ “Regulated resources” are those of fisheries resources, which are subject to recommendations under the Convention and are listed in Annex I. There are, however, numerous additional species occurring in the area.

³⁷ If such derogation is made, the party shall inform the NEAFC secretary, who will put this information on the NEAFC website.

There are suggested provisions concerning the qualifications of inspectors, inspection procedures, obligations of the master of the vessel and inspection reports. The scheme also contains detailed infringement procedures, which cover both violations detected at sea and in ports. Infringements that shall be considered to be serious to great extent mirror the listing of IUU fishing activities set out in paragraph 4 of the FAO Model Scheme, with the addition of a cross reference to the above-mentioned provisions on port State control.

6.2 SEAFO

The SEAFO Convention includes a provision on port State measures, which builds upon Article 23 of the UN Fish Stocks Agreement.³⁸ In addition there are included procedures to deal with a possible violation detected during a port inspection. SEAFO agreed at its annual meeting in 2005 on some basic interim port State measures on inspection of foreign fishing vessels, and transmission of information/results to the SEAFO Secretariat.³⁹ The interim measures include a few elements of the FAO Model Scheme, in particular related to port inspection procedures and result indicators. Parties are considering a full-fledged scheme, based on the FAO Model Scheme, which will be discussed at the annual meeting in 2006.

6.3 WCPFC

The WCPFC Convention contains a specific provision on measures to be taken by the port State that is a blueprint of Article 23 of the UN Fish Stocks Agreement.⁴⁰ These are minimum measures that may be taken by parties to WCPFC, and are thereby voluntary in nature. Work has been initiated for developing a harmonised port State scheme within the organisation. To this end, a background paper was presented at the first meeting of its Technical and Compliance Committee (TCC).⁴¹ The Committee recommended that the FAO Model Scheme serve as the basis for such a scheme. To assist in the development of the system, parties were invited to give a description of existing port schemes. The process within WCPFC will continue at the next meeting of TCC, scheduled for December 2006.

7. NEXT GLOBAL STEPS

Some RFMOs have already introduced some port State duties. A comprehensive scheme should have a wider application because not all port States are members of an RFMO, there are regions where RFMOs are unlikely to be established, there are regions where the current RFMOs deal only with specific species and/or there are regions where port control might involve more than one RFMO.

IUU vessels move in and out of areas under the national jurisdictions of multiple States and operate within areas of competence of several RFMOs. Companies and individuals often have nationalities that differ from those of the vessels themselves and fish deriving from IUU fishing is put into the international trade. It is absolutely necessary that agencies, international organisations and States establish mechanisms for cooperation. This is the only way of achieving the goal of preventing, deterring and finally eliminating IUU fishing.

The Review Conference on the UN Fish Stocks Agreement,⁴² recognised that a number of port States and RFMOs have developed measures or schemes to prevent the landing and transshipment of illegally caught fish in order to promote compliance with RFMO conservation and management measures. The Conference noted, however, that there is still much to be done in developing such measures or schemes, and that in particular a more coordinated approach among States and RFMOs is required.

³⁸ See Article 15 of the Convention on the conservation and Management of Fishery Resources in the South East Atlantic Ocean.

³⁹ SEAFO Conservation Measure 02/05.

⁴⁰ See Article 27 of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

⁴¹ See WCPFC/TCC1/16.

⁴² Review Conference held in New York, 22-26 May 2006, in accordance with Article 36 of the UN Fish Stocks Agreement.

The Conference recommended that “States individually and collectively adopt all necessary port State measures, particularly those envisioned in the 2005 FAO Model Scheme on Port State Measures to Combat IUU Fishing and promote minimum standards at the regional level. In parallel initiate, as soon as possible, a process within FAO to develop, as appropriate, a legally binding instrument on minimum standards for port State measures, building on the FAO Model Scheme and the IPOA–IUU.”

8. FAO MODEL SCHEME IN THE WESTERN CENTRAL PACIFIC

As noted above, there is a process within WCPFC for the establishment of a comprehensive port control system, based on the FAO Model Scheme. As WCPFC applies to only highly migratory species, all other species will be outside the scope of the planned port State scheme. Consequently it seems likely that an additional scheme is required for the Western Central Pacific, which applies to all other species relates to all areas where marine capture fisheries take place (areas within the jurisdiction of the port State, areas within the jurisdiction of another State that are party to a scheme and in the high seas areas).

It is recognized that there is a gap in the management of non-highly migratory fisheries and the protection of biodiversity in the marine environment in high seas areas of the South Pacific Ocean, from the most eastern part of the South Indian Ocean through the Pacific towards the EEZs of South American States. Non-highly migratory fisheries in this area are mainly discrete high seas stocks, but some are straddling stocks. A first intergovernmental meeting was convened in New Zealand in mid-February 2006 with the aim to establish a new RFMO with a mandate to manage fish stocks not covered by other RFMOs in the area. The meeting noted that key issues, including the geographical scope, species to be covered, structural options, decision-making processes, composition of a commission and its subsidiary bodies, and provisions for co-operation with existing RFMOs and other arrangements in the region, would need further discussion.⁴³ It is envisaged that the process will take 3 – 4 years. Australia will hold a second meeting in November 2006, which will consider the adoption of interim arrangements to apply prior to the entry into force of the instrument.

8.1 Implementation at the regional level

All members of Forum Fisheries Agency (FFA) are parties to WCPFC, while several States are parties to WCPFC, but not members of FFA.⁴⁴ At this stage it is rather unclear whether the new RFMO for the South Pacific will include waters adjacent to all States in the Western Central Pacific as delimitation of the northern boundary is still under consideration. It is foreseen that, among the compliance and control issues that will be developed, a joint scheme on port State measures will be included.

Consequently there are several options for the development of a full-fledged port State scheme within the region: i) extend the mandate of the a scheme under WCPFC to cover all species, ii) combine the schemes of WCPFC and the South Pacific RFMO,⁴⁵ iii) combine schemes of WCPFC, the South Pacific RFMO and establish an additional scheme for the possible outstanding areas of the Western Central Pacific, if required, and iv) one scheme for the whole region, an umbrella or an MOU, that covers all areas and all species.

A scheme or schemes should be based on at least the elements outlined in the FAO Model Scheme such as prior notification requirements, inspection procedures, result indicators and exchange of information. Concerning this latter point, it should be mentioned that work is now proceeding on the

⁴³ At the same time States are urged to comply fully with their obligations under international law by taking such measures for their respective nationals and vessels flying their flag, which are engaged in fishing and other related activities, as may be necessary for the conservation and management of living marine resources falling under the intended instrument.

⁴⁴ Canada, China, France (with respect to French Polynesia, New Caledonia and Wallis and Futuna), Japan, Republic of Korea and Philippines.

⁴⁵ This may, however, leave some areas in the Western Central Pacific outside the scheme, pending of course an agreement on the area of application for the new RFMO.

harmonization of data formats and procedures for international exchange of information by electronic means. NEAFC and NAFO have developed a format and protocols (the North Atlantic Format) for electronic exchange of fisheries monitoring, inspection and surveillance information.⁴⁶ This format is now also used by CCAMLR and SEAFO. This format could also be used for information exchange on control in ports.

When port State schemes are developed, current black listing systems could also be taken into consideration. As indicated above, many RFMOs have adopted such schemes, which include provisions for denial of port access of listed vessels and/or requirements for special actions when in port. The World Conservation Union (IUCN) is currently in the process of establishing a global list on irresponsible fishing vessels. All black lists adopted by RFMOs are placed on their websites, accessible to the public. The black lists of RFMOs have been through due processes within the organisations and thus reliable for the possible inclusion on a global list.⁴⁷ The planned IUCN global list will, at least as a starting point, be a compilation of all RFMO black lists, and could consequently be used as a basis for specific action also by port States in the Western Central Pacific.

8.2 Implementation at a national level

In general, the design of legislation on port State control will of course differ from State to State in line with policy objectives and legislative traditions. Some points are, however, universal. There is a requirement for clarity, simplicity and flexibility as well as the need for easy implementation. Rules that are liable to frequent modifications should be expressed in subsidiary legislation. Many States have also included in the fisheries law specific clauses dealing with forfeiture. This would be actions that could be taken in addition to or instead of penalties.

The IPOA–IUU provides that States should, among other measures, deprive nationals under its jurisdiction of the benefits accruing from IUU fishing. In a case related to a fishing vessel, such benefits would of course be the value of the catch. This paragraph is included in the section of the IPOA promoting responsibilities for all States. A similar provision is included in the Code of Conduct, but in the section promoting flag State duties.⁴⁸ Even if the IPOA–IUU limits such actions to nationals of a State, consideration should be given to widening the application of such measures for all States to take actions, irrespective of the nationality of the IUU fishers. This would be especially relevant for IUU catches intended for landing in a port of another State than the flag State.

It might thus be considered whether these measures shall apply to all foreign fishing vessels or whether separate legislation should apply for vessels having fished within areas of jurisdiction of the port State. As outlined above, prosecution would generally be excluded when IUU fishing has taken place outside areas under the jurisdiction of the port State so other means of reaction would have to be established.⁴⁹ However, most of the other elements would be relevant for both categories of fishing vessels.

Many States have established legislation allowing an appropriate body to confiscate vessels, gear and equipment used for unlawful fishing and any fish derived from such activities. Generally speaking, forfeiture by a port State of a vessel that has operated outside waters under its jurisdiction would not be in accordance with international law. Concerning gear and equipment, the international community would hardly accept the confiscation. It could be argued that for fish derived from IUU fishing, the situation would be different.

⁴⁶ The format includes category, data element, field code, type, content and definitions. More information can be found at <http://www.neafc.org/measures/docs/Scheme-2005>.

⁴⁷ Currently seven RFMOs have established such schemes, while four RFMOs (CCAMLR, ICCAT, IOTC and NEAFC) have drawn up lists accordingly.

⁴⁸ Cf. paragraph 8.2.7 of the Code of Conduct.

⁴⁹ This would be even more important the idea is not pursued of making it an offence to enter a port if IUU fishing has been conducted.

The main lines of the administrative system, which includes the administration of the control services and the power of fisheries (port) inspectors, should be laid down in the basic law. Most legislative traditions would also require that the power to make subsidiary legislation is clearly spelled out in the law itself and so are penalties and clauses setting out offences which sometimes are drafted in very precise and detailed language. Possible regulations or other subsidiary legislation might build on elements discussed above, which could include: scope of application, prior notice of access, denial of access, inspection procedures, criteria for the evaluation of compliance (characterizing IUU fishing), reporting requirements and possible reactions.⁵⁰

⁵⁰ Below is an example of provisions for the implementation of port State control of foreign fishing vessels into domestic legislation (some legislative traditions would require quite detailed descriptions of the relevant provisions. A simple approach has been chosen for the Law itself, including the basic elements of such provisions).

I. Fisheries law:

1. Administration

x (name of the body empowered to carry out control and enforcement, including port inspections of fishing vessels) shall ensure compliance with the provisions of this Law and regulations issued pursuant thereto.

2. Power of fishery control services (and port inspectors)

When exercising its control duties, x shall be given unimpeded access to fishing vessels.

3. Power to establish regulations

The Minister/Ministry may lay down regulations concerning control and enforcement, including port control and inspections

4. Penalties (the use of penalties would be limited to infringements within waters of national jurisdiction of the port State or to vessels flying the flag of the port State)

Any person who wilfully or negligently contravenes or is accessory to the contravention of any provisions set out in this Law or provisions issued pursuant thereto, is liable to a fine (in cases of infringements by foreign vessels imprisonment should not be applicable, see Article 73.3 of the 1982 UN Convention on the Law of the Sea).

5. Forfeiture

In the case of infringement of provisions set out in or issued pursuant to this Law, the vessel involved in the commission of that infringement, together with its gear, equipment and any fish caught unlawfully may be forfeited. Instead of the object, its value may be forfeited wholly or in part. When lawful and unlawful catches have been mixed together, the entire catch may be forfeited.

II. Regulation relating to port control of foreign fishing vessel which have been conducting fishing operations in areas beyond the limits of the fisheries jurisdiction of x (name of the port State)

1. Scope of application

This regulation applies to all foreign fishing vessels (a foreign fishing vessel is defined as a vessel flying the flag of another State) that have been conducting fishing operations in waters under the fisheries jurisdiction of another State or in areas beyond the limits of national fisheries jurisdiction of any State.

2. Prior notice of access

A foreign fishing vessel shall seek permission to enter a port at least x hours in advance. Such an application shall contain the following: vessel identification (name of the vessel; external identification number; international radio call sign; flag State), fishing authorization (natural or legal person authorized; areas, scope and duration of the authorization; species and fishing gear authorized); trip information (for each area visited the date of commencement and finish); species and quantities (including their product form) on board.

3. Denial of access

A foreign fishing vessel shall be denied access to any port for refuelling, re-supplying, transshipping, landing etc. if the information submitted pursuant to paragraph 2. is not complete or there are reasonable grounds to believe that the vessel has conducted fishing contrary to applicable conservation and management measures within an area of competence of a regional fisheries management organization or within waters of fisheries jurisdiction of another State. Such access shall also be denied if a foreign fishing vessel has been listed by a regional fisheries management organization as having a history of non-compliance.

4. Inspections

A port inspector shall examine all relevant areas, decks and rooms of the foreign fishing vessel, catch (whether processed or not), nets or other gear, equipment, and any relevant documents which the inspector deems necessary to verify the compliance with relevant conservation and management measures. The master or any person designated by the master shall give the inspector any necessary assistance and information, produce relevant objects and documents etc. and certify possible copies.

5. Criteria for evaluating compliance

The port inspector shall take actions as described in paragraph f if there are reasonable grounds to believe that the vessel has:

- a) fished without a valid licence, authorization or permit issued by the flag State;
- b) failed to maintain accurate records of catch and catch-related data;
- c) fished in a closed area, fishing during a closed season or without, or after attainment of a quota;
- d) directly fished for a stock which is subject to a moratorium or for which fishing is prohibited;
- e) used prohibited fishing gear;
- f) falsified or concealed the markings, identity or registration of the vessel;
- g) concealed, tampered with or disposed evidence relating to an investigation; or

h) conducted activities which together might be regarded as serious undermining of applicable conservation and management measures.

6. Actions

If it during an inspection in port appears that there are reasonable grounds for believing that a foreign fishing vessel has engaged in any activity contrary to relevant conservation and management measures, the flag State shall be notified as soon as possible. The port inspector shall take duly note of any possible reply or actions taken by the flag State. Unless in special circumstances, the vessel shall not be allowed use the port or any other port for landing, transshipping, refuelling or re-supplying.

III. Regulation relating to port control of foreign fishing vessels, which have been conducting fishing operations within areas under the fisheries jurisdiction of x (name of the port State)

1. Scope of application

This regulation applies to all foreign fishing vessels that have been conducting fishing operations in waters under the fisheries jurisdiction of x (name of the port State).

2. Prior notice of access

A foreign fishing vessel shall seek permission to enter a port at least xx hours in advance. Such an application shall contain the following: vessel identification (name of the vessel; external identification number; international radio call sign; flag State), fishing authorization (natural or legal person authorized; areas, scope and duration of the authorization; species and fishing gear authorized); trip information (for each area visited the date of commencement and finish); species and quantities (including their product form) on board.

3. Inspections

A port inspector shall examine all relevant areas, decks and rooms of the foreign fishing vessel, catch (whether processed or not), nets or other gear, equipment, and any relevant documents which the inspector deems necessary to verify the compliance with relevant conservation and management measures. The master or any person designated by the master shall give the inspector any necessary assistance and information, produce relevant objects and documents etc. and certify possible copies.

4. Penal measures

Any wilful or negligent violation of provisions set out in these regulations or issued pursuant thereto is subject to a penalty pursuant to (the penal provision of the Law).

5. Forfeiture

In the case of infringement of provisions set out in or issued pursuant to this Law, the vessel involved in the commission of that infringement, together with its gear, equipment and any fish caught unlawfully may be forfeited. Instead of the object, its value may be forfeited wholly or in part. When lawful and unlawful catches have been mixed together, the entire catch may be forfeited.

**Pilot project for monitoring, control and surveillance in the Indian Ocean –
an emphasis on port State measures**

Neil Ansell¹

ABSTRACT

Large pelagic resources (tuna and tuna like fish) constitute the single largest marine resource at the disposal of the small island states of the IOC (with the exception of Madagascar). Long-term sustainable management of these resources is of critical importance both to the coastal states of the Western Indian Ocean (WIO) and to the dependent markets of the European Union and Asia. Recognising the intrinsic role of monitoring, control and surveillance (MCS) in achieving the goals of fisheries management the three year project ‘A pilot project for MCS of large pelagics in the Indian Ocean’ is being implemented financed under 9th European Development Fund (EDF) by the Indian Ocean Commission (IOC).²

1. CONTEXT

Approximately 970,000 tonnes (t)³ of oceanic tunas⁴, with a processed value of €2-3 billion are harvested each year from the Western Indian Ocean (WIO). Landings in the WIO are close to triple those of the Eastern Indian Ocean (EIO), reflecting the high levels of productivity associated with nutrient rich upwellings adjacent to the Arabian and Somali coastlines. Indian Ocean large pelagic tuna and tuna-like⁵ fisheries are unique for two main reasons:

- catches taken by the artisanal sector are similar in volume to those of the industrial sector; and
- catches taken by the industrial sector are fairly evenly split between longline and purse seine fleets.

In contrast, tuna fisheries in both the Pacific and Atlantic Oceans are dominated by the industrial sector. The fisheries are estimated to be the most valuable in the world; this status reflects two important characteristics:

- the comparatively high value attributed to artisanal catches; and,
- that half of the industrial fleet’s catches are taken by longliners for which catch values are considerably greater than for equivalent purse seine catches.

Distant Water Fishing Nation’s (DWFNs) began longlining for tuna in the WIO in the early 1950s. This was initiated by the Japanese, and was soon followed by the Taiwanese (1954) and the Koreans (1960). Since then, Asiatic longline presence in the Indian Ocean has increased significantly. Sri Lanka and Indonesia are also active players in the fishery with rapidly developing fleets active in almost all areas of the tropical Indian Ocean. The numbers of active Japanese and Korean longliners have diminished in recent years due to declining profitability.

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² Member States: Seychelles, Mauritius, Madagascar, Comoros and France (on behalf of La Réunion)

³ ‘If tuna-like’ species are added, the WIO catch is 1 million tonnes (IOTC).

⁴ The oceanic tunas include skipjack (*Katsuwonis pelamis*), yellowfin (*Thunnus albacares*) and bigeye (*T. obesus*) which are caught by purse seine fisheries, with Albacore (*T. alalunga*) and southern bluefin (*T. maccoyii*) which, together with yellowfin and bigeye tuna are caught by longlines.

⁵ Tuna-like species include principally billfish, with swordfish (*Xiphias gladius*) having the highest catches.

The most significant increase in targeted fishing activity for tuna and tuna like species in the WIO dates back to the mid-eighties, reflecting the increase in industrial fishing fleet interest particularly on the part of the EU purse seine fleet. Large scale industrial purse seine fishing for tuna began in 1983 when the French and Spanish fleets moved into the WIO from the tropical Atlantic. By 1986 some 6% of the world tuna catch (143,099t out of 2,400,000t) was taken by WIO purse seine fleets; by 1997 this had risen to 14% and currently stands at some 19%.

The majority of the active purse seine fleet is Spanish and French fishing under access rights linked to European Community agreements, private and bilateral agreements and in high seas areas. Other purse seine fleets active in the WIO are registered in the Seychelles, Thailand and Iran. Purse seine fleets on the whole have remained fairly stable, with moderate increases in 1997. Activity in the WIO is widely distributed, although tends to follow an annual pattern of distribution summarised below.

- 1st Quarter Central WIO, Seychelles plateau and Northern Mozambique Channel
- 2nd Quarter Southern Somali basin and Mozambique Channel
- 3rd Quarter Somali basin and Western Seychelles plateau
- 4th Quarter Central WIO and Seychelles plateau

In contrast to purse seine activity, longline fishing is comparatively more dispersed ranging over the entire tropical and subtropical WIO.

The purse seine fleets appears on the whole to be operating legitimately. However, although large deep-freezer illegal, unreported and unregulated (IUU) longlining is regarded as being in decline in the WIO, large numbers of small fresh fish longliners⁶ which have not to date been fulfilling management requirements have moved into the region, such that IUU fishing constitutes a significant threat to the economic and social wellbeing of IOC member states.

Revenues from the fisheries are generated both directly and indirectly through inter alia:

- the sale of fishing rights and access to foreign fleets (predominantly to the EU and Taiwan);
- transshipment and associated downstream activities of foreign fleets;
- onshore processing and canning of tuna; and,
- landings (and associated activities) of local semi-industrial and industrial enterprises.

The European market for fish and associated products is the largest in the world, and the gap between demand and domestic supply has increased significantly in recent years. Global fisheries products imported into the community from developing countries was valued close to \$20 billion in 2001. Over the period 1983-1990, annual fish consumption per capita in Europe rose from 15 to 22 kg, in parallel with diminishing marine resources in European waters. This situation has strengthened Europe's reliance on distant water fleet (DWF) catches. DWF imports are a major source of supply feeding the European market, and imports to Europe from lesser developed countries (LDCs) have increased by 900% over the period 1976-1996. Catches from LDCs are integral to meeting this demand, and at present contribute at least 20% of all EU fish production. Seychelles, Mauritius and Madagascar are in the top 10 largest ACP fish exporters to Europe largely as a result of tuna.

Underpinning EU DWF activity are Fishing Access Agreements which bring considerable direct, indirect value added and employment. The EU budget for Fishing Agreements, and de facto the activity of its DWFs, has increased substantially in recent years from €5 million in 1981 to €276 million in 2000. European Union Fishing Agreements for tuna and tuna like species have been negotiated with four IOC member states (Mauritius, Seychelles, Madagascar and Comoros).

⁶ Many vessels freeze bycatch species or non-sashimi grade tuna.

Long-term sustainable management of tuna and associated resources is without doubt of critical importance both to the coastal states of the WIO and to the dependent markets of the European Union and Asia as they form significant renewable resources in their territorial seas and exclusive economic zones.

In line with the 1982 United Nations Convention on the Law of the Sea (1982 UN Convention), it is the prerogative of coastal states to utilize the natural resources of their EEZs, but it is also their obligation to assess the status of fish stocks, allocate surplus to third parties and to conserve fisheries and their habitats. It is within this framework, the terms of the 1995 UN Fish Stocks Agreement and the context discussed above, that an effective and efficient framework for regional MCS for large migratory pelagic stocks in the WIO is essential. MCS is seen as an intrinsic mechanism for implementation of agreed policies, plans or strategies for fisheries management.

2. MCS AND REGIONAL COOPERATION AND THE IOTC

The Indian Ocean Tuna Commission (IOTC) is an intergovernmental organization established under Article XIV of the FAO constitution. Its mandate is to manage stocks of tuna tuna-like species in the Indian Ocean and adjacent waters. It brings together the coastal states of the Indian Ocean and some of the states that fish tuna and tuna-like species in this ocean.

The IOTC obtains catch data from its 24 Members. This information, mostly inadequate in its current aggregated form, contributes to specific Working Parties and is analysed to form the basis of management decisions and resolutions and recommendations to its contracting parties.

The importance of MCS to the IOTC is significant. The IOTC actively supports the regulatory approach in the context of UNCLOS and the FAO Fish Stocks Agreement. IOTC states that up to 20% of large pelagic catches could be being made by IUU.

IOTC Resolutions endorse that contracting parties should control their own fleets by:

- authorizing vessels to fish on the high seas
- monitoring the activities of their fleets through
 - compulsory data reporting schedules/formats
 - VMS monitoring
 - observer coverage
- penalty systems that discourage non-compliance

IOTC Resolution 02/04 works towards a 'positive' and 'negative' vessel list, whereby vessels on the positive list are flagged in contracting and collaborating countries and are therefore authorized to fish in the Indian Ocean whereas those on the negative list have been placed there by the Compliance Committee and are not to be provided with any support, including port access and handling of catch, by IOTC members.

Furthermore, contracting parties must deny licenses for IUU vessels to fish in their EEZs (although this does not tackle the problem of IUU fishing on the high seas). Parties should refuse landing and transshipment services for IUU vessels in line with resolution 02/03 and 06/02 and exercise Port State control measures through Resolution 05/03. Such provisions were recently reinforced with an updated list in Resolution 06/01 adopted at the 10th Session. The IOTC has also recently adopted Resolution 06/03 concerning VMS coverage.

3. SUMMARY OF MCS CAPACITY IN THE WIO AND THE RATIONALE FOR STRENGTHENED PORT STATE MEASURES FOR ENHANCED MANAGEMENT

3.1 Legal issues

The 1990s saw significant developments in international law relating to fisheries, with direct implications for MCS systems. The new international regulatory framework for fisheries, based on the 1982 UN Convention, the 1993 FAO Compliance Agreement, the 1995 FAO Code of Conduct for Responsible Fisheries and the four FAO International Plans of Action, and the 1995 UN Fish Stocks Agreement, encourages the rapid strengthening of national and particularly regional MCS systems as a key mechanism for improving the conservation and management of marine fisheries.

A review⁷ (Cacaud, 2001) for the IOTC shows that the laws of the IOC member States were poorly adapted to such instruments and required new features essential to a robust MCS regime such as rules of evidence, ‘Lacey Act’ clauses and penalty reviews. Furthermore, within the region, there is also the issue of contested sovereignty over various islands such as Isles Glorieuses, Tromelin and the Chagos Archipelago, which impacts on the effectiveness of such instruments, especially when conducting operational surveillance. Mechanisms are also not sufficiently developed to facilitate regional cooperation in MCS information, including statistics, operational data, monitoring standards and intelligence.

3.2 Physical issues

The joint EEZs of IOC member States is over 5.5 million square km. In parallel with the seasonality and transboundary nature of tuna and lack of fine scale data on fleet operations, it is clear any aerial or sea-borne offshore surveillance will be both excessively costly and ineffective.

The purse seine fleet uses Port Victoria (Seychelles), Antsiranana (Madagascar), Mombassa and occasionally Port Louis (Mauritius) to offload and does not tranship at sea. The fleet fishing in the region is fairly well monitored in terms of overall reported catch although there is uncertainty on accurate location reporting. The re-flagging in 2005 of a Russian-owned purse seine fleet brings with it the end of IUU purse seine vessels in the Indian Ocean (although only 5 are now re-flagged in Thailand and hence on the IOTC positive list). There are however European-owned purse seiners, the majority being Spanish owned vessels flagged in the Seychelles.

Of the Asian longline fleet, many use Port Louis; the rest use either Singapore, Yaizu or Kaoshiung. Although the number of industrial IUU vessels is declining, transshipment is carried out on the high seas and, with less than a quarter of catches landed in the region and inherently long vessel campaigns, it is clear that the monitoring of this fleet sector is completely inadequate. A relatively new threat is that many of the several thousand small longliners are engaged in IUU fishing activities as they do not provide statistics, do not observe management measures such as adequate vessel markings and VMS, and are often flagged in non – IOTC member states. An assessment of the scale and nature of operations of such an IUU sector is an absolute priority.

With the exception of Comoros, all IOC countries have operational VMS systems (Comoros is shortly to have a system installed, following a tender procedure), however no regional standards (including minimum specifications etc.), exchange of VMS information between states and evidential value and legislative application with regard its strength in ‘direct enforcement’ has been established for VMS. Given this, it is clear that existing VMS capacity in its previous form could not have addressed the regional monitoring shortfalls presented, particularly within the longline sector.

⁷ Review of fisheries legislation of selected Indian Ocean coastal States to assess the extent of their compliance with the requirements of international instruments pertaining to the law of the sea and high seas fishing in particular, Cacaud, August 2001).

National MCS baseline data (e.g., licence data, vessel registry information, inspection data, sightings) as well as data captured at sea and in the air are not currently processed and stored in a harmonized way. Different users within the fisheries sector (e.g. coastguard, managers and IOTC) have specific requirements in terms of data format and availability; however systems were focused towards domestic requirements at the expense of regional utility.

It is recognized that, despite reporting requirements in access agreements and license conditions, none of the IOC countries had access to fully satisfactory catch-and-effort data needed to extract the optimum benefits from foreign fishing in their EEZs. This statement masks considerable disparities, as some of the States have excellent data on segments of the foreign fleets, while others have access to virtually no data.

The reason for this situation rests in the fact that, where a foreign fishing vessel never calls into the ports of a given country and is not covered by an observer programme, it is often difficult to obtain the logbooks which are the basis for the collection of statistical data and impossible to conduct the sampling needed to correct for reporting errors and commercial categorization which are inherent in logbook records.

The end result of this situation is that:

- the country is poorly placed to negotiate favourable access agreements – this leads to a weakened negotiating position regionally, as negotiations leading to new agreements are usually based on existing arrangements;
- there may be an opening for the fishers to under-report catches in a given EEZ, passing off tonnage fees to a neighbouring country's waters where reporting and thus payment of licence fees is not enforced; and
- the country does not dispose of detailed catch data that could be used to plan future investments.

Only two of the IOC countries have a significant port presence from foreign fishing fleets as described below.

- Virtually all the European-owned fleet is based in Port Victoria in Seychelles – these vessels provide the Seychelles Fishing Authority (SFA) with logbook data covering the whole range of their activities.
- A large part of the longline fleet active in the Western Indian Ocean use Port Louis in Mauritius for transshipment. It is recognised that in the longer term, it is desirable, in the IOTC management regime, to ban all high seas transshipments.

In this context, it is clearly in the interests of all the IOC States that each should have access to complete catch-and-effort data related to their EEZ.

3.3 Political issues

A critical consideration for ensuring effective MCS and the sustainable management of resources in the WIO is the degree of political will and commitment to the implementation and support of any regional MCS initiative. Clearly, both the actual and potential economic profile of the fisheries relative to the national economy will determine the extent of political support for a regional MCS initiative. IOC states will need to strike a balance between the potential long-term benefits of effective management against the cost of such activities. The establishment of evolved information systems for:

- MCS management;
- effective legal frameworks;
- maximisation of potential revenues from licensing;

- greater control over access to resources; and
- knowledge of the scale and nature of regional IUU fishing,

will all offer tangible long-term benefits. These benefits differ from state to state and as such will influence the extent to which strengthened MCS is prioritized.

4. A REGIONAL APPROACH TO FISHERY MANAGEMENT AND MCS IN THE WIO – THE IOC-MCS PROJECT

In February 1998, following the ‘Antananarivo Report’, the specific need for a coordinated approach to managing and protecting fishing zones was identified as a priority. Until this point MCS was given little priority by IOC Member countries. There was however awareness of the issues from international debates at the time, such as the UN Fish Stocks Agreement and the fight against IUU fishing. With these issues in mind the Secretary General considered it necessary for the IOC to promote a regional approach, as discussed at the 25th meeting of the Council of Ministers of the IOC on the 2nd December 1999 and at the 2nd summit meeting of Heads of State of the IOC on 3rd December 1999. Following decisions taken at these meetings the IOC and the European Commission agreed to implement a feasibility study for strengthening regional MCS capacity and cooperation. The feasibility study was completed in April 2001, culminating in a workshop held in Mauritius 4-6 September 2001. The Workshop was attended by all concerned IOC Member countries and representatives of the EU and the IOTC and culminated in the definition of a framework for strengthening regional MCS. A key output of this workshop was a defined framework for strengthening regional MCS capacity in the WIO.

4.1 Project principal objective

Recognising the unique nature and importance of large pelagic resources in the WIO and the difficulties faced towards achieving a state where potential resource value is maximized in the long term, the overall objective of the project is “to bring about a reduction in poverty and to increase food security in the ACP countries of the IOC through sustainable management of the regional resource of large migratory pelagics”.

4.2 Specific project aims and results

It is worth stressing that this project is indeed a ‘pilot project’ formulated to test the conditions and pave the way for regional cooperation in MCS. The pilot stage will contribute towards meeting the objective by laying the groundwork for and identifying the barriers to enhanced regional cooperation in fisheries MCS, and will in so doing strengthen sustainable large pelagic resource management capabilities in the region.

The project is conducted through three layers of management:

- a Project Steering Committee involving the IOC Members, IOC, EC Delegation, PMU and to which are invited as observers, IOTC, SWIOFC, East African ACP States and the SADC MCS Project;
- a Project Management Unit (PMU) located at the Indian Ocean Commission; and
- national focal groups (from each IOC state).

5. OVERVIEW OF SELECTED PROJECT ACTIVITIES

In the first phases of the project, an assessment into port state capabilities took place in all the countries of the IOC, looking into *inter alia* the following areas:

5.1 Port State Control

- Port state control in the member state
- Development / current IPOA IUU
- International legal instruments
- Relevance of national legislation
- Port state obligations:
- Prior notice of port access
- Denial of access to transship in port (ref IOTC Resolution 05/03)
- IOTC Authorized List of Vessels (ref IOTC Resolution 02/05 and 06/02)
- Vessel markings (Ref: IOTC Resolution 01/02)
- Inspections (Ref: IOTC Resolution 01/02)
- Landings of other species e.g. sharks (ref: IOTC Resolution 05/05)

5.2 Documentation

Inspection forms for recording information when boarding commercial fishing, support and carrier vessels:

- Non authorized vessels
- Non-licensed authorized vessels
- Licensed Longline Fishing
- Licensed Purse Seine Vessels
- Support vessels
- Carrier vessels

Operational evaluation and verification of inspection procedures on the following:

5.3 Pre-boarding

- Pre-boarding information collection
- Flag state authorization to fish
- Status of vessel on IOTC (and other RFMO) registers
- Information on previous black-listings by IOTC (and by other RFMOs) and coastal states
- Status of entry on the FAO HSVAR vessel listing
- Reports of national / regional inspections, convictions and fines
- Reports of port state inspections and sanctions
- Reports of boardings and inspections within RFMO regulatory areas
- Details of beneficial as well as direct ownership

5.4 Boarding

- Boarding procedures – health and safety
- Identification of inspectors
- Professional conduct
- Inspection procedures
- Verification and recording of documentation / data
- Vessel logsheets
- National logsheets
- Plotters / charts
- Anecdotal information
- Certificate of vessel registration
- Verification and recording of catches
- Verification and recording of VMS transponder(s) details and functionality
- Verification and recording of vessel external markings and characteristics

- Languages and communications
- Uniform and equipment (cameras, data recording tools)

5.5 Legal framework

- Law and the underlying framework for MCS
- 'Powers of enforcement'
- Areas of jurisdiction / Adjacent areas
- Status of bilateral cooperation arrangements between MCS departments in IOC states
- Incorporation of international obligations and requirements into national law
- Evidential value (e.g. aerial, marine, logbooks and VMS etc.)
- VMS standards (minimum specifications)
- Penalty reviews (e.g. linking to licence fees)
- Licence / access conditions
- Registration and flagging requirements
- Transshipment
- Application of 'Lacey Act' type Clauses

5.6 Prosecutions and citations

- Collection of evidence
- Documentation of events
- Confiscation of gear and catch
- Impounding of vessel
- Organizational considerations
- Roles and responsibilities

5.7 Data, information systems and data handling

- Data quality
- Forms of data recording
- Handling, entry and processing
- Formats
- Exchanges and reporting
- Security

5.8 Reference material/guidelines

- Inspection forms
- Training Manual (if available)
- Boarding inspection checklist (if available)
- Boarding inspection language cards (if available)
- Species and gear codes and reference ID's (if available)

Based on the results of these assessments the following areas are being addressed include:

- Strengthened national and regional information systems and port inspection training
- Revised and updated legal frameworks
- Improved collection and dissemination of catch data
- IUU fishing assessment

6. PROJECT PRIORITIES AND PROPOSALS

6.1 Strengthened National / Regional Information Systems and training

One of the main priorities of the assessment of port state measures was to identify the ‘information systems’ that are required to facilitate and reinforce port state measures, allowing them to be developed and regionally harmonised from pilot project outset. This has the advantage of creating the environment and systems framework to facilitate further pilot project activities.

The IOTC fisheries management system, FINSS (Fisheries Information and Statistical System) provides the baseline on which additional developments will be developed and integrated. The nature of FINSS as a system is technically suitable as its modular approach permits the development of solutions for specific needs and its distributed computing model facilitates data exchange while maintaining common standards. As the IOTC is one of the end-users for the statistical data the MCS project will generate, this will also facilitate reporting by the individual IOC States. Furthermore, this system, which is already used in two IOC States, is being considered by FAO and the CWP⁸ as a global fisheries data management standard.

FINSS will be used for all aspects of MCS including licensing, statistics, shore sampling for correcting weights and commercial categories, bridges to national VMS systems (allowing VMS logbook data, sightings, license details analysis etc.), all aspects of port inspections, sightings, observer reports and vessel registration.

The Seychelles now has an electronic, automated licensing system using FINSS, linking vessel agents, the management authority, licensing authority, central bank as well as coast guard and enforcement authorities. Testing is ongoing with the inspection and enforcement modules (see case Study) and a regional vessel record and statistical hub using FINSS.

Case Study - Use of FINSS for one aspect of port inspection

For Port Inspection, two new modules have been developed for FINSS that source data from within Vessel Registry and Licensing registry within FINSS as well as other sources such as other regional inspection databases and other RFMO positive and negative lists. In operational terms, a compliance officer would, prior to making an inspection, generate FINSS Enforcements Reports, comprising of a ‘Vessel Details Form’, a ‘Pre-boarding Form’ and a ‘Boarding Form’. The vessel details form contains all the known information on a certain vessel that an inspector would need; it also records updates to be entered while making an inspection. Furthermore the MCS Manager can highlight any item he wants the inspector to pay particular attention to when a certain vessel is next inspected. The ‘pre-boarding report’ draws information from multiple sources such as license information (together with a link to an image of the licence and conditions etc.), details of prior regional inspections (from other countries), sightings (e.g. from Coastguards), infractions and observations, as well as details of listings on the IOTC positive or any RFMO negative lists. The ‘boarding report’, like the others, acts both as a data collection form and information source. All items in both the ‘vessel details form’ and the ‘boarding form’ are automatically generate in both English or French depending on the language of the port state, and the spoken language of the vessel captain. The full customisation features of FINSS allows the forms to look identical to the database tables, thus minimizing errors when updating FINSS after boardings and allows comprehensive security measures to be put in place.

⁸ The Coordinating Working Party on Fishery Statistics is a body involving all IGOs holding competence in fishery statistics.

Added to enhanced resources and the supporting legal framework, directed training for the port inspectors will be based around the information systems described above with a view to strengthening the effectiveness of port state measures. Development of standardized regional boarding and inspection protocol and manuals, as well as tools and a series of theoretical and practical port inspection training courses are ongoing.

6.2 Revised and updated legal frameworks

As well as amendments to Regulations, new Regulations and revisions to license conditions, new Acts as well as amendments to Acts are being developed in Mauritius, Seychelles, Madagascar and the Comoros.

6.3 Improved collection and dissemination of catch data

The project proposes that two regional data hubs be created for collection of catch-and-effort data from tuna fishing vessels, validating and processing the data, and transmitting the data related to the EEZs of each of the other IOC States. It was recognized, however, that such activities raise a number of issues which are under discussion following a detailed impact study. These include:

- The need to preserve commercial confidentiality, failing which the fishers might systematically misreport their statistics;
- Restrictions which might exist in national legislation related to the disclosure of fishery statistics by third parties;
- Restrictions which might exist in various access agreements related to the transmission of sensitive data to third parties;
- Estimation of the costs involved for data collection, verification and processing and of their allocation to each of the beneficiaries;
- Handling catch data from contested areas; and
- Type of cooperation required.

6.4 Pilot operations for assessing regional IUU fishing

IUU fishing is an extremely broad category of behaviours and needs some very detailed refining, reviewing and participatory discussions throughout the project to ensure that ‘useable estimates’ are obtained from well planned, precisely designed and evaluated pilot operations.

New technology is being tested such as Satellite Remote Sensing (SRS) tools, through a number of Pilot Operations that include the following activities.

6.4.1 Pilot Operation 1

The specific objective for this element of the project is to obtain quantitative estimates of IUU tuna fishing by using satellite Synthetic Aperture Radar (SAR) from the European Space Agency’s ENVISAT satellite in the EEZs of Indian Ocean Commission member states in association with overlaid VMS data, on the assumption that IUU vessels will not be associated with VMS records.

Two phases are envisaged. The first phase is intended to estimate the incidence of errors in identification of targets from the SAR imagery (i.e. not locating vessels that are known to be present or incorrectly categorizing them – particularly likely for small fibreglass and wooden longliners and of merchant shipping of the same size as fishing vessels, or of locating vessels which do not exist – possibly caused from large waves and wind), a process categorized as Ground Truthing.

The Second phase aims to sample the combined EEZs of the IOC members (5.5 million square kilometres) with SAR imagery to estimate the number of IUU fishing vessels present. The ground truthing might also contribute to improvement of the satellite imagery software, which explains the

involvement of the Joint Research Centre of the European Space Agency in this project. The World Bank, FAO and the UK have also expressed interest. It should be noted that the French CROSS have been using SAR imagery for the control of IUU fishing in the “Terres Australes” (Kerguelen, St. Paul and Amsterdam Islands).

6.4.2 Pilot Operation 2

Under development, this will involve using other satellite remote sensing imagery and data (such as SST, colorimetry and altimetry data) and historical catch and effort data from the IOTC, verified from SAR and VMS data, to predict active areas.

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WCP/FFA regional considerations and priorities

Manu Tupou-Roosen¹

1. DECISIONS/DIRECTIONS OF THE FORUM FISHERIES COMMITTEE (FFC) REGARDING WCPFC REGIONAL PORT STATE SCHEME

Sixty-first meeting of the FFC Decision (FFC 61)

- Preliminary work on the status of port State measures in the member countries was tabled at FFC 61.
(Matrix to be distributed at workshop checks the port State measures in each member country against key port State actions – revealed gaps in most legislation – limitation to this matrix was that it was largely based on the legislation publicly available at the time).
- To fulfill its obligation to the WCPF Commission and provide an inventory of its port State measures, FFC 61 noted that NZ had supplied its detailed port State measures to the Commission Secretariat and that the latter had indicated it may use the NZ approach as a basis for a template.
- To assist member countries to fulfill this obligation to the Commission, the FFA Secretariat has sent out a template to the member countries based on the NZ approach. Template attached.

2. RELEVANT REGIONAL AGREEMENTS

FFA Convention

- harmonization of policies;
- cooperation;
- collection, analysis, evaluation and dissemination of information;
- technical advice, information and assistance.

MTCs

- application of MTCs in port (MTC 11);
- pre-fishing inspections (MTC 16);
- rest of MTCs include measures that relate to port State enforcement.

The US Treaty

- broader cooperation;
- licence conditions.

¹ Legal Officer, FFA, Solomon Islands.

The Niue Treaty

- general cooperation;
- cooperation in the implementation of the MTCs;
- exchange of information;
- cooperation in fisheries surveillance and law enforcement.

The Wellington Convention

- measures against driftnet fishing activities.

The Nauru Agreement

- minimum terms and conditions;
- cooperation and coordination.

The FSM Arrangement

- cooperation in enforcement;
- port State enforcement.

The Palau Arrangement

- Framework to cooperate in establishment and implementation of a system of observation and inspection or to develop surveillance and enforcement procedures, consistent with regionally agreed initiatives.

3. LEGAL ISSUES

- gaps in existing legislation;
- Lacey Act-type provisions;
- discrepancy between the legislation and the access agreements;
- locally-based foreign fishing vessels;
- application of the MTCs;
- clarification of powers of authorized officers;
- designation of authorized officers.

Related issues

- lack of resources to enforce the legislation;
- lack of familiarity with legislation;
- access to legislation

4. PROBLEMS AND CONSTRAINTS IN IMPLEMENTING MODEL SCHEME

- The Model Scheme is intended for developed and developing countries. However, some provisions in the Model Scheme need to be tailored to the Pacific context – small, poor, developing island countries with very limited means of enforcing their laws.
- Some countries will need to amend legislation in order to incorporate some of the provisions of the Scheme – this can be a long process.
- Training of authorized officers so they are fully aware of their powers and duties under any new legislation.
- Continuity after training.

- Coordination with line agencies.
- Current frameworks to enable the exchange of information with other countries are under-utilised – this should be assisted by the FFA MCS website and the Commission’s port State scheme.
- Circulation of appropriate contact points in flag States when detect one of their vessels involved in IUU fishing – this should be assisted by the FFA MCS website and the Commission’s port State scheme.
- Limited resources such as finance, manpower/skills.
- Requirement in the Scheme to “ensure that the result of a port inspection is presented to the master of the vessel” – provides the opportunity for the master to influence the officers’ report.

Template for reporting to the WCPFC

Manu Tupou-Roosen¹

¹ Legal Officer, FFA, Solomon Islands.

Model Port Scheme	Port Measures	(Insert name of country X eg.NZ) requirement for Foreign flagged vessels taking fish outside of (Insert name of country X eg.NZ) fisheries waters	(Insert name of country X eg.NZ) requirement for fishing under a charter arrangement for a (Insert name of company within (Insert name of country X eg.nZ) Fisheries Waters	(Insert name of country X eg.NZ) requirement for foreign flagged vessels fishing pursuant to a foreign fishing licence within (Insert name of country X eg.NZ) fisheries waters.	(Insert name of country X eg.NZ) Requirement for (Insert name of country X eg.NZ) Vessels fishing within (Insert name of country X eg.NZ) fisheries waters	(Insert name of country X eg.NZ) Requirement for (Insert name of country X eg.NZ) Vessels fishing within (Insert name of country X eg.NZ) fisheries waters
2.3 Designate and publicise ports to which access can be permitted						
2.4 Requirement that prior to allowing port access that the vessel provides reasonable advance notice prior to entry to port or its EEZ for the purpose of port access, which includes, with due regard to confidentiality requirements, vessel identification, the authorisation(s) to fish, information on its fishing trip and vessel monitoring systems, quantities of fish on board and other documentation as described in Annex A						
2.5 not allow a vessel to use its ports for landing, transshipping or processing fish if the vessel is flagged to a state that is not a contracting party or cooperating party of a RFMO or has been sighted as being engaged in, or supporting, IUU fishing activities in the area of that particular RFMO or in the waters under the jurisdiction of a relevant coastal state, unless the vessel can establish that the catch was taken in a manner consistent with the relevant conservation and management measures						

2.6 Where there are clear grounds for believing that a fishing vessel has engaged in or supported IUU fishing in waters beyond the limits of its fisheries jurisdiction, refusal to allow the vessel to use ports for landing, transshipping, refuelling or re-supplying							
2.7 Not allow a vessel to use its ports for landing or transshipment where it has been established that the vessel is identified by a RFMO as engaging in, or supporting, fishing activities in contravention with its conservation and management measures.							
2.8 Ensure that port inspections take place in accordance with Annex B and Annex C							
2.9 Consult, cooperate and exchange information with [other states] in order to facilitate the implementation of this model scheme							
3.1 Carries out inspections of foreign vessels in its ports for the purpose of monitoring compliance with relevant conservation and management measures							
3.2 Ensures that inspections are carried out by properly qualified persons authorised for that purpose							
3.3 Ensures that, prior to an inspection, inspectors are required to present to the master of the vessel an appropriate identity document							
3.4 Ensure that an inspector can examine any areas of the fishing vessel that is required etc to verify compliance with relevant conservation and management measures							

<p>3.5 Ensure that the master of the vessel is required to give the inspector all necessary assistance and information, to present relevant material and documents as may be required, or certified copies thereof.</p>						
<p>3.6 Subject to appropriate arrangements with the flag State of a vessel, invite the flag State to participate in the inspection</p>						
<p>3.7 Make all possible efforts to avoid unduly delaying a vessel and ensure the vessel suffers the minimum interference and inconvenience and that degradation of the quality of the fish is avoided</p>						
<p>3.8 Ensure that an inspector is accompanied, where possible and where needed, by an interpreter of the language of the inspected foreign fishing vessel</p>						
<p>3.9 Ensure that inspections are not conducted in a manner that would constitute harassment of any fishing vessel</p>						
<p>3.10 Ensure that the result of a port inspection is presented to the master of the vessel and that the report is completed and sign by the inspector and the master. The master should be given the opportunity to add any comment to the report and to contact the relevant authorities of the flag State, in particular when they have serious difficulties in understanding the contents of the report.</p>						

<p>4 When following an inspection an inspector finds there is reasonable evidence for believing that a foreign fishing vessel has engaged in , or supported IUU fishing activities which include but are not limited to [lists Article 21(11) UNFSA plus an additional VMS violation] then the port State should promptly notify the flag State of the vessel and, where appropriate, the relevant coastal States and RFMOS</p>						
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WCPFC regional operational issues

WCPFC Secretariat¹

1. WCPFC

1.1 Background

The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention) entered into force in June 2004 creating one of the first regional fisheries management organizations to be established since the 1995 adoption of the United Nations Fish Stocks Agreement (Agreement).

The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean in accordance with the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and the Agreement. For this purpose, the Convention establishes a Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). A small Commission Secretariat is based at Kolonia, Pohnpei State, Federated States of Micronesia.

The Convention applies to all species of highly migratory fish stocks (defined as all fish stocks of the species listed in Annex I of UNCLOS occurring in the Convention Area and such other species of fish as the Commission may determine) within the Convention Area, except sauries. Conservation and management measures under the Convention are to be applied throughout the range of the stocks, or to specific areas within the Convention Area, as determined by the Commission. The Commission currently has twenty-five Members and two Cooperating Non-Members. The three Pacific Overseas Territories of France, and Tokelau are Participating Territories within the Commission.

2.2 Objectives of Technical and Compliance Committee regarding port State measures

TCC1 noted the importance of port State measures and port inspections in meeting the objectives of the Convention, increasing cooperation and coordination, addressing illegal, unreported and unregulated (IUU) fishing activity and ensuring compliance with conservation and management measures adopted by the Commission. TCC1 recommended that the 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing serve as the basis for developing a Commission Port State Scheme.

TCC1 also recommended that Commission Members and Cooperating Non-Members provide a report to the Commission that describes their existing port State and/or port inspection schemes, and how these schemes correspond with the FAO Model Scheme. The Commission Secretariat plans to present to TCC2 a paper that is a compilation of reports, containing a comparison of the information received with the FAO Model Scheme and an indication of any gaps between them.

¹ Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

2. General outline of profiles of WCPFC non-FFA members and Cooperating Non-Members

2.1 Fleets

China

Chinese fishing enterprises, relatively new entrants to the WCPO tuna fishery, have experienced mixed success with their commercial operations in the region. A new, and perhaps unfamiliar, business environment, and limited experience in oceanic tuna fisheries that initially concentrated on longlining, perhaps contributed to this situation. However, as their experience has grown so has the Chinese presence in tuna fishing in the region. Chinese fishing enterprises now support a fleet of nine (9) industrial-scale tuna purse seiners and 97 longliners in the WCPO with suggestions that Chinese-associated companies are considering large investments in tuna-related onshore facilities stretching from Indonesia to Marshall Islands.

Chinese-Taipei

There are mainly three types of Taiwanese tuna vessels operating in the WCPO:

- large tuna longline (137 vessels in 2004);
- distant water purse seine (34 vessels); and
- small tuna longline (1,060 vessels).

All of these fleets have been reduced in size from their 2003 levels. There are also numerous Taiwanese-owned purse seiners and longliners operating in the region under the flags of various coastal States.

Japan

Japan has longline, pole-and-line and purse seine fishing vessels active in the WCPO tuna fishery. For vessels over 200GRT the numbers are longline (165), pole-and-line (34) and purse seine (36).

Korea

The size of the Korean fishing fleet has shown a decreasing trend over recent years due to economic streamlining brought on by increasing costs and reduced revenues. Korea currently has 28 purse seiners and 131 longliners operating in the WCPO.

United States of America

The five U.S. fisheries for highly migratory species are the purse seine fishery that targets skipjack and yellowfin tuna, the longline fishery fishing for bigeye tuna and swordfish, the distant-water troll fishery targeting albacore tuna, the troll and handline fishery targeting a variety of tunas, marlines and other pelagic species, and the pole-and-line fishery for skipjack tuna. The U.S. purse seine fleet has decreased from 33 vessels in 2001 to 14 vessels in 2006. There were 165 U.S. longline vessels fishing in the WCPO in 2004.

Numbers of vessels in the distant-water troll fishery for albacore in the South Pacific dropped from 14 in the 2002-2003 season to 11 in the 2003-2004 season. The Hawaii-based pole-and-line fishery declined to only two (2) vessels in 2004.

Indonesia

There are currently seven (7) Indonesian-flag longliners operating in the WCPO. These vessels were previously operating under the Taiwanese flag.

European Union

The European purse seine fleet comprising five large tuna purse seine vessels has mostly operated in the Eastern Pacific Ocean though it has taken sporadic catches in the WCPO since 1999. The Spanish surface longline fleet comprising eight vessels commenced experimental fishing activities for swordfish in the WCPO during 2004. Under a new agreement recently signed between the EU and Kiribati, twelve longliners and four purse seiners, all Spanish flagged, will fish for tuna within the Kiribati EEZ from 16 September 2006.

Canada

The Canadian jig fishery for albacore tuna is comprised of two fleets with a total of 200+ vessels:

- Coastal Fleet – Vessels mostly 10 – 20m long that operate within and near the Canadian and U.S. fishing zones; and
- High Seas Fleet – Vessels mostly >20m long that operate west of the dateline to the Canadian zone in the North Pacific.

In recent years a few Canadian flag vessels have fished Southern albacore stocks below the equator, landing their catch at ports in American Samoa, Fiji, French Polynesia and Canada.

Philippines

The Philippines is a major tuna producer in the WCPO with oceanic and coastal fleets comprising handline bancas, ringnet vessels, small and large purse seiners, domestic longliners, distant water longliners and a range of small artisanal vessels. Philippine purse seiners and longliners fish in the Indonesian EEZ under an access arrangement. In Papua New Guinea, Philippine purse seiners fish under bilateral access arrangements and with PNG-based vessels. Philippine-flag vessels currently operating in the WCPO are purse seiners (22) and longliners (1).

French Polynesia

Tuna fisheries in French Polynesia are divided into:

- Small-scale coastal fishery (approximately 300 boats: 6-8m and 10-12m); and
- Offshore longline fishery (75 boats).

The 6-8m class fleet has stable numbers while the 10-12m class fleet has steadily decreased in numbers and it is likely that this trend will continue in the future. Although the size of the longline fleet increased from 2003, a drop in the availability of albacore tuna has led to a decline in longline catches.

New Caledonia

In 2004, 29 domestic tuna longliners of 20m length were licensed to fish in the New Caledonia EEZ. This fleet has developed from early 2000 and is now well established and stabilised, targeting yellowfin, marlin and shark when the water temperature is above 20°C and moonfish when the temperature is below 20°C. Though it is unlikely that the number of vessels in this fleet will increase sharply in the near future, more vessels may target albacore tuna because of the availability of loining facilities in New Caledonia.

2.2 IUU fishing

The WCPFC is actively supporting initiatives designed to prevent, deter and eliminate IUU fishing. The Commission has included discussion of IUU fishing on the agenda of the second regular session of the Technical and Compliance Committee (TCC2) to be held at Brisbane, Australia from 28 September to 03 October 2006. It is also considering joining a proposed network of organisations and institutions that are interested in monitoring IUU fishing.

2.3 Use of ports

The prominence of certain ports as ‘hot-spots’ for transshipment activity rises and falls depending on factors such as proximity to productive fishing areas, access to relatively inexpensive fuel, access to tuna processing facilities and relatively benign fisheries regulatory regimes. The current ‘hot-spots’ are Pohnpei (Federated States of Micronesia), Majuro (Marshall Islands), and Madang and Wewak (Papua New Guinea). However, other ports that may become active transshipment sites include Honiara (Solomon Islands) and Rabaul (Papua New Guinea).

2.4 Transshipment

TCC1 agreed that transshipment is a global issue that necessitates a comprehensive system of regulation that is consistently applied across all regional fisheries management organizations and oceans, to prevent IUU fishing activity. It recommended that the Commission take early action to regulate transshipment in the Convention Area by developing procedures and other measures to give effect to Article 29 and Article 4 of Annex III of the Convention, giving due consideration to transshipment regulation schemes adopted by other RFMOs, e.g. ICCAT.

TCC2 also recommended that the development of procedures to regulate transshipment be closely coordinated with the implementation of Article 27 on port State measures in order to promote a comprehensive compliance regime and to suppress IUU fishing activities. The Commission Secretariat is preparing draft procedures to regulate transshipment that will be considered by TCC2 in late September 2006.

2.5 Trade patterns

General²

The challenges in the global tuna industry are numerous and getting stronger whether it is fishing, processing or marketing. The regional industries in the Asia/Pacific continue to shoulder the major share of these challenges as it remains the leading tuna harvesting and producing region in the world. In the international and regional markets, there have been noticeable changes in consumer preferences and market demand for tuna products as well, which are being gradually accommodated by the industry.

For non-canned tuna products, Japan still remains the leading outlet; but the world’s largest sashimi market imports more non-traditional types of products. Imports of sashimi tuna and tuna loins for non-canned usages are also growing in the USA; Asia is the largest trading partner in this market segment.

Better utilization of local tuna landings is gaining importance in many Asian countries. Value addition continues to keep consumer preference in mind. The non-Japanese Asian markets keep on expanding

² Synopsis of a presentation at Tuna '06, Bangkok – ‘Review and Highlights of the Asia/Pacific Tuna Markets’ - by Fatima Ferdouse, Chief, Trade Promotion Division, INFOFISH, 1st Floor, Wisma PKNS, Jalan Raja Laut, 50350, Kuala Lumpur, Malaysia.

for *sashimi* tuna and canned tuna products. However, markets with huge potential such as China and India, remain virtually untapped, awaiting generic marketing campaigns, particularly for canned tuna.

Specific

Major markets for purse seine caught skipjack and yellowfin tuna from the WCPO are the canneries in Bangkok, Thailand and Pago Pago, American Samoa, although Japanese purse seine caught skipjack is primarily used in the production of arabushi and tataki, while yellowfin is used to supply Japanese canneries. Aside from the two large canneries in American Samoa, canneries and loining plants are operating in Papua New Guinea, Fiji, Indonesia, the Philippines and Solomon Islands.

The major markets for longline caught bigeye and yellowfin are the sashimi markets of Japan and the United States. Longline caught albacore is primarily used for canning in Thailand and American Samoa, but an albacore tuna sashimi market in Japan is emerging.

3. WCPFC Regional Systems

3.1 Vessel Monitoring System (VMS)

The Convention establishing the Commission states that the Commission shall operate a vessel monitoring system for all vessels that fish for highly migratory fish stocks on the high seas in the Convention Area. At its second regular session (Comm2) in December 2005, the Commission adopted a recommendation by the first regular session of the Technical and Compliance Committee (TCC1) that the Commission Secretariat undertake further work during 2006 in respect of the Commission's VMS, including a cost assessment and feasibility study of two options identified as offering the best potential to meet the Commission's needs.

TCC1 expressed the desire that the system options be considered in 2006 and, if approved, the system be made operational in 2007. Further information about the Commission VMS is appended at Attachment 1.

3.2 Observer Program

One of the Commission's priority tasks is to develop a Regional Observer Program that supports both scientific and compliance functions, and be coordinated, to the extent possible, with existing national, regional or sub-regional observer programs to avoid duplication. The Commission will also need to develop standards and procedures, including training and certification procedures, so that existing observer programs can contribute to the Regional Observer Program to the maximum extent possible.

The Commission's most urgent task in relation to the development of a Regional Observer Program is the drafting of a program document that describes:

- the immediate objectives of the Regional Observer Program;
- institutional arrangements for its implementation;
- science, technical and compliance-related elements of the program, including collaboration between the Scientific Committee, and the Technical and Compliance Committee; and
- a timetable and plan for implementation of the Regional Observer Program across all fleets operating in the western and central Pacific Ocean (WCPO).

A contractor has been employed to draft this program document that will be considered at the second regular session of the Scientific Committee to be held at Manila, Philippines from 07 to 18 August 2006, and at TCC2 to be held at Brisbane, Australia from 28 September to 03 October 2006.

The Commission Secretariat is in the process of recruiting an Observer Program Coordinator to implement the Regional Observer Program. It is expected that an appointment will be made to this position in late-2006.

3.3 Databases

Prior to the development of databases at the Commission Secretariat a Corporate Data Management System (CDMS) will be established that will serve as a foundation for the design and deployment of an Information and Communication Technologies (ICT) system. Two detailed design documents will be prepared by the end of August 2006 that will be the primary references for future ICT developments at the Commission Secretariat.

Several functions have been identified within the Commission Secretariat that would benefit from the application of a systematic approach to data management. These functions range from specific tasks, e.g. maintenance of the Commission Vessel Record, through to organisation-wide processes that impact on all aspects of the business, e.g. shared contact management system.

3.4 Interface of regional systems with FFA

It is unclear at present how the regional systems being developed at the Commission Secretariat will interface with those in existence at the FFA Secretariat. However, it is very likely that they will closely aligned, considering that:

- both options for the Commission VMS involve the FFA VMS;
- the Regional Observer Program is required to coordinated, to the extent possible, with existing regional or sub-regional observer programs, two of which are operated by the FFA Secretariat; and
- the databases being developed at the Commission Secretariat will have as a foundation a Corporate Data Management System, very similar to the Corporate Data Model that has operated at the FFA Secretariat for several years.

Commission VMS

Functions of the Commission's VMS program

Comm2 agreed that the functions of the Commission's VMS program are as follows:

- a) track the position and speed of all fishing vessels that fish for highly migratory fish stocks covered by the Convention on the high seas in the Convention Area and any waters under national jurisdiction as requested by Members as per Article 24(8) of the Convention;
- b) support of the fisheries monitoring, control and surveillance (MCS) functions of the Commission (e.g. transshipment monitoring, observers); and
- c) facilitation of the monitoring and enforcement of conservation/management measures (e.g. closed areas).

Standards for Automatic Location Communicators (ALC)

TCC1 received a draft specification for the use of ALCs by vessels operating under the Commission VMS (appended at Attachment A), based on the FFA VMS³ Specification for ALCs. It was agreed that Members would review this draft specification for further discussion at the TCC's second regular session (TCC2) in September 2006.

Comm2 agreed that approval of ALC standards that do not include a polling capability be contingent on the following conditions:

- a) that the reporting rate be set at a frequency sufficient to ensure that the effectiveness of the program as a monitoring and enforcement tool was not compromised; and
- b) that vessels equipped with such units have on board, and operational at all times, an alternative method of two-way communication between the vessel and the VMS system operators.

TCC1 noted that coastal States and participating territories would retain the right to operate systems in accordance with existing national, bilateral and regional agreements.

Options for the Commission VMS

Comm2 accepted TCC1's recommendation that the Commission consider the following options as potential solutions for VMS implementation:

- a) two VMS with the FFA VMS forwarding relevant high seas data to the Commission VMS; and
- b) two separate VMS (Commission VMS for the high seas and the FFA VMS for FFA member EEZs).

Diagrammatic representations of these two options are appended at Attachment 2 and Attachment 3 respectively.

Other VMS matters considered by the Commission

Comm2 noted that because of the desirability of consistent fisheries management through the area of both EEZs and high seas, VMS monitoring is desirable over both of these areas. The Commission

³ The secretariat of a Regional Fisheries Body, the Pacific Islands Forum Fisheries Agency (FFA) manages and administers the FFA VMS on behalf of its 17 members covering their respective EEZs in the WCPO region.

considered the possibility that the FFA Secretariat could provide the interim service of the Commission VMS, covering both EEZ and high seas in the Pacific Islands region until a decision is made regarding the structure and operation of the Commission VMS.

Link between the Commission VMS and the Commission Record of Vessels

In order for the Commission VMS to operate, it will need to be linked to the Commission Record of Vessels comprising those vessels authorized by Members to fish beyond areas of national jurisdiction in the Convention Area. The Commission Record of Vessels currently contains records of over 5,000 vessels.

Feasibility of the two options for the Commission VMS

Two VMS with the FFA VMS forwarding relevant high seas data to the Commission VMS

The FFA VMS receives position data from vessels operating in the high seas in the Convention Area if those vessels are carrying and operating an FFA VMS type-approved ALC. FFA VMS type-approval includes the requirement for an ALC to be 'polled' on demand, to determine its current location. The FFA VMS does not collect catch information from vessels.

High seas vessel position data is not routinely monitored by the FFA Secretariat but is stored in the FFA VMS database. It could be automatically forwarded to the Commission VMS via the Internet.

To cater for vessels carrying ALCs that cannot be 'polled', a parallel FFA VMS hub-site computer would need to be installed at the FFA Secretariat, capable of receiving high seas vessel positions from ALCs of both types. This parallel FFA VMS hub-site computer would also need to collect catch data from vessels for forwarding to the Commission VMS.

A Commission VMS computer would need to be installed at the Commission Secretariat, Pohnpei to receive high seas vessel position and catch data from the FFA VMS. The Commission VMS would include some VMS functions like those employed by the FFA VMS, such as display of vessel positions. The capability of remotely setting vessel position reporting rates of ALCs installed on fishing vessels operating in the WCPO region would come as part as part of that functionality for use by the Commission Secretariat as required.

Two separate VMS (Commission VMS for the high seas and the FFA VMS for FFA member EEZs).

The Commission would establish an entirely independent VMS that could be based at the Commission Secretariat, Pohnpei. It would use a 'gateway' or 'data collector' to receive high seas vessel position and catch data from a variety of ALCs or from another source that is not a flag State Fishing Monitoring Centre.

The Commission VMS would therefore be capable of 'passively' and 'actively' receiving information from these fishing vessels. These data sources will need to meet certain standards set by the Commission in terms of the format and timeliness of the data provided, but these standards will be broad and inclusive.

Since there would be no forwarding of data between the Commission VMS and the FFA VMS, this system would require the drafting of reciprocal agreements to alert VMS in adjacent areas of jurisdiction on the movement of vessels from one system's area of coverage to another. This would allow the operators to ensure that vessels have the correct reporting setup.

This process can be automated by the inclusion of a provision for automatic area-based reporting in the ALC type-approval process. Some types of ALCs can have zone charts installed on chips within the ALC that can automatically trigger the unit to start or stop reporting to one or more destinations.

Cost assessment of the two options for the Commission VMS

Two VMS with the FFA VMS forwarding relevant high seas data to the Commission VMS

Establishment Costs

- a) Parallel computer at FFA VMS hub-site.
- b) Commission VMS computer.
- c) Software licences for Commission VMS computer
- d) Software licences for the FFA VMS parallel computer.

Operating Costs

- a) Technical staff costs at the FFA VMS hub-site
- b) Technical staff costs at the Commission Secretariat.
- c) Communications costs.
- d) Hardware and software replacement costs.
- e) Service Level Agreement with Service Provider.

Two separate VMS (Commission VMS for the high seas and the FFA VMS for FFA member EEZs).

Establishment Costs

- a) Commission VMS computer.
- b) Software licences for Commission VMS computer

Operating Costs

- a) Professional and technical staff costs at the Commission Secretariat.
- b) Communications costs.
- c) Hardware and software replacement costs.
- d) Service Level Agreement with Service Provider.

OR

Payments to an independent organization that would operate the Commission VMS under contract, either at the Commission Secretariat or elsewhere.

Whatever option is adopted for the operation of the Commission VMS, a scheme will need to be developed to recover operational costs from the users of the system, the vessel operators.

Process for establishing the Commission VMS

Comm2 accepted TCC1's recommendation that the Commission VMS be established via the following process:

- a) December 2005 – Commission agrees on VMS functions. Circulates draft specifications and data security for inter-sessional work.
- b) March 2006 – Secretariat receives comments on draft specifications and data security by e-mail.
- c) May 2006 – Secretariat prepares revised specifications and data security for adoption by the third meeting of the Commission.
- d) July 2006 – Secretariat prepares information paper on implementation and operational costs of the short-listed options. The information paper will discuss cost-recovery options.

- e) August 2006 – Secretariat prepares draft Terms Of Reference based on the revised specifications and security with short-listed implementation options.
- f) September 2006 – TCC2 considers and advises the Commission of preferred implementation options, cost-recovery mechanism, final ALC specifications and data security. TCC2 revises the Terms Of Reference.
- g) December 2006 – The Commission agrees on the above VMS issues and tasks the Secretariat to proceed to tender, based on the agreed Terms Of Reference.

The Convention calls for the Commission to ‘..operate a VMS..’ for the high seas in the Convention Area and provides some guidelines as to its set-up and operations. TCC1’s interpretation of this wording has provided the Commission Secretariat with an understanding of the functionality of the Commission VMS and narrowed the available options for operating the system.

While a great deal of work remains to be done to establish a viable Commission VMS, TCC1 has provided the Commission Secretariat with a work plan designed to address the Commission’s needs in this respect, mindful of the issue of compatibility with existing national VMS operating in the WCPO region. An analysis of the relative feasibility and cost of the selected options for establishing and operating the Commission VMS will be an important factor in this process.

**Field study on port State measures in select major
SIDS fishing ports in the Western Central
Pacific region**

Colin Brown¹

ABSTRACT

This document provides a summary of the port State inspection schemes implemented in Federated State of Micronesia (FSM), Fiji, Papua New Guinea (PNG) and the Republic of the Marshall Islands (RMI) and analyses these inspection schemes in relation to the FAO Model Scheme on port State Measures to Combat Illegal, Unreported and Unregulated Fishing (FAO Model Scheme). Strengths and weaknesses are identified and recommendations are presented on actions that the Pacific Islands States may take to ensure that national port inspection schemes are an effective component of the regional effort to eradicate IUU fishing. Key among these recommended measures is the establishment of a regionally standard MCS information system with links to all relevant national and regional database systems including the licensing and MCS information of neighbour States.

The ports of FSM, Fiji, PNG and RMI are significant transshipment and landing points for the region's tuna and it is suggested that a regionally standard and coordinated inspection scheme based on the FAO Model Scheme, implemented at these and other regional ports, would significantly enhance the monitoring and enforcement of regional conservation and management measures. It is further recommended that regional cooperation and coordination in port State enforcement be formalized in regional or sub-regional Niue Treaty subsidiary arrangement(s), which include the full spectrum of MCS mechanisms.

1. FOREWORD

The Western and Central Pacific Fisheries Commission (WCPFC) is currently in the process of developing a regionally harmonized port State inspection regime. At its first session (December, 2005), the Technical and Compliance Committee (TCC) of the WCPFC noted the importance of port State measures in meeting the objectives of the WCPFC, increasing cooperation and coordination, addressing illegal, unreported and unregulated (IUU) fishing activity and ensuring compliance with conservation and management measures adopted by the WCPFC. The TCC further noted the benefits of developing a harmonized scheme and that the FAO Model Scheme on port State Measures to Combat IUU Fishing (FAO Model Scheme), could usefully serve as a basis in this regard.

In September 2006, the TCC will meet to consider a harmonized port State inspection scheme for possible adoption by WCPFC.

This report aims to assemble and analyse information on port State measures in the Federated States of Micronesia (FSM), Fiji, Papua New Guinea (PNG) and the Republic of the Marshall Islands (RMI). On the basis of this assessment it considers issues associated with a regional approach to port State enforcement recently initiated by the WCPFC. In particular the report undertakes the following.

- Report any existing scheme for port State measures and to the extent possible assess these against the FAO Model Scheme framework adding other information of relevance as appropriate. Indicate where no formal scheme exists, and report information relevant to the framework.

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- Report information on inspections undertaken and the results of inspections, including violations and prosecutions over recent years. Comment, as appropriate, on the collection of evidence, documentation of events, confiscation of gear, catch, impounding vessels, institutional considerations and roles and responsibilities.
- Identify where gaps exist between information reported above, and the FAO Model Scheme, and where national standards exceed standards in the FAO Model Scheme.
- Where gaps exist, identify how they may be addressed, including through capacity development, operational procedures, legal amendment and/or technical means.
- Where standards are exceeded, assess whether such standards should be considered as a component of the regional approach.
- Comment briefly on a strategy to link the port State scheme to the other measures of the WCPFC such as the Record of Fishing Vessels and the Vessel Monitoring System.
- Briefly consider the requirements for integrating the WCPFC's Port State Scheme with the schemes developed by other relevant Regional Fisheries Management Organisations (RFMOs).

2. BACKGROUND

The right for coastal States to make laws and regulations to regulate the activities of foreign fishing vessels is recognized in the 1982 UN Convention on the Law of the Sea (1982 Convention).² With specific reference to fishing, the 1995 UN Fish Stocks Agreement further elaborated on the “right and duty” of a port State to take non-discriminatory measures in accordance with international law to promote the effectiveness of sub-regional, regional and global conservation and management measures. The UN Fish Stocks Agreement provides that a State may inspect documents, fishing gear and catch on board fishing vessels, and empower authorities to prohibit landings and transshipments where the catch was taken in a manner which undermines high seas conservation and management measures. In the context of fishing operations the 1995 FAO Code of Conduct for Responsible Fisheries (Code of Conduct) recommends³ that port States should provide assistance to flag States when a fishing vessel is voluntarily in port and the flag State requests assistance in respect of non-compliance with conservation and management measures for the prevention of pollution and for safety, health and conditions of work on board fishing vessels.

The 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA–IUU) encourages port States to establish comprehensive port State measures for fishing vessels and provides guidelines on how this may be achieved.⁴ Port States are encouraged to cooperate through regional fisheries management organizations (RFMOs) to develop compatible measures to control the activities of foreign fishing vessels including mandatory inspection of non-RFMO vessels, banning the landing and transshipment of fish by vessels presumed to be IUU fishing in the region and information dissemination.

The FAO Model Scheme was developed in 2004 by the FAO Technical Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing and was endorsed by the Twenty Sixth Session of the FAO Committee on Fisheries (COFI) in March 2005. The UN General Assembly provided further endorsement at its Sixtieth session in November, 2005 and urged States to cooperate at the regional level and through regional fisheries management organizations and arrangements, to apply the FAO Model Scheme in order to provide enhanced port State controls to combat IUU fishing. The UN General Assembly has also called for the development of a legally binding instrument setting minimum standards for port State measures and this has been supported by the 2006 Review Conference on the UN Fish Stocks Agreement.

² Reference is primarily in the context of marine pollution, Articles 218-220 assumes that ports are subject to the sovereignty of the coastal State because they are considered as internal waters.

³ Under 8.3.1 and 8.3.2.

⁴ Paragraphs 52-64.

The FAO Model Scheme outlines minimum port State measures to be applied either through adoption of regional memoranda of understanding, through RFMOs or by individual port States. The scheme is a harmonized approach which is not intended to derogate from the sovereignty of States over their ports, but to promote a fair, transparent and non-discriminatory system for implementing port State obligations. The substantive parts of the FAO Model Scheme cover the following issues:

- port State inspection procedures;
- information to be provided in advance by fishing vessels prior to entry into port;
- actions to be taken by port States when violations are detected;
- information to be collected and exchanged by the port State;
- information systems on port State inspections;
- training to be provided for port State inspectors.

3. REGIONAL FISHERIES MANAGEMENT ORGANIZATION PORT SCHEMES

Most RFMOs that deal with straddling and/or highly migratory fish stocks have some form of port inspection scheme in place as it is considered that at-port inspection provides an effective way to promote relevant conservation and management measures. The following is a summary of port inspection measures applied by a selection of RFMOs.

3.1 International Commission for the Conservation of Atlantic Tunas (ICATT)

ICATT considers that most regulations can only be enforced during off-loading and therefore at-port inspection is the most fundamental and effective tool for monitoring. At-port inspection is compulsory in order to check compliance with Commission regulations and to monitor landings and transshipments. A report in standard format of each inspection is required to be copied to the flag State and the Commission. In the case where a foreign vessel is suspected of violating Commission regulations, the flag State is required to report to ICCAT on actions taken to address the violation. If invited by the port State, a flag State may send its own inspectors to that foreign port in order to inspect flag vessel compliance with Commission regulations. The Commission also encourages parties to enter into bilateral arrangements that allow for an inspector exchange programme to promote cooperation, share information and enhance compliance techniques.

3.2 Commission for the Conservation of Antarctic Living Resources (CCAMLR)

CCAMLR requires parties to conduct inspections of all vessels carrying toothfish to check compliance with Commission conservation measures and to ensure that any landings or transshipments are accompanied by the appropriate catch document. Vessels are required to provide prior notice of port entry and to declare that they have not engaged in IUU fishing in the Convention Area. If there is evidence that the vessel has conducted IUU fishing in the Convention Area, the catch shall not be landed. The port State is then required to notify the flag State, cooperate in any investigation and apply penalties as appropriate. The outcome of each inspection is required to be reported to the Commission and in the case where a vessel has been denied access or permission to land or tranship, the Commission is to advise Contracting Parties.

3.3 Northwest Atlantic Fisheries Organisation (NAFO)

Contracting parties of NAFO are required to inspect vessels that have engaged in fishing for stocks subject to Commission conservation and enforcement measures. The Commission and flag State are to be provided a standard report of the outcome of each inspection covering landings and catch verification including catch retained, as well as verification of mesh size of nets.

3.4 Indian Ocean Tuna Commission (IOTC)

IOTC has adopted a port inspection scheme that allows each Contracting Party and Cooperating Non-Party (CPCs) to inspect documents, fishing gear and catch on board fishing vessels, when vessels are voluntarily in its port. In order to promote compliance by Non-Contracting Party vessels, CPCs are required to develop regulations to prohibit landings and transshipments by Non-Contracting Party vessels where it has been established that the catch of species covered by the UN Fish Stocks Agreement establishing IOTC has been in a manner which undermines the effectiveness of conservation and management measures adopted by the Commission. The inspection of non-Contracting Party vessels is to take precedence over CPC vessels. Where there is evidence of a violation by a CPC vessel, the port State is required to provide full documentation to the flag State concerned as well as the Commission and the flag State is required to advise the Commission on details of actions it has taken in respect of the matter. The port State may exercise its right to prosecute the vessel under national law. Each CPC is required to submit electronically to the Commission, on an annual basis the list of foreign fishing vessels and catch of tuna and tuna-like species caught in the IOTC area, which have landed in their ports.

3.5 Pacific Islands Forum Fisheries Agency (FFA)⁵

While FFA member countries have yet to agree on the details of a region-wide port State inspection scheme a number of regional initiatives have been adopted that support the standards elaborated in the FAO Model Scheme. These initiatives include:

- foreign vessels to be licensed, in “good standing” on the Regional Register, VMS compliant and on the WCPFC record of Fishing Vessels, in order to operate in the region;
- foreign vessels to be marked according to the FAO Standard Specifications for the Marking and Identification of Fishing Vessels;
- a ban on at-sea transshipment;
- 24 hours prior notice of port access and 72 hours notice if landing or transshipping;
- minimum catch reporting including daily logs, entry/exit, weekly in-zone and transshipment/landing;
- common boarding procedures;
- foreign vessels to submit to inspection of vessel, gear, documentation and catch; and
- foreign vessels required to have a resident agent.

4. COUNTRY REPORTS

The following reports compare port inspection schemes in the FSM, Fiji, RMI and PNG with the FAO Model Scheme. Each country report provides information on tuna fisheries and their management including details relating to vessels licensed, monitoring and enforcement, transshipment and unloading, exports and the level of IUU fishing.

4.1 Federated States of Micronesia

4.1.1 Background

The FSM Exclusive Economic Zone (EEZ) is 2.78 million km² in extent and is one of the largest and most productive in the Western Central Pacific Ocean (WCPO), spanning 136°-166° E and 1° S to 13° N.

⁵ Strictly speaking, FFA is a regional fisheries management arrangement, but does not have the authority to adopt conservation and management measures.

The tuna fishery is dominated by foreign vessels licensed under long-standing access agreements, involving purse seine, pole-and-line and longline vessels. Purse seine vessels of 13 different flag States, have taken between 60 000 and 220 000 tonnes annually in the FSM EEZ over the past two decades, with this variability strongly linked to El Niño – Southern Oscillation (ENSO) events. The 2004 catch is estimated at 133 000 tonnes. The pole-and-line catch by Japanese vessels has been steadily declining since the early 1990s and is now around 1 000 tonnes in most years (1 700 tonnes in 2003). The longline catch, by Belize, FSM, Chinese, Japanese, and Taiwanese vessels, some of which were locally-based, has fluctuated between 5 000 and 10 000 tonnes in most recent years (3 747 tonnes in 2004), with bigeye and yellowfin comprising the bulk of the catch. Some of the foreign longline vessels are Guam-based and unload in Guam, whilst others unload for airfreight export in Pohnpei.

The FSM purse seine fleet now comprises 6 vessels, taking around 20 000 tonnes per year. The 2004 catch was estimated at 26 958 tonnes. The 2004 catch of the domestic longline fleet of around 25 vessels based in Pohnpei appears to be incompletely documented, with annual catches of less than 1 000 tonnes recorded. Some of the catch by these vessels is taken in waters of RMI under an agreement with RMI.

Subsistence and artisanal fishing for oceanic species, based mainly on trolling and drop-lining, remains important for food security and income generation. There is also a small informal sport fishery targeting a range of large pelagic fish operating mainly from Pohnpei.

4.1.2 Oceanic fisheries management

The major objectives of tuna management and development policy set out in the FSM Tuna Management and Development Plan are to:

- ensure that the nation's tuna resources are used in a sustainable way;
- obtain maximum sustainable economic benefits from the nation's tuna resources;
- promote economic security for the nation through the use of tuna resources.

No specific regulations currently apply to the tuna fishery, although imposition of total allowable catch (TAC) has been considered in the past, and there are area restrictions. Larger commercial vessels are prohibited from fishing within 12 miles of islands and major reefs, and two other measures are set out in Section 501 of Title 24, specifying that no fishing be allowed within 1 mile from submerged reefs, and 2 miles from certain protected fish aggregating devices (FADs). The four states comprising the Federation generally exercise rights over marine resources out to 12nm, and claim a share of enforcement revenues.

4.1.3 Oceanic fisheries institutional arrangements

The National Oceanic Resource Management Agency (NORMA) is the primary agency responsible for oceanic fisheries management. The Ministry has an establishment of 11 posts, and an annual operating budget of US\$ 400 000. Oceanic fisheries management is the total focus of the work of the NORMA. Coastal and inshore fisheries are dealt with at state level, although there remain some unresolved issues concerning state and national responsibilities. Within NORMA, responsibilities for oceanic fisheries are divided as described below.

- Statistics, Licensing and Computer Branch – responsible for implementing fishing agreements, issuing licences, fee collection, monitoring vessel activities, log sheet processing, and maintaining the fisheries database and computer network.
- Research & Data Analysis Section - responsible for managing port sampling and observer programmes, monitoring transshipments, analyzing this information, and providing management advice.

- Executive Management /Administration and Finance Section - responsible for overall administration, economic analysis and planning, and management issues at national, regional and international level.

Revenue from oceanic fisheries access agreements and other fees is currently around \$US12 million per year, but has been as high as US\$ 35 million in the past. Other government agencies involved in oceanic fisheries are:

- Maritime Wing of the National Police, Ministry of Justice, which operates three patrol boats (Palikir, Micronesia and Independent), hosts the VMS hub and carries out compliance duties including port inspection;
- External Affairs, who are active in international aspects of fisheries policy, including work related to the WCPFC and other regional and international aspects of fisheries affairs
- Office of the Attorney General (Ministry of Justice), which provides legal advice on issues pertaining to oceanic fisheries management and conducts prosecutions.

In each of the four states, there are fisheries or marine resources departments concerned with coastal fisheries development and management out to 12nm, and an Environmental Protection Authority (EPA).

NORMA's activities are directed by a Board, which has five members - one representative from each of the four states and one at-large member appointed by the President, with the Executive Director of NORMA serving as Secretary. Fisheries policy is largely driven by NORMA, with the approval of the Board; where legislative change is involved, approval of the National Congress is required.

Aside from the Board, there is currently no formal mechanism for broader consultation with stakeholders on oceanic fisheries management issues in FSM, although national fisheries summits have been held in the past. The Tuna Management Plan suggests such a mechanism would be desirable.

4.1.4 Compliance

Compliance and enforcement is a shared responsibility involving NORMA, the Police Maritime Wing and the Office of the Attorney General. As the agency responsible for offshore fisheries management, NORMA is the licensing authority and is mandated to coordinate and implement fisheries management control.⁶

FSM has a well developed capacity to enforce its fisheries laws, using three patrol vessels provided and supported through the Australian Pacific Island Patrol Boat Programme (PPBP), with a Maritime Surveillance Adviser and two technical advisors. Aerial surveillance is provided on a regular basis by Australian and New Zealand Air Force Orion aircraft and on an *ad hoc* basis by the United States Coast Guard (USCG).

In 2002, FSM, Palau and RMI established a subsidiary arrangement under the 1992 Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region (Niue Treaty) for the conduct of joint surveillance and enforcement operations. It is likely that this arrangement will be expanded to include other parties including Papua New Guinea and Kiribati. The arrangement allows for the sharing of surveillance assets and the cross-authorisation of personnel. Information on operational matters is shared including vessel monitoring system (VMS) data.

⁶ Marine Resources Act, 2002, section 205 (6).

Patrol vessel operations, based in Pohnpei because of cost and coordination considerations, attempt to achieve around 170 days of seagoing patrols per vessel per year, but there are other calls on vessel services, albeit on a user-pays basis, which interfere with the attainment of these objectives. Communications costs are also a major factor in widely spaced FSM, but fuel remains the major operational cost constraint.

The Maritime Wing also operates the regional VMS but lacks back-up capacity. Of critical importance is the need to train additional personnel in the use of the VMS system.

Although informal monthly consultation on monitoring, control and surveillance (MCS) matters occurs amongst concerned agencies the Marine Resources Act, 2002, allows NORMA to establish a Fisheries Management and Surveillance Working Group (FMSWG), to formulate and implement a national fisheries management surveillance strategy:

“The working group shall consist of appropriate representatives of NORMA and the Department of Justice. In addition, representatives from other divisions and departments of the National and State governments engaged in activities related to surveillance may be invited to participate”.⁷

4.1.5 Monitoring

FSM has had a long history of involvement in fishery monitoring activities. The features of current activities are:

- logsheet coverage of the locally-based longline fleet has in the past been incomplete, and may only be around 50%; current logsheet coverage of purse seine, longline and pole-and-line access vessels is considered high (at least 80%);
- a licensing database which holds vessel, master and owner information;
- a Port sampling programme comprised of three fulltime samplers covering landings in Pohnpei. The coverage of locally based longline vessels has in the past been high but coverage of the locally based purse seine fleet has been low;
- landings data collected, via the port sampling programme, although coverage has been incomplete. Transhipments are monitored by NORMA;
- an observer programme with 7 trained observers on contract, who have achieved 4-5% coverage of purse seine and pole-and-line trips in the EEZ, but low coverage rates for longline trips. Observer placement on Guam-based vessels is difficult and currently does not occur. Coverage of FSM Arrangement purse seine vessels is close to 20%. NORMA maintains a target level of 20% coverage of trips in the EEZ; and
- export data relating to the air-freight of tuna is available but not regularly collected.

As a member of WCPFC, FSM is preparing to meet expanded monitoring requirements and expects to use cost recovery to fund some expanded activities in the observer and port sampling programmes. The major focus will be on the training of observers, port samplers and statistical staff, and a probable upgrade of existing IT capacity. It is not viable for FSM to establish its own training programmes for the small numbers involved, and FSM sees itself continuing to rely on the regional organisations for this function.

4.1.6 Scientific analysis

FSM sees the development of a national capacity for scientific analysis on oceanic fisheries as an important priority and also feels that regional scientific advice is not always well-tailored to national needs, an issue with an EEZ as large as FSM's. FSM will continue to rely on the Secretariat of the Pacific Community (SPC) for stock assessment analysis and related advice but also wants to develop

⁷ Marine Resources Act, 2002, section 207.

its own capacity to interpret and apply the regional results and to be able to interpret data from national monitoring programmes.

There is a well developed national catch and effort database, competently maintained, but assistance will be needed to produce the verified estimates of annual catch by species, gear and fleet for FSM waters which is required to meet the data standards established by the WCPFC.

4.1.7 Transshipment and landing

Considerable transshipment and landing occurs in FSM ports, by purse seine (transshipment) and longline vessels (landing and transshipment), mainly in Pohnpei. In 2003, 381 purse seine transshipments were recorded accounting for 181,330 tonnes of mainly skipjack tuna. In 2004 the number of transshipments declined to 363 but the amount of tuna transhipped increased to 232,830 tonnes. The Police Maritime Wing reported 600 dockside inspections for 2004.⁸ It is anticipated that the level of transshipments will increase from 2006, due to the basing of the Dongwon fleet in Pohnpei.

The longline fleet has been severely impacted by the increasing cost of fuel and to date in 2006, no landings have taken place. In 2004, approximately 800 tonnes of mainly bigeye tuna was unloaded from 425 landings.

4.1.8 Exports

In 2004, FSM exported 580 tonnes of sashimi grade tuna mainly to Japan.

4.1.9 IUU fishing

Between 2000 and 2005, FSM prosecuted 28 vessels for violations that included, unlicensed fishing, fishing in a closed area, not filling out catch logs (target species as well as by-catch), unlicensed transshipping, incorrect position reporting, switching the automatic location device (ALC) off, and immigration violations. Apprehensions involved the use of patrol craft, VMS and observer information as well as dockside inspections. In 2006, there are currently three cases under investigation: one involving a longliner apprehended for fishing inside 12 nautical miles and two involving purse seiners apprehended during operation "Island Chief" for transshipment and reporting violations. Penalties for violating FSM law are amongst the highest in the region. In 2001 a carrier and purse seiner were each fined US\$1.2 million for transshipping without authorisation.

Although there is still the occasional apprehension of a vessel not licensed to fish, the perception is that reporting violations are common and that more effort needs to be put into ensuring that all conditions of license are adhered to and that a more comprehensive analysis of catch and effort reports would reveal significant reporting violations.⁹

In order to more effectively deal with fisheries violations, FSM will soon introduce regulations to allow authorised officers to issue citations. From an operational perspective, the use of an administrative penalties system will lead to the more efficient use of patrol craft by reducing the need to accompany non-compliant fishing vessels to port.

In a further move to eliminate IUU fishing, FSM has enacted a law that will ban all fishing vessels and fishing vessel owners from fishing in the event that a court judgement in excess of US\$25,000 is entered against the vessel or owner, until such time as that judgement is settled.¹⁰

⁸ Personal comment, Commander Robert Maluweirang, Maritime Wing.

⁹ Personal comment, Commander Robert Maluweirang, Maritime Wing.

¹⁰ Public Law 13-86, enacted March 4, 2005.

4.1.10 International legal instruments

FSM is a party to or has adopted the instruments shown in Table 1.

Table 1: FSM International Legal Instruments

Instrument	Status
WCPF Convention	Ratified
1982 UN Convention	Ratified
1995 UN Fish Stocks Agreement	Ratified
FAO Code of Conduct	Principles included in Marine Resources Act and Tuna Management Plan.
Convention on Biological Diversity	Acceded
1993 FAO Compliance Agreement	Accepted
FAO International Plans of Action	NPOA-IUU implemented 2005
FFA Minimum Terms & Conditions	Implemented
Driftnet Convention	Ratified

4.1.11 IPOA-IUU

A national plan of action to prevent, deter and eliminate illegal, unreported and unregulated fishing was implemented in 2005.

4.1.12 Port State control

The Marine Resources Act, 2002, requires all foreign fishing vessels wishing to operate in FSM waters, to be duly licensed pursuant to a fishing access agreement. Terms and conditions of access require any fishing vessel wishing to enter the FSM EEZ to give 24 hours notice of its intention to do so, the proposed point of entry and the purpose for which entry is requested. A request to enter or depart from a port also requires at least 24 hours notice¹¹. Once in port, all fishing and fishing support vessels are inspected to verify the accuracy of vessel, catch and activity reports.

Legislation relating specifically to ports of entry, requires all vessels authorised to enter the FSM and wishing to call at an official port of entry, to obtain clearance from that authorised port of entry, file a manifest and be subject to inspection.¹²

Consistent with international law, FSM allows port access to foreign flagged vessels for reasons of *force majeure* or distress or for rendering assistance to persons, ships or aircraft in danger or distress.

4.1.13 Designated ports

The following are the authorised maritime ports of entry for the FSM:

- Yap State: Yap, Ulithi, Wjoleai, Satawal
- Chuuk State: Weno, Satowan
- Pohnpei: Mesenieng, Kapingamarangi, Temwen
- Kosrae: Lelu, Okat

Due to cost and security considerations, vessels now choose to tranship at Pohnpei.

¹¹ Marine Resources Act, 2002, s.115.

¹² FSM Code Title 18, Chapter 2.

4.1.14 Prior Notice of Port access

FSM has adopted the Harmonised Minimum Terms and Conditions for Foreign Fishing Vessels Access (MTCs) and requires vessels to provide 24 hours notice of their intention to enter a designated port. Information relating to catch on board is also required. As a condition of license, vessels are required to provide entry/exit reports as well as weekly reports while in the EEZ. Vessels are also monitored by VMS prior to entry and while in the EEZ.

The Marine Resources Act, 2002, section 407 requires all transshipments to be conducted at a designated port and that a request to tranship must be received by NORMA at least 72 hours in advance. The transshipment notice must include:

- vessel name
- call sign
- position
- catch on board by species/kg
- time and port of transhipment

On completion of the operation, the vessel is required to submit a report of transhipment or landing as set out in the regionally adopted FFA/SPC Landing Form. The vessel must also comply with environmental laws. Any breach of section 407 attracts a fine of between US\$75,000 and \$275,000.

The WCPFC is currently developing a resolution to regulate transhipment by purse seine vessels. The draft resolution seeks to ban at-sea transhipment for purse seine vessels¹³ and includes the requirement that each Member and Co-operating non-Member and Participating Territory (CCM) of the WCPFC should ensure that transshipments and landings at its designated ports are restricted to vessels included in the WCPFC Record of Fishing Vessels. Detailed reporting procedures will also be required with respect to the fishing vessel, carrier vessel, port State and landing State. The port State and landing State are required to cooperate to verify the accuracy of the transhipment and landing information and each year the flag CCM of the purse seiner shall include in its annual report to the Commission, the details on transshipments by its vessels.

4.1.14.1 Vessel identification

Vessel name and call sign information is required as part of the notice of port entry. This information is also provided in the zone entry report. All foreign fishing vessels must also be VMS compliant. FSM has adopted the FAO standard specifications for the marking and identification of fishing vessels.

4.1.14.2 Purpose of access to port

This information is included in the notice of intention to enter port.

4.1.14.3 Fishing authorisations

The provision of information on fishing authorisations is not currently a requirement prior to port access. Only licensed fishing vessels may enter FSM for fisheries related purposes. As part of the license application process, foreign vessels are required to provide details of flag State authorisation to operate beyond areas of national jurisdiction in the WCPFC Area. NORMA holds vessel, owner and master related information in the license database. Details of vessels authorised to fish in the WCPFC Area are required to be on the WCPFC Record of Fishing Vessels.

¹³ Subject to specific exemptions: licensed group seiners less than 600 tonnes regulated and monitored under current arrangements including 100% observer coverage and catch reporting and on the WCPFC Record of Fishing Vessels.

4.1.14.4 *Trip information*

Trip information as set out in Annex A (4) of the FAO Model Scheme, is not currently a requirement. Information on the last port of call and date of departure, are acquired on inspection. It is noted however that each licensed vessel is monitored throughout its range by VMS. Currently only in-zone VMS information is available on a regular basis. Position information covering the full range of a vessel that enters port would include previous port calls.

4.1.14.5 *Species information*

Catch on board by species and weight is required as part of the request to enter port. The zone entry report also requires species/weight details.

4.1.15 **Denial of access to tranship or unload**

Only licensed fishing vessels may operate in FSM. If an offence has been committed, the vessel will be prosecuted. The Marine Resources Act, 2002, section 20, makes it an offence to import, export, transport, sell, receive, acquire or purchase any fish taken, possessed or transported in contravention of another State's laws.¹⁴ Penalties for fisheries offences may include a fine, confiscation of vessel, gear and catch as well as imprisonment.

4.1.16 **Inspections (Annex B)**

Inspections are carried out in accordance with the FFA Boarding and Prosecutions manual and conform to Annex B.

4.1.16.1 *Powers of authorised officers*

At port inspections are conducted by the Police Maritime Wing, Department of Justice. Section 601 of the Marine Resources Act, 2002, vests enforcement authority in the Police Maritime Wing which undertakes this function in collaboration with the monitoring and control authority, NORMA. An Authorised Officer appointed by the Secretary of Justice has the power to search any vessel, vehicle or aircraft that he reasonably believes may be transporting fish or engaging in other activities relating to fishing; require to be produced, examine and take copies of any permit, logbook, record or other documents required concerning the operation of any vessel or aircraft.¹⁵

4.1.16.2 *Authorised officer identification*

Identifying the vessel master and providing identification as an authorised fisheries officer is standard operating procedure.

4.1.16.3 *Flag State participation*

It is not standard practice to invite the flag State to participate in the inspection process. However, the vessel agent is usually on hand to assist.

4.1.17 **Inspection report (Annex C)**

The FSM National Police Inspection Form for Foreign and Domestic Fishing Vessels appended as Attachment A is required to be completed for each inspection. Table 2 shows the information required by Annex C of the FAO Model Scheme, but not specifically identified in the FSM inspection form.

¹⁴ Provided there is a reciprocal fisheries management agreement in place between FSM and that State.

¹⁵ Marine Resources Act, 2002, s.603.

Table 2: FSM Inspection Report: Information Gaps

FAO Model Scheme Annex C requirement	Comments
Maritime Mobile Service Identity number	
Previous vessel names and flag	Available from the Regional Register
Whether the flag State is a party to a particular regional fisheries management organisation	Foreign fishing vessels operating in FSM are required to be on the WCPFC Record of Fishing Vessels
Home port	
Names and addresses of previous owners	Available from the Regional Register
Certificate of master	Ports Authority responsibility
Authorisations to fish	MTCs require vessels licensed in the region to have the license in the wheelhouse
Species and fishing gear authorisations	MTCs require vessels licensed in the region to have the license in the wheelhouse
Duration of authorisation to fish	MTCs require vessels licensed in the region to have the license in the wheelhouse
Areas visited on current trip	Available from logsheets and VMS
Areas where fish was caught	Available from logsheets
Ports visited	Port of departure required. Other port calls available from logsheets and VMS info.
Start and end date of discharge	Landing and transshipment monitored by NORMA and reports collected
Fish species unloaded	Landing and transshipment reports collected by NORMA
Presentation	
Live weight	
Processed weight	
Intended destination of fish and fishery product	Data on tuna unloaded for export collected by NORMA
Fish retained on board by species and weight	
Details of gear inspection	Gear inspected as a matter of course

The report is required to be signed by the vessel master as well as the inspecting officer.

4.1.18 Notification

If, following inspection it is found that there are reasonable grounds to believe that an offence has been committed, notice is served to the vessel agent in accordance with the fishing access agreement. The Government to Government agreement with Japan provides a mechanism for the Japan Government to be informed and to take appropriate action. FSM is currently developing its administrative penalty system to allow the issuing of citations for minor offences. For vessels operating under regional multilateral fishing arrangements administered by FFA, provision is made under those arrangements for dispute settlement.

4.1.19 Information management

4.1.19.1 Inspection database

FSM does not currently have a database for the management of reports from at port inspections. It is not the practice to send reports of all inspections to the flag State or relevant RFMOs. Details of port inspections are now required to be reported to the WCPF Commission on an annual basis.

FSM participates in the FFA coordinated “vessels of interest” (VOI) project whereby information concerning vessels of interest is shared with other FFA members.

4.1.19.2 *Prosecutions database*

A prosecutions database is managed by the Department of Justice.

4.1.20 **Training of port State inspectors**

All inspections are conducted by officers of the Maritime Wing. Support for the training of officers in boarding procedures and techniques is provided through the Australian Pacific Patrol Boat Programme (PPBP) as well as through the FFA MCS programme.

4.2 **Fiji**

4.2.1 **Background¹⁶**

Fiji has an Exclusive Economic Zone (EEZ) of 1.29 million km², which supports a substantial domestic tuna fishing industry. Foreign fishing has occurred in Fijian waters since the early 1950s. Domestic fisheries started with pole and line ventures in the mid 1970s and continued until the 1990s when low prices and relatively high costs made this form of fishing largely uneconomic. Taiwanese and Korean longline activity, primarily targeting albacore, increased in the 1980s, with substantial growth of the domestic longline fleet occurring over the last 10 years. The number of domestic longliners has grown rapidly in recent years reaching a peak of 103 in 2002. As at June 2006, 63 longline vessels are licensed to fish in the EEZ (37 Fiji, 23 China, 1 NZ, 2 Cook Islands), along with 1 purse seiner and 13 Japanese pole and line vessels. In addition Fiji hosts a further 90 foreign vessels licensed to fish in other zones and mainly in Vanuatu, Solomon Islands and Tuvalu.

Catches by the domestic fleet have increased from around 5,000 tonnes in 1998 to an all time high in 2004 of 19,617 tonnes, of which 10,832 tonnes (55%) was taken in the Fijian EEZ.

4.2.2 **Oceanic fisheries management**

Commercial tuna fishing is now focused on longline operations. The longline fishery is managed under a system of catch and effort limits with an overall TAC for yellowfin, bigeye and albacore of 15,000 tonnes, and a limit on the number of longline vessel licenses of 110. Of these 110 licenses, 60 are open licenses, 25 are reserved for indigenous Fijians and 25 for vessels associated with processors. Licenses are issued annually.

The area between internal waters and the shoreward boundary of archipelagic waters is closed to vessels over 20 metres and those owned by non-indigenous Fijians. All vessels using ‘commercial’ fishing gear i.e. longline, purse seine, pole and line require a license, irrespective of length. There is a proposal currently before Cabinet that the area of archipelagic waters be reserved for indigenous interests.

4.2.3 **Oceanic fisheries institutional arrangements**

The institutional structure of the Ministry of Fisheries and Forests is in the process of change. A National Fisheries Authority has been proposed under the new Fisheries Bill which is before Parliament. Currently the Oceanic Fisheries Management Services Division (OFMSD) of the Fisheries Department is responsible for oceanic fisheries management. The Fisheries Department has a total staff of 188, of which 36 are in the OFMSD. Of these 36 posts, only two are established, with

¹⁶ Statistical information is from: Department of Fisheries, Annual Report 2004. Institutional information is from: GEF SAP II Project, National Project Preparation Reports, Fiji, By Ian Cartwright and Seremaia Tuqiri, 2004.

the balance employed as project staff. One SPC funded contract officer is also employed by the Division, using EU funding. The Fisheries Department has an annual operating budget of US\$3.6 million. The OFMSD, with the exception of two core-funded established posts, is funded entirely from a trust fund from that portion of the license fees not paid to government. The OFMSD has five activity areas: Administration, Information Technology, Licensing and Enforcement, Observers, and Offshore Tuna Data Analysis. While oceanic fisheries are a high priority within the Fisheries Department, the OFMSD budget of US\$300,000 is only around 12% of the total Fisheries Department budget.

The main government agencies involved in oceanic fisheries are the:

- Office of the Solicitor General, which provides legal advice, drafts legislation and attends meetings as legal advisors;
- Navy Division of the Fiji Military Forces, which undertakes surveillance and enforcement duties using three ocean-going patrol boats and two support vessels;
- Ministry of Foreign Affairs and External Trade which is active in the international aspects of fisheries policy, including work related to the WCPF Convention and other regional and international aspects of fisheries affairs;
- Fiji Police Force, which in collaboration with the Office of the Director of Public Prosecutions is responsible for prosecutions and enforcement; and
- Department of Environment which has interests in respect of marine conservation and sustainability issues, including turtles and other by-catch.

Fisheries policy is largely driven by the Fisheries Department. Consultation with government departments and other stakeholders (including industry and NGOs) on policy matters is dealt with through:

- an industry-based body, the Offshore Tuna Council¹⁷, whose membership comprises all Fiji License holders, those owning fish processing and packaging factories and representatives of government; and
- various ad-hoc committee processes, called to consult on specific issues, e.g. the review of the Tuna Management Plan.

Consultation with government departments on licensing and project matters occurs through the two committees described below.

- **The Licensing Committee** – responsible for making recommendations on all license applications for oceanic fisheries in Fiji. Cabinet appoints members of the Committee which comprise the CEO Fisheries and Forests, CEO Foreign Affairs and External Trade, CEO Home Affairs and Immigration and the Director of Fisheries. A large number of co-opted members also sit on the committee, including those from the line Ministries outlined above. There is no industry or environmental NGO participation. Application for licenses by fishing operators, including those involved in joint-ventures with local partners, are increasingly coming under closer scrutiny.
- **The Project Committee**- responsible for considering all project proposals relating to fisheries in coastal and oceanic waters, e.g. foreign investment in oceanic fisheries. Membership comprises the Deputy Director of Fisheries, Principal Fisheries Officer (Research) and the Principal Fisheries Officer/Project Officer whose area is being applied for.

The Department of Environment is responsible for broader aspects of environmental management, including marine pollution.

¹⁷ Currently the Offshore Tuna Council meets infrequently.

4.2.4 Compliance

The Department of Fisheries has a compliment of seven enforcement officers with duties that include fishing vessel inspection. Assistance with the monitoring of transhipments and landing is provided by regionally trained observers (7) and port samplers (5).

Compliance and enforcement activities are also carried out by the Naval Division through the operation of three ocean-going patrol vessels, the Fiji Police Force, the Department of Fisheries, and the Office of the Director of Public Prosecution. Naval officers have been given fisheries boarding powers to board vessels. A comprehensive database of registered vessels and gear characteristics is kept with the Department of Fisheries. There is recognition of the increasing mobility of fishing fleets and the associated compliance issues. To deal with such issues Fiji has entered into collaborative compliance arrangements with Vanuatu and Tuvalu and consideration is being given to the establishment of a Niue Treaty arrangement to formalise this and to include other neighbouring FFA member countries in the arrangement.

The FFA VMS facility is managed by the Naval Division. A minimum criterion imposed on all fishing vessels is that they must be VMS compliant before they can be licensed to fish in Fiji waters. The Naval Division also conducts fisheries related surface patrols utilising 3 patrol craft for this purpose.

4.2.5 Monitoring

Fiji has a well developed system of data collection, verification and analysis of catch and effort data. It also has the capability to log and generate data before its transmission to SPC for review. This work has been well supported by SPC. A database has been set up containing Fiji's catch and effort data by species, gear, and fleet type and efforts are now focused towards the training of programmers and data analysts to do more detailed in-country analysis of both national and regional fisheries data.

While most vessel landings are well monitored ensuring a high level of port sampling coverage, some data gaps from landings still exist.

An onboard observer programme aimed at the domestic longline fleet is in place, with an approximate observer coverage of 20%. A common term of reference has been agreed to with Vanuatu to qualify Fiji Observers to become Vanuatu Observers, once multi-licensed vessels enter Vanuatu waters. This cross-accreditation is expected to be an on-going requirement.

4.2.6 Scientific analysis

Fiji, with software and training assistance provided by SPC, has well developed data collection and analysis capability that allows the production of reports to support the management process. The trend whereby recent stock assessment advice provided by SPC has increasingly focused on the impact of fishing on stocks in the Fiji EEZ has been welcomed by all stakeholders. While progress is acknowledged, there is considered to be a need to expand this activity and thereby provide a greater understanding of the relative impacts of fishing and environmental factors on tuna stocks.

Fiji is keen to build on the progress made with national data collection and analysis, and wishes to progress towards gaining a national capability to interpret regional stock assessment data. There is also a requirement to better understand and monitor the relationship between long line and purse seine fisheries.

Tuna by-catch is currently not considered to be an issue for Fiji, but is recognised as an emerging issue with the potential to impact exports. Under current practices, and using the SPC definitions, there is virtually no longline by-catch, with retained non-target species being landed as by-product

and finding a ready market. Data on by-catch taken within the EEZ is generally sketchy and work to date on by-catch issues has been minimal.

Large scale oceanographic changes undoubtedly have impacts on Fiji's oceanic fisheries however there is little capacity to monitor and analyse large scale impacts, or to separate these impacts from the impacts of fishing. Analysis conducted through the Oceanic Fisheries Programme of the SPC is providing greater understanding of the local situation with respect to large scale ENSO-driven changes.

4.2.7 Transshipment and landing

A significant volume of tuna is transhipped at ports in Fiji by foreign vessels, and in particular Taiwanese longliners (88% of total transshipments in 2002). Other minor transshipments include those by China, Vanuatu and Japan flag vessels. In 2002 a total of 171 vessels transhipped 12,036 tonnes of tuna and related species around 90% of which was albacore. In 2004, a total of 302 transshipments of fish caught in the EEZ occurred. A further 799 vessels transhipped 58,000 tonnes of tuna caught outside the EEZ.

The total number of vessel inspections at port in 2004 was 1,354. Of these, 307 were inspections of vessels not based or licensed to fish in Fiji.

4.2.8 Exports

The PAFCO cannery in Levuka processes much of the albacore landed in Fiji, and produced around 12,600 tonnes of loins and 418,766 cases of tuna in 2002, primarily for export.

In 2004 Fiji exported 66% of its sashimi grade tuna to Japan and America, with the bulk of the remaining 34% going to China. Total revenue generated in 2004, from the export of tuna and associated species was US\$215 million. This makes tuna fishing one of Fiji's major industries, ranking third behind tourism and sugar. The domestic tuna industry in Fiji in 2002 accounted for some 900 jobs on vessels with a further 1,500 employed in shore-based facilities.

4.2.9 IUU fishing

Since 2004, Fiji has prosecuted seven vessels in the High Court for fisheries offences.¹⁸ These offences included being unlicensed to fish, targeting shark, non-reporting and unauthorised fishing for southern bluefin tuna (SBT). Detection and apprehension has involved dockside inspection, use of VMS tracking,¹⁹ at-sea boarding and the sharing of information with neighbouring States as well as with CCSBT.

In 2005 the Indonesian flagged vessel, *Chin Shun Fa 66*, entered Fiji for the purpose of landing SBT. Upon checking with the Indonesian Embassy in Suva, as well as with the CCSBT, it was found that the Indonesian registry documents were false and that in any case Indonesia was not a member of CCSBT. In addition, the vessel owed money to a Taiwan interest. The vessel and catch were seized and subsequently sold.

As noted above, there are around 150 tuna vessels based in Fiji and landing and transshipment activity is significant. Many vessels that use the ports are licensed to fish in other neighbouring States. Fiji benefits from this and intends to further enhance port facilities and related infrastructure to increase port calls by tuna vessels. To assist in the management of these vessels, Fiji is working with Vanuatu, Solomon Islands and Tuvalu to establish a joint and reciprocal surveillance and enforcement arrangement. This arrangement is likely to include areas of common interest beyond fisheries. Discussions are also underway with neighbouring States including Cook Islands, Niue, Samoa and Tonga to develop a sub-regional management arrangement with respect to the albacore fishery.

¹⁸ Personal comment by Anari Raiwalui, Fisheries Officer.

¹⁹ The *Chin Shun Fa 66* case involved flag State verification communication with Indonesia.

4.2.10 International legal instruments

Fiji is a party to or has adopted the following international legal instruments relating to fisheries management shown in Table 3.

Table 3: Fiji International Legal Instruments

Instrument	Status
WCPF Convention	Ratified
1982 UN Convention	Ratified
1995 UN Fish Stocks Agreement	Ratified
Driftnet Convention	Ratified
Convention on Biological Diversity	Ratified
FAO Code of Conduct	Accepted
1993 FAO Compliance Agreement	Endorsed
IPOA-IUU	Endorsed, not yet implemented
WSSD Fisheries Targets	Not formally adopted
FFA Minimum Terms and Conditions	Implemented

4.2.11 IPOA IUU

A national plan of action to prevent, deter and eliminate illegal, unreported and unregulated fishing, has yet to be developed.

4.2.12 Port State control

The Marine Spaces Act, 1978, section 14, makes provision for the issuing of licenses to foreign fishing vessels. Conditions of license relate to:

- landing and transshipment
- entry to port
- provision of information including catch and effort and position
- vessel markings
- VMS

In addition, foreign fishing vessels must be in “good standing” on the Regional Register, have flag State authorisation and be included in the WCPFC Record of Fishing Vessels, before a license can be issued. All vessels on the Regional Register are also VMS compliant.

Every vessel that enters a Fiji port carrying fish taken outside the fisheries waters, is required to submit to inspection. Locally based vessels that fish inside fisheries waters may be inspected, but their activities are monitored primarily through the observer and port sampling programmes.

Vessels that are not licensed to fish in the fisheries waters but that intend to enter port for transshipment or landing purposes, are required to have a permit to do so.

4.2.13 Designated ports

Suva and Levuka.

4.2.14 Prior notice of port access

Fiji has adopted the regional MTCs and requires vessels to provide 24 hours notice of their intention to enter a designated port. Information relating to catch on board is also required. Licensed vessels are

required to provide entry/exit reports as well as weekly reports while in the fisheries waters. It is normal practice for the vessel agent to notify details of vessel activity and to be on hand at inspection. Vessels are also monitored by VMS prior to entry and while in the fisheries waters.

4.2.14.1 Vessel identification

The Regional Register provides full information on foreign fishing vessels and this can be accessed by using vessel name, call sign or vessel identification number.

Fiji has adopted the FAO standard specifications for the marking and identification of fishing vessels.

4.2.14.2 Purpose of access to port

This information is included in the notice of intention to enter port.

4.2.14.3 Fishing authorisations

License information for Fiji licensed vessels is held in the license database and this information includes flag State authorisation. For vessels not licensed in Fiji, information is provided by the vessel agent and this is routinely cross-checked with licensing agencies in neighbouring States (Solomon Islands, Tuvalu, Vanuatu).

4.2.14.4 Trip information

Trip information as set out in Annex A (4) of the FAO Model Scheme is not currently a requirement. Port of departure information is acquired on inspection. It is noted that vessel position information is monitored by VMS and having access to position information for the full range of a vessel, would meet the FAO Model Scheme standard.

4.2.14.5 Species information

Catch on board by species and weight is required as part of the request to enter port. The zone entry report also requires species/weight details.

4.2.15 Denial of port access to tranship or unload

Only licensed vessels and non-licensed vessel with a permit to tranship or unload may use Fiji ports for those purposes. In compliance with WCPFC obligations, port access will be denied to foreign fishing vessels that fish in the WCPFC Area and are not included on the WCPFC Record of Fishing Vessels. Access will continue to be denied to vessels active in other RFMO regions that are not authorised to fish in those regions. Fiji will also cooperate to deny port use to any vessel which has been identified by a RFMO as engaging in or supporting fishing activities in contravention of its conservation and management measures.

The effective monitoring of unlicensed vessels that use Fiji as a base for maintenance and reprovisioning purposes, will continue to require close cooperation with the licensing States, flag States, the WCPFC and other RFMOs as appropriate. Towards this end, Fiji is pursuing a joint and reciprocal surveillance and enforcement arrangement with Solomon Islands, Tuvalu and Vanuatu and is also exploring sub-regional management arrangements with other Pacific Island States involved in the southern albacore longline fishery. Fiji will work through the WCPFC to develop cooperative arrangements with other RFMOs.²⁰

²⁰ WCPFC Convention, Article 22.

4.2.16 Inspections (Annex B)

Inspections are carried out in accordance with the FFA Boarding and Prosecutions manual and conform to Annex B.

4.2.16.1 Powers of authorized officers

All vessels that have entered a port from outside the fisheries waters, are required to submit to health, customs, immigration and fisheries inspections. Section 17 of the Marine Spaces Act, 1978, empowers a Fisheries Officer to *inter alia*:

- board a fishing vessel;
- search the vessel and examine fish on board;
- require to be produced relevant documents.

4.2.16.2 Fisheries officer identification

Identifying the vessel master and providing identification as an authorised Fisheries Officer is standard operating procedure.

4.2.16.3 Flag State participation

It is not standard practice to invite the flag State to participate in the inspection process. However, the vessel agent is usually on hand to assist.

Given the number of inspections required to be made and the prospect that these are likely to increase, it may be a practical solution to develop cooperative arrangements with flag States to allow their inspection officers to assist with port inspections.

4.2.17 Inspection report (Annex C)

The Vessel Arrival Inspection Form, appended as **Attachment B**, is required to be completed for each inspection. The information required by Annex C of the FAO Model Scheme but not specifically identified in the Vessel Arrival Inspection Form is shown in Table 4.

Table 4: Fiji Inspection Report Gaps

FAO Model Scheme Annex C requirement	Comments
Maritime Mobile Service Identity number	
Previous vessel names and flag	Available from the Regional Register
Whether the flag State is a party to a particular regional fisheries management organisation	
Names and addresses of previous owners	Available from the Regional Register
Certificate of master	Ports Authority responsibility
Areas visited on current trip	Available from logsheets and VMS
Areas where fish was caught	Available from logsheets
Ports visited	Port of departure required. Other port calls available from logsheets and VMS information
Fish species unloaded	Landing and transhipment reports collected for customs and fisheries purposes
Presentation	
Live weight	

Intended destination of fish and fishery product	Data on tuna unloaded for export collected by fisheries and customs officers
Fish retained on board by species and weight	Available from logsheet data
Details of gear inspection	Gear inspected as a matter of course

The report is required to be signed by the inspecting officer and countersigned by the vessel master.

4.2.18 Notification

If, following inspection it is found that there are reasonable grounds to believe that a vessel has been involved in IUU fishing activity, notification is provided to:

- the flag State²¹
- any affected coastal State²²
- the relevant RFMO²³

4.2.19 Information Management

4.2.19.1 Inspection database

A database for the input of information from the Vessel Arrival Inspection form has been developed in-house. Currently it is not the practice to send reports of all inspections to the flag State or relevant RFMOs. Details of port inspections are now required to be reported to the WCPF Commission on an annual basis.

4.2.19.2 Prosecutions Database

A prosecutions database has been developed in-house.

4.2.20 Training of port State inspectors

There is no programme specifically designed to train and certify port inspectors. Training for officers involved in port inspections has been provided by FFA and SPC through their regional MCS, observer and port sampling training programmes. The basic training text is the FFA Boarding and Prosecutions manual. FFA is scheduled to convene a Dockside Boarding workshop in July.

Given the number of inspections undertaken and the prospect that frequency of port calls is likely to increase, there is a need to increase the number of trained inspectors. The amount of information generated coupled with the need for analysis and verification points to the need for enhanced MCS analytical capacity.

4.3 Republic of the Marshall Islands

4.3.1 Background

The Exclusive Economic Zone of RMI, lying between 5⁰N and 15⁰N, is large (2.1 million km²) and moderately productive, with over 50% of the zone bordering international waters to the north, east and west. RMI has opted to promote onshore development, transshipment and processing, rather than

²¹ A number of diplomatic missions are based in Suva including those from the major fishing interests active in the region.

²² Fiji has established informal links with Solomon Islands, Tuvalu and Vanuatu to share information on the activities of vessels licensed in those countries and based in Fiji.

²³ Article 25 of the WCPF Convention requires a member to investigate violations alleged to have been committed by its flag vessels.

the development of its own domestic tuna fleet. RMI has had long-standing access agreements with a variety of countries and industry associations, and operates a vessel registry, with six RMI-flag purse seine vessels currently on the register. In the 2004/2005 fiscal year, RMI had 13 access agreements in place covering 224 licensed vessels from 13 flag States, as shown in Table 5. In addition 45 purse seine vessels were licensed to operate under the Multilateral Treaty on Fishing with the USA and the FSM Arrangement bringing to 17 the number of foreign flag States with vessels licensed to fish in the EEZ. The number of tuna vessels licensed under access agreements with RMI is shown in Table 5.

Table 5: RMI Licensed Tuna Vessels 2004

Country/Party	Gear	Vessels	Flag
USA	Purse Seine	14	
Japan	Purse Seine	34	Japan
Japan	Longline	15	Japan
Japan	Pole and line	7	Japan
Taiwan	Purse Seine	34	Taiwan PC
Korea	Purse Seine	27	Korea
FSM Arrangement	Purse Seine	31	FSM,RMI,KI, SI, PNG
Fong Seong Co.	Purse Seine	5	Vanuatu
Shandong Fishery Co.	Purse Seine	2	PROC
Shanghai Fishery Co.	Purse Seine	1	PROC
Marshall Islands Fishing Venture	Longline	38	PROC, Taiwan PC
New Zealand	Purse Seine	3	NZ
Hsiang Sheng Fishery Co	Purse Seine	1	Taiwan PC
Fair Well Fishery (PNG) Ltd	Purse Seine	1	Vanuatu
Pacific Food & Services, Inc.	Longline	11	Japan
Sanko Bussan (Guam), Inc.	Longline	14	Japan

Catches taken by foreign vessels fishing in the zone under access agreements are significant - purse seine catches (various fleets) have been as high as 70,000 tonnes per year, longline catch (mostly Japanese) to 7,600 tonnes and Japanese pole-and-line vessel catch to 18,000 tonnes, but total catches (all gears) are usually less than 40,000 tonnes in most years. ENSO effects on purse seine catches, typically taken in the southern parts of the zone, are significant.

A base for locally-based foreign longline vessels has operated in Majuro at various times, and was recently reactivated. In 2004, 30 vessels, mostly of Chinese origin, fished in the EEZ, landing over 2,000 tonnes of mainly bigeye and yellowfin for airfreight export through Honolulu to the USA and Japan.

4.3.2 Oceanic fisheries management

The recently revised Marine Resources Act (1997) and associated Regulations establish the Marshall Islands Marine Resources Authority (MIMRA) and direct it to, *inter alia*:

- “conserve, manage and sustainably develop all resources in the Fishery Waters and seabed and subsoil there-under, in accordance with the principles and provisions in this Act and in sub-regional, regional and international instruments to which the Republic of the Marshall Islands is party”.

With respect to the conservation, management and sustainable use of the fishery resources, “the Authority shall ensure the long-term conservation and sustainable use of the fishery resources, and to this end shall adopt management measures which promote the objective of optimum utilization”. A Tuna Management Plan has been in place since 2004.

No formal management measures or limits currently apply to tuna fishing within the EEZ. Waters inside 12 nautical miles of all islands are closed to longlining, whilst waters inside 50 nautical miles around three heavily-populated islands (Majuro, Kwajalein, Arno) are also closed to longlining. These closures primarily apply to the locally-based foreign longline fishery.

4.3.3 Oceanic fisheries institutional arrangements

The Marshall Islands Marine Resources Authority (MIMRA) is the primary agency responsible for oceanic fisheries management in RMI. The Division has a staff establishment of around 50 posts, and an annual operating budget of US\$1.4 million (which includes coastal fisheries and the Fisheries and Nautical Training Center). Within MIMRA, sections with responsibilities for oceanic fisheries include the following.

- Oceanic and Industrial Affairs Division: licensing, national fisheries database (data collection and statistics), research and monitoring (port sampling and observer programmes), international liaison, and collaboration in national MCS.
- Administration and Finance, Policy and Planning : policy and administration.

Other government agencies involved in oceanic fisheries are the:

- Sea Patrol Division of the National Police, Ministry of Justice, who operate the patrol boat Lmor, with assistance from RAN;
- Foreign Affairs, Asia Pacific Desk, which is active in international aspects of fisheries policy, including work related to the WCPF Convention and other regional and international aspects of fisheries affairs;
- Office of the Attorney General (Ministry of Justice), which provides legal advice on issues pertaining to oceanic fisheries management;
- Ministry of Resources and Development – oversight Ministry for MIMRA with the Minister as Chairman of the MIMRA Board;
- Environmental Protection Agency (EPA), and Office of Environmental Planning and Policy Coordination.

There is currently no formal mechanism for consultation with stakeholders on off-shore fisheries management issues but this is envisaged under the Tuna Management Plan. The Board of MIMRA includes representatives from relevant government departments and the private sector. Fisheries policy is largely driven by MIMRA, with the approval of the Board, and where legislative change is involved, the National Parliament (Nitijela). The Office of Environmental Planning and Policy Coordination is responsible for broader aspects of environmental management, including marine pollution, whilst EPA is concerned with grass roots environmental issues.

4.3.4 Compliance

MIMRA is responsible for the licensing of tuna fishing vessels and maintains a licensing database which is linked to the FFA Regional Register. All foreign fishing vessels are required to be FFA VMS compliant. Information required from licensed vessels including those relating to zone entry/exit and port visits, are reported to MIMRA.

Compliance activities are carried out by the Police Sea Patrol Division, with assistance from MIMRA, and ongoing technical support from the Royal Australian Navy (RAN). Sea Patrol operates one Australian-provided patrol vessel, the Lmor, with an annual target of 120 days of seagoing patrols. RMI is involved in collaborative surveillance operations with its neighbours FSM and Palau, undertakes contracted surveillance around Kwajalein Atoll, and has also been approached by Nauru to conduct patrols in the Nauru EEZ.

The FFA VMS is under the control of the Police and is operational, although there is limited capacity within RMI to maintain and service VMS operations.

Since 2004, a citation process has been in effect which allows enforcement officers to inspect fishing vessels and issue citations for minor offences. Should the receiver of a citation accept that an offence was committed, an administrative penalty may be extracted. In the case where the receiver of a citation denies the offence, the matter may be progressed through the adjudication process or by taking court action. The use of citations has allowed fisheries offences to be dealt with swiftly and has enabled compliance related resources such as the patrol craft to be released for further duties.

4.3.5 Flag vessels

Marshall Islands currently has six purse seiners operating in the region under the FSM Arrangement. As required by the WCPF Convention, these vessels are authorised to fish in the Convention Area beyond the RMI fisheries waters and are on the WCPFC Record of Fishing Vessels.

4.3.6 Monitoring

There is a well-developed system for the collection and analysis of catch and effort data from all vessels licensed under access agreements, RMI flag vessels and locally-based foreign vessels. With the assistance of SPC, to whom scanned logsheet data are routinely sent, RMI has the capacity to produce catch and effort data by species, gear, fleet and area. Catches are however not yet fully verified.

An observer programme, focusing on the locally based foreign longline vessels, RMI-flagged purse seine vessels, and FSM Arrangement vessels, is managed by a full-time Observer and Port Sampling Coordinator. Coverage is currently low, but there is a firm commitment to increase this to 5-10% in the short term, and 15-20% in the medium term. The observer programme is supported by SPC.

4.3.7 Scientific analysis

RMI has a well-developed capacity to provide scientific analysis of information related to oceanic fisheries, including regular reporting of catch and effort by fleet, gear and flag, as evidenced by the detailed and timely annual reports produced. RMI provides strong support for regional monitoring and scientific programmes undertaken by SPC.

The regular flow of information from regional stock assessment work in a form useful for national fisheries management continues, but there will be an ongoing need for assistance in interpretation of the regional analyses. RMI will continue to rely on SPC in this area but will continue to develop its national capacity particularly with respect to scientific expertise.

The species taken as by-catch in oceanic fisheries are important in RMI as highly regarded food products, although landings appear to be small. RMI has some data generally on by-catch from the observer programme. Interaction issues are important in the RMI situation - between longline fisheries and the sport fishery and dive operations, and between purse seine and longline fisheries.

Large scale oceanographic changes have significant impacts on oceanic fisheries in and adjacent to the RMI EEZ and thus transshipment activity. Improving understanding of these through current SPC work is valuable, and continuing that research is important.

4.3.8 Transshipment and landing

Large volumes of transshipment have occurred in Majuro in recent years, involving up to 400 vessels in some years and possibly 300,000 tonnes of fish: a significant proportion of the regional catch. In 2004 a total of 227 purse seiners transhipped 163,052 tonnes of tuna and in addition 569 longline

landings took place. Transshipment by foreign fishing vessels is encouraged and it is estimated that each purse seine transshipment directly benefits the RMI economy by US\$5,000, through employment and local purchases.²⁴

4.3.9 Exports

In 2004 RMI exported approximately 3,000 tonnes of tuna to Japan, the United States, Canada and Taiwan, in chilled, fresh, frozen and loin form. The high quality bigeye and yellowfin tuna went to the Japanese sashimi market while the lower quality tuna and by-catch was exported to Taiwan.

A loining plant with a capacity of 10,000 tonnes was established in 2000 to produce product for eventual canning in PagoPago. The plant is currently undergoing refurbishment.

4.3.10 IUU fishing

With RMI largely surrounded by productive international waters, there is believed to be an issue with IUU fishing in contiguous waters, and possibly in the northern parts of the EEZ. RMI operates one patrol vessel, and is assisted by periodic air patrols by Australia and New Zealand. RMI is involved in collaborative surveillance and enforcement operations with its neighbours FSM and Palau. In June 2006, operation “Island Chief” was conducted and involved surveillance and enforcement personnel and platforms from RMI, FSM, Palau, Australia, New Zealand, the United States, Papua New Guinea, Kiribati and FFA.

In recent years fisheries prosecutions have been carried out for violations of license conditions relating to catch reporting, VMS, pollution and by-catch including the targeting of shark. Since 2004, eight vessels have been prosecuted through the administrative penalties process with fines ranging from US\$10,000 to US\$250,000.²⁵ There have been no prosecutions of unlicensed vessels for some years.²⁶

4.3.11 International legal instruments

RMI is party to or has adopted the international legal instruments relating to fisheries management shown in Table 6.

Table 6: RMI International Legal Instruments

Instrument	Status
WCPF Convention	Ratified (2001)
1982 UN Convention	Ratified
1995 UN Fish Stocks Agreement	Ratified
FAO Code of Conduct	Accepted
WSSD fisheries targets	Not formally adopted
Convention on Biological Diversity	Ratified
1993 FAO Compliance Agreement	Adopted
FFA Minimum Terms & Conditions	Implemented
Driftnet Convention	Ratified

²⁴ MIMRA Director, Glen Joseph, personal comment.

²⁵ Chief of Police, Thomas Heine, personal comment.

²⁶ Ibid.

4.3.12 IPOA–IUU

A national plan of action to prevent, deter and eliminate illegal, unreported and unregulated fishing, has yet to be developed.

4.3.13 Port State control

The Marine Resources Act, 1997, section 20, establishes that exclusive management and control over living and non-living resources within the fisheries waters of the Marshall Islands is vested in the Government. All foreign and locally based fishing vessels are required to be licensed to operate pursuant to a fishing access agreement. Foreign fishing vessels are subject to the regionally adopted MTCs which includes the requirement to be in “good standing” on the Regional Register as well as VMS compliant. Fishing without a license is subject to a fine of US\$1 million.²⁷

All fishing vessels calling in to port are required to submit to clearance by health, customs and immigration authorities, followed by inspection by Sea Patrol and MIMRA.

4.3.14 Designated Ports

Majuro is the port designated for all licensed fishing vessels.

4.3.15 Prior Notice of Port Access (Annex A)

Fishing vessels are required to give 24 hours notice of port entry.²⁸ If port access is for transshipment purposes, the fishing and carrier vessels are required to provide the following.²⁹

- 72 hours notice and current position
- species and weight of catch to be transhipped
- name and call sign of vessel

In addition, vessels are required to provide faxed or telexed, entry/exit and Wednesday reports which include position and catch on board.

All vessels are monitored by VMS throughout the EEZ.

4.3.15.1 Vessel identification

The FFA Regional Register and the license registry provide full information on all foreign fishing vessels licensed to operate and this can be accessed by using vessel name, call sign or vessel identification number.

RMI has adopted the FAO standard specifications for the marking and identification of fishing vessels.

4.3.15.2 Purpose of access to port

This information is included in the notice of intention to enter port.

²⁷ Marine Resources Act, 1997, section 66 (1).

²⁸ Marine Resources Act, 1997, section 74.

²⁹ Marine Resources Act, 1997, section 63.

4.3.15.3 *Fishing authorisations*

Only licensed vessels are entitled to operate in RMI. Information held on licensed vessels includes flag State authorisation. Advice on authorisations to fish in other States in the region is not required in advance of a port call.

4.3.15.4 *Trip information*

Advance notice of trip information is currently a requirement. However, historical information on vessel movements can be provided by VMS. Information on the last port of call is acquired at inspection.

4.3.15.5 *Species information*

Catch on board by species and weight is required to be faxed or telexed in advance. The zone entry report also requires species, weight and position information.

4.3.16 **Denial of Port Access**

As required by the WCPF Convention, all flag vessels that fish in the WCPFC Area beyond areas of national jurisdiction must be authorised to do so and must be included on the WCPFC Record of Fishing Vessels. Any vessel not on the WCPFC Record of Fishing Vessels will be denied port access. Only licensed vessels may be allowed port access. If such a vessel is suspected of IUU fishing activities outside of the EEZ, then it may have committed a fisheries offence and could therefore be prosecuted.

As a member of the WCPF Commission, RMI will cooperate to deny port use to any vessel which has been identified by a RFMO as engaging in, or supporting, fishing activities in contravention with its conservation and management measures.

The WCPF Commission has joined with other regional fisheries management organisations (CCSBT, IOTC, IATTC, ICCAT) to establish www.Tuna-org which currently provides information on IUU vessels.

4.3.17 **Inspections (Annex B)**

Inspections are carried out in accordance with the FFA Boarding and Prosecutions manual and conform to Annex B of the FAO Model Scheme.

4.3.17.1 *Powers of authorised officers*

All fishing vessels that have entered the EEZ are required to submit to health, customs and immigration inspection, as well as inspection by authorised fisheries officers. Authorised officers have the power to board and search any fishing vessel in the Fishery Waters and inspect relevant documents.³⁰

4.3.17.2 *Fisheries officer identification*

Identifying the vessel master and providing identification as an authorised fisheries officer is standard operating procedure.

³⁰ Marine Resources Act, 1997, s.82 (1).

4.3.17.3 *Flag State participation*

It is not standard practice to invite the flag State to participate in the inspection process. However, the vessel agent is usually on hand to assist.

4.3.18 **Inspection report (Annex C)**

The following inspection reports are produced:

- boarding checklist: Carrier vessels
- boarding checklist: longline and pole and line fishing vessels
- boarding checklist: purse seine fishing vessels

Completed inspection forms are required to be signed by the vessel captain as well as the inspecting officer.

Information required by Annex C of the FAO Model Scheme but not specifically identified in the RMI boarding checklists is in Table 7.

Table 7: RMI Inspection Report Gaps

FAO Model Scheme Annex C requirement	Comments
Maritime Mobile Service Identity number	
Previous vessel names and flag	Available from the Regional Register and also included in license application form
Whether the flag State is a party to a particular regional fisheries management organisation	
Names and addresses of previous owners	Available from the Regional Register and also included in license registry database
Certificate of master	Ports Authority responsibility
Ports visited	Port of departure required. Other port calls available from logsheets and VMS info. Carrier vessels required to provide voyage memo
Presentation	
Live weight	
Intended destination of fish and fishery product	Data on tuna unloaded for export collected by MIMRA
Details of gear inspection	Gear inspected as a matter of course

4.3.19 **Notification**

Where there are reasonable grounds to believe that a vessel has been engaged in IUU fishing the resident vessel agent is informed. It is a condition of fishing access that a resident agent is maintained to receive and respond to any legal process issued.³¹ Remedial action may be pursued through the Adjudications Proceedings process,³² the High Court, the WCPF Convention³³ or through FFA.³⁴

³¹ Marine Resources Act, 1997, s.60 4 (a).

³² Marine Resources Act, 1997, s.102.

4.3.20 Information Management

4.3.20.1 Inspection database

A database for the input of information from the boarding checklists is currently under consideration. MIMRA has a strong data management capability supported largely by SPC and is able to process information relating to the following.

- catch and effort
- transshipment and landing
- observer reports
- weekly/entry/exit vessel reports
- registration and licensing
- marketing

At present the licensing and registration system is linked to the FFA Regional Register. Eventually it is planned to link all sets of information. The inspection database will be a component of this linked system.

A recent FFA MCS initiative is the development of a VOI database through which member countries are able to share information on vessels of interest. RMI is an active participant in VOI.

4.3.21 Training

There is no programme specifically designed to train and certify port inspectors. Training for boarding officers, observers, port samplers, VMS operators and data entry personnel is provided by FFA, SPC and through the Pacific Patrol Boat programme. The basic text used is the FFA Boarding and Prosecutions Manual.

4.4 Papua New Guinea

4.4.1 Background

Papua New Guinea (PNG) has a highly productive and extensive Exclusive Economic Zone (EEZ), with an area of 2.4 million km². These waters produce up to around 10% of the world's catch of major tuna species. Catches from the PNG EEZ are highly variable due to El Niño/La Niña effects, with total tuna catches varying between 125,000 tonnes in 1999 and the highest recorded catch of 374,000 tonnes in 2003. The 2004 catch is estimated to be 313,027 tonnes. More than 95% of this catch in most years is purse seine-caught skipjack, destined for canning. PNG has a long history of foreign fishing, initially licensing the Japanese fleet and in turn vessels from the United States, Korea, Taiwan and Philippines. Apart from the Japanese longline fleet, most of these vessels have been purse seiners.

PNG has put in place active policies to encourage PNG national involvement in the fishery and onshore investment in tuna processing for export, with considerable success. There is a cannery (130 tonnes/day) and a high capacity loining plant (potential 200 tonnes/day) in operation, with plans for expansion of these operations and two new canneries. If all planned expansions occur, up to 175,000 of tuna per annum could be processed in PNG.

³³ WCPF Convention, art. 25.

³⁴ FFA administers the Regional Register, the US Treaty and the FSM Arrangement.

Current purse seine fishing activity is a mix of access arrangements with the DWFN fleet and increasingly, by licensing domestic and locally based vessels. Catches for the latter group have increased from 31,800 tonnes in 1998 to 101,300 tonnes (or 28% of total p/s landings) in 2004. In 2006, 113 purse seine vessels are licensed to fish in PNG's EEZ, including the fleets of Korea (27), Taiwan (47) Philippines (17) and China (6) as well as the recently signed access agreement with Japan covering 32 purse seine vessels. A number of other purse seine vessels are domestically based and flagged to such countries as Vanuatu and Philippines. In addition vessels licensed under the Multilateral Treaty on Fishing with the USA and the FSM Arrangement, have access to PNG waters.

Since 1987 longline effort by foreign longliners has been minimal and in 1995, a domestication policy was introduced to encourage local development of the tuna longline fishery. Since then this sector of the tuna fleet has expanded considerably with catches increasing more than four-fold since 1998 to 3,918 tonnes in 2004. In 2004 there were 42 tuna longliners and eight shark longliners licensed to fish in PNG waters. Currently, 38 tuna longliners along with nine longliners targeting shark, are licensed to fish.

4.4.2 Oceanic Fisheries Management

The objectives of oceanic (tuna) fisheries management stated in the National Tuna Fishery Management Plan 1999 are to:

- maximize benefits to Papua New Guinea from sustainable use of its tuna resource;
- satisfy Papua New Guinea's regional and international obligations to the management and conservation of tuna resources, while ensuring the national interest comes first and foremost;
- minimise any adverse impacts of tuna fishing and related activities on the marine environment;
- minimize any adverse impacts on the artisanal and traditional fishing sectors;
- improve decision-making in relation to management of the tuna fishery through effective information and communications network; and
- ensure that the provisions of the Plan are developed, implemented, administered and monitored in an efficient and cost-effective manner.

Catch and effort and other restrictions for the tuna fishery are specified in the 1998 Tuna Management Plan.

Commercial tuna fishing in PNG now consists of purse seine and longline operations. The purse seine fishery is managed under a TAC of 338,000 tonnes. Purse seine vessel numbers are managed under the Palau Arrangement with plans to implement the new Vessel Day Scheme (VDS) recently adopted by the Parties to the Palau Arrangement. Longline fishing is prohibited within 12 miles from any land, island or declared reef.

The tuna longline fishery is managed by a TAC of 10,000 tonnes and vessel limits, with a maximum of 100 licences. The longline shark fishery is managed separately, with a TAC of 2000 tonnes dressed weight (including by-catch from longline vessels) and effort limits (9 vessels and 1,200 hooks per vessel). Longline fishing is prohibited within 12 miles from any land, island or declared reef..

4.4.3 Oceanic Fisheries Institutional Arrangements

Oceanic fisheries management is under control of the National Fisheries Authority (NFA), a statutory body established under the Fisheries Management Act 1998. NFA is required to implement government policy for managing and developing fisheries as a national asset. In 2004, NFA had a total staff of 71, and an annual operating budget of US\$6.1 million³⁵. NFA receives no recurrent

³⁵ US\$1.00= K(kina)3.141

funding from Treasury, operating on an approved budget funded from income derived from access fees, licensing fees, penalties and other miscellaneous charges. In 2003, income from these sources totalled US\$9.4 million; US\$7.4 million was returned to government as the annual dividend, with the balance held in investments.

The NFA has four activity areas (business groups) directly related to oceanic fisheries management. These are: Provincial and Industry Liaison, Fisheries Management, Licensing and Information and Monitoring, Control and Surveillance.

While the Minister of Fisheries has overall and ultimate responsibility for policy direction, the NFA Managing Director and Board play a role in developing fisheries policy at an operational level. Consultation between NFA, government departments and other stakeholders (including industry and NGOs) on policy matters is dealt with through:

- The Tuna Consultative Committee (TCC) whose membership includes representatives from NFA, the fishing industry, Attorney Generals, Foreign Affairs and the Maritime Operations Section of the Defence Force. The TCC has direct input into NFA papers on tuna management issues prior to their submission to the Board for decision.
- The Tuna Stakeholders Group, which meets immediately prior to the TCC and is open to all stakeholders in the tuna fishery, including industry, NGOs and the wider public.

The TCC is scheduled to meet on a quarterly basis and more often when required.

The Department of Environment and Conservation is responsible for broader aspects of environmental management, including marine pollution. The Department is actively involved in turtle conservation and considers the significant turtle migratory route in the Bismarck/Solomon seas as a priority for research and monitoring. Reflecting PNG's status as a member of CITES, the Department has particular responsibilities towards controlling the trade of protected and endangered species.

Responsibility for ocean fisheries legal issues is shared between the International Law Division (ILD) of the Office of the State Solicitor and NFA. ILD have three lawyers working part-time on fisheries issues and NFA has three legal staff, dealing primarily with licensing, compliance and other national issues. The level of communication between AGs and ILD is considered to be good.

4.4.4 Compliance

Compliance, monitoring, licensing and enforcement activities are carried out by the NFA, in a unique collaboration with the Marine Element (i.e. the Navy) which is an arm of the PNG Defence Force (PNGDF). PNG has had difficulties with maintaining their fleet of four patrol boats, and with funding for fuel and allowances. An MOA exists between the NFA and the PNGDF Maritime Element under which NFA funds the cost of 10 patrols per year for a total of one million PNG Kina. Without this support, very little ship-borne surveillance would occur. In the last five years approximately US\$1.6 million was expended on fisheries surveillance activities, and over US\$1.75 million was collected in terms of penalties imposed on illegal fishers. The Navy is looking to improve links with NFA to improve data flow (e.g. by the use of a remote VMS station at the Surveillance Centre and more regular updates on vessel licensing), and to gain an increased understanding of the implications of the WCPFC and other fisheries legal instruments for compliance activities .

The FFA VMS facility is located with the NFA and is operational at around 80% efficiency. PNG also operates its own national VMS. While the level of compliance has increased, the NFA and the Maritime Element are aware that regulations are not being fully observed by foreign fishing vessels that do not carry an ALC for monitoring purposes and the use of illegal FADs continues to occur. There has also been anecdotal evidence of IUU fishing involving pump boat handline fishers from Indonesia illegally fishing in FAD areas.

NFA has its own enforcement section, dealing primarily with compliance with licence conditions and cooperating with the Navy during surveillance operations. Coordination between NFA and the Navy is generally good, and relies on regular informal communications.

Expanded sub-regional cooperation in surveillance is considered important to PNG. In June, PNG participated in a sub-regional MCS exercise together with the FSM, RMI and Palau. For the period of the operation, data obtained through their respective VMS facilities was shared. It is anticipated that PNG will seek to become a party to the joint and reciprocal surveillance and enforcement arrangement between Palau, FSM, and RMI.

4.4.5 Monitoring

NFA operates a licensing database that contains full information on vessel characteristics.

Logsheets are required to be submitted by both foreign and domestic licensed vessels. Currently there is approximately 100% coverage for the domestic purse seine fleet and 70% for the domestic longline fleet.

There is a large observer programme in PNG which is well supported and coordinated by NFA. The programme currently has 86 active observers, with a target of 103 by the end of July. For the foreign fleet, target coverage of 20% for purse seiners, 5% for longliners and 100% for mothership operations are reported as currently being achieved. PNG is reliant on SPC and FFA services for observer training.

Landings data are currently available for approximately 15% of the purse seine catch and while all transshipments are currently observed, systematic recording of transshipments is not undertaken. Port sampling of the longline fishery occurs at Port Moresby, Lae, and Rabaul. Given the high level of observer coverage of the domestic purse seine fleet, there is considered no need to increase port sampling for this sector. However SPC has suggested that increased port sampling coverage of the foreign vessels landing in Wewak and Rabaul is required.

4.4.6 Scientific Analysis

PNG generally has sufficient data available to support regional stock assessments. Logsheet and landings data are processed by NFA, with data entry verification (quality control) provided by SPC. Observer, port sampling and packing list data are forwarded to SPC for processing, although there are plans to provide these data electronically to SPC. All PNG data are incorporated into regional databases and the PNG national database. NFA uses SPC-supplied software for generating reports of catch and effort data which it uses for STCB reports and other uses. There is a need for further capacity building to enable NFA staff to undertake more detailed data interpretation using statistical packages to analyse nationally and regionally held data.

Advanced data processing, capacity building and stock assessment advice is expected to continue to be an important regional role for the SPC particularly with regards to modelling management scenarios and deciding on effort and catch limits to inform management decisions.

There is strong support for activities geared towards meeting nationally identified research needs (e.g. the impact of FAD fishing on species composition).

Tuna by-catch is not a significant issue at the present time. Non-target species landed catch (by-product) are valued both economically and as a food source. Fishers are being encouraged to land by-product ashore so that information on the different species types, sizes, and age are documented, a requirement under PNG access agreements. Buyers are also encouraged to buy non-target species. PNG has a relatively new Shark Management Plan that provides guidance for its shark fishery. At the time of the mission, 9 boats were involved in the shark fishery with a TAC of 2000 metric tonnes

annually. Sharks are also caught by tuna longliners as by-product. Observer data on by-catch is forwarded to, and coordinated by the SPC.

The work done by the SPC on climatic impacts on oceanic fisheries is creating a deeper understanding and appreciation of the effect of environmental factors on tuna resources. While a FADs management policy was introduced in 2003, there remains some concern that the large number of FADs currently in the Bismark Sea (around 700) may be having some impact on resident stocks of tuna and other species.

The policy will require review in the near future, partly as a result of the impending introduction of the VDS and pump boats. A tuna tagging programme would provide an opportunity to do this particularly in the Bismarck Seas, preferably with the involvement of local scientists in order to build and strengthen local capacity. There is a need for training in the understanding of the application of reference points (an aspect of the precautionary approach) and of the application of ecosystem based approaches to management.

4.4.7 Transhipment and landing

Transhipment at sea is prohibited and transhipment in Papua New Guinea is required to take place at the designated ports of : Manus, Kavieng, Rabaul, Wewak, Lae, Vanimo, Alotau, Misima and Port Moresby. Purse seiners are required to make a minimum of three port calls for landing, resupply or maintenance purposes.

4.4.8 Exports

The total value of the tuna exports has more than doubled since 1999 and was estimated to be worth around US\$55 million in 2004. In 2001 the domestic tuna industry in Papua New Guinea accounted for some 460 jobs on vessels, with a further 2,700 employed in shore-based facilities. These numbers have increased significantly since that time, as domestic vessel and shore based activities, including the Wewak loining plant commissioned in 2004, have created 1,000 additional jobs alone.

PNG supplies a substantial domestic market (10,800 tonnes in 2003) and other markets in the region with canned tuna products, as well as export markets, mainly in US and Europe. In 2004 PNG exported 15,252 tonnes of canned tuna valued at US\$35 million. Other tuna products exported in 2004 included: 11,000 tonnes of frozen product valued at US\$7 million, shipped to Philippines, Japan and Taiwan; 2,111 tonnes of chilled tuna valued at US\$9.6 million, for the sashimi markets in Japan and Australia; and 2,973 tonnes of fishmeal, valued at US\$1.2 million exported to Australia.

4.4.9 IUU fishing

Illegal and unreported fishing is a problem in PNG. A study by the Marine Resources Advisory Group (MRAG)³⁶ of IUU activity estimated that the value of IUU caught fish amounted to US\$34 million for all fisheries in PNG in 2003, with IUU-caught tuna valued at US\$2 million. A Gillett, Preston and Associates Inc. study³⁷ indicated that the major concern was the potential extent of under-reporting of catches in almost all fisheries with the main issues being:

- under-reporting of purse seine tuna catches;
- under-reporting of purse-seine by-catch;
- under-reporting of by-catch;
- under-reporting in the shark longline fishery.

³⁶ MRAG, June 2005.

³⁷ The Impacts of IUU fishing in Papua New Guinea, Gillett, Preston and Associates Inc., March 2005.

Illegal access to PNG waters by non-licensed vessels is also viewed as a major concern with specific concerns being:

- illegal access by Indonesian vessels into the area of the PNG EEZ known as the dogleg;
- cross-border incursions by Indonesian vessels on the northern boundary; and
- illegal access to the fringes of the PNG EEZ by unlicensed flag of convenience vessels (vessels not included on the Forum Fisheries Agency Regional Register).

In 2005, a total of six tuna vessels were prosecuted for illegal and unlicensed activity with fines ranging from US\$10,000 to US\$300,000. Already in 2006 there are five vessels under investigation for illegal activity.

4.4.10 International Legal Instruments

Papua New Guinea has been an active participant in the development of the international legal instruments shown in Table 8.

Table 8: PNG International Legal Instruments

Instrument	Status
WCPF Convention	Ratified
1982 UN Convention	Ratified
1995 UN Fish Stocks Agreement	Ratified
Driftnet Convention	Signed, awaiting ratification
Convention on Biological Diversity	Ratified
FAO Code of Conduct	Accepted
1993 FAO Compliance Agreement	Endorsed
IPOA-IUU	Endorsed, not yet implemented
WSSD Fisheries Targets	Not formally adopted
FFA Minimum Terms and Conditions	Implemented

4.4.11 IPOA IUU

Papua New Guinea does not have a national plan of action to prevent and deter IUU fishing. It appears from an initial study of relevant legislation and fisheries management procedures that the guidelines set out in the IPOA-IUU are being practiced. Assistance to formulate a NPOA-IUU was requested during the visit.

4.4.12 Port State control

Papua New Guinea establishes port State control over fishing vessels seeking to operate in national waters through the Fisheries Management Act 1998 (FMA 1998), Fisheries Management Regulations 2000 (FMR 2000) and through fishery management plans. The FMA 1998 established the National Fisheries Authority (NFA) to manage fisheries resources.

All commercial fishing vessels including support-craft, are required to be licensed to operate. In addition, licenses are issued pursuant to a fishing access agreement to which PNG is a party. The access agreement and conditions of license, detail the manner in which vessels may be operated.

As a condition of license, vessels are required to submit to inspection prior to the first trip and following the last trip before exiting the EEZ. The regular inspection of vessels calling in to port to unload, tranship or resupply, is not undertaken. The monitoring of landings and transhipments as well as port sampling, is undertaken by fisheries officers.

4.4.13 Designated ports

Manus, Kavieng, Rabaul, Wewak, Lae, Vanimo, Alotau, Misima and Port Moresby.

4.4.14 Prior Notice of port access (Annex A)

All foreign fishing vessels are required to provide NFA with a 24 hour notice of their intention to call at an authorized port. In addition, a port call form must be submitted to NFA detailing catch on board and purpose of visit. All purse seine vessels are required to make four port calls a year: the first for a pre-trip inspection and the remaining three for landing, re-supply or repair purposes.

If the purpose of a port call is to tranship, then 48 hours notice must be given detailing:

- vessel name
- vessel license number
- category of report: tranship to vessel in port; tranship to port facility
- tonnes to be transhipped
- name of port
- destination of catch

In addition, if the landing is to a reefer vessel, that reefer vessel must also report activity details including the eventual destination of the tuna.

For tuna that is sold, a Sales Return Form detailing vessel, port, date, species and value, is required to be submitted.

4.4.14.1 Vessel identification

The vessel name and license number is required in the notice of access. Full details of the vessel, owner and master can be accessed from the licensing database and from the Regional Register.

It is a prerequisite of licensing that the vessel be marked according to the FAO standard specifications for the marking and identification of fishing vessels.

4.4.14.2 Purpose of access to port

Foreign fishing vessels are required to advise the purpose of a port call in the prior access notice.

4.4.14.3 Fishing authorisations

All vessels operating in PNG must be licensed pursuant to an access arrangement. The notice of entry requires vessels to indicate their PNG license number. Notice of authorisations to fish from the flag State or other coastal States is not a requirement.

4.4.14.4 Trip Information

Trip information as set out in Annex A (4) of the FAO Model Scheme is not currently a requirement.

4.4.14.5 Species information

Catch on board by species and weight is required as part of the request to enter port. The zone entry report also requires catch information.

4.4.15 Denial of port access to tranship or unload

All vessels are required to be licensed to operate in the EEZ. If a vessel is suspected of conducting IUU activity, prosecution may be a course of action and this may lead to a fine, seizure of vessel gear and catch and imprisonment.

Section 75 of the Fisheries Management Act, 1998, makes it an offence to import fish that has been taken against the laws of another State.

4.4.16 Inspections (Annex B)

As indicated above, at port inspections occur prior to the vessel's first trip and following its last trip. Mandatory inspections are not a requirement for vessels that tranship, unload or re-provision.

The inspection of vessels of interest does take place and in these cases the procedure established in the Surveillance manual, appended as **Attachment B**, is followed.

This procedure is based on the FFA Boarding and Prosecution manual and is in compliance with Annex B of the FAO Model Scheme.

4.4.16.1 Powers of authorised officers

Section 49 of the Fisheries Management Act, 1998, empowers Fisheries Officers to board and inspect fishing vessels and processing plants to inspect any documents, instruments, compartments and catch.

A comprehensive Surveillance Manual establishes the protocol for such inspections. The Fishing Vessel Sighting/Boarding Form is appended as **Attachment C**.

4.4.16.2 Fisheries officer identification

The Fisheries Management Act, 1998, section 48, requires fisheries officers to "upon request, identify himself and to produce evidence that he is a fisheries officer." Identifying the vessel master and providing identification as an authorised officer is standard operating procedure.

4.4.16.3 Flag State participation

It is not standard practice to invite the flag State to participate in the inspection process. However, the vessel agent may be on hand to assist.

4.4.17 Inspection report (Annex C)

The Fishing Vessel Sighting – Boarding form is required to be completed for each inspection.

The following is the information required by Annex C of the FAO Model Scheme but not specifically identified in the Fishing Vessel Sighting – Boarding form is shown in Table 9.

Table 9: PNG Inspection Report Gaps

FAO Model Scheme Annex C requirement	Comments
Maritime Mobile Service Identity number	
Previous vessel names and flag	Available from the Regional Register
Whether the flag State is a party to a particular regional fisheries management organisation	Foreign fishing vessels operating in PNG are required to be on the WCPFC Record of Fishing Vessels as well as in good standing on the Regional Register
Home port	
Names and addresses of owner/operator and previous owners	Available from the Regional Register
Certificate of master	
Authorisations to fish	MTCs require vessels licensed in the region to have the license(s) in the wheelhouse
Species and fishing gear authorisations	MTCs require vessels licensed in the region to have the license(s) in the wheelhouse
Duration of authorisation to fish	MTCs require vessels licensed in the region to have the license(s) in the wheelhouse
Areas visited on current trip	Available from logsheets and VMS
Areas where fish was caught	Available from logsheets
Ports visited	Port and date of departure required. Other port calls available from logsheets and VMS info.
Start and end date of discharge	Landing and transshipment monitored by NFA and reports collected
Fish species unloaded	Landing and transshipment reports collected by NFA
Presentation	
Live weight	
Intended destination of fish and fishery product	Data on tuna unloaded for export collected by NFA

The report is required to be signed by the boarding officer but no provision is made for the vessel master to countersign.

Additional items required in the Fishing Vessel Sighting – Boarding form are shown below.

- VMS unit inspection
- navigation equipment inspection
- bird radar fitted
- conditions of license

4.4.18 Information management

4.4.18.1 Inspection database

A database of information from the Compulsory Vessel Inspection and Checklist is in operation. This information however, is limited to verification of vessel characteristics. There is no database for the management of information from the Fishing Vessel Sighting – Boarding form.

Currently it is not the practice to send reports of all inspections to the flag State or relevant RFMOs. Information relating to port inspections are now required to be reported to the WCPFC on an annual basis. Article 25 of the WCPF Convention makes provision for a member flag State to conduct an investigation of a flag vessel at the request of another member.

Other database systems include those relating to:

- the vessel licensing system
- VMS
- prosecutions

4.4.19 Training of port State inspectors

There is no programme specifically designed to train and certify port inspectors. Training for officers involved in port inspections has been provided by FFA and SPC through their regional MCS, observer and port sampling training programmes.

FFA conducts approximately four “dockside boarding” workshops each year around the region. Budgetary constraints prevent more courses being held. An outline of the course is appended as **Attachment D**.

These courses have been conducted for some years now so that there is a growing pool of “inspectors” trained to a regional standard. Providing supplementary training for the regional observers, would add to that pool.

5. SUMMARY AND ANALYSIS

5.1 The FAO Model Scheme

The FAO Model Scheme outlines minimum port State measures to be applied either through adoption of regional memoranda of understanding, through RFMOs or by individual port States. The Scheme promotes a harmonised approach which is not intended to derogate from the sovereignty of States over their ports, but to support a fair, transparent and non-discriminatory system for implementing port State obligations. Port States are urged to consult, cooperate and exchange information with other States in order to facilitate the implementation of the FAO Model Scheme. The aim of the scheme is to eradicate IUU fishing.

The substantive parts of the FAO Model Scheme cover the following:

- port State inspection procedures;
- information to be provided in advance by fishing vessels prior to entry into port ;
- actions to be taken by port States when violations are detected;
- information to be collected and exchanged by the port State;
- information systems; and
- training for port State Inspectors.

Since the establishment of FFA, member countries have developed a number of fisheries management measures aimed to ensure that as coastal States, they maximize the benefits associated with the harvesting of tuna resources in the region. These measures, including the Regional Register, harmonized minimum terms and conditions for fishing access, VMS, the Niue Treaty, multilateral licensing, observer and sampling programmes, aerial and surface surveillance, standard boarding procedures and personnel development, have all contributed to the establishment of port inspection procedures that meet many of the requirements of the FAO Model Scheme. To be effective however, the inspection schemes need to be part of a fully integrated national MCS programme and the national MCS programmes need to be integrated with subregional, regional and eventually international MCS programmes. To achieve this would require the linking of information systems.

5.2 IUU fishing

After considering information provided by enforcement officials as well as FFA, it appears that the level of fishing by unlicensed vessels has decreased significantly in recent years. RMI reported that there had not been an arrest of an unlicensed vessel in years. This has been largely due to the increased level of aerial and surface surveillance as well as the increased level of cooperation between FFA member countries particularly with respect to joint surveillance and enforcement operations, application of MTCs and the involvement of US enforcement agencies. As well, it would appear that heavy penalties imposed in past years has had a deterrent effect guiding foreign fishing vessels to become more compliant.

While the incidence of fishing by unlicensed fishers appears to have declined, prosecutions involving licensed vessels failing to comply with conditions of licence, continues. Recent prosecutions have involved violations associated with reporting, non-target species, closed area encroachment, VMS tampering, and at-sea transshipment.

The view of national enforcement agencies as well as FFA enforcement personnel, is that catch reporting violations present the biggest challenge because of the volume of work and analytical skill needed to verify daily logsheet data with other sources of information including VMS information, zone entry/exit/weekly reports, landing and transshipment reports as well as observer reports.

5.3 Comparative analysis

The following is a more detailed analysis of the vessel inspection schemes of the surveyed countries as they compare to the FAO Model Scheme.

The designated ports in Fiji, FSM, RMI and PNG are key transshipment, landing and resupply points for tuna fishing vessels operating in the region. All ports host vessels that are licensed to fish in a number of other coastal States in the region and in the case of Fiji, there has been at least one occasion on which a vessel that has fished in another RFMO region has sought port access.

Other key ports include PagoPago and Guam. These ports should be considered essential components of a regional port State inspection scheme.

There is some competition between the surveyed port States to maximize the number of port visits by vessels because of the added value associated with at-port transshipment and landing. The FFA member country ban on at-sea transshipment had two main purposes: to ensure better monitoring of catch; and to take advantage of the economic benefits associated with at-port transshipment. FSM has estimated that a single transshipment generates up to US\$10,000 from fees and local purchases.³⁸ For RMI the value is estimated at US\$5,000.³⁹ Fiji and PNG have on-shore processing plants and need to keep these supplied with raw material. With a relatively stable number of vessels operating in the region, attracting a vessel to one port mean will mean a loss to another. In this competitive environment, it is essential that the nature and standard of compliance regimes among port States remains complimentary.

Table 10 provides a summary comparison between the FAO Model Scheme and the inspection schemes operating in Fiji, FSM, RMI and PNG. All countries except PNG conduct mandatory inspections of foreign vessels that call in to a designated port primarily to ensure compliance with conditions of license. Inspections in PNG are conducted prior to a vessel's first trip and at the completion of its last trip and where there is reason to believe that an IUU offence has been committed.

³⁸ Federated States of Micronesia NPOA-IUU, 2004.

³⁹ Glen Joseph personal comment.

For FSM and RMI the initial fisheries inspection is conducted by maritime (police) officers and any transshipment or landing is monitored by fisheries personnel. For Fiji and PNG, inspection and monitoring are undertaken by enforcement officers from the respective fisheries authority.

All four countries have inspection regimes that contain elements of the FAO Model Scheme largely due to the management measures adopted by FFA member countries over many years. It is evident however these gaps do exist particularly with respect to coordination and integration at the national level and at the regional level. Since the establishment of FFA in 1979, member countries have cooperated in the development and implementation of management mechanisms to monitor and control the exploitation of shared tuna resources by fishing fleets that operate throughout the region, across multiple zones of national jurisdiction and on the high seas. Many of these coastal State initiatives, such as the Regional Register, the region wide adoption of the FAO Standard Specification for Vessel Marking and Identification, VMS, standard catch and activity reporting requirements, the use of observers, the ban on at-sea transshipment and standard boarding and inspection regimes, contribute towards the fulfilment of many elements of the FAO Model Scheme.

5.3.1 Prior notice of access

The FAO Model Scheme assumes an environment where ports may be subject to open access including by vessels geared for a range of methods and target species. The inspection schemes in FFA member countries however are focused on the tuna fisheries and require a foreign fishing vessel which engages in fishing activity to be in good standing on the Regional Register and to be licensed to fish. Vessels are also required to be VMS compliant. Because of this FFA members are able to obtain full information on a vessel including with respect to characteristics, master and owner, at least 24 hours before it enters national waters.

However, the current regional system needs to factor in two sets of information to complete the information set required to be provided in advance by foreign fishing vessels.

- flag State authorization
- fishing authorizations to fish in other coastal States

This information is available but needs to be made accessible. Flag State authorization is now a requirement for vessels operating in the WCPFC Area beyond areas of national jurisdiction and all authorized vessels are required to be on the WCPFC Record of Fishing Vessels. Information on vessels licensed in other WCPFC Area coastal States, needs to be made available to the port State and this can be achieved by having a central registry of currently licensed vessels (at FFA) or by linking all national license registries.

5.3.2 Inspection protocol (Annex B)

All four countries follow the basic boarding procedure as set out in the FFA Boarding and Prosecution manual. This manual was developed in the early 1990s and has received some enhancement by the Australian and New Zealand armed services to strengthen the “use of force” components. Papua New Guinea has developed its own Surveillance Manual which includes a boarding protocol and this is appended as **Attachment D**. Papua New Guinea has also developed its own Prosecution Manual which provides detailed procedures relating to evidence and includes valuable information on previous fishing prosecutions.

All four countries also benefit from the training modules covering, dockside boarding, at-sea boarding, observer and port sampling duties, provided by FFA, SPC, the Royal Australian Navy (RAN) and the United States Coast Guard (USCG). This regionally coordinated training helps to ensure that boarding and inspection is conducted in a standard manner across the region.

5.3.3 Flag State participation in inspections

It is not the current practice to request the flag State to participate in the dockside boarding process. For this to occur, there would need to be a formal arrangement in place. It is however the practice to have the vessel agent on hand to assist. In principle it may be beneficial to have flag State inspectors involved particularly at ports where inspections and their analyses are constrained by manpower restrictions.

5.3.4 Inspection report

Boarding and inspection checklists have been developed according to the needs of the individual countries covered in this study. They vary in form and content (fields) between one another and all omit fields specified in the FAO Model Scheme report (Annex C). One reason for this is that inspection is conducted in a phased approach with authorities from immigration, customs, ports, maritime patrol and fisheries agencies conducting inspections for different purposes. Vessel and master certification checks, for example, is the responsibility of the ports authority and not included in the fisheries/maritime inspection report. In terms of landing, transshipment and export information, this may be collected separately as part of the monitoring or sampling programmes. This highlights the need for coordination between the agencies involved to ensure that information collected disparately, is able to be retrieved readily for among other things, the compilation of a comprehensive inspection report.

The appropriate report content and format can be achieved at the database system design stage. Having standard database systems established at the various ports, will then ensure standardized reporting.

5.3.5 Notification to flag State, coastal State, RFMO

Formal mechanisms in place that allow for a port State to inform the flag State of a vessel suspected of committing a fisheries offence, are the centrally administered multilateral fishing arrangements and the WCPFC.⁴⁰ The WCPFC also provides for cooperation with other RFMOs.⁴¹ Government to government agreements such as those between Japan and the governments of FSM, RMI and PNG, provide for dispute settlement.

It was noted, by all countries, that one of the aims of the IPOA–IUU is to ensure that flag States take responsibility for the actions of their flag vessels and that port State notification is one way to achieve this. The experience in the region however, is that more direct assertive action through the use of administrative penalties, has been required to ensure IUU vessels are dealt with efficiently. FFA member countries have also taken enforcement action through the Regional Register.

FSM, RMI and PNG all have “Lacey Act” provisions in their legislation. This provision makes it an offence for a vessel or person to import, export, transport, sell, receive, acquire or purchase any fish taken, possessed or transported in contravention of another State’s laws. For this to be applicable in RMI and FSM, a formal arrangement needs to be in place with the State where the offence took place, while for PNG, proof that the particular activity constitutes an offence in the foreign State, needs to be established.

A key reason for establishing fishing access arrangements is to ensure that the fishing party takes responsibility for the actions of vessels licensed pursuant to the arrangement. As part of the arrangement, the licensing State requires that a resident vessel agent be in place to respond to legal notice. In PNG, all vessels are required to post a bond which NFA may draw on to cover payment of

⁴⁰ WCPF Convention, article 25.

⁴¹ WCPF Convention, article 25.

any penalties imposed for license breaches. In RMI and FSM, administrative procedures are in place to quickly deal with certain offences.

The only cases detected of a port State communicating with the flag State, coastal State and relevant RFMO regarding suspected IUU fishing activity, took place in Fiji. This involved two cases of IUU fishing, the assumed flag State of Indonesia, the coastal State of Vanuatu and CCSBT. The two vessels concerned were successfully prosecuted.

In terms of port State to coastal State notification, this occurs on an informal basis and on occasion, through FFA. The arrangement between FSM, RMI and Palau on Cooperation in Fisheries Surveillance and Law Enforcement, allows for joint and reciprocal surveillance and enforcement, but this arrangement is focused on at-sea patrols. There would appear to be value in extending such an arrangement to include other aspects of MCS including at-port inspections.

In relation to the development of joint and reciprocal surveillance and enforcement arrangements, it is noted that other States in the region are exploring the establishment of sub-regional fisheries MCS arrangements. Should this be the case then it would add to any such arrangement if the exchange of information relating to inspections (including at-port inspections), VMS, landing, transshipment, licensing and prosecutions, were included.

5.3.6 Information management

Information management is the most critical area of the inspection process that requires strengthening. The FAO Model Scheme provides guidance on the management of inspection information including that information should be in a standard format and that it should be shared through computerized communication between States and RFMOs. To equip countries with information management systems compliant with the FAO Model Scheme guidelines would require the provision of appropriate software and training in its use.

At present Fiji and PNG have database systems that are used to process information obtained from boarding inspections (including at-sea boarding information) and all four have hardware capacity as well as software that might be appropriately configured. In addition the fisheries and/or maritime agencies have personnel skilled in the use of computers.

To be a fully effective management tool, however, at-port inspection needs to be integrated both nationally and regionally with all other fisheries related programmes and mechanisms including the Regional Register, licensing, VMS, the observer programme, catch and effort monitoring as well as the prosecution process. In terms of information management, the inspection database should have links to all other fisheries related databases. The end result should be that all information relating to a vessel, an operator or an incident, is linked and reports on all aspects of a vessel can be produced. The national port inspection scheme should thus be integrated with all national and regional fisheries related programmes and all port inspection schemes need to be harmonised and networked.

Exploratory work into the development of a relational surveillance database for use by member countries is currently underway at FFA. The proposed surveillance database would enable the input and processing of a range of information including from vessel sighting, inspection and prosecution. This information would then be linked to other sets of information such as catch, landing, transshipment, licensing and VMS.

The Seychelles now has an electronic, automated licensing system using the Fisheries Information Statistical System (FINSS), linking vessel agents, the management authority, licensing authority, central bank as well as coast guard and enforcement authorities. Testing is ongoing with the inspection and enforcement modules and a regional vessel record and statistical hub using FINSS. A case study of using FINSS for port inspections is appended as **Attachment E**.

5.3.7 Training (Annex D)

Enforcement officers active in vessel inspection schemes have received training through a range of modules provided by FFA and SPC as well as PPBP that together, appear to meet the guidelines outlined in Annex D of the FAO Model Scheme. There is however no regional certification process. Areas covered in these modules include boarding and inspection procedures, regional fisheries management, legal instruments, collection and presentation of evidence, vessel and gear characteristics and biological aspects. It is noted that the WCPFC will soon develop inspection procedures for use during high seas patrols. At-port inspection and at-sea inspection should mirror one another. Table 10 compares national inspection schemes with the FAO Model Scheme.

Table 10: Comparison of National Inspection Schemes with the FAO Model Scheme

FAO Model Scheme	FSM	FIJI	RMI	PNG	Comment
IPOA-IUU		X	X	X	FSM NPOA-IUU, 2004
					Regional Register/VMS compliant
					Licensed to fish in port State
Compulsory inspection				O	PNG inspects pre first trip and post last trip. Also when IUU suspected
Designated Ports					
24 hrs notice					72hrs for transshipment
Prior notice information					
Vessel ID					Link to RR/VMS, license database for full vessel information
Purpose of access					
Flag State, other coastal State authorizations	X	X	X	X	Available from WCPFC Record
Trip Information	X	X	X	X	All vessels VMS compliant
Species information					
Denial of access					Prosecute for IUU
Inspection protocol (Annex B)					FFA Boarding manual standard
Powers of authorized officers					Legislated
Identification					SOP
Flag State participation	X	X	X	X	Vessel agent on hand
Inspection Report (Annex C)	O	O	O	O	Large gaps c.f. FAO Model Scheme. Standard report format needed. Solved by having standard database.
Notifications re IUU					
Flag State	X		X	X	Resident agents required to accept and respond to legal notice
Coastal State	O		O	O	Multi-lateral treaties and occasional State to State
RFMOs	O		O	O	Occasional notification to FFA
Information Management					
Inspection database	O	O	O	O	Links needed to log sheet data, RR etc. A standard regional database would enhance info sharing and reporting to flag State, RFMOs, and coastal States
Prosecutions Database	O	O	O	O	Ibid
Training	O	O	O	O	Training in techniques provided by FFA, USCG, PPBP but regional certification needed
Formal Regional Arrangement for the exchange of information in place	X	X	X	X	Sub-regional or Regional Niue Treaty Arrangements could incorporate port inspection as one component.

Key: X : Non-compliant; O : Elements in place but requires enhancement.

6. RECOMMENDATIONS

Noting that effective MCS requires the coordinated use of assets and information and that inspection is one component, it is recommended that a holistic approach be taken to the implementation of a regional port State inspection scheme as follows:

6.1 Information management

It is recommended that an MCS information system be established in all FFA member countries, in accordance with agreed regional standards, that allows:

- the input of information from vessel sightings, boarding, prosecutions and other information that relates to all vessels operating in the Western and Central Pacific Ocean (WCPO);
- the maintenance of a record of (national/regional) authorized officers and their level of training;
- links to other databases including, the Regional Register, VMS, the WCPFC Record of Fishing Vessels, daily catch logsheets, landing and transshipment, export, final landing, observer reports, licensing;
- the production of a vessel history at the time a vessel registers an intention to enter port;
- the production of inspection forms (at-port and at-sea); and
- the production of reports including inspection and prosecution reports, with the requisite information available to the flag State, other coastal States and RFMOs as appropriate.

In order to enhance the ability to analyse daily catch logsheets and noting that timely and accurate information is crucial for effective fisheries management, it is recommended that digital catch reporting by each vessel be introduced and that this information be provided to member countries through VMS on a daily basis. It is further recommended that VMS information on each vessel be made available to all countries which license that vessel to ensure all licensing countries are able to track the vessel throughout its full range.

It is recommended that an appropriate cost effective and secure communications network be established that allows for direct, computerized exchange of messages between FFA member countries as well as other significant port States (PagoPago and Guam).

6.2 Training

It is recommended that a regionally coordinated training programme be developed to train and certify MCS personnel including in the areas of:

- vessel inspection;
- national, regional and international legal instruments;
- information gathering and analysis;
- evidence gathering and presentation; and
- VMS operation.

The current FFA Dockside Boarding Workshop (course outline appended as **Attachment D**) could be used as the basis for such a training programme.

6.3 Regional arrangements for the coordination of inspection

It is recommended that formal regional or subregional arrangements be entered into to ensure coordination and cooperation in port inspection among FFA member countries and that these arrangements include:

- the exchange of information relating to licensing, inspection outcomes and prosecutions; and
- the cross authorization of inspectors to allow for the exchange of inspection personnel and to ensure that high frequency ports that host commonly licensed vessels are adequately resourced.⁴²

It is further recommended that other high frequency ports PagoPago and Guam that service vessels licensed by FFA member countries be included in such regional or subregional arrangements.

⁴² For example, Tuvalu has a number of regionally trained observers that could be based in Suva where Tuvalu licensed vessels are based, and utilized for inspection purposes.

FSM National Police
Inspection form for foreign and domestic fishing vessels

INSTRUCTIONS: Fill in the Information below with assistance from Captain or Fishing Master from each Boat Calling at any FSM Port, whether they have an FSM Fishing Permit or not. Return Completed Form to the FSM National Police Maritime Wing Unit Office in Dekehtik, Kolonia Pohnpei. Tel #: (691)320-2384/ Fax # (691)320-8387/ E-mail: fsmvms@mail.fm

<p>1. Name of Vessel: _____</p> <p>2. Radio Callsign: _____</p> <p>3. Registration #: _____</p> <p>4. Type of Vessel: _____</p> <p>5. FSM Permit Number: _____</p> <p>6. Effective Date: _____</p> <p>7. Name of Permit Holder: _____</p> <p>8. Expiration Date: _____</p>
<p>9. Gross Tonnage: _____</p>
<p>10. Name of Captain: _____</p> <p>11. Number of Crew: _____</p> <p>12. Fishing Master: _____</p> <p>13. Last Port: _____</p>
<p>14. Date Departed Last Port: _____</p> <p>15. Agent: _____</p> <p>16. Purpose of Entry into FSM: _____</p> <p>17. Vessel Finished Fishing or Returning to Fishing: _____</p>
<p>18. If Returning to Fishing Ground where do they Plan to Operate in: _____</p> <p>19. How Much Fuel do They have Onboard Now: _____</p> <p>20. Do they Plan on purchasing Fuel in FSM: _____</p> <p>21. How Much: Gallons. _____</p> <p>22. How much fish do they have Onboard Now: SkipJack: _____</p> <p>YellowFin: _____</p> <p>Big Eye: _____</p> <p>Marlin: _____</p> <p>Shark: _____</p> <p>Others species: _____</p>

23. Are They Fishing with Other Vessels in group: _____
24. How Many: _____
Callsign: _____
General Comments: _____

24. Log Books Check: YES/NO 25. Charts checked: YES/NO. 26. VHF: YES/NO 27. HF: YES/NO
VMS: YES/NO. 28. General Comments: _____

29. Boarded: AT SEA/INPORT 30. Standard of English: _____
30. Signature of Captain: _____
Date and Time: _____
31. Interviewed by Officer: _____
Signature of Boarding Officer: _____
Date and Time: _____

General Comments: _____

**Papua New Guinea
Code of conduct for boarding**

This Code of Conduct should be adopted by Fisheries Officers of the NFA when they conduct routine checks of fishing vessels to make sure they are complying with the fisheries laws of Papua New Guinea.

The purpose of The Code of Conduct is to help maintain good relationships between Fisheries Officers, fishing vessel owner/operators and crew. Good relationships result in co-operation and, therefore, good results (successful prosecutions).

A fishing vessel for the purposes of this Code is defined in Part 2 of the Act 'Interpretation'. *Fishing Vessel (FV)* means any boat, ship or other craft which is used for, equipped to be used for, or of a type normally used for, fishing or related activities, and includes carrier vessels.

Foreign Fishing Vessel (FFV) means a fishing vessel other than a Papua New Guinea fishing vessel or a locally based foreign fishing vessel.

How to apply the Code of Conduct

In normal circumstances when a PNGDF Patrol vessel is approaching an FV with the intention of boarding, Fisheries Officers should permit the crew of the FV time to prepare before coming alongside. Using verbal signals and hand signals, as well as VHF radio calls to the FV concerned, Fisheries Officers should state their reasons for wanting to board the vessel.

If the crew of the FV do not agree to be boarded the Commanding Officer (C/O) of the PNGDF will take action to ensure the boarding can take place. The Fisheries Officer will be advised when it is safe to board. Officers must take care in all sea conditions and must not assume that the crew of a FV will assist in the boarding.

Section 49 of the Act refers to the '*powers of Fisheries Officers*'.

(1) Notwithstanding Section 3(2), this Section applies to all persons and all vessels.

A Fisheries Officer may, without a warrant:

stop, board, enter, search and stay on board for purposes of exercising his or her powers under this Act

- (i) *any vessel in the fisheries waters which he or she has reason to believe has been used, is being used or is intended to be used for fishing or a related activity*
- (ii) *any Papua New Guinea vessel outside the fisheries waters; or any other vessel to which this Act and any international law or agreement applies.*

Fisheries Officers are to produce their authorities, both as a matter of courtesy and as a legal requirement, immediately on boarding the vessel — the powers of inspectors is described in Section 49 of the Act.

The production by any Fisheries Officer of any identification document issued to him or her shall, until the contrary is proved, be sufficient authority for any such Fisheries Officer to do any thing which he or she is authorised by this Act to do.

The Captain of the fishing vessel should be approached first. Fisheries Officers will then formally state that they are conducting an investigation for the purposes of ascertaining compliance with the Act. (Use a language card if applicable.)

The Captain should be requested to be present when any inspection is being carried out. If any whole fish and/or fillets need to be removed from freezers, this should be done as quickly as possible to prevent the catch from spoiling. Crew members may be asked to assist. Fisheries Officers should attempt to gain their cooperation.

Fisheries Officers should be polite, courteous and professional at all times. Although they may have to be assertive towards the Captain and crew they should not be rude. It will be necessary to interview in a formal manner if a breach of the Act is alleged.

Nothing in this code should be read or interpreted in any way that may compromise a Fisheries Officer's duty as a law enforcement officer — this duty being to investigate potential breaches of the Act and to make a case to present to the Courts.

Reasons for boarding a fishing vessel

A Fisheries Officer may board a boat to find out whether the Act is being complied with. Section 30 — *'Fishing and related Activities Subject to Prohibition'* provides the legislative authority.

Papua New Guinea
Fishing vessel sighting/Boarding Form
National Fisheries Authority
Fishing vessel sighting - Boarding Form

Date:	Time:		
Location:	GPS Fix	Lat.	Long.
Type of FV			
Registration Number and Flag			
Displayed	Yes/No		
Captain's Name			
Captain's Address			
Date of Departure	Port of Departure:		
Access or Conditions of Licence			
BRD/TED fitted			
Navigation equipment: Compass/ sounder/sonar/ clock Operating Yes/No	GPS/D	If instrument not working reason:	

Vms	Unit Operating	Yes/No
	Reason Not Working	
	Seal Intact	Yes/No
	Reason Intact	
	Unit No.	

Catch	Weight	Catch	Weight	Log Book Carried	Y/N
Prawns		Squid		Log Book Completed	Y/N
Tuna Species:		Reef Fish		Validation Catch/Logbc	Y/N
Tuna Species:		Other Fish			
Tuna Species:		Crabs			
Mackerel		Swordfish			
Lobsters		Sharks			
Beche de mere		Others			
Fishing Equipment	Trawl: Length of head rope/s				
	How many nets on board				
	Mesh Size: (each net)				
	Type of nets				
	Long Line: Number on board:				
	Length of each line				
	Other Fishing Equipment		Type		
	Description and numbers:				

Breaches/Cautions/Comments and any impending action:

Boarding Officer/s		Signature/s	Date
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**Forum Fisheries Agency
Workshop on Dockside Boarding**

Course Outline

1. Overview of Fisheries
2. Fisheries Management
3. Regional Fleets and methods of fishing
4. Overview of International Arrangements as they relate to enforcement: UNCLOS, UNFSA, FAO Compliance Agreement, FAO Code of Conduct for Responsible Fishing (IUU), WCPFC Commission, Drifnet Convention, The US Treaty, Niue Treaty
5. Overview of sub-Regional arrangements: PNA, FSM, Palau
6. Harmonised Minimum Terms and Conditions
7. Fisheries Legislation
8. Authorised Officers
 - a. Powers: seize, detain, arrest and penalize
9. Identification of offences, penalties
10. Bonding, forfeiture
11. Type of evidence, burden of proof
12. Fishing access agreements
13. Exercise: Identification of offences
14. Boarding and inspection procedures
 - a. Kit
 - b. Party
 - c. Collection of evidence
15. Gathering, analyzing and safe-handling of evidence
16. Asian dating system: Taiwan, Japan, Korea
17. Charges and elements of fishing offences
18. Mapinfo-FFA Maps
19. Exercise: Boarding
20. Exercise: Witness statement writing

**Indian Ocean Tuna Commission
Use of FINSS for port inspection**

For port inspection, two new modules have been developed for FINSS that source data from within the vessel registry and the licensing registry as well as outside sources such as other regional inspection databases and vessel lists from other RFMOs. Prior to making an inspection a compliance officer would generate FINSS Enforcement Reports comprised of a Vessel Details Form, a Pre-boarding Form and a Boarding Form. The Vessel Details Form contains all the known information relating to a vessel and provides for any updates that are required following inspection. In addition, the MCS manager can highlight any items that require particular attention when next the vessel is inspected. The Pre-boarding Report draws information from multiple sources and includes license information (including vessel photo and license conditions) details of prior regional inspections, sighting, infractions and observer reports as well as RFMO registers. The Boarding Report acts as both a data collection form and an information source and details all information required at the time of the inspection. All items in both the Vessel Details Form and the Boarding Form are in both English and the spoken language of the vessel master. The full customisation features of FINSS allows the forms to look identical to the database tables thus minimising errors when updating FINSS after boardings and allows comprehensive security measures to be put in place.

**New Zealand port State measures
Executive summary**

David Marx¹

The New Zealand presentation shared New Zealand's experiences with the Workshop participants. The areas discussed in the New Zealand presentation included the following.

- The role that monitoring, control and surveillance (MCS) frameworks (including port State measures) play in respect of supporting fisheries management objectives, standards and frameworks.
- An overview of New Zealand's MCS framework.
- Identifying how port State measures fit within the MCS Framework.
- An analysis of the New Zealand port Scheme against the FAO Model Scheme on port State measures..
- How New Zealand completed the analysis and made a comparison.
- Identification of additional measures and adding these to the template.
- The legal basis for the New Zealand framework and its application.
- Collecting, collating and using the information.
- The importance of effective implementation: .
 - legal and administrative approaches;
 - domestic and international obligations;
 - systems/processes used;
 - the importance of having a wider understanding to ensure that implementation is effective.
- Consideration of performance measurement to make improvements.
- The benefits of harmonization within the region.
- Challenges.
- Questions, answers and observations.

¹ Senior International Advisor, Ministry of Fisheries, New Zealand.

Members of Working Groups

Practical application of port State measures Case Study: Bold Beauty

WORKING GROUP 1	WORKING GROUP 2	WORKING GROUP 3
ALEKERA, Simon (Solomon Islands)	APISAKE, Soakai (Tonga)	ATANRAOI, Pole (Federated States of Micronesia)
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IEREMIA, Victoria (Samoa)	IGISOMAR, Sylvan (Commonwealth of the Northern Marianas)	IWAIS, Anlus (Papua New Guinea)
KANAS, Beverleigh (Vanuatu)	KERR, Phillip (New Zealand)	LANWI, Samuel (Marshall Islands)
KOMANGIN, Gisa (Papua New Guinea)	MAHIT, John (Vanuatu)	MALSOL, Nanette (Palau)
MARSH, Vanessa (Niue)	MURIN, Hazlitt Jeremiah (Nauru)	MO'ALE, Viliami (Tonga)
MYAZOE, Xavier (Marshall Islands)	PANGELINAN, Eugene (Federated States of Micronesia)	OBED, Wesley (Vanuatu)
RAIWALUI, Anare (Fiji)	TAKUIA, Uakeia (Kiribati)	SHARP, Eidre (New Zealand)
TEARO, Kintoba (Kiribati)	TOBASALA, Charles (Solomon Islands)	GUSTAFSSON, Marten (Sweden)
PELASIO, Mose (Tokelau)		
RESOURCE PERSONS		
BROWN, Colin	TUPOU-ROOSEN, Manu	AQORAU, Transform
PAINTER, Kevin	PAWUT, Lamiller	LOBACH, Terje
TSAMENYI, Martin	ORTIZ, Paul	MARX, David

Working Groups reports

Practical Application of Port State Measures

WORKING GROUP 1

Main IUU fishing problems in the region that can be addressed by port State measures

- Lack of capacity to police national and regional waters;
- Inconsistency of documentation;
- Lack of resources/man power within countries to deal with IUU fishing issues (availability of enforcement resources);
- Lack of training of boarding personnel (ongoing training);
- Inadequate clearinghouse coordination;
- Lack of good governance/political will;
- Multiple licensing of one vessel;
- Problem is also within domestic agencies of the government where they do not allow access of the vessel for outstanding debts.
 - e.g. Port Authority denied access to a vessel – without consulting other relevant agencies. Vessel then re-routed to neighboring port.

Gaps in the implementation of the FAO Model Scheme

- Weakening of already existing schemes e.g.: refer to Action 5 of the Model Scheme;
- Is it perhaps a little bit too lenient?
- Ports of convenience;
- Most FFA members have already exceeded the minimum requirements which are set out in the Model Scheme.

Constraints and solutions to overcome identified gaps

- Lack of government will and good governance – are we perhaps allowing these things to happen?
- Things required in the scheme are in existence but are not being implemented;
- Technological constraints – hindrances to access of websites, basic emailing facilities.
- Lack of urgency;
- Ports of convenience – For FSM this is happening in country as some states are benefiting off others;
- Requirement for notification – interdepartmental relationships – no support system;
- Is there enough capacity building? Is there sufficient training. Issue of human resources – or perhaps rather a lack of them;
- Lack of resources/facilities to undertake port state measures and enforcement/formalities of boarding and inspection;
- Fine print of the license – terms of conditions;
- Access to the VMS data is often not accessible by those responsible for the carrying out the duties- Fiji. VMS and log verification;
- Port State enforcement: Who/which agency is responsible for this area. Can departments work cooperatively? FIJI: Reps from the different agencies board;
- Could all these duties be centralized? Perhaps this may present other challenges.

Process for adapting and strengthening the FAO Model Scheme in the Pacific Islands

- Standardization – Everything working harmoniously;
- Take advantage of the new MCS websites;
- More information sharing-networking;
- More training and investment in areas which are lacking in resources;
- Fostering relationships between neighboring States;
- Addressing these issues at a ministerial level;
- Traceability;
- Internally: The law can be tailored to accommodate for the changes and implementations – need to modernize existing legal regimes.

Key linkages between port State measures and other compliance tools

- VMS data sharing;
- Verification of data – logbooks, vessel equipment;
- Patrols – cooperation, cooperation, cooperation;
- Airports – major air hub for the transportation of sashimi grade tuna and other fish products;
- Observer scheme- information sharing by observers.

WORKING GROUP 2

Main IUU fishing problems in the region that can be addressed by port State measures

Undermines National, Regional Conservation and Management Measures

- Non and misreporting catches/falsification of catch information/documents;
- Unauthorized fishing;
- Fishing by unregistered and unlicensed vessels;
- Fishing in closed areas;
- Lack of call signs/vessel markings;
- Lack of legislation / policy that address IUU fishing.

Gaps in the implementation of the FAO Model Scheme

- Inadequate legal and policy framework;
- Lack of coordinated approach to implementing port State measures/national/regional and international levels;
- Reluctance to take ownership to promote and implement the port state model scheme;
- Capacity issues in terms of numbers, expertise, knowledge (national/regional/international obligations).

Constraints and solutions to overcome identified gaps

Constraints: Lack of political will/varying degree of interests at national/regional/international levels

Solutions:

- Increased awareness of Model Scheme;
- Review and address the legal and policy framework;
- Monitoring/audit of regional performance and development;
- Harmonizing of national and regional measures;
- **Capacity building with the people involved in implementing port state measures.**

Process for adapting and strengthening the FAO Model Scheme in the Pacific Islands

(The Scheme is a minimum standard of measures)

- Use the Model Scheme to identify the gaps in national framework;
- Fill the gaps via the approaches identified in the solutions;
- Determine at a national level whether to then build on these minimum standards;
- All fishing vessels vs. foreign vessels.

Key linkages between port State measures and other compliance tools

- Catch documentation schemes;
- Trade measures (=> CDS);
- VMS;
- Licensing regimes;
 - i. Vessel registry
 - ii. Black and white listing
 - iii. History of vessel/operator/violations
- Fishing agreements (bilateral);
- Trade sanctions (catch related market block).

WORKING GROUP 3

Main IUU fishing problems in the region that can be addressed by port State measures

- VMS – National and FFV not operating, gap in reporting for wider Convention area;
- Different ALC standards;
- Transferring of catch - unlicensed fishing;
- Misreporting of catch/landings/by-catch including prohibited species;
- Means to verify reported catch and landings;
- Capacity building for smaller island states;
- Ensure fisheries people involved in inspections;
- Need for improved training programmes for inspections for officers;
- Some bilateral agreements allow for catch to be transhipped in designated ports out of the region-difficult to get data;
- Extra regional responsibilities thru the Convention to be met in addition to domestic added complexity;
- Unlicensed fishing;
- Ports of Convenience.

Gaps in the implementation of the FAO Model Scheme

- Ability to identify breaches of “conservation and management measures” in the Convention,
- Monitoring of VMS in wider Convention area (not just national waters),
- Gaps in legislation (national/state) to support the port state measures.

Constraints and solutions to overcome identified gaps

Constraints:

- Lack of knowledge of requirements;
- Lack of time for training programmes to take effect;
- Time and process required to change legislation to support;
- Model could weaken if decrease port State measures to those in the model in some instances.

Solutions:

- Identify gaps in current legislation and processes and consider the minimum standards in the model as a way (“starting point”) to fill those gaps;
- Organizations-training/support for inspectors and fisheries officers.

Process for adapting and strengthening the FAO Model Scheme in the Pacific Islands

- Access to information – Enhance existing database and access regionally-
 - Support the system,
 - Use the system-easy entry, set-up so limits ability to enter wrong information;
- Additional information-
 - Destination of vessels,
 - Landing information linked to buyer “reporting”;
- Needs to be timely access to compare catch/landing/buyer and to support patrols;
- Inter-agency cooperation/coordination-
 - More effective links between all the different regional organizations operating in the region (FFA, FAO, SPC, PIFS, SPREP, SOPAC) for purpose of information exchange and processes eg. Fishing activities/product movement and licensing/conditions;
 - Cooperation/coordination with other RFMOs.

Key Linkages between port State measures and other compliance tools

- Electronic monitoring and reporting systems;
- To support increasing use and standardization of VMS;
- Trade documentation, tracking of fish movement-catch to sale.

Bold Beauty

The scenario

The *Bold Beauty*, a purse seiner registered in Centralia, was apprehended in Voluptia's waters on suspicion of illegal drug trafficking pursuant to information from Interpol. She was taken by the Navy to the Voluptian port of Vavoom, and there was inspected for a consignment of cocaine.

The information indicated that the consignment would be found in containers located underneath the catch in the fish hold. The customs inspectors, also trained in fisheries inspection, noted that the fish hold was only half full. The catch comprised orange gumfish, a high value pelagic species that occurred only above sea mounts in the high seas adjacent to Voluptian waters and for which fishing had been strictly limited through a combination of quotas and seasons by the members of the Oceanic Fisheries Commission (OFC). Because it was late in the season and the quotas were believed to have been fully taken, the evidence suggested that the entire catch had been taken illegally and that the vessel's operations had undermined OFC management measures.

Voluptia and Centralia are both members of the OFC and parties to the 1995 UN Fish Stocks Agreement. The OFC was in the process of developing a regional port State control scheme based on the FAO Model Scheme on Port State Measures, and members were urged to implement the Model Scheme expeditiously and to the extent possible. The OFC maintains a list of IUU vessels and vessel monitoring system (VMS). It requires members to authorize vessels for fishing on the high seas and in the waters of other countries.

Centralia had consistently objected to many of the conservation and management measures adopted by the OFC, including those relating to fishing for orange gumfish, VMS requirements and the requirement to authorize fishing outside areas of national jurisdiction.

Drugs were not found on the *Bold Beauty*, and late-breaking information from Interpol indicated that the vessel either did not receive them or had transferred them to another vessel on the high seas. The investigation was terminated.

Voluptia requested permission from Centralia to carry out a fisheries boarding and inspection, including catch, fishing gear and documents, but Centralia denied permission. Voluptia then requested Centralia to take flag State measures, including inspection and compliance activities, but Centralia refused.

Bold Beauty then set sail for Paradiso to re-supply and to offload catch that would be air freighted to Hole Foods, a well-known supermarket chain in Europe with an ecolabelling programme that requires traceability audits. The journey normally takes two days, and requires transiting the high seas and Paradiso waters before entering the port of Paress. Paradiso is also member of the OFC.

In the meantime, Voluptia had immediately reported the information regarding the *Bold Beauty*'s suspected IUU catch and Centralia's failure to take flag State measures to the OFC, which transmitted the information to all members.

Two days after leaving the Voluptian port of Vavoom, OFC received a report originating from a member's fishing vessel that *Bold Beauty* was sighted fishing in the high seas for more orange gumfish. The next day, a Paradisan Air Force aerial surveillance mission sighted *Bold Beauty* engaged in unauthorized fishing in Paradiso's exclusive economic zone.

Five days after leaving Vavoom, the Bold Beauty requested permission to enter the Paradisan port of Paress. It did not provide the information regarding the authorization, trip and species as required in the FAO Model Scheme and implemented by Paradiso at the request of OFC. However, it was granted permission to enter port and immediately inspected using procedures in the Model Scheme. The inspectors found that her hold was three-quarters full of orange gumfish and one-quarter full of another high-value species, the goldtail striker, that occurs in Paradiso's waters. The inspectors found that the Bold Beauty had not complied with the catch documentation scheme for orange gumfish required by the OFC and to which Centralia had not objected.

The inspection, together with the sighting reports, resulted in clear and compelling evidence that Bold Beauty had engaged in fishing on the high seas that had undermined OFC management measures, and in unauthorized fishing in Paradiso's waters.

The problem

Taking account of all the information provided, briefly comment on actions that should have been taken or should be taken by the following:

Voluptia

Paradiso

The OFC

Centralia

Bold Beauty case study**Conclusions of the Working Groups****WORKING GROUP 1**

Actions that should have been taken or should be taken:

Voluptia

- Coastal State / Port State
- Voluptia is a member of OFC
- UN FSA – establishment of jurisdiction over the Bold Beauty:
 - Article 8: Cooperation for conservation and management (Port State)
 - Article 9: Sub regional and regional fisheries management organizations and arrangements (Coastal State)
 - Article 23: Measures taken by Port State

Paradiso

Actions that should have been taken or should be taken:

- Port State / Coastal State Options:
 - Law of the Sea Convention
 - Article 73; Violation of sovereign rights
 - UN FSA
 - Article 23; Measures taken by port State

The OFC

Actions that should have been taken or should be taken:

- RFMO
- FAO Model Scheme
- Sanction against Centralia (members deny port entry):
 - members to board and inspect the vessel in the high seas;
 - trade sanctions;
 - request Centralia to withdraw its flag;
 - all necessary sanctions allowable under international law.

Centralia

Actions that should have been taken or should be taken:

- Flag State
- UNFSA:
 - Article 18: Duties of the Flag State;
 - Centralia breached its flag State duties;
- Options:
 - request vessel to comply;

- request vessel to come to port immediately;
- withdraw authorization to fish and notify the Commission;
- suspend license;
- withdraw flag status (in extreme circumstances).

WORKING GROUP 2

Bold Beauty allegations:

Voluptia

Actions that should have been taken or should be taken:

- Board and inspect the Bold Beauty -
 - a. Article 22 of UNFSA => notify the flag state,
 - b. Paragraph 3 of Port State Scheme;
- Notify the OFC of alleged violation;
- In-port inspection to verify vessel ID, authorization, catch, gear, documents;
- Provide copies of final inspection report to OFC and Centralia.

Paradiso

Actions that should have been taken or should be taken:

Soft approach:

- Deny port access
- Notify OFC and flag state of vessel's IUU activities in jurisdiction and request flag state action

Real/hard approach:

- Board and inspect according to Appendix B of FAO Model Scheme
- Arrest the vessel for illegal fishing in Paradiso EEZ
- Notify the vessel agent, OFC and flag State
- seize catch, market catch and withhold proceeds pending outcome of case
 - Refer to appropriate regulations/law or court order to do so

The OFC

Actions that should have been taken or should be taken:

- Disseminate the notification to Commission members
- Black list vessel as IUU vessel
- OFC to impose applicable trade sanctions trade sanctions to Centralia
 - Assumption: sanctions exist under OFC rules

Centralia

Actions that should have been taken or should be taken:

- Fulfill its obligations under OFC Convention and relevant international treaties
- Authorize boarding and inspection request by Voluptia
- Dispatch representative to assist in investigation of alleged violation
- Prosecute the vessel under national law (Lacey Act)
- Deny permit/authorization to fish in OFC areas
- Impose additional conditions on permit

WORKING GROUP 3

Voluptia

Actions that should have been taken or should be taken:

- Should have asked for more information from the Commission in terms of VMS requirements as they maintain a list of IUU vessels and the VMS requirement, and asked for vessel history;
- Further investigation of the vessel in exercise of its port State responsibilities;
- Need for Voluptia to inform Centralia that there is evidence of IUU fishing by one of its vessels on the high seas and ask them to take action;
- Advise them that if they don't take action the vessel won't be allowed to land and action will be taken against the vessel in accordance with national laws;
- Request Centralia to enforce their obligations under the Convention and inform OFC pursuant to the UNFSA;
- Take up the refusal to comply by Centralia at a Ministerial level to raise awareness of OFC as well as bilaterally;
- Pass on information to Paradiso.

Paradiso

Actions that should have been taken or should be taken:

- Order the vessel in as a consequence of the surveillance flight;
- Notify Centralia and OFC what the vessel has done, that it is under investigation and is detained;
- Apply Paradiso's national legislation.

The OFC

Actions that should have been taken or should be taken:

- Publicise the Model Scheme;
- Provide information requested by Voluptia;
- Investigate what actions can be taken by OFC for IUU fishing in the high seas;
- Sanction Centralia – cease market entry;
- Encourage Members to apply sanctions;
- Remove the vessel from the authorised list;
- Facilitate the exchange of information between Centralia and Paradiso, and other Members;
- Depending on outcome of investigations by Voluptia notify other relevant coastal States and RFMOs.

Centralia

Actions that should have been taken or should be taken:

- Comply;
- Read up on their obligations;
- Investigate evidence provided by Voluptia and OFC;
- Investigate and verify information provided by Bold Beauty;
- Investigate Paradiso's information.

Members of Working Groups
Review of the FAO Model Scheme
with a view to developing standards for the Pacific Islands

Legal (Regional and National Requirements)	Information Requirements and Systems	Inspection Procedures, (Results of Port States Inspections)	Training Programme
ATANRAOI, Pole (Federated States of Micronesia)	ALEKERA, Simon (Solomon Islands)	HARRIS, Dorothy (Guam)	APISAKE, Soakai (Tonga)
CARL, Ricky (Federated States of Micronesia)	IEREMIA, Victoria (Samoa)	KANAS, Beverleigh (Vanuatu)	IGISOMAR, Sylvan (Commonwealth of the Northern Marianas)
GRAHAM, Peter (Cook Islands)	KOMANGIN, Gisa (Papua New Guinea)	KERR, Phillip (New Zealand)	LANWI, Samuel (Marshall Islands)
IWAIS, Anlus (Papua New Guinea)	MAHIT, John (Vanuatu)	MALSOL, Nanette (Palau)	MARSH, Vanessa (Niue)
PANGELINAN, Eugene (Federated States of Micronesia)	MURIN, Hazlitt Jeremiah (Nauru)	MYAZOE, Xavier (Marshall Islands)	MO'ALE, Viliami (Tonga)
PELASIO, Mose (Tokelau)	OBED, Wesley (Vanuatu)	RAIWALUI, Anare (Fiji)	TAKUIA, Uakeia (Kiribati)
	SHARP, Eidre (New Zealand)	TEARO, Kintoba (Kiribati)	
	TOBASALA, Charles (Solomon Islands)	GUSTAFSSON, Marten (Sweden)	
RESOURCE PERSONS			
MARX, David	BROWN, Colin	PAINTER, Kevin	LOBACH, Terje
ORTIZ, Paul	PAWUT, Lamiller	TUPOU-ROOSEN, Manu	AQORAU, Transform
TSAMENYI, Martin			

**Review of the FAO Model Scheme with a view to developing standards
for the Pacific Islands**

Reports of the Working Groups

WORKING GROUP 1

LEGAL (REGIONAL AND NATIONAL) REQUIREMENTS

Recommendation:

A. Scope:

- a. Policy Issue: Does it apply to all vessel or just FFA vessels?

-Scope should be for all.

Recommendation: This issue should be left as a policy matter.

B. Provision for notice of intention to enter port.

- a. ? hours notice to port state (*Port States should decide*)

b. Master name

c. Authorization to fish in HS/EEZ

d. State authorizing to fish

e. Quantities of fish on board

f. Information as set out in appendix A

- Vessel ID
- Purpose of Access to port
- Fishing Authorization
- Trip Information
- Species Information
- (Refer to page 7 of the Model)

C. Provision for authorized officers.

- a. Provision regarding power to appoint

- appoint who?

- b. Provision on specifications of their powers to enable officers to verify compliance with relevant C&M measures, e.g.

- boarding without warrant
- search and seizure,
- authority to arrest,
- prohibited acts,
- authorization for civil action and sanctions,
- right to prompt administrative hearing,
- criminal sanction authority,
- reputable presumptions.

D. Provision specifying actions to be taken in response to serious violations.

-Serious violations are defined in Article ?

- E. Actions that can be taken by port states.
- a. Provision on cooperation with UFOs ☺ RFMOs (Information exchange, evidence, prosecution etc...)
 - b. Provision specifying inspection procedure standards
 - c. Provision specifying actions to be taken when response by the flag state is not made within ? time.
 - d. Provision on seizure and bonding of vessel
 - e. Provision on seizure of catch

WORKING GROUP 2

INFORMATION REQUIREMENTS AND SYSTEMS

Information is Power

Good information allows/leads to good management

Information needs to be:

- Accurate
- Timely

There needs to be coordination and communication with other agencies:

- Nationally
- Regionally

Good national programmes needed before can support the region.

Regional needs are important as vessel operations are not limited to national waters.

What information is needed?

Vessel details:

- Flag
- Owner
- Regional register
- National database
- Support craft
- Previous Name and Owner of vessel
- Master
- Previous inspections
- VMS – position, speed, ALC details
- Markings

Catch logs/daily log/ships log

Vessel certification documents: (from Port authority – Customs/Immigration)

- Layout of ship:
- Engines
- Capacity – hold, freezer etc

Licence details:

- licence held
- where issued
- High Sea authorization

Fishing Information:

- Type of fishing
- Gear
- Species

Operation:

- Unload
- Transship
- Refuel
- Transit
- Fish on board
- Intention to leave, move to next zone
- Previous ports

Customs/Immigration documentation

- Crew list

Catch documentation system

- Catch, land etc

RFMO lists:

- WCPFC
- other RFMOS

IUU registers**Aerial and vessel surveillance****Observers on board****Prosecution history****Pre-license inspection – chat to Master****Local agent**

- Advise of arrival
- Provide documentation
- Translation requirements

WORKING GROUP 3

INSPECTION PROCEDURES (RESULTS OF PORT STATES INSPECTIONS)

PORT STATE INSPECTION PROCEDURES OF FOREIGN FISHING VESSELS	
APPENDIX B:	COMMENTS
	<i>In reference to Port Inspector(s) minimum recommendation to insert Port Samplers and those directed by National law to perform such duties.</i>
Vessel identification 1(a)	Require original documents on board: <ol style="list-style-type: none"> 1) Registry Certificate from Flag State 2) Safety Certificates 3) Vessel Log 4) Logbooks 5) Engineers Log 6) FFA Vessel Register (VMS) 7) Expiration Dates 8) English Version
1(b)	Include Vessel Name
1(c)	
1(d)	Add name and address of Agent; and any legally binding contract or agreement between the vessel owner and the agent.
1(e)	This would already be in the regional database
2. Authorization(s)	
3. Other Documentation	Unloading Forms
4(a) Fishing Gear	Require fishing gears to be stowed in a proper manner.
4(b) Fishing Gear	In addition, to check for any illegal fishing gear on board.
5(a) Fish and Fishery Products	
5(b)	
5(c)	In reference to Port Inspector(s) recommendation to insert Port Samplers and those directed by national law to perform such duties.
5(d)	In addition to contacting the flag state, recommendation to include the coastal state of where the fish was caught.
6. Report	Recommendation: Standard Format for region.

INFORMATION PROCEDURES, (RESULTS OF PORT STATE INSPECTIONS)	
APPENDIX C	COMMENTS
Results of Port State Inspections	
1. Inspection References	In addition to the last item (date), to include the "date of inspection"
2. Vessel Identification	In addition, add name and address of Agent; and any legally binding contract or agreement between the vessel owner and the agent.
3. Fishing Authorization (licenses/permits)	Document 10?
4. Trip Information	In reference to ports and areas visited, recommendation is to insert the date and time.
5. Result of the inspection on discharge	a. insert "time".
6. Quantities retained on board the vessel	Intended destination on fish and fishery products retained on board
7. Results of gear inspection	
8. Conclusions	Need clarifications on why "conclusions" is used as opposed to "observations"

WORKING GROUP 4
TRAINING PROGRAMME

1) Training

Training Need/Content of Training	Target Groups	Training Delivery
Conservation and management measures	MCS officers Fisheries decision makers Officials from relevant agencies authorized by fisheries legislation	Job training Workshops Workshops
Relevant laws and regulations and applicable rules of international laws (ie UNCLOS, FAO Code of Conduct for Responsible Fisheries, Fish Stock Agreement, WCPFC, RFMOs, and others)	MCS Officials Decision makers Officials from relevant agencies authorized by fisheries legislation	Job training Workshops
Inspection procedures	MCS Officials including Observers	Job training
Information sources ie. Log books & other e-info	Officials from relevant agencies authorized by fisheries legislation MCS Officials	Workshops Job training
Species identification and calculation	Officials from relevant agencies authorized by fisheries legislation Fisheries Officials (ie. Port samplers, data analysts)	Workshops Job training (ie. SPC attachment)
Catch landing and monitoring	Port samplers MCS Officials All other relevant Officials	Job training

Vessel boarding and inspection	MCS Officials	Job training
Investigation procedures (ie. evidence, collection, valuation and preservation)	All relevant Officials	Job training
Post inspection measures	MCS Officials All relevant Officials MCS Officials	Job training
Prosecution training	All relevant Officials Lawyers	Job training
Surveillance and patrol (air and sea)	Sea and air patrol officials VMS officials	Job training/workshop
Language and culture	Operational manager MCS Officials	Short course Language cards Workshop
	All relevant Officials	

2) Funding Opportunities

1. Local, and MCS funds (ie. US territories)
2. FAO, FFA, SPC, and other institutions
3. Other members (eg. Drawing from country which has particular expertise)

Note:

- (i). Content of training programs can be adapted according to needs of member countries.
- (ii) Training priorities subject to member countries' priorities.

3) Systems

- VMS
- Regional Register – WCPFC record
- Vessels history/details eg IMO, RFMOs, Interpol
- Licence
- Observers
- Other National Agencies – Ports, Customs
- Prosecutions
- Inspection Reports
- Surveillance
- Final unloading point – CDS
- International Registers
- Other Port States – MCS
- Catch logs
- Trade – export, transshipment
- Law, international agreements (national and foreign)
- International MCS Network
- List of certified inspectors

Require harmonization of systems to access and use the information effectively on an inspection by inspection basis.
Need more information than the minimum standards in the model.

4) Operating Requirements (Standard Protocols)

Standard formats

Links:

- National
- Regional
- International

Secure access

Information entered

This document contains the report of, and the papers presented at, the FAO/FFA Regional Workshop to Promote the Full and Effective Implementation of Port State Measures to Combat Illegal, Unreported and Unregulated [IUU] Fishing, which was held at Nadi, Fiji, from 28 August to 1 September 2006. The objective of the workshop was to develop national capacity and promote regional coordination so that countries will be better placed to strengthen and harmonize port State measures and, as a result, meet the requirements of relevant Regional Fishery Management Organizations and implement the relevant tools of the 2001 FAO International Plan of Action on IUU Fishing and the 2005 FAO Model Scheme on port State measures to combat IUU fishing (FAO Model Scheme). Funding and support for the workshop were given by: the FAO FishCode Programme through its TrainFish Component, supported by the Government of Sweden and its small islands developing States Component, supported by the Government of Japan; the FAO Regular Programme; the Pacific Islands Forum Fisheries Agency; the West and Central Pacific Fisheries Commission; the Western Pacific Regional Fisheries Management Council; and the Governments of the Federated States of Micronesia, New Zealand, Tokelau, Tonga, the United States of America and Vanuatu.

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