

Report of the

**FAO/APFIC/SEAFDEC REGIONAL WORKSHOP ON PORT STATE
MEASURES TO COMBAT ILLEGAL, UNREPORTED AND
UNREGULATED FISHING**

Bangkok, Thailand, 31 March–4 April 2008



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PREPARATION OF THIS DOCUMENT

This is the final version of the report of the FAO/APFIC/SEAFDEC [Food and Agriculture Organization of the United Nations/Asia Pacific Fisheries Commission/Southeast Asian Fisheries Development Center] Regional Workshop on Port State Measures to Combat Illegal, Unreported and Unregulated [IUU] Fishing that was held in Bangkok, Thailand, from 31 March to 4 April 2008.

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ABSTRACT

This document contains the report of the FAO/APFIC/SEAFDEC Regional Workshop on Port State Measures to Combat Illegal, Unreported and Unregulated [IUU] Fishing, which was held in Bangkok, Thailand, from 31 March to 4 April 2008. The objective of the Workshop was to develop national capacity and promote bilateral, subregional and/or regional coordination so that countries would be better placed to strengthen and harmonize port State measures and, as a result, implement further the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, the 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing and contribute to the development of a legally-binding instrument on port State measures. The Workshop addressed: the background and framework for port State measures; the FAO Model Scheme including national plans of action to combat IUU fishing and IUU fishing activities in Southeast Asia; the FAO Model Scheme and regional approaches and the 2007 draft Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; key elements of national laws, and the role of the Asia Pacific Fisheries Commission and the Southeast Asian Fisheries Development Center; national coordination and implementation of port State measures; industry perspectives on port State measures, and responses to the questionnaire on port State measures. Working groups were formed to enhance the participatory nature of the Workshop and as a means of engendering broader and deeper discussion on concepts and issues relating to port State measures. In the first exercise, participants addressed multidisciplinary aspects of port State measures, and in the second exercise, thematic issues were considered. A fictitious case study exercise was also undertaken. It was intended to demonstrate how a port State might deal with a realistic IUU fishing problem. The final session of the Workshop sought to identify key issues to be addressed on a regional basis as follow-up to the Workshop. Funding and support for the Workshop were provided by the FAO Regular Programme, by the Governments of Norway, through the Trust Fund for Port State Measures (MTF/GLO/206/MUL), and Sweden, through the FishCode Programme (MTF/GLO/125/MUL [Sweden-SIDA] [SWE/05/IUU Port State Measures/IUU fishing]).

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OPENING OF THE WORKSHOP

1. The FAO/APFIC/SEAFDEC [Food and Agriculture Organization of the United Nations/Asia Pacific Fisheries Commission/Southeast Asian Fisheries Development Center] Regional Workshop on Port State Measures to Combat Illegal, Unreported and Unregulated [IUU] Fishing, was held at the Imperial Queen's Park Hotel, Bangkok, Thailand, from 31 March to 4 April 2008.
2. The Workshop was attended by 30 participants from Southeast Asian countries and four resource persons. A list of participants and resource persons is attached as Appendix B.
3. Dr David Doullman, Senior Fishery Liaison Officer, FAO Fisheries and Aquaculture Department, Rome, Italy, called the Workshop to order. He welcomed participants, resource persons and FAO colleagues pointing out that the Workshop was timely for the region since illegal, unreported and unregulated (IUU) fishing around the world was increasing. He noted that the meeting, the fifth of its kind in the world, was being conducted in partnership with APFIC and SEAFDEC. He added that the Workshop was highly fortunate in having three eminent persons to address it: Mr He, Assistant Director-General, FAO Regional Office for Asia and the Pacific, Bangkok, Thailand; Dr Widi Pratikto, Chair, APFIC, and Secretary General, Ministry of Marine Affairs and Fisheries, Jakarta Pusat, Indonesia; and Dr Siri Ekmaharaj, Director-General, SEAFDEC, Bangkok, Thailand. On behalf of FAO and the participants at the Workshop, Dr Doullman expressed his thanks to the donors who were co-funding the Workshop, the Governments of Norway and Sweden. He also noted that the FAO Regular Programme had contributed to it.
4. Dr Doullman invited Mr He, Dr Pratikto and Dr Ekmaharaj, in turn, to address the Workshop. Their statements are in Appendixes D, E and F, respectively.
5. Ms Judith Swan, Legal Consultant, Fisheries and Aquaculture Department, FAO, Rome, Italy, and Technical Secretary, briefed the Workshop on the technical aspects of the meeting. She encouraged full and robust engagement by all participants and advised participants that a CD-ROM containing the draft report of the Workshop and the PowerPoint presentations made would be distributed at the conclusion of the Workshop.
6. Dr Simon Funge-Smith, Senior Fishery Officer, FAO Regional Office for Asia and the Pacific, Bangkok, Thailand, APFIC Secretary and Workshop Coordinator, outlined the administrative arrangements for the Workshop.
7. Dr Purwanto, Director of Fisheries Surveillance, Directorate General of Surveillance and Control, Ministry of Marine Affairs and Fisheries, Jakarta Pusat, Indonesia, and Mr Parlin Tambunan, Director of Fishing Port, Directorate-General of Capture Fisheries, Ministry of Marine Affairs and Fisheries, Jakarta Pusat, Indonesia, were selected to co-chair the Workshop. In accepting their roles, they expressed their gratitude for the confidence in selecting them. They invited the participants and resource persons to introduce themselves.
8. The Agenda for the Workshop is attached as Appendix A and the list of documents is attached as Appendix C.

BACKGROUND AND FRAMEWORK

9. The Workshop viewed a multimedia presentation prepared by FAO on port State measures. It highlighted, *inter alia*, the status of world fish stocks, the need for port State measures, aspects of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU), the 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing (Model Scheme), the development of a binding instrument and the need to block IUU-caught fish from entering international fish trade. A copy of the multimedia presentation was included in the Model Scheme distributed at the Workshop.

10. Dr Doulman made a presentation entitled “International framework for port State measures to combat IUU fishing: towards more stringent and binding measures”. Its purpose was to provide an overview of the international framework for port State measures for fishing vessels, showing how these measures had evolved primarily to support improved goals of long-term sustainability and enhanced fisheries governance. The presentation also outlined why port State measures had assumed an increasingly important role, concurrent with the international concern about IUU fishing, and explained planned future FAO developments to strengthen port State measures through the development of a legally-binding instrument. In its conclusion, the presentation noted that IUU fishing remained a serious impediment to sustainability in fisheries and that ongoing political commitment was required to underpin measures that would inhibit or prevent financial flows to IUU fishers, the main incentive to engage in IUU fishing. In combination, the use of market-related and port State measures probably offered the best opportunities to achieve this goal. In addition, the presentation pointed out that the use of minimum standards in a binding instrument on port State measures could assist countries revise and strengthen both their policy and legislation in a timely manner.

11. Ms Judith Swan introduced developments relevant to port State measures at international and regional levels in her paper entitled “Port State control: introduction to international and regional law and developments, linkages with other compliance tools and FAO initiatives”. She referred to the international instruments of the International Maritime Organization that have underpinned rigorous port inspection measures for merchant vessels, and to relevant developments in FAO since 2002. She underlined the governance role of regional fisheries management organizations or arrangements (RFMOs) and arrangements in strengthening and harmonizing port State measures, and referred to processes under way to develop regional monitoring, control and surveillance (MCS) networks that would address the issue, including in the Southeast Asia region. Ms Swan also explained the importance of linking port State measures with other compliance tools such as flag State responsibility, documentation and information and vessel monitoring systems, and described recent developments in these areas.

12. In discussion, it was recalled that the limited MCS capacity and resources of the region were acknowledged at the November 2007 Regional Workshop on the Implementation of the Regional Plan of Action to Promote Sustainable Fisheries Practices including Combating IUU Fishing. The cost effectiveness of port State measures was compared with other measures such as at-sea boarding and inspection and aerial surveillance.

13. Concern was expressed about the apparent proliferation of international instruments and initiatives to combat IUU fishing, and the possibility that new instruments are repeating formally agreed provisions. It was explained that the instruments and initiatives built upon previous agreements where gaps existed and brought the need for coordinated actions and measures into sharper focus.

14. The need to cooperate through the existing International MCS Network was emphasized but concern was expressed that financial and related constraints could prevent full and prompt participation by countries in the region in the development and implementation of measures to combat IUU fishing such as the Regional Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (RPOA), the Model Scheme and the draft Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (draft Agreement). It was acknowledged that implementation of any international instrument could be burdensome for developing countries worldwide. In fact, it was always necessary, as a general rule, to take an incremental approach. It was recognized that the Southeast Asian region had a head start in addressing port State measures compared with other region because the process to develop a RPOA provided a strong basis for countries to move forward together and in harmony.

THE FAO MODEL SCHEME ON PORT STATE MEASURES: NPOAS-IUU AND IUU FISHING ACTIVITIES IN THE REGION

15. Mr Terje Lobach, FAO Consultant, Bergen, Norway, made a presentation entitled “The 2005 FAO Model Scheme on Port State Measures to Combat IUU Fishing, including its interface with the 2007 FAO draft Agreement on Port State Measures”. In his introduction, he mentioned the guidance for focusing on port State measures found in other international instruments, in particular in the IPOA-IUU. He also explained the development of the Model Scheme, leading up to its adoption at the FAO Committee on Fisheries (COFI) in 2005. He then went through the various elements of the Model Scheme, including its objective and scope, the vessels that should be targeted by port authorities, the details of the prior notification requirements as well as possible reactions based on such notifications. Mr Lobach also explained the standards concerning inspections in port, including formal requirements, the execution of an inspection and how to react if involvement in IUU fishing was disclosed during an inspection. He emphasized the need for rapid exchange of information, and referred to the guidance given in this regard in the Model Scheme. He discussed the clauses on *force majeure*, the sovereignty of the ports and the relationship between the Scheme and international law.

16. Mr Lobach went on to explain the interface between the Model Scheme and the 2007 draft binding Agreement on port State measures to combat IUU fishing, in particular concerning their legal status, regional approaches concerning their implementation both in the intermediate and longer perspective. Finally, he made a brief comparison of the content in the two instruments, focussing mainly on differences.

17. Dr Doulman made a presentation entitled “IUU fishing in the Southeast Asian region”. The presentation commenced with a brief discussion of the definitions of IUU fishing followed by a synopsis of global issues related to IUU fishing. The next section addressed the question: Why does IUU fishing continue? In discussion, the role of flags of non-compliance and ports of convenience were emphasized. Dr Doulman then outlined emerging measures to address IUU fishing pointing out that some countries were now moving to negatively list

States that did not exercise effective flag State control as well as fishing vessels that habitually engaged in IUU fishing. He then moved to discuss the IUU fishing problems and solutions identified at the 2004 FAO Workshop that was held in Penang, Malaysia. He stressed that the rankings of problems were not official but that they provided a good indication of problems and solutions in the region. He added that there was a high degree of symmetry with the IUU fishing problems and solutions identified in FAO regional workshops in other areas of the world. In conclusion, Dr Doulman noted that IUU fishing was not diminishing, that IUU fishers depended on the use of flags of non-compliance and ports of convenience for their survival, that IUU fishing imposed significant costs on governments and RFMOs and exploited the weaker position of developing countries. Moreover, it was essential to block IUU-caught fish from entering international trade as the removal of the financial incentive would discourage IUU fishers from engaging in IUU fishing and related activities. Dr Doulman emphasized that in Southeast Asia, countries should work independently and together to combat IUU fishing and to protect national and regional fisheries wealth. The IPOA-IUU provided an excellent basis for such cooperative action.

18. Dr Somboon Siriraksophon, Policy and Programme Coordinator, SEAFDEC, Bangkok, Thailand, made a presentation entitled "Profile of IUU fishing activities and issues relating to port control in the Southeast Asian region". The Workshop was informed that SEAFDEC member countries had developed common positions based on a series of SEAFDEC expert consultations with the intention of promoting the sustainable management and development of fisheries in the region and to combat IUU fishing. The implementation of port State measures formed a part of this initiative. It was pointed out that the regional outcomes included the adoption of port State measures based on the Model Scheme. This included promoting interagency collaboration, a focus only on high seas fisheries and a number of other issues relating to the draft Agreement that should be clarified at this Workshop. The Workshop was also advised that SEAFDEC's position had been further strengthened through the endorsement by ASEAN Ministers and the signing of an ASEAN-SEAFDEC Strategic Partnership (ASSP) as a committed partner and competent implementing arm to realize priority actions such as strengthening effort to combat IUU fishing as stated in the Declaration on the ASEAN Economic Community Blueprint. Dr Siriraksophon also advised the Workshop that a number of concerns had been raised in the SEAFDEC Consultation about port State measures within the context of sustainable management and development of fisheries in the region.

19. Following the presentations, participants made comments and asked questions. One participant expressed concern about paragraph 5 of the Model Scheme, where it is stated that the port State may take other actions with the consent of, or upon the request of, the flag State. Mr Lobach explained that this was related to fishing activities that had taken place in areas beyond the jurisdiction of the port State. In cases of fishing within the port State's national waters, it had the right to take actions against any vessel without the consent of the flag State, in accordance with Article 73 of the Law of the Seas Convention.

20. A question was raised concerning the definition of *force majeure*, and if for example, re-fuelling, fell within that definition. Mr Lobach pointed out that *force majeure* had to be evaluated on a case by case basis, and the vessel or crew had to be in real danger or distress to be granted port access under the *force majeure* clause. He expressed the view that in general the need for re-supplying or re-fuelling a fishing vessel did not fall within this provision.

21. It was pointed out that it was very difficult for developing countries, due to a lack of capacity, to fully implement the Model Scheme, and a question was raised if any developing country so far had implemented a scheme based on the Model Scheme. Mr Lobach responded that he was unaware of any developing State that had done so, but many developing countries had agreed to port State obligations as members of RFMOs. He added that some of these measures had been inspired by the Model Scheme.

22. It was recognized that RFMOs in general were the mechanisms that should be used for the implementation of port State measures at the regional level. A question was raised concerning regions where there was no RFMO, for example in Southeast Asia. Mr Lobach said that cooperation between States was essential to give effect to port State measures, and that States in a region where there was no RFMO should find alternative ways and means of cooperating, either bilaterally or multilaterally. One option could be to establish a port State scheme under the SEAFDEC umbrella, while another possibility would be for responsible port States to cooperate to create an “independent” mechanism.

THE FAO MODEL SCHEME AND REGIONAL APPROACHES, THE 2007 DRAFT BINDING AGREEMENT ON PORT STATE MEASURES

23. Mr Terje Lobach made a presentation entitled “The 2005 FAO Model Scheme on Port State Measures and regional approaches: what it means for the Southeast Asian region”. He provided an overview of actions taken by regional fisheries bodies concerning the implementation of port State measures. In his presentation, he focused both on general port State measures (notification requirements, inspections and actions by port States) and on other MCS tools that contained port State obligations. Concerning the latter tools, he explained the linkages to port State measures of various schemes of vessel listing, trade- and market-related measures as well as regulation of transshipment.

24. Mr Lobach then highlighted actions taken by various RFMOs, particularly relevant to States in the Southeast Asian region, such as the Indian Ocean Tuna Commission (IOTC) and Western Central Pacific Fisheries Commission (WCPFC). Both organizations had introduced systems of negative listing of IUU fishing vessels, requiring, among other things, port States to take specific actions against such vessels. In addition, IOTC and WCPFC had established so-called “positive lists”, implying that port State actions shall be taken against vessels not included in those lists. Furthermore, he mentioned that both organizations had introduced specific schemes concerning transshipment, including special requirements applicable in ports. His presentation also indicated that many RFMOs had agreed to implement trade- and market-related measures, containing special obligations for port States. In addition, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) had introduced a catch documentation scheme, which required actions by port States, including some identified States in the Southeast Asian region.

25. Mr Lobach also presented some ideas concerning a possible scheme in the Southeast Asian region, preferably under the SEAFDEC umbrella, building on the Model Scheme. He highlighted some of the issues that required careful examination, such as the area of application, vessels included, small-scale fisheries, notification requirements, designation of ports, use of ports, level of inspections, role of the flag State, possible sanctions and training.

26. Ms Judith Swan made a presentation entitled “The 2007 FAO draft Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

including the importance of the annexes". She described the background, approach and methodology to the development of the 2007 draft Agreement, noting the recognition of the need for a robust, forward-looking instrument. She described the framework and content of the draft Agreement and explained that the Agreement would apply to all fish taken at sea until its first landing. The rights and duties of the port State as elaborated in the Agreement were explained, as well as linkages with RFMOs and the role of flag States. Ms Swan noted that the annexes had been reviewed and updated from those in the FAO Model Scheme, and contributed to the comprehensive and clear basis provided by the draft Agreement for the strengthening and harmonization of port State measures.

27. In discussion, the practicality of implementing Article 9 (1)(b) of the draft Agreement was raised, with respect to denying the use of a port to a vessel that had been sighted undertaking IUU fishing activities in areas under the national jurisdiction of a coastal State. In particular, it would be difficult to know the destination of such a vessel. It was pointed out that once a sighting report had been provided to coastal States authorities, they could take action to notify appropriate port States or work through established cooperative mechanisms to inform port States of the illegal fishing activity.

28. To promote a deeper and broader understanding of the draft Agreement, it was suggested that explanatory notes be attached to the draft text prior to its consideration by the June 2008 Technical Consultation. The notes could describe the purpose and context of the articles in the same manner as the presentation.

29. The applicability of the draft Agreement to all fish at the point of first landing in port was explained. Even if the fish had been transshipped one or more times at-sea, the draft Agreement would only apply to the vessel that brought them to port for the first time.

30. The role of the flag State was discussed, and it was emphasized that international law required the flag State to ensure it could exercise effective control over fishing vessels before registering them.

31. Concern was expressed in relation to the technical scientific requirement in some annexes to the draft Agreement and the ability of some developing countries to translate, understand and apply them. It was explained that the minimum essential information requirement for combating IUU fishing was contained in the annexes, and these provisions were already required by many countries and RFMOs. In fact, it was information that commonly formed the basis for sound fisheries management.

32. It was noted that where a country was unable to join an RFMO for technical or other reasons, its vessels could be considered as IUU fishing vessels if they undermined the conservation and management measures of that RFMO.

33. The interface between existing RFMO port State measures and the requirements of the draft Agreement, once it entered into force, was addressed. It was explained that some RFMOs had robust port State measures schemes, while others were in the process of developing such schemes based on the Model Scheme and the draft Agreement. It was anticipated that, once a global agreement setting out minimum standards was agreed, RFMOs would exercise flexibility to ensure the standards would be applied or would adopt more stringent standards.

34. It was emphasized that the draft Agreement would be negotiated by Governments in the Technical Consultation. Participants at the Workshop had the opportunity to return to their respective countries to explain the content and intent of the draft Agreement to relevant officials so as to ensure that their national interest would be reflected in the Technical Consultation.

35. Concern was expressed in relation to Article 19, permitting compensation to the vessel owner or operator for loss or damage because of undue delay. It was explained that this provision was based on a similar provision in an International Maritime Organization (IMO) instrument. The provision was intended to promote fair proceedings and placed the burden of proof on the owner or operator. However, it was proposed that criteria be developed to elaborate “undue delay”.

36. Finally, the Workshop agreed that the adoption of the draft Agreement would provide a mechanism for the harmonized and broad implementation of port State measures for both members and non members of RFMOs.

KEY ELEMENTS OF NATIONAL LAWS AND THE ROLES OF APFIC AND SEAFDEC

37. Mr Blaise Kuemlangan, Legal Officer, Development Law Service, Legal Office, FAO, Rome, Italy, gave a presentation on “Key elements of national laws for the implementation of port State measures”. It included an overview of elements for national legislation on port State measures and the Lacey Act-type clause as a port State measure to help combat IUU fishing. He stated that national implementing legislation was vital for implementing port State measures as they translated international obligations and commitments into enforceable requirements nationally. He noted that the basic requirement was to ensure a strong MCS and enforcement legal framework under which port State interventions against IUU fishing would emanate. Typically, this framework should define powers, duties and obligations of the management and enforcement authority; provide the basis for implementing MCS tools; protect the interests of fishers (e.g. confidentiality of information); grant enforcement powers (e.g. arrest, detention, seizures); safeguard basic civil rights in enforcement action; and establish judicial or alternative enforcement systems for penalizing violators.

38. The national legal framework should enable competent authorities to fulfil requirements set out in the Model Scheme as restated and elaborated in the draft Agreement. These requirements included the designation of ports, requirements for notification and the time limits for such notification, inspections in port and the range of powers and responsibilities of the inspector and enforcement action in the case where there was evidence of IUU fishing. Examples from Southeast Asian fisheries legislation were given to demonstrate the basic issues that could be confronted in a legislative review.

39. Mr Kuemlangan also gave an overview of the Lacey Act offence as a type of port State measure. He described the Lacey Act clause as creating an offence involving the import of fish illegally taken in contravention of another State’s laws (i.e. the underlying violation). He stated that legislating Lacey Act-type clauses required regional discussion but that the enactment of legislation was done unilaterally by individual States. In drafting legislation, issues such as giving a broad meaning to the word “import” and “persons” were important. Mr Kuemlangan also gave a brief overview of Papua New Guinea’s first case against an offender charged with violation of its Lacey Act-type clause. He stressed that it was vital that

the drafting exercise foresee the problems that could be raised in enforcement and dealt with in a satisfactory way so that prosecutions were not compromised on technical grounds.

40. Mr Simon Funge-Smith, Senior Fishery Officer, FAO Regional Office for Asia and the Pacific, Bangkok, Thailand and Dr Somboon Siriraksophon gave a presentation on “What can APFIC and SEAFDEC do to strengthen port States measures to combat IUU fishing in the region?”. The presentation described briefly the role and functions of the two regional fishery bodies (RFBs) APFIC and SEAFDEC. It was noted that APFIC was an Article XIV Body under the FAO Constitution and was therefore owned by its 20 members.¹ APFIC was formed in 1949 with the intention of creating regional agreements and arrangements. It was originally intended to give APFIC management powers. To date, members have not assigned management functions to APFIC as there has yet to be a clear indication of a role that APFIC could perform which would satisfy all of its members. APFIC must also avoid overlap in terms of areas and stocks with other RFMOs. The APFIC area is rather general and includes parts of the areas of competence of the Indian Ocean Tuna Commission (IOTC), the Western Central Pacific Fisheries Commission (WCPFC) and the North Pacific Andromonous Fishery Commission (NPAFC).

41. APFIC may not be currently mandated by members with management functions but the opportunity existed if a “management function” was identified and members agreed on it. The presentation stressed the fact that RFBs did not actually manage stocks but rather acted as a forum. One of APFIC’s key roles in the region was promoting subregional arrangements. APFIC’s strategy was to support and promote subregional initiatives such as the RPOA, the forthcoming Bay of Bengal Large Marine Ecosystem project and the proposed SEAFDEC Regional Management Mechanism. These arrangements were structured on a subregional basis and as such were more manageable (e.g. the Large Marine Ecosystem, marine eco-region/semi enclosed sea and economic cooperation [e.g. ASEAN]).

42. The Workshop was advised that SEAFDEC was an intergovernmental organization established in 1967. It had ten Southeast Asian member countries and Japan. For four decades, SEAFDEC had promoted sustainable fisheries development in Southeast Asia covering various important issues including capture fisheries technology, aquaculture, post-harvest technology and fisheries resources assessment and management.

43. To facilitate the future implementation of port State measures in the region, SEAFDEC organized the first Expert Consultation meeting in Thailand in February 2008. It considered the issues and challenges in implementing port State measures in the Southeast Asian region and concluded that there applicability in the region might be limited.

44. At the international level, measures under the Model Scheme applied to foreign fishing, carrier and supply vessels. However, a challenge for many Southeast Asian countries was to control IUU fishing vessels that were flying the national flag under joint venture or other arrangements, but which were fishing outside national zones of jurisdiction and returned to national ports to land or transship catches.

45. It was recalled that fisheries management measures in many Southeast Asian countries were generally not harmonized on a subregional or regional basis because many fishing

¹ Australia, Bangladesh, Cambodia, People’s Republic of China, France, India, Indonesia, Japan, Republic of Korea, Malaysia, Myanmar, Nepal, New Zealand, Pakistan, Philippines, Viet Nam, Sri Lanka, Thailand, United Kingdom and the United States of America.

grounds in the region did not lie within the area of competence of a RFMO. Consequently, there was a lack in harmonization of port State measures as well as IUU and authorized vessel lists and information networks.

46. Additional problems were commonly experienced at the national level in the coordination of administrative arrangements, information systems and training. It was noted that these situations were not uncommon and sound approaches and solutions should be identified by considering and adapting relevant regional and international practices and instruments to regional needs.

47. In response to what management measures could be used to strengthen and harmonize port State measures, it was pointed out that SEAFDEC, as a technical arm of ASEAN, could provide assistance to member countries in the areas of capacity building, the promotion of bilateral and subregional coordination and information exchange.

48. The Workshop was informed that subregional initiatives could assist in the implementation of port State measures including the facilitation of capacity building and even direct management functions. Training and capacity building functions could include inter-departmental coordination (for example, ports and harbours, maritime/transport departments, fisheries, customs); the development of national plans of action to combat IUU fishing (NPOAs-IUU); the development of consensus among member countries on the implementation of arrangements for port State measures (e.g. the harmonization of inspection standards and procedures); the conservation and management measures (particularly for highly migratory and straddling fish stocks) and could advocate for stronger flag State control.

49. In addition, more direct management activities or functions could be to develop regional agreements on reporting (e.g. where fishing has contravened a bilateral agreement); to harmonize actions to be taken by port States; to exchange information on IUU fishing activities; to monitor subregional activities; to coordinate with other RFBs (e.g. MCS networks); to maintain negative and positive vessels lists and to develop MCS measures.

50. Following the presentations, an issue was raised concerning the rights under international law to refuse entry of vessels to port. It was confirmed that a vessel could be denied access except in cases of *force majeure*.

51. The Workshop was also informed about SEAFDEC's plans for the establishment of a Regional Fishery Management Mechanism that would be influenced by member countries once they had committed themselves to implement port State or other management measures. The decision would be taken by the SEAFDEC Council after the draft Agreement was finalized.

52. The Workshop sought guidance on how countries could implement port State measures when in general they had minimal or inadequate legal and MCS frameworks. Countries were encouraged to use both formal and informal cooperative mechanisms to consider how port State measures could be implemented. In this way, countries could make their own decisions about how to enhance national legislation to implement port State measures.

53. The Workshop requested clarification on the difference between a port and a landing site. The definition of a “port” was rather general in the Model Scheme and the draft Agreement. It was noted that a country should make its own definitions for the purpose of applying port State measures. Participants were informed that landing sites could be designated by the State as “ports” for the purpose of implementing the Model Scheme and the draft Agreement. It was further explained that measures could be different for national and foreign vessels but that measures for foreign vessels must be applied without discrimination.

NATIONAL COORDINATION AND IMPLEMENTATION OF PORT STATE MEASURES

54. Dr Widi Pratikto, APFIC, gave a presentation on “National coordination and implementation of port State measures to combat IUU fishing: problems and prospects”. The comprehensive presentation commenced by highlighting the importance of the RPOA. It was noted that ten countries had adopted it at a ministerial level meeting in Bali, Indonesia, in May 2007. Countries were encouraged to develop and implement NPOAs-IUU as a means of giving effect to the RPOA at national level. Dr Pratikto also advised the Workshop that the implementation of port State measures was a priority issue in the RPOA. He also referred to other regional and international issues relating to efforts to combat IUU fishing.

55. With respect to Indonesia’s action to implement port State measures, Dr Pratikto indicated that his country was, to some extent, taking steps to implement them. He outlined aspects of Indonesian law that were intended to combat IUU fishing and promote port State measures. He encouraged APFIC members to develop NPOAs-IUU and to initiate measures to promote public awareness about IUU fishing generally, to cooperate to establish a regional MCS network, to enhance the capacity of countries to collect the data and information and to undertake relevant research.

56. Case studies on national coordination and implementation of port State measures to combat IUU fishing were given by participants from Malaysia and Thailand.

57. Mr Ahmad Saktian bin Langgang, Senior Fishery Officer, Coastal Resource Management Section, Department of Fisheries Malaysia, Putrajaya, Malaysia, made a presentation entitled “National practice relating to port State measures in Malaysia”. It outlined current arrangements for foreign fishing vessels as well as the benefits flowing to the country from the implementation of effective port State measures. The presentation also addressed the main constraints encountered by Malaysia in implementing port State measures as well as solutions intended to overcome them. These included the need to convince government agencies of the importance of implementing port State measures, the organizing of training programmes especially with respect to procedures for inspection of fishing vessels, the amendment of fisheries legislation, the requirement that vessel monitoring systems (VMS) be carried on all fishing vessels operating on the high seas and participation in regional and international MCS networks.

58. Ms Doungporn Na Pombejra, Legal Officer, Fisheries Foreign Affairs Division, Department of Fisheries, Bangkok, Thailand, made a presentation entitled “Port State measures to combat IUU fishing in Thailand”. It commenced with a summary of the current situation with respect to port State measures reviewing institutional considerations, the Marine Department and the Department of Fisheries. It was pointed out that the Marine Department was responsible for marine safety, pollution/environment and working conditions

onboard vessels. The Department's role with respect to foreign fishing vessels involved the requirement for prior notification (one to 24 hours in advance), inspections on a regular basis without predetermined priorities and the possibility to deny, detain and expel vessels from Thailand's ports.

59. With respect to the Department of Fisheries, Ms Na Pombejra focused her presentation on sanitary and contamination issues, epidemic and the introduction of alien species, species on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) list, and species under the Wild Animal Reservation and Protection Act. With respect to inspections, it was pointed out that the Department undertook inspections of documents relating to fishing vessels and onboard inspection of foreign fishing vessels with appropriate consent. It was pointed out that Thailand had only one port that was used by foreign or joint-venture fishing vessels (Phuket fishing port). This port provides services to fishers along the coast of the Andaman Sea and for deep seas fisheries in the Indian Ocean. At the Phuket fish port, port State measures were based on voluntary cooperation for data collection stemming from the certification of the "rule of origin" for yellowfin, inspection of total landings of aquatic species and shipping. Moreover, the Andaman Sea Fisheries Research and Development Center has two sampling programmes to improve data collection such as total landings biological data and total catches from customs records.

60. With respect to the challenges for the implementation of port State measures, Ms Na Pombejra indicated that currently in Thailand port State measures were inadequate to cope with problems effectively as well as a lack of coordination and collaboration among agencies to tackle the IUU fishing problem and the challenges it presented. In addition, fishing ports needed improvement to meet standards and human resource development was required at both the national and provincial levels.

61. Ms Pongthong Onoora, Chief, International Law Group, Fisheries Foreign Affairs Division, Department of Fisheries, Bangkok, Thailand, gave a presentation on "National coordination and implementation of port State measures in selected States in the Southeast Asian region". A copy of the presentation is in Appendix G. Her presentation was based on questionnaires from three "selected" States: Thailand, the Philippines and Indonesia. She provided information concerning issues relating to the frequency of annual port calls, the number of major fishing ports, legal requirements and institutional mechanisms or practices for implementing the Model Scheme. Her analysis showed several common practices among the countries in respect of prior advance notice, denial of the use of ports and inspections of fishing vessels. Ms Onoora noted that there were some differences regarding specific laws and regulations dealing with measure to combat IUU fishing among the three countries, particularly with respect to port State measures.

62. Ms Onoora outlined some requirements that the countries needed to implement port State measures including capacity building, information sharing, the review and redrafting of specific laws and the establishment of a regional MCS network. However, she recommended a number of ways to overcome existing constraints. The recommendations included:

- enhanced inter-agency cooperation because sectoral problems were the main constraints at national level;
- the need to develop specific law for port State measures to cover all national agencies;
- improved information sharing and public awareness building;

- the urgent implementation of training programmes at the national, regional and global levels;
- the development and establishment of a regional MCS network;
- the development of a model for the region to implement port State measures so that common concerns would be addressed;
- fostering closer cooperation and collaboration among Southeast Asian countries to combat IUU fishing;
- undertaking a stocktake study to identify IUU fishing problems and related activities in Southeast Asia, and
- assistance to Southeast Asian countries to overcome some regulatory problems.

63. The Workshop acknowledged the issues and constraints in implementing port State measures that were highlighted in the presentations. However, there was general agreement that the constraints could be addressed through the options identified by the presenters.

64. The Workshop queried whether it was contrary to Article 73 of the 1982 United Nations Convention on the Law of the Sea (1982 Convention) to detain crew and vessels in enforcing national fisheries laws. The Workshop was informed that Article 73 required the prompt release of crew and vessels arrested for contravening fishing laws in the exclusive economic zone (EEZ) upon the placing of a bond or security by the arrested vessel. An adequate bond or security could comprise the value of the vessel, the penalty that could be imposed as well as the value of the catch. The Workshop was also informed that detention must be subject of due legal process and that unreasonable detention could be unlawful.

65. The Workshop also discussed the issue of minimum port State measures that could be implemented under current resource and capacity constraints in the region. These constraints included the need to address legislative gaps, training of staff and the resolution of sectoral problems and issues in the context of cross-departmental jurisdictions (e.g. vessel safety might be dealt with by more than one Department, such as the Department of Fisheries, the Maritime Department or the Transport Department). It was acknowledged that the implementation of port State measures in Southeast Asia was complicated and countries would need time to develop practices and procedures. The issue of lack of access to markets would hasten the pace for countries to commence effective implementation. The rate of development of the draft Agreement was rapid and as a consequence countries were concerned about the need to ensure that port State measures were addressed in a timely manner. It was noted that it would take time for countries to ratify the Agreement once it was adopted. However, it would be possible for countries to start to apply the terms of the Agreement before it entered into force.

66. Concerns were raised in the Workshop about the inability of developing countries to participate in global fora that negotiated international agreements due to a lack of resources. This meant that the views and concerns of developing countries and safeguards to protect their interests could not be assured despite the urgent need to address IUU fishing. It was suggested that Southeast Asian countries give consideration to these concerns, possibly in conjunction with external partners.

67. The Workshop was informed that the draft Agreement built on other international agreements such as the 1982 Convention and 1995 UN Fish Stocks Agreement as well as customary international law that obliged States to take certain measures. In addition, the

Workshop was advised that there was no impediment to prevent States from implementing agreements even if they were not party to them.

INDUSTRY PERSPECTIVES ON PORT STATE MEASURES

68. Attorney Rodolfo T. Paz Jr., Assistant General Manager, Philippine Fisheries Development Authority (PFDA), Quezon City, Philippines, made a presentation concerning the mandate of the PFDA. He explained that the success of the General Santos Fishing Port Complex in meeting the European Union's stringent international quality standards was a classic case of a unique working relationship among all industry players in the fisheries sector. The consolidated efforts of national government agencies, the local government unit, and the private sector turned the seemingly impossible task of transforming the port into what was at present a model port. It highlighted the Bureau of Fisheries and Aquatic Resources (BFAR) and PFDA's resolve to meet emerging trends abroad, the government's capacity to respond to challenges and the Philippine's commitment to call for a unified international working cooperation to further the development, conservation, and preservation of the fisheries resources in the Asia Pacific Region by eliminating the threat of IUU fishing.

69. As a flag State, the Philippines through BFAR and PFDA was working to combat IUU fishing together with FAO, APFIC and SEAFDEC. However, ongoing assistance for capacity building was required.

70. Mr Nat Onsri, Chairman, Tuna Group and Vice President, Thai Food Processors' Association, Nadee, Muang, Samut Sakorn, Thailand, made a presentation providing a perspective on port State measures from the point of view of Thai fish processors and marketing groups. He commenced by providing an overview of the Thai Food Processors' Association (TFPA), noting in part that the organization was a non profit one established in 1970 and included a 120 processors and 84 trading companies. The association's objectives were generally to promote and develop the establishment of processed food, to provide scientific assistance to members, to serve as a communication center between members and government and to represent the members as required. He pointed out that about 80 percent of the tuna processed in Thailand, adding that it was essential to have sustainable and reliable suppliers for the stability of the industry.

71. Mr Onsri outlined how Thailand controlled the import of tuna, both through government agencies and certification by the Earth Island Institute (EII). In this process, the Government exercised control over import and export documents while the customers received documents related to traceability that had been certified by EII. In summary, he stressed that it was important to sustain the world tuna industry by promoting sound management and fishing practices, the joint monitoring of fishing, processing and trade and engaging in public relations to encourage consumers to only accept certified tuna.

72. Mr Aphisit Techanitisawad, President, Thai Overseas Fisheries Association, Tambon Thasai, Muang, Samut Sakhorn, Thailand, made a presentation relating to fleet operations in Thailand. It provided a historical perspective on the movement of fleets from national waters to the high seas and the effects of the implementation of extended jurisdiction. Mr Techanitisawad discussed the effect of increasing consumer demand on fleet operations, the requirement relating to traceability schemes and the loss of revenue to vessels. He also outlined the information to be provided in advance to port States by foreign fishing vessels, vessel identification, fishing authorization, trip information and species information. He noted

in part that the Thai Government was encouraging the private sector to move into high seas and deep seas fisheries to target tuna.

73. Dr Smith Thummachua, Chief, Overseas Fisheries and Economic Cooperation Group, Fisheries Foreign Affairs Division, Department of Fisheries, Bangkok, Thailand, provided a synthesis of key aspects of perspectives on port State measures to combat IUU fishing. A copy of the synthesis is in Appendix H. He emphasized that the increasing incidence of IUU fishing in many regions of the world created threats to the sustainability of fisheries both within areas of national jurisdiction as well as on the high seas. It was timely a challenging task for all countries to establish collective action to combat IUU fishing and to ensure that fishery resources were utilized in a long-term sustainable manner.

74. With respect to key aspects of port State measures, Dr Thummachua reiterated the point that port State measures were a promising tool to combat IUU fishing and that they must be implemented in a complementary manner to other mechanisms intended to address IUU fishing. In particular, he added that port State measures must be used to deter and prevent the landing and transshipment of IUU-caught fish in national ports. He also highlighted the following issues:

- A port State should maintain an effective system of port State control for foreign fishing vessels calling at its port.
- Training programmes for inspectors were very important for port States so that they could ensure that port inspection were carried out in an effective and efficient manner. When a foreign fishing vessel was in port, it should be required to undergo a port inspection by properly qualified and authorized inspectors;
- Accurate and reliable data and information were an integral element to ensure that port State measures were effective.
- Responsible fishers and processors were playing prominent roles in combating IUU fishing.
- Thai fishers and processors were not familiar with the Model Scheme even though it was adopted for implementation in 2005. For this reason, an urgent task for governments was to promote capacity building programmes as soon as possible through appropriate training initiatives, workshops and seminars.

75. In the discussion following the presentations, the relative importance of tuna in the overall Thai fish imports was raised. A further issue related to flag State requirements for vessels to land a certain share of their catches in the country where the vessels operated. The Workshop was advised that the situation varied among countries: some flag States permitted 100 percent of catches to be exported while others required some domestic landings.

76. A further consideration concerned the effectiveness of the “One-Stop Action Centre”, established to safeguard Philippine laws inside the Davao Fish Port Complex. It was the only designated international fish transshipment port in the country. In addition, the Anti-Illegal Fishing Task Groups that operated in the eight fish ports under PFDA. It was noted that while these initiatives had proven relatively successful, their effectiveness in overall law enforcement was limited by the fact that the port State measures were restricted to the regional fish ports managed by the PFDA.

RESPONSES TO THE FAO QUESTIONNAIRE ON PORT STATE MEASURES

77. Participants were invited to summarize and present their responses to the FAO questionnaire relating to national practice concerning the implementation on port State measures. The questionnaire had been distributed in advance of the Workshop. It is in Appendix I.

78. Dr Siriraksophon provided a consolidated summary and analysis of the participants' responses to the questionnaire covering ten countries. His presentation addressed ports currently used by foreign and joint venture vessels, port inspections, human capacity issues and resources, constraints and problems, and national needs for implementing port State measures to combat IUU fishing. It was pointed out that the implementation of port State measures in Southeast Asia was still tenuous due to many constraints and problems at the national level. These constraints included a lack of human capacity to implement the necessary measures, limitations of existing legal instruments, insufficient MCS capacity, and a lack of coordination among national agencies. Dr Siriraksophon urged, on the basis of this information, that the national needs for implementing port State measures be clarified by countries so that appropriate solutions could be found.

79. Dr Siriraksophon also noted that IUU fishing was not a new issue in Southeast Asia. The problems stemming from IUU fishing were due to failures in fisheries management at the national, subregional and regional levels, as well as an absence of an RFMO for high sea areas. He explained that three types of IUU fishing vessels were evident in the region: those from neighboring countries, those from foreign countries that operated in the region and those that operated in high sea areas covered by a RFMO. He added that different approaches were required to deal with the three types of IUU fishing vessels.

80. At the national and subregional levels, Dr Siriraksophon indicated that a way of solving IUU fishing in the region was to strengthen national fisheries management implementing the 1995 FAO Code of Conduct for Responsible Fisheries and other related management measures. Action towards this end should at least include the monitoring and regulating of national IUU fishing vessels and those from neighbouring countries. At the regional and international levels, and in areas covered by RFMOs, action against IUU fishing vessels, should be instituted, as far as possible, by RFMOs. This would include the implementation of a range of management tools including port State measures.

81. The report prepared by Dr Siriraksophon summarizing the responses to the questionnaire is in Appendix J.

82. In the discussion that followed, the country presentations, it was noted that for some countries, the definition of "vessel" did not include support and carrier vessels and that this had an impact on questionnaire responses. If the definition was to be widened to that of the Model Scheme, the number of ports used by foreign or joint venture fishing vessels would have increased in number.

FORMATION OF THE WORKING GROUPS AND THEIR REPORTS AND CONCLUSIONS

Multidisciplinary working groups

83. Four working groups were formed to enhance the participatory nature of the Workshop and as a means of engendering broader and deeper discussion on concepts and issues relating to port State measures. Each working group was invited to identify to consider a number of key issues and to draw conclusions from them develop responses to them. The composition of the working groups for the three exercises is in Appendix K.

84. The working groups were requested to identify the:

- main IUU fishing problems in the region that could be addressed by port State measures, distinguishing between the issues on foreign and national vessels and current and potential problems;
- strengths and constraints in implementing the Model Scheme;
- solutions for overcoming the constraints in implementing the Model Scheme,
- clear steps that national fisheries administrations might take to develop port State measures that implemented the relevant measures of the IPOA-IUU and the Model Scheme;
- recommended steps for strengthening linkages between port State measures and key compliance tools (e.g. trade, traceability, vessel monitoring systems (VMS) and information networks); and
- cooperative mechanisms to promote harmonized port State measures at bilateral, subregional or regional levels in Southeast Asia.

85. The reports of the multidisciplinary working groups are in Appendix L.

86. Following the presentations by the working groups, three commentaries were made by a panel of resource persons comprising Messrs Lobach and Kuemlangan and Dr Siriraksophon.

87. Mr Lobach commended the working groups for their excellent work. In his comments, he discussed each of the questions in turn focusing on common themes and issues:

- With respect to the first question, he noted that the working groups had identified unauthorized fishing, misreporting and non-reporting and the use of prohibited gear as the main IUU fishing problems by national and foreign vessels.
- Concerning the strengths and constraints in the implementation of the Model Scheme, he noted that the existence of regional bodies such as SEAFDEC and APFIC was strengths and constraints were inadequate legal frameworks, a lack of regional network and a lack of trained inspectors.
- For the solutions, it was noted that countries should formulate and/or revise the legal framework, establish a regional MCS Network and promote capacity building and training.

- For the steps to develop port State measures, it was noted that countries should ensure political will, encourage public awareness and promote interagency cooperation and coordination.
- With respect to the linkages with other MCS tools, the working groups identify the use of VMS as an important consideration.
- For cooperative mechanisms in the region, the establishment of an RFMO for Southeast Asia and the initiation of bilateral and multilateral mechanisms for dialogue, harmonisation and exchange of information were proposed.

88. Mr Kuemlangan noted that the working groups, through their discussion and reports, showed a high level of familiarity with port State measures and the Model Scheme even if it was acknowledged that the Scheme represented a complex system and the region required additional time to understand its terms and implications for implementation. In addition, he pointed out that the different interpretations of, and approaches to, addressing the issues showed a high level of commonality that reflected similarity of country situations in the region.

89. Standard operating procedures for the implementation of port State measures were highlighted as an important implementation tool for the measures. Another important and related point raised was the need to ensure partnership with the private sector, investors and other stakeholders in terms of consultation and implementation of port State measures. These would contribute to efficient interagency action. In addition, the procedure would enhance transparency, especially with respect to ensuring that clients, vessel operators and owners knew the procedures in advance. In this way, the legitimacy of port State measures and procedures would be improved, thereby facilitating compliance with the measures and procedures.

90. Mr Kuemlangan noted the need for linkages between port State measures and the use of other monitoring tools such as IMO's Automatic Identifier Systems (AIS) and catch documentation and certification schemes. This was particularly important for trade verification to ensure compliance with the rules of origin under international trade regimes.

91. In his comments on the working groups, Dr Siriraksophon highlighted four issues based on the presentations:

- The need to strengthen the implementation of fisheries management based on the FAO 1995 Code of Conduct and the Regional Code of Conduct for Responsible Fisheries as a means of eliminating some types of IUU fishing;
- Giving careful consideration to the development of standard operating procedures to support the implementation of port State measures as well as developing regional guidelines for port State measures as proposed by the working groups. The regional guidelines could seek to standardize measures as a means of eliminating competition among neighbouring port States;
- The establishment of a regional MCS network was considered crucial by the Working Group. However, countries should review the effectiveness of their existing national MCS programmes to determine whether it was necessary to promote closer regional MCS coordination, particularly if the national programmes were not functioning well;

- Many fisheries management measures had already been adopted in the region with the purpose of improving the status of fisheries resources and as a means of gathering data and information. However, it was important to ensure that these measures were implemented fully and that IUU fishing by both national and foreign vessels was combated. It was stressed that these measures would have little effect if countries failed to implement sustainable practices that were required to underpin the management measures.

92. In discussion following the presentations, it was observed that inadequate law enforcement had been identified as an IUU fishing problem in the region. However, law enforcement was undertaken by the State and was not an IUU fishing activity, although adequate enforcement would curb IUU fishing. Furthermore, the definition of unregulated fishing was discussed and it was explained that this term only related to areas within RFMO competence, not activities within EEZs.

93. It was emphasized by participants that some of the terminology used in both the Model Scheme and the draft Agreement was not relevant for all countries in Southeast Asia, rendering it difficult for implementation in the region. It was suggested that the terminology should better provide for regional differences. The participants were encouraged to represent their views in the relevant international process and to work through RFBs in order to further define the terms as they apply to the region.

94. It was noted that some developing countries would require financial assistance to participate in the June 2008 Technical Consultation. Participants were encouraged to advise their countries about the issues at stake and seek funding, if necessary, through appropriate bilateral, regional and international channels to attend the Consultation. It was explained that FAO did not fund attendance of Members at technical consultations and, because an inter-governmental negotiation was involved, could not take comments separately from countries or regional fora prior to consultations.

Thematic working groups

95. The thematic working groups (Appendix K) were formed to review the Model Scheme and the draft Agreement with a view to developing bilateral, sub-regional or regional implementation strategies. The working groups focussed on:

- legal aspects;
- information requirements and systems;
- inspection procedures and results of port State inspections; and
- training programmes for port inspections.

96. The reports of the thematic working groups are in Appendix M.

97. In his comments on the reports of the working groups, Dr Thummachua noted that the Working Group exercise had provided a good learning process about the draft Agreement and how countries should establish mechanisms to implement port State measures at the national, subregional and regional levels. In addition, he noted that the draft Agreement required that the fishing vessel prove that it had not engaged in IUU fishing.

98. With respect to cooperation, Dr Thummachua stressed that it important to establish closer cooperation with port States in the region and with port and flag States outside the region. To this end, a practical system needed to be established. He noted that some countries in Southeast Asia already had port inspection procedures in place to combat IUU fishing.

99. A key aspect of implementing robust port State measures was the need for well trained and professional personnel. Appropriate training programme were essential to facilitate port inspection. Coupled with this training, awareness building programmes to educate and involve stakeholders including fishers and processors was needed. Such programmes would facilitate greater compliance with port State measures.

100. Once concern about the draft Agreement was that it lacked a process to verify and validate the information pertaining to prior notification. Dr Thummachua proposed that this issue might require further consideration at the June 2008 Technical Consultation.

101. Dr Funge-Smith observed that most of the countries were taking rather limited action on IUU fishing through their ports. Most of the focus was on the control of issues relating to IMO, CITES, food safety, immigration, migration and crewing. Some countries had designated ports while other countries had yet to undertake such designations. It was proposed that each country should consider establishing a model port.

102. He added that to commence the implementation of port State measures, it was apparent that countries should embark on a number of actions. Dr Funge-Smith noted that at the regional level, countries should establish minimum standards that could be regionally harmonized, including the establishment of standard operating procedures. He expressed the view that SEAFDEC, ASEAN or the RPOA would provide a suitable mechanism for facilitating this work. In addition, he indicated that countries should develop awareness mechanisms to inform foreign fishing nations and vessels of the requirements and what to expect when they arrived at designated ports. The implementation of the regional MCS network should be promoted actively through the RPOA and ASEAN. In this regard, Dr Funge-Smith suggested that non ASEAN members in and adjacent to the region should be engaged in these initiatives. Finally, the establishment of a legal working group under the SEAFDEC umbrella, could provide necessary advice and recommendations for regional initiatives to implement port State measures.

103. Regarding actions at the national level, Dr Funge-Smith proposed several actions to implement port State measures, including the development and implementation of a NPOA-IUU, as this would clearly show where there were gaps in policy and measures. It would also enable clearer prioritization of actions as well as resource needs from the national budget. A further consideration would be to strengthen interagency consultation and coordination to assist with the establishment of a model port and to elaborate standard operating procedures. He noted that these actions would also indicate training and capacity-building requirements.

104. With respect to the updating of legislation, a process that was very often slow, Dr Funge-Smith pointed out that subsidiary legislation such as decrees may need to be promulgated in order to take effective and timely action against IUU fishing. The ratification of the 1982 UN Convention should be fast tracked by those countries that had not yet ratified it. Action towards this end could be encouraged through the RPOA and ASEAN.

105. Finally with respect to training, Dr Funge-Smith stressed that there was a clear requirement for dedicated courses to be developed within the ASEAN and SEAFDEC frameworks and through regional fisheries colleges. FAO, depending on resource availability, might also be in a position to assist with this task. He added that it might be possible to develop online training, using case studies and examples of how to fill forms, compile and submit reports, etc. This type of training could permit the more rapid accreditation of officers and provide the opportunity for continuing training and skills updating.

106. Ms Gunilla Greig, Programme and Projects Officer, Fisheries and Aquaculture Department, FAO, Rome, Italy, in her comments following the presentation, encouraged the establishment of the networks to assist in the implementation of port State measures. She urged that they be initiated as soon as possible, albeit on an informal basis initially. She also pointed out that it was not necessary to await the ratification of the draft Agreement before taking action. Referring to the 1982 UN Convention, Ms Greig noted that, analogous to that process, the implementation of the draft Agreement could preferably commenced prior to its entry into force. In this context, she referred to the APFIC Regional Consultative Forum Meeting to be held in Indonesia in August 2008, noting that it provided an opportunity to continue discussions initiated at this Workshop. She also mentioned the Meeting of the ASEAN Ministers on Agriculture and Forestry (including fisheries) as a relevant forum for creating the necessary political will.

107. Ms Greig commended the working groups on their constructive approaches, referring in particular to the Group that had provided concrete proposals for amendments to the draft Agreement. She expressed the hope that this work would be built upon in national briefs to be carried forward to the international negotiations at the June 2008 Technical Consultation. In relation to one specific proposal concerning the exclusion of small-scale vessels from the scope of the draft Agreement, she pointed to the complexities in agreeing to a global definition of small-scale vessels.

108. Noting that participants had given very frank expositions about the current situations in their countries, Ms Greig highlighted a lack of mechanisms and capacity to implement port State measures. In this context, she recognized that considerable time would be needed for the implementation of the draft Agreement in Southeast Asia and at the same time pointed out that this gave rise to all the more reason to start initiative as early as possible.

109. Following the presentations, the Workshop agreed that capacity-building was critical to implement port State measures and that the suggestion for online training was highly appropriate. Such training could also cater to the needs of other stakeholders. With respect to online training, the Workshop was of the view that there would be a continuing need for national facilitators to assist with local training (e.g. to provide clarification on issues that might not be clear in the online training programme). It was noted that interregional cooperation was a medium- to long-term goal and strategy that should be pursued.

110. In discussion, the Workshop sought clarification as to why the scope of the draft Agreement was so broad and not limited to the high seas. The Workshop was informed that control was assured over foreign fishing vessels in the jurisdiction of the port State. However, in order to control IUU fishing, wherever it took place, the draft Agreement covered activities in all areas, including the high seas and maritime zones of coastal States other than the port State. In respect of the latter, the draft Agreement catered to situations, for example, where the coastal State sought the cooperation of the port State to inspect a vessel suspected of carrying

out IUU fishing activities in its waters. Limitation of the scope of the Agreement to the high seas would therefore create a major loophole in respect of efforts to combat IUU fishing.

111. It was also confirmed to the Workshop that the 2008 FAO Expert Consultation on the Global Record of Fishing Vessels discussed the issue of the scope of the global record and considered the issue of whether or not to include “small-scale” or “small” vessels on the register. The inclusion of “small” vessels was problematic and it was recommended that a phased approach be adopted in compiling vessel information, commencing with data already available for vessels such as those on the Lloyds Register.

CASE STUDY: “HONG KUI HUI”

112. The working groups (Appendix K) were convened to undertake a fictitious case study concerning IUU fishing and the use of port State measures. The exercise concerning the vessel, the “Hong Kui Hui”, is in Appendix N. The reports of the working groups on the case study are in Appendix O.

113. Dr Doulman commended the working groups for the presentations noting that it was a difficult exercise that required logical thinking to appreciate the extent and scope of the problems involved. He added that the case study demonstrated the complex nature of real world problems relating to IUU fishing. He stated that all the working groups had highlighted the need for cooperation among States and that this was a key aspect for implementing port State measures.

114. With respect to specific presentation, Dr Doulman stated that he welcomed the logic and approach of Working Group 1 and that Working Group 4 had concisely set out the issues at the beginning of the problem. He noted that none of the Groups had sought to detain vessels and believed that some of the States could have acted more forcefully in this regard. The lack of assumptions by working groups 2 and 3 made their presentations harder to follow though Working Group 3’s attempt to integrate the Articles of the draft Agreement into its analysis and presentation was commendable.

115. Dr Doulman underscored the difficulties created by unauthorized transshipment and how such activities, which often sought to launder catches, undermined regional efforts to conserve and manage fish stocks. He stressed that the objective of reducing the incidence of IUU fishing was to enhance fisheries management and the status of stocks and that for this reason, sustainability considerations were of paramount importance. In concluding his remarks, he applauded the presentations of the working groups, particularly given the limited time available to address the complex issues involved.

116. Ms Onoora indicated that she would refrain from commenting on the presentation of Working Group 1 because she had participated in its deliberations. She added that overall the presentations were rather similar and noted that the time allocated to the case study had been rather limited. She stated that the working groups had identified issues of importance and that this had indicated that they had a good appreciation of the problems involved.

117. With respect to Working Group 2, Ms Onoora indicated that seeking compliance through the trilateral agreement was a possible means of resolving problems. She noted that the Group had not made assumptions about its discussions and that the presentation could have been a little clearer if such assumptions had been made. For Working Group 3,

Ms Onoora expressed the view that it had provided a very good overall picture of the situation but the presentation would have been enhanced if the assumptions of the Group had been clearer. Concerning Working Group 4, she pointed out that the strict enforcement of law could easily create disputes between or among relevant States or other entities concerned and that it would be preferable to seek to address problems in a friendlier manner through regional cooperation and collaboration. She added that overall, the work of the four Groups had been impressive.

118. Mr Lobach indicated that he was very impressed with the thorough examination of the issues in the case study. He acknowledged that it had been a difficult exercise and was pleased that some working groups had used the draft Agreement as the basis for finding relevant solutions. He noted that the activities of the reefer vessel on the high seas were not regarded as illegal but rather as unregulated as the flag State of the vessel was not a member of the relevant RFMO. Furthermore, he mentioned that the activities of the vessel within its own area of national jurisdiction were outside the scope of the draft Agreement. He commended the working groups and emphasized that the case study showed the importance of cooperation and coordination in combating IUU fishing.

BRAINSTORMING: LOOKING AHEAD

119. Discussions led by Dr Purwanto and Mr Terje Lobach were held with a view to:

- identify aims and targets for bilateral, subregional and regional cooperation and harmonization of port State measures;
- determine some measures and mechanisms that could be used to implement harmonized port State measures on a bilateral, subregional and regional basis; and
- assess the scope to implement the draft Agreement by countries in the Southeast Asian region.

120. The Workshop agreed on six key issues for future action and cooperation in strengthening and harmonizing port State measures to combat IUU fishing in the Southeast Asian region. The key issues for future action are in Appendix P.

CLOSURE OF THE WORKSHOP

121. The Technical Secretary, Ms Swan, commended the participants and resource persons for the exceptionally high standard of their contribution and for their commitment in combating IUU fishing by developing a range of potential areas for cooperation in the implementation and harmonization of port State measures. In this regard, she noted the recommendations of the Workshop that identified key roles that might be played by APFIC, SEAFDEC, ASEAN and relevant RFMOs. She thanked the Government of Norway and Sweden and the FAO Regular Programme for supporting the Workshop and expressed gratitude to FAO Regional Office for Southeast Asia for contributing to the Workshop in such an effective manner. In conclusion, she reiterated the aim expressed by many participants for the outcome of the Workshop to be carried forward at national level and through appropriate mechanisms in the region to promote the strengthening and harmonization of port State measures to combat IUU fishing.

122. The APFIC Secretary and Workshop Coordinator, Dr Funge-Smith thanked the participants from APFIC member countries and those who had participated as SEAFDEC members for their commitment to the Workshop. The ability to engage a broad range of Southeast Asian countries in the Workshop was an important contribution to the development of global consensus and awareness raising on the use of port State measures to combat IUU fishing. He noted that there was a continuing need for further awareness raising in the region to ensure that the opportunities provided by the application of port State measures could be capitalized upon to restrict IUU fishing and limit the drain of revenue and resources from the fisheries of the region. A shift in perception was also necessary to appreciate that IUU fishing should not be viewed as exploitation of the opportunity to access a resource before other competitors, but in fact was equivalent to theft and should be treated as such. The Workshop and previous APFIC and SEAFDEC workshops had demonstrated the clear commitment by countries in the region to address IUU fishing. This commitment should be both commended and deserved continued support. Dr Funge-Smith thanked both FAO and the Governments of Norway and Sweden for their support to the Workshop and the participating non-FAO Member countries.

123. The SEAFDEC Secretary-General, Dr Ekmaharaj, expressed his satisfaction with the Workshop and stated that SEAFDEC was pleased to have been a partner in the Workshop. He added that although there were important differences in Southeast Asia, it was recognized that the issue of port State measures and associated traceability schemes would impact fishers and countries in the region. He expressed the hope that participants would return to their countries and brief colleagues and other officials about the developments taking place with respect to the implementation of port State measures to combat IUU fishing. Dr Ekmaharaj expressed his appreciation to the Governments of Norway and Sweden for their support to the Workshop and to FAO for its partnership in the initiative.

124. On behalf of the participants, Mr Acacio Guterres, Director of Fisheries Fishing Industry, National Directorate of Fisheries and Aquaculture, Ministry of Agriculture, Forestry and Fisheries, Mandarin-Dili, Timor Leste, expressed his thanks to FAO, APFIC and SEAFDEC for convening the Workshop. He noted that it was timely in view of international events relating to the development and implementation of port State measures. He expressed the view that participants should return to their respective countries and promote discussion about the need for port State measures and for officials to participate actively in the Technical Consultation on port State measures at FAO headquarters in Rome in June 2008. Furthermore, Mr Guterres pointed out that the Workshop dovetailed closely with other important initiatives in Southeast Asia relating to IUU fishing, and in particular the implementation of the RPOA. Finally, he thanked the Governments of Norway and Sweden for their generous support in making the Workshop possible. He also thanked FAO staff and the resource persons for their input for a successful Workshop.

125. On behalf of the Co-Chairs, Dr Purwanto noted that from the active involvement of participants during the Workshop and the output of the group discussions, it could be concluded that the Workshop's primary objective had been achieved. The presentations made had increased the awareness and understanding of the participants about how port State measures could be used to combat IUU fishing and the need to promote bilateral, subregional and/or regional coordination to implement these measures. Meanwhile, the results of the group discussions would contribute to the development of an international instrument on port State measures. The impact of national capacity development resulting from the Workshop,

would also contribute directly to the implementation of the call to develop port State measures as contained in the 2007 RPOA. Therefore, all participants would like to thank FAO, APFIC and SEAFDEC and the resource persons for conducting this important Workshop. Dr Purwanto also thanked the participants for their active involvement in all aspects of the Workshop and stressed that FAO, APFIC and SEAFDEC would be required to help carry forward this important initiative to facilitate the implementation the port State measures in the Southeast Asian region.

126. Dr Purwanto wished all participants a safe and pleasant journey to their home countries. He stated that he looked forward to meeting some of the participants at the RPOA Coordination Committee meeting to be held in Manila at the end of April 2008.

127. The Workshop closed at 13.00 hours on 4 April 2008.

Agenda

Opening of the workshop

Background and framework

The FAO Model Scheme on Port State Measures: NPOAs-IUU and IUU fishing activities in the region

The FAO model scheme and regional approaches, the 2007 draft binding Agreement on port State measures

Key elements of national laws and the roles of APFIC and SEAFDEC

National coordination and implementation of port State measures

Industry perspectives on port States measures

Responses to the FAO questionnaire on port State measures

Formation of the working groups and their reports and conclusions

Case study: “Hong Kui Hui”

Brainstorming: looking ahead

Closure of the workshop

APPENDIX B

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Opening statement
by
Mr He Changchui
Assistant Director-General and
Regional Representative for Asia and the Pacific
Bangkok, Thailand

Ladies and gentlemen,

It is my pleasure to extend a warm welcome to each and all of you on the occasion of the opening of the *Regional Workshop on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing* – jointly organized by the Southeast Asian Fisheries Development Center (SEAFDEC), the Asia-Pacific Fisheries Commission (APFIC) and the Food and Agriculture Organization of the United Nations (FAO). The FAO Regional Office for Asia and the Pacific is indeed honoured and pleased to be part of this forum aimed at considering options for cooperative action in the subregion.

Seven years ago, FAO Members adopted the 2001 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU). As a result of consequent consultations convened by FAO between 2002 and 2004, the Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing was endorsed by the FAO Committee on Fisheries (COFI) in 2005, urging countries to give priority to the operationalization of the model scheme.

Since then, the international community has intensified its resolve to strengthen port State measures even further. Over the past two years there have been repeated calls in international fora for a binding international instrument on port State measures, to be developed and based on the Plan of Action and the Model Scheme. As a result, the 2007 twenty-seventh session of COFI established a process that is likely to result in the development of such an instrument. To this end, an Expert Consultation to Draft a Legally-binding Instrument on Port State Measures was held in the United States of America from 4 to 8 September 2007, and a Technical Consultation to review the draft Agreement will take place in June 2008. The next session of COFI, in 2009, will review the outcome.

We are now on the threshold of a new era in addressing IUU fishing through the key compliance tool of port State measures. They are widely regarded to be one of the most cost-effective means of combating IUU fishing, and their value is well understood in allowing swift and certain action to be taken. They embrace a range of requirements, including vessel reporting prior to entry into port, in-port inspections, complementary actions by flag States, reports on inspections, information exchange and human capacity development. Action taken as a result of port State measures target the profitability of IUU fishing, gained through what is now widely recognized as “environmental crime”. Action to combat this can include the denial of port access, landing, transshipment, trade, export and resupply.

In addition, port State measures are fundamental to the effective use of a wide range of other tools employed at national and regional levels to combat IUU fishing. These tools include IUU and authorized vessel lists, vessel monitoring systems and the implementation of internationally agreed market-related measures.

As a result, a growing number of countries, mindful of the value of port State measures and the need for their harmonization, are developing, or have adopted through regional fishery bodies (RFBs), strengthened measures and regional schemes. Human capacity development programmes often accompany these important actions. Such regional cooperation and coordination will assist greatly in reinforcing national efforts and deterring the operation of “ports of non-compliance”, where countries are unable or unwilling to apply effective port State measures. However, in a region such as ours, without the benefit of comprehensive coverage by regional fisheries management organizations, a creative approach will have to be developed to achieve the needed cooperation and coordination.

In response to mounting international attention to the essential role of port State measures in combating IUU fishing, FAO has mounted a series of regional workshops to develop national capacity and promote regional coordination. As a result of these initiatives it is expected that countries will be better placed to strengthen and harmonize their port State measures. In addition, we anticipate that countries will be able to meet the requirements of relevant RFBs and implement the necessary IPOA-IUU tools and the FAO Model Scheme.

This is the fifth in a series of regional workshops on port State measures in which FAO has been involved. We acknowledge with gratitude the many organizations and governments that support this important series of workshops, including our partners in the delivery of this present workshop, APFIC and SEAFDEC. Special recognition and gratitude is also extended to the donors that are supporting this workshop. In FAO, extra budgetary financing has been provided by the governments of Norway and Sweden.

The considerable scope of interest and support received to date reflects a broad-based appreciation of the potential impact of strengthened and harmonized port State measures in combating IUU fishing activities.

Participants from ten countries in the Southeast Asian region are attending this five day workshop, and have the opportunity to interact with international and regional experts during discussion periods. The participants will form working groups to consider the development of regional standards for port State measures based on the FAO Model Scheme, and, based on prevailing circumstances in the region and use of complementary compliance tools, recommend measures that can best implement port state controls in the Southeast Asian region.

The workshop also affords a valuable opportunity to discuss issues that may eventually be considered in the context of a binding international instrument on port State measures. I am thus anticipating outcomes of a very high standard.

Bringing this workshop to fruition has been a true team effort. I wish to extend my thanks to those in SEAFDEC, APFIC and FAO who have worked together to ensure that enduring outcomes will be achieved for the benefit of all.

I wish you all a full and very productive workshop.

Thank you very much, ladies and gentlemen, for your attention.

I hereby declare the workshop open.

Statement
by
Mr Widi A. Pratikto
Chair, Asia Pacific Fisheries Commission
Jakarta Pusat, Indonesia

The Honorable Dr He Changchui,
The Honorable Dr Siri Eckmaharaj,
Distinguished Delegates, Ladies and Gentlemen,

First of all, I would like to welcome you to this important event, the regional workshop on port State measures to combat illegal, unreported and unregulated fishing (IUU Fishing). IUU fishing practices are our common concerns as these practices have significantly and severely depleted our fish stocks. Therefore a number of international *fora*, at least since the late 1990s, had issued calls to combat IUU fishing. The culmination of these *fora* were the adoption of the international plan of action to prevent, deter and eliminate IUU fishing (IPOA-IUU) by the FAO Committee on Fisheries (COFI) in March 2001. One action in the IPOA-IUU is Port State Measures.

Distinguished Delegates, Ladies and Gentlemen,

The Port State measures have been increasingly adopted by Regional Fisheries Management Organizations and are also addressed in a number of international instruments. Also these measures have been promoted to be legally binding instrument. At the twenty-seventh Session of COFI in March 2007, the Committee acknowledged the urgent need for a comprehensive suite of port State measures and the strong support expressed on the proposal to develop a new legally-binding instrument for these measures. The APFIC member countries should anticipate the development of the Port State Measures to legally binding.

However, there are a number of constraints to implement these measures in our region including national laws and regulation and the implementing capacity. Therefore, I would like to appreciate the joint effort of FAO/APFIC and SEAFDEC to carry out this workshop to help the APFIC member countries to develop national capacity and promote bilateral, sub-regional and/or regional coordination so that countries will be better placed to strengthen and harmonize port State measures and, as a result, implement the relevant IPOA-IUU tools and the FAO Model Scheme and contribute to the development of a legally-binding instrument on port State measures.

Distinguished Delegates, Ladies and Gentlemen,

The port State measures are also one action in the Regional Plan of Actions to Promote Responsible Fishing Practices including Combating Illegal Fishing in the Region, which is known as the RPOA. The RPOA had been endorsed by Ministers responsible for fisheries from 10 countries, namely Indonesia, Australia, Brunei Darussalam, Malaysia, Papua New Guinea, the Philippines, Singapore, Thailand, Timor Leste and Viet Nam, in the Regional Ministerial Meeting that was held in Bali, Indonesia, on 4 May 2007.

The preparation for the implementation of the RPOA has been elaborated by conducting preparatory meeting/workshop in Kuala Lumpur and Bangkok in 2007, and Monitoring, Control and Surveillance (MCS) workshop in Bali, March 2008. During the first RPOA meeting in Kuala Lumpur, August 2007, the countries endorsing RPOA had decided that the port State measures to be one of the five priority actions that will be implemented soon. During that MCS Workshop in Bali, however, the RPOA-endorsing countries have decided to wait for the result of this FAO/APFIC/SEAFDEC Regional Workshop on Port State Measures before elaborating the implementation of port State measure in the RPOA region.

Further elaboration of the implementation of the RPOA, including port State measure, will be carried out in the RPOA planning workshop in Manila in April 2008. The results of these meeting and workshops will be reported to and possibly endorsed by the coordination committee during the meeting in Manila in April 2008. The effective implementation of the RPOA will be reviewed by a Coordination Committee comprised of officials from each participating country and communicated to the FAO's Committee on Fisheries and other regional bodies as appropriate.

Distinguished Delegates, Ladies and Gentlemen

Considering the current development of the fisheries management practices and the regional cooperation, I believe that APFIC member countries are currently in the right path to implement the port State measures. With regard to the limited capacity of APFIC member countries to implement the port State measures I do hope that this workshop could identify the constraints and their solutions, develop the timeframe for implementation in order to combat IUU fishing while managing the fisheries resources sustainably. I conclude that this workshop is a milestone for a development and sustainable of marine resources and fisheries in the region of Asia-Pacific therefore in this opportunity, please allow me to thanks all of you for your contribution and support to the workshop. I do hope that the RPOA can be adopted by the FAO as the official plan of action for Asia-Pacific.

Thank you very much,

Statement
by
Mr Siri Ekmaharaj
Secretary-General, Southeast Asian Fisheries Development Center
Bangkok, Thailand

Dr Simon Funge Smith, Fisheries Senior Officer of FAO Regional Office in Bangkok
Distinguished delegates from FAO, APFIC, SEAFDEC, and member countries;
Ladies and gentlemen,

On behalf of SEAFDEC, allow me to express our appreciation to the FAO/APFIC for organizing this workshop. It has also been our pleasure and honor to co-organize this important regional event.

SEAFDEC recognizes FAO/APFIC as a regional competent agency in areas of multiple water resource use management and development in Southeast Asia. The collaboration and partnership between APFIC and SEAFDEC is therefore considered important in light of the potential benefits not only to APFIC member countries but also to the SEAFDEC Member Countries. The experience from co-organizing the ASEAN-SEAFDEC Regional Technical Consultation on Implementation of the ASEAN Roadmap early this year is a prominent example, and is expected to spearhead future close collaboration between SEAFDEC and APFIC.

We have noted that the “Draft Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing” has been prepared as an outcome of the FAO Expert Consultation to draft a Legally-binding Instrument on Port State Measures organized from 4 to 8 September 2007 in the United States of America. The SEAFDEC have been informed that this Draft Agreement will be finalized and submitted for consideration and review by the FAO Technical Consultation on Port State Measures in June 2008. In this regard, FAO, APFIC and SEAFDEC is now co-organizing this regional workshop on port State measures to combat IUU fishing to enhance regional awareness of the importance of the port State measures, update the participants on the FAO Model Scheme on Port State Measures and the progress in the development of the Draft Agreement, and prepare the necessary inputs for the FAO Technical Consultation in June 2008.

In looking at the forthcoming challenges in combating IUU fishing, SEAFDEC wishes to provide the view expressed by its member countries on the issue related to port State measure and legally-binding instrument on port State measures. During the ASEAN-SEAFDEC Regional Technical Consultation on International Fisheries Related Issues organized by SEAFDEC in Chiang Mai in February 2008, the initiatives developed at global and regional levels aimed at combating illegal, unreported and unregulated (IUU) fishing, including the FAO International Plan of Action to Prevent Deter and Eliminate IUU Fishing; the Regional Plan of Action (RPOA) to Promote Responsible Practices including Combating IUU Fishing in the Region; and the ongoing development of a legally-binding instrument on port State measures by FAO, were discussed.

The ASEAN-SEAFDEC member countries expressed the view that the port State measures should be implemented together with other measures such as the flag State measures in combating IUU fishing. Thus, the ASEAN-SEAFDEC member countries agreed to carefully review the Draft Agreement on Port State Measures, to be able to assess the applicability and usefulness of the Agreement in the region and most importantly to be able to provide inputs to this Workshop. The Member Countries also concurred that other unclear issues on the port State measures pertaining to the Draft Agreement would be clarified at this Workshop.

Furthermore, the ASEAN-SEAFDEC member countries also suggested that, when the final version of the Draft Agreement on Port State Measures is available, that is after the June 2008 FAO Technical Consultation on Port State Measures or before the next FAO COFI Meeting in 2009, further discussion among the member countries would be conducted to come up with the regional common and coordinated position on the measures.

Distinguished delegates from FAO, APFIC, SEAFDEC, and member countries, ladies and gentlemen,

I would like to thank you for your participation in this Workshop. SEAFDEC is looking forward to having close collaboration with you in the near future. And lastly, I wish the Workshop a great success especially in the discussions during the next three days.

Thank you!

**National coordination and implementation of port State measures
in selected States in the Southeast Asian region**

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1. INTRODUCTION

This study on national coordination and implementation of port State measures to combat illegal, unreported and unregulated (IUU) fishing, draws from examples of practice in Indonesia, the Philippines and Thailand. It will:

- Briefly describe the annual level and purpose of port calls made by non-national fishing vessels in each country and the number of major fishing ports;
- Briefly describe the legal requirements and institutional mechanisms and practice for the implementation of port State measures as set out in the 2005 FAO Model Scheme on Port State Measures to Combat IUU Fishing (FAO Model Scheme) for each country;
- Briefly describe the legal requirements and institutional mechanisms and practice for the implementation of port State measures as set out in the 2005 FAO Model Scheme on Port State Measures to Combat IUU Fishing for each country;
- Identify and evaluate national-level coordination mechanism for the legal and administrative implementation of port State measures;
- Identify where coordination mechanisms are weak or do not exist;
- Assess the strengths and weakness of implementation of port State measures in Indonesia, the Philippines and Thailand, and
- Make recommendations on how to overcome the constraints.

This paper will mostly make legal analysis and comparison based on information provided in a questionnaire prepared by FAO and answered by respectively selected States.

2. NATIONAL COORDINATION AND IMPLEMENTATION OF PORT STATE MEASURES BY INDONESIA, THE PHILIPPINES AND THAILAND

The number of major fishing ports and annual port calls made by non-national fishing vessels varied in each selected country in 2007. In the Philippines, there are approximately 760 port calls annually at Davao Fish Port Complex which is the only one fishing port in this country located in Davao City (southern Philippines). However, there were significantly more port calls in Indonesia, where about 5 000 vessels called into eight fishing ports, and in Thailand, where 2 000 to 3 000 vessels called into one fishing port – Phuket – which provides services to fishermen along the coast of the Andaman Sea and for deep seas fisheries in the Indian Ocean.

The legal requirements and institutional mechanisms or practices for implementing the FAO Model Scheme differed among the three countries as described below.

a) Legal requirements and institutional mechanisms and practice for the implementation of port State measures as set out in the 1995 FAO Model Scheme as they relate to non-national fishing vessels

(i) Prior advance notice

Indonesia: The non-national fishing vessels are required to provide relevant information prior to entering into a fishing port 48 hours before reaching its port.

Philippines: The non-national fishing vessels are required to provide relevant information prior to entering into a fishing port 48 hours before its arrival. Fisheries Administration Order (FAO) No, 199 allows transshipment of fish catch by foreign fishing vessels subject to the following conditions: a) only in a government-designated port; b) compliance with legal requirements prior to transshipment, and c) compliance with procedures in the course thereof.

Thailand: Notification is required 24 hours prior to reaching the port's area and also within 24 hours after the port call regardless of the size of the non-national fishing vessels.

(ii) Denial of port use

Indonesia: Indonesia will *deny* the use of its port if there is strong indication that the vessel engaged in illegal fishing practices in the conservation area of regional fishery management organizations (RFMOs) providing black and white lists. Each fishing vessel entering at any port shall send reports before its arrival to the head of fishing ports and fisheries inspectors. After that, documents and their validity will be checked, including the appropriateness of the document to the physical condition of the vessel and fishing gear. In case the document is found to be false, then it will be subject to further *investigation*. In conclusion, subject to its local law, there could be 1) denial of use of port if there is a strong indication that the vessel engaged in IUU fishing; 2) fishery inspections, and 3) an investigation.

Philippines: Due to the provision of Section 87 of Republic Act No. 8550 which is a local law, it provides that mere presence of a foreign fishing vessel inside Philippines' waters is an evidence for poaching, while the fishermen onboard and their crews may immediately be *arrested* and their foreign fishing vessel *detained*. In conclusion, subject to Republic Act No. 8550, 1) presence of a foreign vessel is a prima facie evidence for IUU fishing, 2) the fishermen onboard and their crew members may be arrested, and 3) fishing vessel may be detained.

Thailand: In Thailand's national practices regarding implementation of port State measures, there is no direct application to IUU fishing at this stage, as the objectives are to control safety and security, navigation pollution/environmental problems including working conditions onboard vessels. However, it has the right to *deny, detain, or expel* to safe refuge for specific or certain conditions such as security threat and violation of international standards of the 1974 Convention for the Safety of Life at Sea (SOLAS) and the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL). Furthermore, according to the provision of the Act Governing the Right to Fish in the Thai Waters 1939, any foreign fishing vessel is prohibited to operate within the Thai waters and the violation of this provision is subject to penalty as stated in this Act. In conclusion, Thailand has no nationally specific law or regulation dealing with the case of IUU fishing.

(iii) Inspections of vessels where the fish had not been landed

Indonesia: According to the existing regulations in Indonesia, each fishing boat, either a national or non-national fishing vessel, that needs to enter a fishing port, shall comply with applicable provisions. Some measures are enforced, including: 1) information must be provided to the harbormaster about the vessel's purpose and reason to enter fishing port at least 2 hours prior to its arrival; 2) the vessel's license or required document must be presented to the harbormaster for verification; 3) the cruise

report must be presented to a fishery inspector concerning the origin of fish, number and species of fish, and 4) the log book must be presented to detect whether the vessel's catch come from IUU fishing.

Philippines: All non-national fishing vessels which are allowed to use fishing ports are individually inspected on the basis of the precedence of their arrival.

Thailand: The Department of Fisheries and Marine Department undertakes inspections of documents relating to fishing vessels and onboard inspection of non-national fishing vessels with appropriate consent and inspection on a regular basis without any priorities. Measures for detention and expulsion must be applied whenever there are clear grounds on the basis of security/safety/environment, however expulsion cases are rare. Moreover, it is obvious that the Marine Department is responsible for maritime safety, pollution and environmental issues including working conditions onboard vessels.

It is noted that this comparative study shows several common practices among three selected States in respect of prior advance notice, denial of the use of ports and inspections of fishing vessels.

(iv) Communication with the flag State

In relation to communication by Indonesia, the Philippines or Thailand with the flag State of non-national fishing vessels where it was found during port inspection that there were strong grounds to believe the vessel had engaged or supported in IUU fishing activities, the fact is that "none" of them undertook such communication.

(v) Report of result of inspections

Indonesia, the Philippines and Thailand each have no process for reporting their fishing vessel inspection results to any international organization or States concerned.

(vi) Follow-up actions taken where IUU fishing is discovered

Indonesia: The harbormaster will provide information to the fisheries inspector and then the captain and crew members of fishing vessel will be detained for further investigation before proceeding the case to fisheries court, on the other hands, catches of fish will be sold through auction and money from auction will directly be sent to Indonesian Treasury Unit.

Philippines: Where IUU fishing occurred within the Philippines' waters by a non-national fishing vessel, the fishermen and crew members onboard such vessel are arrested for violation of Section 87, Republic Act No. 8550, or poaching in the Philippines' waters. Furthermore, the fish are confiscated and disposed of pursuant to the provisions of the local law on the matter and the non-national fishing vessel with all its gear and equipment are detained pending the disposition thereof by the proper court for prosecution.

Thailand: While Thailand has no specific measure directly applied to IUU fishing at this stage regarding port inspection, however, fishing operation and its production conducted by non-national fishing vessels within Thai waters is subject to legal sanction as designated in the Act Governing the Right to Fish in the Thai waters, when arrested.

(vii) Training of port inspectors

Indonesia: There are 262 surveillance officers in Indonesia placed at several ports and the local government, including 108 officers assigned to ports.

Philippines: The number of personnel needed to carry out the inspection of all foreign fishing vessels at Davao Fish Port Complex of the Philippines is inadequate, so the Philippines needs to train more staffs to be two quarantine officers and two fish inspectors and at least three other support personnel.

Thailand: Thailand allows staff of other departments to be officially appointed to perform port inspection, such as officers from Royal Thai Navy, Marine Police Officers and Fishery Officers in addition to officers from the Marine Department. However, all of them need to be trained in the specific knowledge regarding fishing vessel inspection, in accordance with the FAO Model Scheme, a new international instrument for port States to implement.

In general, among the three selected States, capacity-building programmes need to be developed for port inspectors to:

- Create a better understanding in relation to the concept of the FAO Model Scheme both at national and sub-regional levels or even at the regional level;
- Be trained how to do an appropriate inspection onboard at port to find out clear evidence for IUU fishing, and
- Develop effective training modules for personnel in charge of combating IUU fishing.

(viii) Information system

At present, the Philippines is member of the West and Central Pacific Fisheries Commission (WCPFC), the International Commission for the Conservation of Atlantic Tunas (ICCAT) and the Indian Ocean Tuna Commission (IOTC) while Indonesia is also a member of IOTC and is now in the process of becoming a member of the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) and Thailand is a member of IOTC. Thus, among the Philippines, Indonesia and Thailand, they can establish their information system or network regarding port State measures among themselves through IOTC as the common regional fisheries management organization (RFMO) in this region.

b) National-level coordination mechanisms for the legal and administrative implementation of port State measures

Indonesia:

- Lack of regional monitoring, control and surveillance (MCS) network;
- Lack of national capacity to implement port State measures;
- Lack of personnel skills, facilities and network, and
- Lack of public awareness on port State measures.

Philippines:

- Lack of information technology;
- Lack of equipment in combating IUU fishing, and
- Need effective training modules for personnel in charge for combating IUU fishing.

Thailand:

- Need holistic approach to combat IUU fishing activities among agencies concerned;
- Need closer inter-agency cooperation and consultation;
- Need National Plan of Action on IUU Fishing initiated or drafted by all agencies concerned, and
- Need to solve regulatory problems arising from cross-sectoral problems among government offices.

c) The strengths and weakness of implementation of port State measures in Indonesia, the Philippines and Thailand

The implementation of “port State measures” as one means or tool to combat IUU fishing is quite a new mechanism for the Southeast Asian region. Thus it is obvious that the implementation of port State measures need to be strengthened. However, there are currently a number of weaknesses in several areas as follows:

Indonesia:

- Lack of capable personnel;
- Lack of national and regional network in MCS;
- Lack of comprehensive research, and
- Lack of public awareness relating to implementation of port State measures to combat IUU fishing.

Philippines:

- Lack of qualified personnel;
- Lack of information technology regarding IUU fishing and port State measures, and
- Lack of equipment for combating IUU fishing activities.

Thailand:

- Lack of cooperation and consultation between or among agencies concerns,
- Lack of national laws or regulations regarding IUU fishing;
- Lack of capacity-building among port inspectors of inter-agencies concerned;
- Major constraints arising from regulatory problems that need to be urgently solved in order to strengthen some existing mechanisms at national level for implementing port State measures in the near future;
- Inadequate port State measures to directly cope with the problems of IUU fishing in efficient ways, and
- Lack of an MCS network both at regional and national levels for effective application in this region.

d) Recommendations for overcoming the above-mentioned constraints proposed by the three States

Based on the questionnaires provided by the Philippines, Indonesia and Thailand for the FAO/APFIC/SEAFDEC Regional Workshop on Port State Measures to Combat IUU Fishing, held in Bangkok, Thailand, 31 March to 4 April 2008, the recommendations proposed for overcoming the above-mentioned constraints are summarized below.

Indonesia:

- Promoting public awareness regarding port State measures;
- Strengthening the national capacity to implement port State measures especially on the number and skill of personnel, facilities and network through training and workshops;
- Improving related facilities and infrastructure;
- Exchanging data and information among countries in the region related to fishing boats suspected of or proven to have been involved in IUU fishing activities;
- Building capacity for the implementation of port State measures, including development of human resources, increasing facilities and infrastructures;
- Developing guidelines agreed by all relevant member countries in the region on the minimum standards and procedures to be carried out in accordance with the instruments on port State measures, and

- A coordination committee should play a major role in developing a mechanism for combating the IUU fishing in the region.

The Philippines:

- Hiring of more qualified personnel;
- Procuring of the necessary equipment in combating IUU fishing;
- Conducting regular trainings of personnel charged with the function of combating the IUU fishing, and the regular review of the training modules used therein;
- Capacity building and skills training;
- Adopting of unified monitoring forms and protocols in combating the IUU fishing;
- Using the vessel monitoring system;
- Conducting localized but uniform training of personnel directly tasked with the function of combating IUU fishing;
- Conducting workshops on the development and adoption of commonly acceptable monitoring forms and protocols in combating IUU fishing, and
- Promoting a common commitment among the various ports states to develop their respective the Vessel Monitoring Systems.

Thailand:

- Formulating of a mechanism to encourage inter-agency cooperation and consultation such as establishment of an inter-departmental working group;
- Recruiting of qualified staffs for implementing port State measures;
- Training and workshop participation both at national and international scales;
- Regional trainings and workshops should be conducted;
- Improving data collection systems and sharing such information among countries in the region;
- Strengthening and joint action to promote regional plan of action to combat IUU fishing;
- Technical assistance provided by international and regional fisheries organization is needed;
- Workshop or technical consultation to consider an information collection and sharing system for future cooperation in the region, and
- Political support and commitment to promote the regional plan of action to prevent, deter and eliminate IUU fishing as the main mechanism to implement RPOA-IUU.

e) Recommendations for overcoming the above-mentioned constraints proposed by the author

I would also like to make my own recommendations in a number of ways to overcome existing constraints arisen from implementing port State measures to combat IUU fishing in the Southeast Asian region where Indonesia, the Philippines and Thailand are located. The recommendations include:

- Enhancing inter-agency cooperation because sectoral problems are the main constraints at national level;
- Requiring urgent need to develop specific law for establishing port State measures at national level to cover all national agencies;
- Improving information sharing and public awareness building program/project;
- Requiring urgent implementation of training programs at the national, regional and international (global) levels;
- Developing and establishing a regional MCS network;
- Developing of a model for the region to implement port State measures so that common concerns would be addressed;
- Fostering closer cooperation and collaboration among Southeast Asian countries to combat IUU fishing;

- Undertaking a stocktake study to identify IUU fishing problems and related activities in Southeast Asia, and
- Providing legal assistance to Southeast Asian countries to overcome some regulatory problems.

3. CONCLUSIONS AND RECOMMENDATIONS

In my personal view, I would like to note that there are some differences regarding specific laws and regulations dealing with measures to combat IUU fishing among the three countries, particularly with respect to port State measures. Furthermore, there are some common concerns at the national level on challenging issues relating to combating the IUU fishing activities in the Southeast Asian region such as a lack of coordination and collaboration among different agencies concerned, inadequate laws and regulations to directly deal with the IUU fishing problems, inadequately qualified staff, insufficiency of needed information, need to establish MCS network in the region and appropriate equipment to combat the IUU fishing especially through port State measures. These concerns would need to be addressed by all States in the region at the present stage.

I also strongly agree with some recommendations made by the three selected States to overcome the above-mentioned constraints in implementing and applying port State measures in each State as the port State in the common area of interest such as capacity building, information sharing, the review and redrafting of specific laws or regulations dealing with the application of port State measures and the establishment of a regional MCS network. Nevertheless, to achieve our common goals, more time/cooperation/participation and support for the relevant parties, such as policy-makers and all stakeholders (both government sector and private sector), are desperately needed. It is noted that the FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing would be an appropriate approach to deal with these difficulties as a voluntary instrument.

Synthesis of key aspects of perspectives on port State measures to combat IUU fishing

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Introduction

It is imperative that fisheries in all regions have yet been sustainably managed. Many fish stocks are fully utilized or overutilized, some are depleted. Fishing capacity exceeds the suitable level for resource sustainability. Apart from undermining our current fisheries management and conservation practices, the proliferating illegal, unreported and unregulated fishing or IUU fishing recently received global concern even further create threats to the sustainability of fisheries both within the national jurisdiction and in the high seas. In addition, the IUU fishing also complicate or prevent the opportunity to reverse present practices toward sustainable and responsible fisheries. It creates a challenging task for all nations to establish collective actions to combat IUU fishing and to ensure that fishery resources are utilized in a sustainable manner.

Principles on port State measures: global VS regional perspective

International Development

Port state measures should be a complimentary tool to the other measures in combating the IUU fishing. As a voluntary instrument, the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) was adopted at the twenty-fourth Session of FAO Committee of Fisheries (COFI) in 2001. It specifies various measures to combat the IUU fishing through all State responsibilities, flag State responsibilities, coastal States measures, regional fisheries management organizations, internationally agreed market-related measures and port State measures.

The IPOA-IUU stipulates principles for any State providing a port access¹ to foreign fishing vessels to combat the IUU fishing. For instance, where a port State has clear evidence that a vessel having been granted access to its ports has engaged in IUU fishing, it should not allow such vessel to land or transship its production in its ports². In general, State should use measures, in accordance with international law, for port State control of fishing vessels in order to prevent, deter and eliminate IUU fishing. Since its inception in 2001, all States have been urged to consider implementing the measures taken by port States.

Due to the recognition of port State measures in combating the IUU fishing and the ubiquitous implementation by regional fisheries management organizations, the FAO convened the Expert Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing from 4 to 6 November 2002 and the Technical Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing from 31 August to 2 September 2004. The latter meeting adopted a Model Scheme on Port State Measures to Combat IUU fishing. The Model Scheme lays out

¹ Port access means admission for foreign fishing vessels to ports or offshore terminals for the purpose of, *inter alia*, refuelling, re-supplying, transshipping and landing.

² See other measures in the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Rome, FAO, 2001. 21 p.

principles and guidelines to be further used to prevent, deter and eliminate IUU fishing. It emphasizes on general measures especially advance notification prior to port access, mechanism for port inspection including training of port inspectors and action taken when IUU fishing occurs, information exchange and notification to flag State.

In 2007, the twenty-seventh session of COFI recognized the urgent need to develop a legally-binding instrument for port State measures based on the IPOA-IUU fishing and the FAO Model Scheme. Through an Expert Consultation followed by a Technical Consultation, a draft legally-binding instrument will then be scrutinized by the twenty-eight session of COFI in 2009.

Regional Development

The IUU fishing practices continues to present a challenge for the Southeast Asian region. In May 2007, 10 Ministers responsible for fisheries or their representatives³ endorsed the Regional Plan of Action (RPOA) to Promote Responsible Fishing Practices including Combating IUU Fishing in the Region. The regional measures shall be based on the concepts stipulated in the international legal instruments and initiatives, including the 1982 United Nations Convention on the Law of the Sea, the 1995 United Nations Fish Stocks Agreement⁴, the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing and International Plan of Action for the Management of Fishing Capacity. The core elements of the RPOA are to ensure that fishery resources are utilized in a sustainable and responsible manner and to combat the IUU fishing practices in the region with the emphasis on 3 areas, namely the South China Sea, Sulu-Sulawesi Seas and the Arafura-Timor Seas. The Ministers of the participating countries agreed to establish a Coordination Committee (CC) to review the effective implementation of the measures stipulated in the RPOA.

Given the need to land production and support fishing operations, the Ministers were convinced that port states play a key role in combating IUU fishing in the region. Thus, participating countries and fishing entities need to develop measures to regulate fishing vessels accessing their ports for transshipping and/or landing catch and collect and exchange relevant data. They emphasized that countries should consider adopting port State measures, where appropriate, based on the FAO Model Scheme.

Key aspects of perspectives on port State measures

Port state measures are guidelines to be implemented or taken by a port state which allows access of foreign fishing vessels⁵ to its port⁶ to unload, transship their catches and to use port services and facilities.

A port state should maintain an effective system of port State control for foreign fishing vessels calling at its port.⁷ Ports to which foreign fishing vessels may be permitted access should be designated and publicized, and a port state should ensure that these ports have the capacity to conduct port state inspections. In practice of the Philippines, the Davao Fish Port Complex is the only designed international fish transshipment port.

³ Australia, Brunei Darussalam, Indonesia, Malaysia, Papua New Guinea, the Philippines, Singapore, Thailand, Timor Leste and Viet Nam.

⁴ 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

⁵ Include any vessel used or intended for use for the purpose of fishing, including support ships, carrier vessels and any other vessels directly involved in such fishing operations (Model Scheme, para. 1.2).

⁶ Include offshore terminals and other installations for landing, transshipping, refuelling or re-supplying (Model Scheme, para.1.1).

⁷ Model Scheme 2.2.

Training programs for inspectors are so important for a port State to ensure that port inspection is carried out in an effective and efficient manner. When a foreign fishing vessel is at port, it is required to have port inspection carried out by properly qualified and authorized inspectors who are trained in the followings:

- Inspection procedures;
- Information on relevant conservation and management measures as well as relevant laws and regulations and applicable rules of international laws;
- Information sources, such as log books and other electronic information that may be useful for the validation of information given by the master of the vessel;
- Fish species identification and measurement calculation;
- Catch landing monitoring, including determining conversion factors for the various species and products;
- Vessel boarding/inspection, hold inspections and calculation of vessel hold volumes, gear measurement and inspections;
- Collection, evaluation, and preservation of evidence;
- Range of measures available following the inspection, and
- Training in relevant languages, particularly English.

In addition, port inspection program can also include courses on review of fisheries, national, regional and international legal instruments and initiatives, information collection and analysis, and food safety requirements. Methods and approaches to be used in the training programs and their value or benefit are highlighted.

Accurate and reliable data and information are an integral element to make port State measures effective. The following data and information are needed:

- Prior notification for the purpose of port access, including vessel identification, purpose of access to port, authorization to fish, fishing trip information and quantities of fish on board.⁸
- Contracting parties and cooperating non-contracting parties of the Regional Fisheries Management Organizations coupled with their lists of authorized fishing vessels and IUU fishing vessels which engage in or support fishing activities in breaching conservation and management measures.
- Appropriate identity document of the port inspectors.
- Report on the results of port inspection, including inspection reference, vessel identification, fishing authorization, trip information, result of the inspection on discharge, quantities retained on board the vessel, results of gear inspection and conclusion.⁹

Fishers and processors play an important role in tackling the IUU fishing. Processors desire to be sustainable and reliable suppliers having recognized, certified and traceable systems to ensure safety, healthy and value satisfaction of their customers. They support responsible fishing and avoid associating with production undertaken by the IUU fishing. To sustain world wide tuna industry of Thailand, the Thai tuna industry reaffirms well managed fishing and resource control, supports conservation and management measures being undertaken by RFMO, has joint monitoring of fishing, tuna trade and processing and conducts campaign to raise awareness of its consumers to accept only certified tuna and its products.

⁸ See details in Model Scheme, Appendix A.

⁹ See details in Model Scheme, Appendix C.

Fishers need to conduct responsible fishing in any fishing grounds whether within the national jurisdiction or in the jurisdictions of other countries through fisheries cooperative arrangements or in the high seas. The growing consumer demand to accept non-IUU caught fish and the risen requirements relating to traceability schemes in many international markets are driving forces for fishers to ensure that production is taken in a responsible manner.

Although the FAO Model Scheme on Port State Measures was adopted for implementation in 2005, it is rather a new experience for fishers and processors in Thailand. This means that capacity building programs through training, workshop and seminar are an urgent task of the government to implement as soon as possible. Thailand is now in the process of establishing the Inter-Departmental Committee to collaboratively formulate the National Plan of Action to control IUU fishing practices including port State control regime and MCS system. In addition, Thailand is in the ongoing process of enacting its new fisheries law where management of overseas and high seas fisheries as well as controlling of the IUU fishing practices become its integral part.

Conclusion

Combating IUU fishing is a challenging task facing every country nowadays. It can not be feasibly implemented without joint actions among them. At the same time, seriously political support and commitment must be rendered by all government concerned with a view to minimizing, if not eliminating, IUU fishing. Port State measures are not the stand alone mean to tackle IUU fishing but are a promising tool which must be implemented in concert with existing mechanisms since the production of IUU fishing eventually needs to be landed or transshipped at port. It is an utmost importance to raise awareness both in government and private sectors to recognize principles and their implication as stipulated in the FAO Model Scheme on Port State Measures in particular port inspection, training of inspector, and action taken when IUU fishing occurs.

**Questionnaire
for the FAO/APFIC/SEAFDEC Regional Workshop on Port State Measures
to Combat IUU Fishing**

COUNTRY _____
NAME (optional) _____
E-MAIL CONTACT _____

1. PLEASE IDENTIFY THE PORTS IN YOUR COUNTRY THAT ARE USED BY FOREIGN OR JOINT VENTURE FISHING VESSELS.	
2. Please estimate the number of port calls by foreign or joint venture fishing vessels per year in all ports in your country.	
3. Does your country require the foreign or joint venture fishing vessels to provide information prior to entering into port? (If “yes” please indicate how much time in advance they must give notification)	Always Sometimes Never
a. If “Sometimes” or “Never” is this because of insufficient: (If “other” please describe)	Laws Human capacity Other
4. Does your country deny the use of its port to non-national fishing vessels that are believed to have engaged in IUU fishing? (If “always” or “sometimes” please briefly explain when and why)	Always Sometimes Never
5. Does your country carry out port inspections of non-national fishing vessels in port? (If “always” or “sometimes” please describe any priorities your country may have for selecting the vessels to be inspected)	Always Sometimes Never
6. Does your country take measures against vessels found to have IUU-caught fish aboard during port inspection? (If “always” or “sometimes” please describe some measures that have been taken)	Always Sometimes Never
7. How would you describe your country’s human capacity/resources to carry out port inspections? (If “inadequate”, please describe how many port inspectors are currently available and their training, and estimate what might be needed for “adequate” human capacity)	Adequate Inadequate
8. Is your country a member of a regional fisheries management organization (RFMO)? (If “yes” please identify the RFMO(s))	Yes No
a. If “yes”, please indicate major constraints or problems, if any, in implementing the RFMO conservation and management measures, or otherwise fulfilling membership obligations.	
9. Please indicate up to three major constraints or problems in implementing port State measures in your country.	
10. Please suggest up to three ways of how to overcome the constraints or problems identified in Question 9.	
11. Please suggest up to three key areas for future regional cooperation in the strengthening and harmonization of port State measures to combat IUU fishing.	
12. Please suggest up to three mechanisms for future cooperation to address the “areas” identified in Question 11.	
13. Please indicate whether your country is developing, or has adopted a national plan of action to combat IUU fishing (NPOA-IUU).	
14. Are you aware of the proposed Regional Plan of Action to promote responsible fishing practices (including combating IUU fishing) in the region currently being developed? Please feel free to comment as appropriate.	

Consolidated summary and analysis on participants' responses to the questionnaire

Mr Somboon Siriraksophon
Program and Policy Coordinator
SEAFDEC

This consolidated summary and analysis are based on responses to a questionnaire on port State measures from participants in ten countries: China, Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Timor Leste, Thailand and Viet Nam. The questionnaire, shown in Annex A, consisted of six main issues as follows:

1. Current information on the ports used by foreign or joint venture vessels;
2. Port inspection procedures and human capacity/resources to carry out port inspections;
3. Constraints in implementing conservation and management measures of regional fisheries management organizations (RFMOs);
4. Constraints to the implementation of port State measures and means of overcoming them;
5. Future regional cooperation and mechanisms for implementing the port State measures, and
6. The proposed Regional Plan of Action to Combat Illegal, Unreported and Unregulated Fishing (RPOA-IUU) to promote responsible fishing practices.

The responses to these issues are described below.

1. Current information on the ports used by foreign or joint venture vessels

Of the ten responses received, only those from two countries, namely China and Cambodia, reported that no port is specially used by foreign or joint venture fishing vessels concerning fishing activity except for ship repair and sheltering from ocean storms. A total of 22 ports in the eight responding countries are used by the foreign and joint venture fishing vessels, and of these nine are in Indonesia. All of the identified ports require that information be given by vessels prior to entering the port, but the time that the information is to be given varies among countries. For example, China, Indonesia, the Philippines, Timor Leste and Thailand require information 48 hours or less prior to entry, Myanmar requires 7 to 10 days, and Singapore has no such requirement.

With regard to denial by a country of the use of ports to non-national fishing vessels that are believed to have engaged in IUU fishing, five of the nine countries reported that they deny the use of ports to IUU fishing vessels based on tools such as their local/national fisheries laws, port inspection regulations and measures taken against vessels found to have IUU fish on board: China, Indonesia, Myanmar, Philippines and Timor Leste. This information is elaborated in Table 1.

2. Port inspection procedures and human capacity/resources to carry out port inspections

Eight of the ten responses indicate that countries always carry out port inspections for non-national fishing vessels in accordance with their fisheries laws or port regulations, including inspections of species and volume of catch, log books, gear, licenses and relevant documents. However of these, the response from participants in Singapore indicated that fisheries inspections were conducted only for reasons of food safety, and Timor Leste indicated that inspections are always conducted in coordination with other relevant institutions such as those responsible for the port authority, customs, immigration and quarantine.

With regard to measures taken against vessels found to have IUU-caught fish on board, four of the nine responses, indicated that measures were always taken against the vessels: China, Indonesia, Myanmar and Timor Leste. However, in case of non-national fishing vessels that poach fish in the

exclusive economic zone (EEZ), two responses indicated that measures will be applied according to national law: Thailand and the Philippines. That means in some countries in the region, existing law or/and port inspections may not be directly applicable to vessels with IUU-caught fish where the fish were caught or brought from outside the EEZ.

In the region, six of the ten responses showed inadequate human capacity/resources at national level as problematic for carrying out port inspections. Only a small number of port inspectors are currently trained and available, and most of the inspectors need to be trained in the relevant international laws and management measures. Responses from Indonesia, Malaysia and Singapore indicated there were adequate human capacity/resources in relation with number of ports used by foreign and joint venture vessels. In addition, Myanmar also indicated that human resources were adequate to carry out fisheries inspections, but did not identify the number of inspections undertaken.

Table 1: Current information on port use by foreign and joint venture vessels and port inspection procedures.

	Country	Use of port for foreign and joint venture vessels				Port inspection			
		Identify the ports	Number of port of calls/year	Information required prior to entry into port/ time	Deny use of port to non national fishing vessel	Port inspection of non national fishing vessel	Measures against vessels with IUU-caught fish	Human capacity/resources to carry out port inspections	Number of port inspectors
1	China	No	Very Seldom	Always 24 h	Always	Always (fisheries law)	Always	Inadequate	Small number
2	Cambodia	No	N	(-)	Never	Never	No	No fishing port, port inspection is for domestic activities against fisheries law only	
3	Indonesia	Yes (9 ports)	5000	Always at least 2 h	Always	Always (rule)	Always	Adequate	262 surveillance officer
4	Malaysia	Yes (1 port)	50	Always 2 weeks/ later inform DOF	Never/ no information	Always	Never	Adequate	2 - 3
5	Myanmar	Yes (3 ports)	>1000	Always 7-10 days	Always	Always, first come, first served	Always, legislative measures	Adequate	Not identify
6	Philippines	Yes (1 port)	~760 (in 2007)	Always 48 h	Always, due to local law	Always	Sometimes if poaching inside the PH	Inadequate	2 non-permanent
7	Singapore	Yes (2 ports)	~80	Never	Sometimes	Sometimes	Never, use Certificate as measures	Adequate	2
8	Timor Leste	Yes (2 ports)	No data	Always 48 h	Always	Always in coordination to others relevant institutions	Always	Inadequate	9 inspectors and 9 observers
9	Thailand	Yes (1 port)	2000-3000 trips/year	Always 24 h	Not directly applicable	Always	Not directly	Inadequate	Not identify
10	Viet Nam	Yes (3 ports)	No Data	Always 3 days	Never	Sometimes	Not identified	Inadequate	4 -5 inspectors/ province

3. Constraints in implementing conservation and management measures of RFMOs

Five of the ten responses indicated that the countries are members of RFMOs such as IOTC, ICCAT, WCPFC, IWC, CCAMLR and CCSBT:¹⁰ China, Indonesia, Malaysia, the Philippines and Thailand (Table 2). Based on these responses, the major constraints and problems in implementing the RFMO conservation and management measures can be summarized as follows:

- Lack of training, education and effective training modules for personnel in-charge;
- Lack of human capacity/resources to support on data and information collection for regional analysis;
- Inadequate comprehensive scientific research on marine fisheries biology;
- Lack of information, technical knowledge on MCS, technical implications of VMS;
- Lack of public awareness;
- Limitation of existing domestic law and regulations;
- Inadequate implementation of international law and management measures into domestic law and regulations, and
- Insufficient direct enforcement capacity on the high seas.

Table 2: Membership in RFMOs and constraints in implementing RFMO conservation and management measures

Country	RFMO membership	RFMOs concerns
		Constraints or problems in implementing RFMO conservation and management
China	IOTC, ICCAT, WCPFC, IWC, CCAMLR	<ul style="list-style-type: none"> • Inadequate training and education for fishers and companies • Insufficient for direct enforcement capacity on high seas • Inadequate in converting international law and management measures into domestic law and regulations
Cambodia	None, (FAO, SEAFDEC)*	(-)
Indonesia	IOTC and CCSBT	<ul style="list-style-type: none"> • Lack of public awareness • Limited capacity to collect data and information required including human resources capacity • Inadequate comprehensive research on marine fisheries biology, distribution
Malaysia	IOTC	<ul style="list-style-type: none"> • No problem at the moment
Myanmar	None, (SEAFDEC, APFIC, IOSEA)*	<ul style="list-style-type: none"> • Poaching by foreign vessels
Philippines	WCPFC, ICCAT, IOTC	<ul style="list-style-type: none"> • Inadequate on qualified personnel • Inadequate of the needed information technology and other equipment in combating IUU • Lack of training and of effective training modules for personnel in-charge
Singapore	None	(-)
Timor Leste	None, ATSEF, PEAMSE, CTI*	<ul style="list-style-type: none"> • Under assessment and identification process
Thailand	IOTC	<ul style="list-style-type: none"> • Limitation existing through current fisheries Act of 1947 • Inadequate capable staffs, limited technical knowledge on MCS, technical implication of VMS • Insufficiency of needed information/appropriate equipment to combat IUU
Viet Nam	None	(-)

* Not RFMOs.

¹⁰ IOTC: Indian Ocean Tuna Commission

ICCAT: International Commission for the Conservation of Atlantic Tunas

WCPFC: Western and Central Pacific Fisheries Commission

IWC: International Whaling Commission

CCAMLR: Commission for the Conservation of Antarctic Marine Living Resources

CCSBT: Commission for the Conservation of Southern Bluefin Tuna

IOSEA: Memorandum of Understanding on the Conservation and Management of Marine Turtles and their Habitats of the Indian Ocean and South-East Asia

ATSEF: Arafura and Timor Seas Expert Forum

CTI: Coral Triangle Initiative

4. Constraints to the implementation of port State measures and means of overcoming them

The responses from participants in individual countries identifying constraints to the implementation of port State measures, and suggestions on how to overcome them, are set out in Annex B. Many responses indicated that the existing port State measures/regulations or domestic law appear inapplicable, and are insufficient for the countries to effectively implement against the vessels with IUU-caught fish. In this regard, many suggested that the law and all relevant measures be amended. The response from the Singapore participants suggested that port State measures should strictly apply to vessels with fishing gears on board and exclude carriers and support vessels, and also confine the inspection of containers to those landing the fish in the final port of call.

It was suggested that IUU fishing should be classified as a criminal activity and that substantive evidence should be required for its proof.

One of the key constraints identified was the need for strengthened cooperation and coordination between port authorities and among relevant agencies; establishment of an inter-departmental working group towards that end was also suggested.

Cooperation in monitoring, control and surveillance (MCS) was also flagged as a need for implementing the port State measures, and the establishment of an MCS network at national and regional levels was suggested to help meet the need. In addition, for purposes of improved understanding and training, it was suggested that a standard operating procedure (SOP) for MCS should be developed.

All constraints for implementing port State measures and suggestions for overcoming them are set out in Table 3.

Table 3: Constraints for implementing port State measures and suggestions for overcoming the constraints

Implementing port State measures	
Countries constraints or problems	Countries suggestions/needs
Existing measures and regulations	<ul style="list-style-type: none"> • Develop port inspection measures and regulation by using relevant international law and management measures • Amend fisheries law and port State measures
Inadequate the qualified port inspectors	<ul style="list-style-type: none"> • Enhance the port inspectors on measures and regulations as developed • To strengthen and develop human capacity to implement port State measures especially on the number and skill of personnel through training and workshop
Inadequate on cooperation and coordination between port control authority and among relevant agencies	<ul style="list-style-type: none"> • Strengthen cooperation and coordination between port control authorities • Set up standard operating procedures for coordination including port authority • Develop an action plan to combat IUU fishing • Formulate a mechanism to encourage inter-agency cooperation and consultation such as establish of an interdepartmental working group

Implementing port State measures	
Countries constraints or problems	Countries suggestions/needs
Insufficiency of needed information and appropriate technology/equipments and infrastructure	<ul style="list-style-type: none"> • Improve related facilities and infrastructures • International support to enhance technical and management capabilities
Lack of national and regional monitoring, control and surveillance (MCS) network	<ul style="list-style-type: none"> • Establish MCS network at national and regional level
Lack of training and of effective training modules for personnel in-charge	<ul style="list-style-type: none"> • Conduct regular training of personnel charged with the function of combating IUU fishing and regular review of the training module • Initiate and establish the MCS system, develop a standard operating procedure for the MCS • Training and workshop participation both at national and international level
Lack of public awareness on port State measures	<ul style="list-style-type: none"> • Promote public awareness on port State measures
Terminology and future impact	<ul style="list-style-type: none"> • Measures must be applicable to situation and implementation graduated to mitigate against disruption of trade and supply • Definition of “fishing vessels” should strictly apply to vessels with fishing gear on board and exclude carriers and support vessels; and also confine inspection of containers to those whose fish are landed in final port of call • IUU fishing should be classified as a criminal activity and evidence provided need to be substantive

5. Future regional cooperation and mechanisms for implementing port State measures

The respondents were asked to suggest up to three key areas for future regional cooperation in the strengthening and harmonization of port State measures to combat IUU fishing, and up to three mechanisms for future cooperation to address the areas identified. The individual responses are described in Annex C.

A number of suggestions were made for development of regional cooperation in strengthening and harmonizing port State measures. The following areas for cooperation were identified: integrated monitoring measures, aspects of cooperation on MCS such as a identification of fish species targeted for inspection, a harmonized format for data collection/inspection, minimum procedure, monitoring forms and protocols, and other harmonized communications. Some more general suggestions are aimed at strengthening existing cooperation and implementation at national level in conjunction with capacity building and human resource development.

Mechanisms suggested for future regional cooperation are set out in Table 4. Key to the suggestions is the sharing and exchanging of information and experience among the countries in the region. Suggestions in this regard include establishing a joint liaison working group, setting up regular meetings among countries and establishing a MCS network to better understand on the current situation of IUU fishing in the region. Uniform training and monitoring forms and protocols for implementing port State measures were also proposed as possible mechanisms for future cooperation.

Joint action to promote the Regional Plan of Action to Promote Responsible Fishing Practices Including Combating IUU Fishing (RPOA) is also one of the key areas in which the political support and commitment by countries are needed. However, the responses indicating the current status in developing a national plan of action (NPOA) to combat IUU fishing showed that Myanmar, Indonesia, the Philippines, Thailand and Viet Nam are developing an NPOA-IUU while China, Cambodia and Timor Leste indicate not yet developing such a plan. The response from Singapore indicated an intention to evaluate the measures recommended under the FAO Model Scheme and ascertain their applicability.

Table 4: Key areas and mechanisms for regional cooperation in the implementation of port State measures

Implementing port State measures	
Key area for regional cooperation in strengthening and harmonizing	Mechanisms for future cooperation
Regional cooperation on port State measures, integrated monitoring measures, MCS, applicable means of communication and joint action to promotion of RPOA	<ul style="list-style-type: none"> • Develop guidelines agreed by all relevant member countries in the region on the minimum port State measures standards/procedures to be carried out • Fully implement the national fishery laws and regulations • Strengthening the regional, subregional, and bilateral cooperation's on MCS system • Regulate the appropriate terms and conditions on fishing vessels between neighbouring countries • Establish a coordination committee under APFIC or SEAFDEC • Political support and countries' commitment to promote the regional RPOA
Building capacity and development of human resources through training, workshop and practical skills on boarding and inspections	<ul style="list-style-type: none"> • Seeking finance support from different donors • Technical assistance through the training and workshop supported by international and regional fisheries organizations • Conducting localized but uniform training of personnel • Development of a port monitoring program • Capacity building to establish an MCS network, boarding and inspection
Share and exchange of information and experience (on conservation and management measures, illegal fishing by foreign vessel)	<ul style="list-style-type: none"> • Establish information network and MCS network • Establish a joint liaison working group • Arrange regular meetings among member countries for better understanding the IUU fishing
Improvement of data collection systems and share such information among countries in the region	<ul style="list-style-type: none"> • Workshop or technical consultation to consider information collection and sharing system • Standardize the format of data collection/inspections
Adoption of unified monitoring forms and protocols	<ul style="list-style-type: none"> • Conduct workshops on the development and adoption of commonly acceptable monitoring forms and protocols
Implementation of a Vessel Monitoring System	<ul style="list-style-type: none"> • Promote a common commercial commitment among the various port States to develop their respective VMS
Harmonizing the criteria for granting of fishing permits, management of fisheries and exchanging information on catch of shared stock	<ul style="list-style-type: none"> • Comparative study
Involvement of legal personnel to advise on legality of regulations formulated and communication with coastal and flag States	<ul style="list-style-type: none"> • Fast-communication channel established with coastal and flag States to ascertain the validity of documents submitted by in-bound fishing vessels

6. The proposed regional plan of action to combat illegal, unreported and unregulated fishing to promote responsible fishing practices (RPOA-IUU)

Participants were asked if they were aware of the proposed RPOA-IUU to promote responsible fishing practices that was currently being developed in the region, and were invited to comment. All respondents indicated that they were aware of the proposed RPOA-IUU.

Some of the respondents provided comments, including the challenge involved in harmonization and the need to improve national fisheries laws and foster interagency cooperation. Many commented on the RPOA-IUU, noting its voluntary status and indicating that the situations in the various countries must be taken into account. However, it was recognized that countries can take individual or collective action under the RPOA-IUU framework to enhance and strengthen the overall level of conservation and management. One comment noted that responsible fisheries practices extended beyond IUU fishing to areas such as destruction of fishing grounds, and another referred to the importance of small scale fisheries issues.

Questionnaire

COUNTRY _____
 NAME (optional) _____
 EMAIL CONTACT _____

FAO/APFIC/SEAFDEC Regional Workshop on Port State Measures to Combat IUU Fishing

1. PLEASE IDENTIFY THE PORTS IN YOUR COUNTRY THAT ARE USED BY FOREIGN OR JOINT VENTURE FISHING VESSELS.
2. Please estimate the number of port calls by foreign or joint venture fishing vessels per year in all ports in your country.
3. Does your country require the foreign or joint venture fishing vessels to provide information prior to entering into port? (If “yes” please indicate how much time in advance they must give notification)

	Always
	Sometimes
	Never
a. If “Sometimes” or “Never” is this because of insufficient: (If “other” please describe)	Laws
	Human capacity
	Other
4. Does your country deny the use of its port to non-national fishing vessels that are believed to have engaged in IUU fishing? (If “always” or “sometimes” please briefly explain when and why)

	Always
	Sometimes
	Never
5. Does your country carry out port inspections of non-national fishing vessels in port? (If “always” or “sometimes” please describe any priorities your country may have for selecting the vessels to be inspected)

	Always
	Sometimes
	Never
6. Does your country take measures against vessels found to have IUU-caught fish aboard during port inspection? (If “always” or “sometimes” please describe some measures that have been taken)

	Always
	Sometimes
	Never
7. How would you describe your country’s human capacity/resources to carry out port inspections? (If “inadequate”, please describe how many port inspectors are currently available and their training, and estimate what might be needed for “adequate” human capacity)

	Adequate
	Inadequate
8. Is your country a member of a regional fisheries management organization (RFMO)? (If “yes” please identify the RFMO(s))

	Yes
	No

a. If “yes”, please indicate major constraints or problems, if any, in implementing the RFMO conservation and management measures, or otherwise fulfilling membership obligations.
9. Please indicate up to three major constraints or problems in implementing port State measures in your country.
10. Please suggest up to three ways of how to overcome the constraints or problems identified in Question 9.
11. Please suggest up to three key areas for future regional cooperation in the strengthening and harmonization of port State measures to combat IUU fishing.
12. Please suggest up to three mechanisms for future cooperation to address the “areas” identified in Question 11.
13. Please indicate whether your country is developing, or has adopted a national plan of action to combat IUU fishing (NPOA-IUU).
14. Are you aware of the proposed Regional Plan of Action to promote responsible fishing practices (including combating IUU fishing) in the region currently being developed? Please feel free to comment as appropriate.

**RESPONSES ON CONSTRAINTS TO IMPLEMENTING PORT STATE MEASURES AND
SUGGESTIONS FOR OVERCOMING THE CONSTRAINTS**

Country	Implementing port State measures	
	Constraints or problems	Suggestions for overcoming constraints
China	<ul style="list-style-type: none"> • Inadequate specific port inspection measures and regulations • Inadequate number of inspectors • Cooperation and coordination between port control authorities 	<ul style="list-style-type: none"> • Develop port inspection measures and regulation by using related international law and management measures • Improve port inspectors on the measures and regulations as developed • Strengthen cooperation and coordination between port control authorities
Cambodia	(-)	<ul style="list-style-type: none"> • Coastal State responsibility
Indonesia	<ul style="list-style-type: none"> • Lack of national capacity to implement port State measures especially on skill, personnel, facility and network • Lack of regional monitoring, control and surveillance (MCS) network • Lack of awareness about port State measures among the stakeholders 	<ul style="list-style-type: none"> • Strengthen the national capacity to implement port State measures especially on the number and skill of personnel, facilities and network through training and workshop • Improve related facilities and infrastructures • Promote public awareness regarding port State measures
Malaysia	<ul style="list-style-type: none"> • Limited authority • Lack of cooperation among relevant agencies • Identification of IUU fishing vessel 	<ul style="list-style-type: none"> • Amend fisheries law • Set up SOP for coordination among MMEA, including port authority • Establish MCS network
Philippines	<ul style="list-style-type: none"> • Inadequate on qualified personnel • Inadequate of the needed information technology and other equipment in combating IUU • Lack of training and of effective training modules for personnel in-charge 	<ul style="list-style-type: none"> • Hiring of more qualified personnel • Procurement of the necessary equipment • conducting regular training of personnel charged with the function of combating IUU fishing and regular review of the training module
Singapore	<ul style="list-style-type: none"> • Measures are not practical and/or doable, thereby impeding trade and/or disrupting flow of fish supply to Singapore • Definition of “Fishing Vessels” extends to include carriers and support vessels and checking of containers under transshipment • IUU fishing is not classified as a criminal activity and evidence provided is often not substantive enough for legal action to be taken 	<ul style="list-style-type: none"> • Measures must be applicable to situation and implementation should mitigate against disruption of trade and supply • Definition of “fishing vessels” should strictly apply to vessels with fishing gear on board and exclude carriers and support vessels, and also confine inspection of containers to those whose fish are landed in final port of call. • IUU fishing should be classified as a criminal activity and evidence provided need to be substantive
Timor Leste	<ul style="list-style-type: none"> • Lack of knowledge and experience • No MCS operational procedure, lack of facilities and equipment • Weak capacity among institutions in the country 	<ul style="list-style-type: none"> • Initiate and establish an MCS system, develop SOP for MCS • International support to enhance technical and management capabilities • Develop an action plan to combat IUU fishing
Thailand	<ul style="list-style-type: none"> • Inadequate qualified staff • Insufficiency of needed information and appropriate equipment • Inadequate inter-agency cooperation and consultation 	<ul style="list-style-type: none"> • Recruitment of qualified staff • Training and workshop participation both at national and international levels • Formulation of a mechanism to encourage inter-agency cooperation and consultation such as establish of an inter-departmental working group
Viet Nam	<ul style="list-style-type: none"> • Fisheries is considered as SCF • Lack of facilities • Lack of trained port inspectors 	<ul style="list-style-type: none"> • Improve fishing port • Develop human capacity, including training and capacity building • Join RFMOs

Responses on future regional cooperation and its mechanisms for implementing port State measures

Country	Implementing port State measures	
	Regional cooperation in strengthening and harmonization	Mechanisms for future cooperation
China	<ul style="list-style-type: none"> • Learning and understanding status in relation to port inspector and control • Try to find out differences and similarities • Share and exchange information 	<ul style="list-style-type: none"> • Training and workshop sponsored by related international or regional organization • Information share and exchange network • Establish a joint liaison working group
Cambodia	<ul style="list-style-type: none"> • Domestic • Intra-regional • International 	<ul style="list-style-type: none"> • Capacity building • Establish national, regional, international network • Share information
Indonesia	<ul style="list-style-type: none"> • Data and information exchanges among countries in the region related to fishing boats suspected/proven conducting IUU fishing • Building capacity for implementation of port State measures, including development of human resources, increase facilities and infrastructures • Develop guideline agreed by all relevant member countries in the region on the minimum standard/procedure shall be carried out in accordance with port State measures 	<ul style="list-style-type: none"> • Establishment of MCS networks • Development of port monitoring programme
Malaysia	<ul style="list-style-type: none"> • Format for data collection/inspection to be harmonized • Establish regional MCS network • Capacity building on boarding and inspection 	<ul style="list-style-type: none"> • Capacity building on establish MCS network, boarding and inspection, and legal conduct
Myanmar	<ul style="list-style-type: none"> • Regional cooperation • Faster exchange of information between neighboring coastal states • Applicable means of communication 	<ul style="list-style-type: none"> • Fully implement the national fishery laws and regulations • Arrange regular meetings among member countries for better understanding the IUU fishing • Regulate the appropriate term and conditions on fishing vessels between neighbouring countries
Philippines	<ul style="list-style-type: none"> • Capacity building and skills training • Adoption of unified monitoring forms and protocols • Imposition on the use of Vessel Monitoring System 	<ul style="list-style-type: none"> • By conducting localized but uniform training of personnel • By conducting workshops on the development and adoption of commonly acceptable monitoring forms and protocols • By promoting a common commercial commitment among the various port stages to develop their respective VMS
Singapore	<ul style="list-style-type: none"> • Sharing of experience and case studies to evaluate applicability of measures • Involvement of legal personnel to advise on legality of regulations formulated and communication with coastal and flag States. • Region should identify specific fish species that are targeted for checking and inspection 	<ul style="list-style-type: none"> • Workshops and sharing sessions of case studies • Fast-communication channel established with coastal and flag States to ascertain the validity of documents submitted by in-bound fishing vessels • List of fish species to focus for checking upon landing of fish

Country	Implementing port State measures	
	Regional cooperation in strengthening and harmonization	Mechanisms for future cooperation
Timor Leste	<ul style="list-style-type: none"> • Exchange information on conservation and management measures, illegal fishing by foreign fishing vessel • Coordinate and integrate monitoring measures • Harmonize the criteria for granting of fishing permits, management of fisheries and exchanging information on catch of shared stock 	<ul style="list-style-type: none"> • Strengthening the regional, suboriginal, and bilateral cooperation's on MCS system • Memorandum of Understanding arrangements (bilateral or multilateral) for joint patrol for maritime boundary in neighbouring countries • Comparative study
Thailand	<ul style="list-style-type: none"> • Regional training and workshop • Improve data collection systems and share such information among countries in the region • Strengthening and joint action to promote the RPOA 	<ul style="list-style-type: none"> • Technical assistance provided by international and regional fisheries organization • Workshop or technical consultation to consider information collection and sharing system • Political support and commitment to promote the RPOA
Viet Nam	<ul style="list-style-type: none"> • Exchange experience and share information • Training and technical assistance to reduce gaps among countries • Regional guidelines for port State measures 	<ul style="list-style-type: none"> • Organize workshop, meeting, training course, study tour • Seeking financial support from different donors • Establishment a coordination committee under APFIC or SEAFDEC

Composition of the working groups**Working Group 1: Multidisciplinary/legal/Hong Kui Hui**

EKMAHARAJ Siri
ESCOTO Demosthenes
ISMAYANTI
POUNGTHONG Onoora
SHENGZHI Sun
TRY Ing
VINH Chu Tien
XINZHONG Liu

Working Group 2: Multidisciplinary/information requirements and systems/ Hong Kui Hui

AHMAD SAKTIAN bin Langgang
HA Thi
LIANG Wang Kok
NA POMBEJRA Doungporn
PRATIKTO Widi
PURWANTO
SUJANG Arthur Besthur
THUMMACHUA Smith

Working Group 3: Multidisciplinary/inspections procedures and the results of port State inspections/Hong Kui Hui

AMARAL Lourenco
CHEONG Leslie
NHUNG Nguyen Thi Trang
SOTHA Poum
SUKMOUNG Pumed
TAMBUNAN Parlin

Working Group 4: Multidisciplinary/training programmes for port inspections/ Hong Kui Hui

ABDUL HAMID bin Yasin
GUTERRES Acacio
MYINT Soe Aung
PAZ Rodolfo T. Jr.
SITANGGANG Mian Sahala
THANAMALARAT Thewan
WANCHANA Worawit

Reports of the multidisciplinary working groups

REPORT OF WORKING GROUP 1

Main IUU fishing problems in the region that could be addressed by port State measures, distinguishing between the issues on foreign and national vessels and current and potential problems

- Fishing without a valid licence, authorization or permit issued by the flag State or the relevant coastal State;
- Failing to maintain accurate records of catch and catch-related data;
- Fishing in a closed area, fishing during a closed season or without, or after attainment of quota;
- Directed fishing for a stock that is subject to a moratorium for which fishing is prohibited;
- Using prohibited fishing gear;
- Falsifying or concealing vessel markings, identification or registration;
- Failure to comply with VMS requirements, and
- Taking or landing undersized fish in contravention of relevant conservation and management measures.

Strengths and constraints in implementing the Model Scheme

Strengths:

- Provides guidance to States and organizations for the further consideration or implementation on port State measures;
- RFMOs in the region can provide appropriate assistance in some instances;
- The Model Scheme addresses the real situation regarding IUU fishing problem in the region;
- The Model Scheme is not required to be implemented because it is a voluntary instrument, closely related to the draft Agreement, and
- Encourages States and organizations to concentrate on formulating relevant institutional and legal requirement to implement port State measures in all regions of the world.

Constraints:

- Lack of trained port inspectors, financial resources and technical support;
- Lack of regional institutional and legal frameworks; and
- Language barrier for international participation.

Solutions for overcoming the constraints in implementing the Model Scheme

- Translation of the Model Scheme into national languages;
- Need for technical and financial support;
- Need to establish subregional fisheries management organizations; and
- Need to further promote implementation of RPOA in the region.

Clear steps that national fisheries administrations might take to develop port State measures that implemented the relevant measures of the IPOA-IUU and the Model Scheme

- Promote awareness and involvement among all stakeholders, especially those at a policy-making level;
- Promote inter-agency coordination and cooperation; and
- Integrate port State measure concepts into national legislation.

Recommended steps for strengthening linkages between port State measures and key compliance tools (e.g. trade, traceability, VMS and information networks)

- Strengthen operational port procedures particularly in monitoring fishing licences and documents;
- Enact laws and regulations that will increase or strengthen the power of fishery inspectors and law enforcers engaged in combating IUU fishing.

Cooperative mechanisms to promote harmonized port State measures at bilateral, subregional or regional levels in Southeast Asia

- Establishment of information networks;
- Creation of minimum standard operating procedures for port State measures that should be fulfilled by countries in the region;
- Strengthen the MCS network in terms of implementation and enforcement to combat IUU fishing; and
- Conduct regional and subregional capacity building activities.

REPORT OF WORKING GROUP 2

Main IUU fishing problems in the region that could be addressed by port State measures, distinguishing between the issues on foreign and national vessels and current and potential problems

Foreign vessels:

High Seas:

- Difficulty in obtaining concrete evidence on catch and position of fishing;
- No participation or linkages between some countries in the region with RFMOs;
- No information sharing or coordination among port States, and between some port States and RFMOs;

- Inadequate or insufficient legal frameworks;
- Unauthorized fishing and transshipments; and
- Misreported or unreported catches.

EEZ:

- Unauthorized fishing and transshipments;
- Misreported or unreported catches; and
- Inadequate or insufficient law enforcement or legal frameworks.

National Vessels:

- Unauthorized fishing, transshipment and illegal export of catches;
- Misreported or unreported catches; and
- Inadequate or insufficient law enforcement.

Strengths and constraints in implementing the Model Scheme

Strengths:

- Regional cooperation framework (RPOA, FAO Code of Conduct and Regional Guidelines to implement the Code) and institutions (APFIC, SEAFDEC, Worldfish Centre, Infish);
- Bilateral cooperation among countries in the region; and
- Existing legislation relating to port State measures and Lacey Act-type clauses in national legislation in some countries.

Constraints:

- Inadequate or insufficient legal framework;
- Inappropriate RFMO practice (a country must be a member or cooperating non-member in order to have black or white listed vessels for implementing port State measures);
- Lack of a regional MCS network;
- Unclear understanding of the Model Scheme;
- Inadequately trained inspectors; and
- Insufficient law enforcement capacity.

Solutions for overcoming the constraints in implementing the Model Scheme

- Develop a regional MCS network;
- Conduct capacity building;
- Initiate and establish information sharing;
- Harmonize port State control practices;
- Encourage law enforcement;
- Formulate or revise legal frameworks; and
- RFMO promotion of a mechanism to exchange information with non-member countries.

Clear steps that national fisheries administrations might take to develop port State measures that implemented the relevant measures of the IPOA-IUU and the Model Scheme

- Inter-agency consultation and cooperation at the national level;
- Raise public awareness about port State measures;
- Formulate or revise legal frameworks;
- Promote capacity building on port State measures; and
- Strengthen national MCS systems.

Recommended steps for strengthening linkages between port State measures and key compliance tools (e.g. trade, traceability, VMS and information networks)

- Encourage processors not to purchase IUU-caught fish or to engage with IUU fishers;
- Install VMS;
- Develop a regional MCS network and systems;
- Maintain harmonized catch documentation and vessel logbooks;
- Stress the values and importance of sustainable fisheries conservation and management on all fishers; and
- Instill awareness among fishers of possible trade sanction and punitive action by port States in relation to IUU fishing.

Cooperative mechanisms to promote harmonized port State measures at bilateral, subregional or regional levels in Southeast Asia

- Bilateral:
 - Bilateral arrangements and agreements;
 - Bilateral cooperation on marine and fisheries MCS including coordinated patrols;
 - Periodic dialogue and regular information sharing; and
 - Development of a code of conduct and standard operational procedures.
- Subregional or regional:
 - Regional technical consultations;
 - Financial and other resources to support cooperation;
 - Development of regional guidelines on port State measures; and
 - Development of a regional MCS system.

REPORT OF WORKING GROUP 3

Main IUU fishing problems in the region that could be addressed by port State measures, distinguishing between the issues on foreign and national vessels and current and potential problems

Foreign fishing vessels

- Avoid using designated ports;
- Transshipment at-sea;

- Unauthorized fishing (including gear, fishing areas, etc.);
- Flying unregistered flags; and
- Lack of proper vessel identification.

Strengths and constraints in implementing the Model Scheme

Strengths:

- Not too many strengths but lots of constraints; and
- Some strengths through the promotion of cooperative mechanisms like the RPOA, ASEAN, APFIC and SEAFDEC.

Constraints and solutions:

- Time required for document verification among government authorities and a minimum time for flag States to respond;
- No communication network within the region and subregion: a network would need to be established;
- Small-scale fishing vessels should be exempted;
- No national legal framework: this would need inter-agency and cross-sectoral interactions and cooperation and legislations;
- Limited human capacity;
- Confidentiality of reports, especially on fishing areas, to be furnished by the vessel owner: aggregated reporting;
- Lacking of facilities;
- Definition of fishing vessel is too broad (carrier and support vessels, does it include container vessel);
- Article 14 on transmittal of results by Party is too onerous for the port State (what is FAO intended to do with reports?): a summary of reports every 6 months could be sent instead;
- Article 18 on the right of the owner of vessel to appeal is not clear: a systematic and transparent procedure should be described for appeal by owners;
- Article 19 on the port State bearing all responsibilities for compensation for any delay and losses: this should be a shared responsibility between the flag State and the port State;
- Linkage and responsibilities of the flag State and the coastal State with the port State are not clear: a formal cooperative multilateral mechanism to be developed by FAO? and
- Article 22 Section 3 on the need to establish a special funds for developing countries: Who will provide the funds?

Clear steps that national fisheries administrations might take to develop port State measures that implemented the relevant measures of the IPOA-IUU and the Model Scheme

- Improve port facilities and equipment for verification;
- Set up or improve the legal framework;
- Set up standard operational procedures for inspection procedures;

- Implement training (e.g. for port inspectors, fisheries managers, legal experts, etc.);
- Promote intersectoral consultation;
- Strengthen MCS, including the setting up of regional networks; and
- Encourage discussions with stakeholders on the urgency of port State measures and feedback.

Recommended steps for strengthening linkages between port State measures and key compliance tools (e.g. trade, traceability, VMS and information networks)

- Trade: link inspections to catch documentation scheme;
- Traceability: certification schemes for catching IUU products; and
- VMS: consider other tracking systems, such as automatic identification systems.

Cooperative mechanisms to promote harmonized port State measures at bilateral, subregional or regional levels in Southeast Asia

- Establish a RFMO for the Southeast Asian region;
- Implement fully the RPOA; and
- Implement SEAFDEC's Fisheries Regional Management Mechanism.

REPORT OF WORKING GROUP 4

Main IUU fishing problems in the region that could be addressed by port State measures, distinguishing between the issues on foreign and national vessels and current and potential problems

In general, the problem with foreign vessels is that they fish illegally; for national vessels, the main problem is unreported and misreported fishing. More specifically, problems include:

- Foreign vessels fishing illegally in a country's EEZ;
- National vessels misreporting;
- National vessels fishing without a valid license; and
- National vessels using prohibited gears.

Strengths and constraints in implementing the Model Scheme

Strengths:

- The existence of SEAFDEC and APFIC through which information can be shared, consultations can be held, training can be coordinated, etc; and
- Long-term cost effectiveness.

Constraints:

General remark: the Model Scheme seems to be a complicated system and so time will be needed to increase capacity and implement the Scheme in the subregion, in collaboration with APFIC, SEAFDEC and FAO.

- Non-specific legislation for this purpose;
- Lack of staff numbers;
- Lack of trained staff;
- Lack of equipment;
- Weak port infrastructure facilities; and
- Not cost-effective in the short term for the port State.

Opportunities

- The sharing of information through RFMOs: IOTC, WCPFC and the Commission for the Conservation of Southern Bluefin Tuna (CCSBT).

Solutions for overcoming the constraints in implementing the Model Scheme

- Develop appropriate fisheries law and regulations;
- Extend foreign and local investment in port infrastructure and staffing;
- Subregional training exchange schemes;
- Awareness building programmes for stakeholders;
- Enter into bi- and multilateral agreements and arrangements; and
- Inter-agency sharing of information.

Clear steps that national fisheries administrations might take to develop port State measures that implemented the relevant measures of the IPOA-IUU and the Model Scheme

- Hold consultations with all relevant agencies with a view to establishing Memoranda of Understanding for the:
 - establishment of one-stop action centres in the port;
 - development of standard operational procedures for transshipment (involving the whole chain from vessel advance notice to clearance to leave port again; immigration; customs etc.).
- Hold consultations with all other stakeholders concerned in the private and public sectors.

Recommended steps for strengthening linkages between port State measures and key compliance tools (e.g. trade, traceability, VMS and information networks)

- Require VMS onboard for transshipment vessels in order to monitor vessel movements; and
- Share information with flag States and coastal States about vessel licences, vessel registers, catch documentation, landings, etc.

Cooperative mechanisms to promote harmonized port State measures at bilateral, subregional or regional levels in Southeast Asia

- Create political will through Asian Ministers for Agriculture and Forestry; and
- Enhance and create multilateral, subregional and bilateral arrangements and mechanisms for the sharing of information and expertise.

Reports of the thematic working groups

WORKING GROUP 1: LEGAL ASPECTS

REQUIREMENTS	REGIONAL			NATIONAL		
	SITUATION	STRATEGY	MECHANISM	SITUATION	STRATEGY	MECHANISM
1.Scope and definition of terms	There are differences in the definition of countries of some terminology	Establish the description of minimum standards	Conduct technical consultations among countries in the region	Same as for regional situation	Create national standards for minimum requirements	National consultation among all stakeholders
a. recognizing the 1982 UN Convention, Compliance Agreement, 1995 UN Fish Stocks Agreement and Code of Conduct b. some definitions	Some differences in the legal status	Promote regional collaboration for implementation	Establishment of the regional legal expert group Information sharing, collaboration and consultation at all levels	Thailand and Cambodia have not yet ratified the 1982 UN Convention	Conduct national studies to overcome some constraints	Interagency cooperation and collaboration Urge involvement of policy-makers
2. Involvement of flag State, coastal State, market State Besides the port State.	No legal framework but RPOA may provide a basis to build on	Consultation at all levels Additional addendum protocol on port State measures to the RPOA	Utilize existing regional mechanisms for consultation	No existing legislation covering responsibilities of those States	Establish national coordination Develop and implement a protocol on port State measures to the NPOA-IUU	Creation of an interagency group
3. Draft Agreement (if adopted) shall be applied and implemented in a fair, transparent and non-discriminating manners and consistent with international law	The draft Agreement has not been adopted although with existing RPOA	Consultation at all levels Additional addendum protocol on port State measures to the RPOA	Utilize existing regional mechanism for consultation	Some countries have NPOA-IUU while others are developing them	Implementation of NPOA-IUU for other countries to prioritize the development of NPOA-IUU	National consultation among all stakeholders
4. Party shall cooperate and exchange information with States, RFMOs, international organizations for providing/requesting some information in subregional, regional level.	Not existing communication, information mechanism	Set up mechanism for regional exchange of communication and information	Utilize existing RFBs/RFMOs for consultation	Lack of general understanding about the effectiveness of international organizations	Dissemination of vital information relating to RFMOs	National consultation among all stakeholders
5. Designation of port- State shall designate and publicize port	Some countries have already designated fishing port while others have not	Promote compliance among member countries in the region	Utilize existing RFBs/RFMOs for consultation	Consider location of ports with access to international markets	Provide specific laws for the designation of ports	National consultation among all stakeholders

WORKING GROUP 2: INFORMATION REQUIREMENTS AND SYSTEMS

Requirements of the Agreement

Article 6: To amend Article 6 para. 1 to accommodate exclusively the fishing license and authorization and records of vessels engaged in IUU fishing; exclude small-scale vessels.

Article 7: Some countries already have designated ports in place while others are required to designate ports, develop capacity and publicize the existence of ports.

Article 8: In para. 2, flag State shall respond to port State queries in a timely manner pertaining to curiosity and doubts with regard to the fishing authorization, vessel license, species catch quota and fishing area.

Annex A: Reformat into categories of information for the easy reference for port officers and shipping agents; for number 37, the addition of “number” behind “Fishing Licence Reference”; for number 39, 42 and 44 add additional columns on the type of species and having the word “Others” in the last row; the particulars of authorized persons who complete the form and a list of persons authorized (company representatives or agents) to complete the form.

WORKING GROUP 3: INSPECTION PROCEDURES AND RESULT OF PORT INSPECTIONS

Current requirements in the draft Agreement: Article 11, Para. 1

Current situation: Inspection – Yes (not specifically on IUU fishing and related activities although includes some items in Annex B; inspections more related to food safety, vessel safety, crew list, CITES, etc.); Level of inspection – No set target

Current requirements in the draft Agreement: Article 11, Para. 2

Current situation: Inspection – no priority set on which vessels to inspect

Current requirements in the draft Agreement: Article 11, Para. 3

Current situation: No, have not sought to agree on a minimum number of inspections

Current requirements in the draft Agreement: Article 12, Para. 1

Current situation: Generally to some extent; inspections cover some aspects of Annex B; inspections usually based on visual check of documents submitted by the vessel; exceptions – one country (in group) to the extent possible, e.g., gears, fish on board, evaluation, another country (in group) on report signing (inspection form); items on examining the catch and on translation are not carried out (bilingual in English and national language)

Current requirements in the draft Agreement: Article 12, Para. 2

Current situation: (a) Training (Annex E): some items; (b) – yes; (c) – No; (d) – yes; (e) – no, but if vessel is involved in high sea fishing and the port State is a member of certain RFMO, it may invite the flag State to participate in the inspection; (f) – one country (in group): yes, no need for inspection is an effort; (g) – yes; (h) – yes; (i) – yes (but no provision in report for the master to give additional comments)

Current requirements in the draft Agreement: Articles 13, 14, 15 and 16

Current situation: No

Current requirements in the draft Agreement: Articles 17, Para. 1

Current situation: No generally, but one country (in group) acts on 1(a) on fishing without a valid licence, (f) gear inconsistent with authorized gear; (g) falsifying or concealing markings, etc.

Current requirements in the draft Agreement: Articles 17, Paras 2 and 3

Current situation: No generally, but one country (in group): yes to some extent

Current requirements in the draft Agreement: Article 18

Current situation: Not applicable generally, but some countries indicated yes

Current requirements in the draft Agreement: Article 19

Current situation: Not yet applicable

Current requirements in the draft Agreement: Article 20

Current situation: yes (general matter)

Strategy: Objective/goal: to strengthen inspection procedures to be in line with combating IUU fishing; implement a plan of action as indicated in the schedule below

Inspection procedures and results of port State inspections

	Immediate (3yrs)	Mid-term (5yrs)	Long-term (> 5yrs)	Remarks (including mechanisms)
1) National legislation				
a) Review and update existing procedures and laws				
i) Inter-agency consultation and definition of roles				In-country mechanism
ii) Agencies establish the standard operating procedures and enact laws				In-country mechanism
2) Regional and subregional consultations				
a) Achieve agreement to cooperate				ASEAN, SEAFDEC, APFIC
b) Establish networks				ASEAN, SEAFDEC, APFIC
c) Establish harmonized procedures				ASEAN, SEAFDEC, APFIC
3) Interregional consultations				FAO, IMO, ILO, etc.,

WORKING GROUP 4: TRAINING PROGRAMMES FOR PORT INSPECTIONS

Outline and Objectives of five-week course:

<i>Subject</i>		<i>Lecture</i>	<i>Practice</i>	<i>Period</i>
Introduction: To outline the objectives of the training course and the various elements of the course	<ul style="list-style-type: none"> • Brief overview of applicable legislation • Basic fish species identification • Introduction to types of gear • On-board equipments including communication devices • Fish handling facilities • Ecosystem approach 	O		1 day
Legislation: Give basic knowledge of the international legislative framework for combating IUU fishing and related “soft law instruments”	<ul style="list-style-type: none"> • 1995 Code of Conduct and regional code of conduct • IPOA-IUU • IMO and safety-related issues • Recent international developments 	O O O O		2 Days
Inspection techniques: Allow the inspector to identify vessels and gear and to measure vessel holds and provide techniques for the operation of electronic tracking systems, fish identification and handling procedures	<ul style="list-style-type: none"> • Type of vessels • Fishing gears and its operation • VMS • Fish holds 	O O O O	O O O O	10 days
Navigation, seamanship, safety at sea: Give the inspector an understanding of the system for vessel operation and the division of responsibilities on-board	<ul style="list-style-type: none"> • Navigation • Seamanship • Safety at sea 	O O O	O O O	1 day
Catch and vessel documentation including analysis of collected information: To provide the skills to analyze the fishing licences, sailing permit, logbooks and other catch documentation, electronic documentation, port accreditation permits and vessel history	<ul style="list-style-type: none"> • Fishing licensing • Sailing permit • Navigational logbook • Catch documentation • Etc. 	O O O O TBI		4 days
Terminology in relevant languages	<ul style="list-style-type: none"> • Provide instruction on the terminology necessary to interpret documentation 	O	O	2 days
Ethics	<ul style="list-style-type: none"> • Acquire an understanding of other cultures and idiosyncracies 	O	O	1 day
Coordination and communication skills	<ul style="list-style-type: none"> • How to communicate with vessel operators, government agencies and other stakeholders 	O	O	2 days
Report-writing skills		O	O	2 days

Organizations capability:

Regional training courses and training for national trainers might be carried out by SEAFDEC or the Asian Institute of Technology in Thailand or through FAO facilitation.

Timeframe: Regional courses and training for trainers could start, depending on funding availability, during the second quarter of 2009.

National courses can be carried out, for example, at the following institutions: the National Agriculture Training College in Malaysia; the BFAR-PFDA in the Philippines; the Fishery Training Centre in Indonesia and the Institute of Fishery Technology in Myanmar; SEAFDEC; ASEAN Institute of Technology, Thailand.

Case study: “Hong Kui Hui”**The scenario:**

The Hong Kui Hui, a reefer vessel flying the flag of the State of Omega, received a transshipment of fish on the high seas. It was a consignment of valuable spikefin fish. The fish was taken in violation of the management measures of the relevant regional fisheries management organization (RFMO), the Regional Fisheries Commission (RFC). Omega is not a Member of the RFC.

The Hong Kui Hui then steamed to the exclusive economic zone (EEZ) of Alpha where it received by transshipment a consignment of valuable curlyfin fish. The curlyfin fish was transshipped from the Blue Maru, a fishing vessel registered in Alpha. In violation of Alpha law, the transshipment was not authorized. In fact, the Blue Maru had illegally taken the curlyfin fish from the waters of a neighbouring country, Beta.

After this transshipment, the Blue Maru returned to port in Alpha, and at the request of Beta, a port inspection was carried out. Inspectors concluded that there were reasonable grounds to suspect the vessel had been fishing illegally in Beta waters, and officials of Alpha and Beta began discussions regarding the measures that should be taken. Meanwhile, the Hong Kui Hui steamed towards the port of Nang in the neighbouring country of Cheta.

Alpha, Beta and Cheta all recently concluded a trilateral agreement where each country agreed to implement the draft Agreement on Port State Measures in its laws and practice, and to exchange information accordingly.

Cheta has not yet updated its national laws to require that a foreign vessel must be refused the use of its port where there are clear grounds for believing that it has engaged in or supported IUU fishing activities in areas beyond its fisheries jurisdiction. However, it does require prior notice of entry into port and has implemented agreed procedures for inspection. Two months ago, Alpha, Beta and Cheta began to develop an information exchange system on the results of their port inspections.

The Hong Kui Hui gave 48 hours prior notice of entry into the port of Nang, declaring that it was carrying a consignment of spikefin and curlyfin fish that it would be landing for processing in Cheta for export.

Two hours before the Hong Kui Hui was due to land the fish, the Cheta Permanent Secretary for Fisheries received a communication from Alpha. The message stated that, following a port inspection of the Blue Maru, there were reasonable grounds to suspect that the Hong Kui Hui had received illegally caught fish and had carried out illegal transshipment operations.

Furthermore, Alpha advised that as a member of the RFC, it had been informed that the Hong Kui Hui had been sighted supporting IUU fishing in the RFC Area of Competence.

The exercise:

Describe steps that should be taken, and by whom, to implement the provisions of the Draft Agreement on Port State Measures to Combat IUU Fishing.

You may make assumptions of fact if necessary.

Reports of the working groups on the case study

WORKING GROUP 1

HONG KUI HUI

Assumption:

- transshipment received by HKH are also caught by illegal means;
- under the national law of Omega, reefer vessel is considered as fishing vessel;
- Omega is cooperating non-member of the Trilateral Agreement among Alpha, Beta and Cheta, and
- Alpha, Beta and Cheta are members of the same RFMO.

Beta:

- furnish copy to Cheta and Omega of relevant information and document given by Beta to Alpha concerning Blue Maru.

Omega:

- take action in accordance with national law against HKH;
- report action-taken to Alpha and RFMO;
- upon receive information from Cheta, HKH is currently in the port, Omega will direct the owner of the vessel to return to Omega for proper actions, and
- Omega will return back to Cheta and to inform Cheta for the actions taken.

Cheta:

- inform Omega that HKH has already made a port call to Nang and will be docking in 2 hours;
- will request Omega to take actions against HKH since Cheta has no existing law that can deal with this particular situation;
- Cheta will be return back to Alpha and inform Alpha of the actions taken, and
- Cheta also inform RFMO.

RFMO:

- request for relevant evidence and information, and
- arrange for consultation to solve this problems for working towards peaceful dispute settlement among States concerns.

BLUE MARU CASE

Assumption:

- State of Alpha, Beta and Cheta are member of the same agreement among the three;
- Omega is cooperating non-member of the above agreement, and
- Besides the said agreement, there is existing RFMO which all States are member.

Alpha:

- inform the RFMO and seek for suggestions;
- submitted relevant evidences to Beta;
- inspect and investigate the case and report the result to Beta and RFMO;
- fine cases, and
- inform Ceta and Omega about illegal transship committed by Blue Maru.

Beta:

- inform and provide relevant evidence to prove the commission of the offence to Alpha that there was an illegal fishing within Beta's water;
- request Alpha for taking enforcement actions;
- report the result of enforcement operation to Beta, and
- send the copy to RFMO.

Omega:

- take action in accordance with national law against HKH;
- report action-taken to Alpha and RFMO, and
- upon receive information from Cheta, HKH is currently in the port, Omega will direct the owner of the vessel to return to Omega for proper actions.

Cheta:

- inform RFMO regarding implement.

RFMO:

- Request for relevant evidence and information, and
- arrange for consultation to solve this problems for working towards peaceful dispute settlement among States concerns.

WORKING GROUP 2

Action to be taken	Carried out by
Logbook and catch documentation seized from Blue Maru	Alpha
Charge Blue Maru in violation of transshipment regulations of Alpha	Alpha
Cheta to inspect vessel log, catch and transshipment document and vessel hold	Cheta
Assuming confirmation of violations	
Cheta to deny HKH use of port facilities – Article 17	Cheta in compliance with trilateral agreement (ABC)
Results of inspection by Cheta to be transmitted to all relevant states (ABC, Omega, RFC, FAO and relevant RFMOs). - Article 14	Cheta
HKH to be blacklisted – information to be disseminated to RFC member countries	ABC
RFC member countries can request Omega to take punitive action against HKH	RFC committee

WORKING GROUP 3

Background

- country “B” informs Country “A” as Blue Maru is registered under “A” (Article 17 and 14);
- countries “A” and “B” inform “C” on the various sightings and suspicions regarding BM and HKH (Article 17 and Trilateral Agreement);
- RFC informs relevant parties of illegal fishing by HKH (RFC’s role);
- actions by Country “C”;
- requests vessel HKH for documentation on catch (Article 8);
- inspects vessel (Article 12);
- sends evidence found on HKH of findings to Country “O” as flag State for comments (Article 17, Para 1);
- transmits results to trilateral partners “A” and “B”, and RFC and FAO (Article 14);
- receives reply from Country “O” (Article 21), and
- directs HKH to return to flag State “O” and requests “O” to investigate (Article 17, Para 3b).

WORKING GROUP 4

State	Alpha	Beta	Cheta	Omega
Vessel	Blue Maru			HKH
Fish		Curry fish		
Port			Nang	
Regulation			Not update his national laws	Not member of RFMO/RFC

Assumption:

- Alpha, Beta, and Cheta are signatories to the draft Agreement (IUU); and
- Alpha and Beta had passed national laws adopting international agreement.

Cases	Steps to be taken, and by whom
1. Blue Maru did IUU fishing in Beta	1. under Part4Article11Para2-b, Beta (coastal stage) requests Alpha (flag State) that Blue Maru to be inspected at Alpha. 2. Alpha did inspect Blue Maru, and found reasonable ground that indeed Blue Maru committed IUU in Beta Water. 3. We can assume that Beta participated in the inspection of Blue Maru in Alpha.
2. Blue Maru did illegal transshipment in Alpha	Alpha will prosecute Blue Maru under the national law. Alpha
3. HKH did illegal transshipment with Blue Maru in Alpha	Alpha will prosecute HKH under the national law.
4. Assuming Cheta and Omega are members signatory of the draft Agreement, accepts landing of HKH at Nang port	1. Cheta requests Alpha and Beta to send representative to inspect/check. 2. Alpha and Beta have responsibility to prosecute HKH. 3. Alpha/Beta/Cheta needs to inform Omega, being the flag State of HKH. 4. Alpha, Beta and Cheta can prosecute HKH (Article14 and Article17). 5. Alpha under their national law can prosecute HKH for illegal transshipment. 6. Beta can prosecute Blue Maru for IUU in their EEZ. 7. Beta can prosecute HKH as an accomplice (Article17 Para 1).

Key issues for future action and cooperation in strengthening and harmonizing port State measures to combat IUU fishing in the Southeast Asian region

1. The Workshop agreed on key issues for future action and cooperation in strengthening and harmonizing port State measures to combat IUU fishing. It was further noted that port State measures could be related to traceability schemes, which could significantly impact exports of fish and fisheries products from Southeast Asian countries. The issues were:

1. Ensuring political will and support;
2. Harmonization and standardization;
3. Legal frameworks;
4. Regional MCS network;
5. Training and human capacity building; and
6. Information sharing and activity coordination.

Issue 1: Ensuring political will and support

- Involve APFIC, ASEAN and SEAFDEC;
- Include the outcomes of this Workshop in the implementation of the RPOA;
- Develop and adopt NPOAs–IUU as applicable;
- Raise public awareness through communications strategies and campaigns, and
- Support the process established by COFI to develop a binding agreement on port State measures, including ensuring full participation at the June, 2008 FAO Technical Consultation.

Issue 2: Harmonization and standardization

- Develop regional minimum standards,
 - take into account international instruments, especially the draft Agreement on Port State Measures,
- Agree on appropriate mechanisms, for example under APFIC, SEAFDEC, ASEAN and/or the RPOA;
- Elaboration of standard operation procedures and
- Designate ports where port State measures will be implemented.

Issue 3: Legal framework

- Cooperate on a regional level to develop a legal basis to strengthen the harmonization of port State measures, based on relevant international instruments;
 - Consider the establishment of a regional legal working group to address implementation, strengthening and harmonisation of port State measures and other measures to address IUU fishing, for example under ASEAN or SEAFDEC;
 - Identify key legal issues for the region;
 - Establish a framework of cooperation and networking among countries in the region;
- Update national legislation to implement port State measures developed under relevant international instruments;
- Consider developing bilateral and/or regional mechanisms to coordinate port State measures;
- Seek expert assistance to set up the legal framework to implement port State measures, and
- Consider fast track options for implementation.

Issue 4: Regional and subregional MCS networks

- Promote through RPOA and ASEAN;
- Encourage engagement with non-RPOA and/or non-ASEAN neighbours;
- Engage with other initiatives dealing with topics relating to oceans and coastal environment, where IUU fishing is also an issue, and
- Sharing of MCS tools.

Issue 5: Training and human capacity building

- Develop and deliver regional training courses and human capacity building by SEAFDEC and/or FAO depending on the availability of resources, and by other training centres or through regional fisheries colleges;
- Develop online component to support training, including for refreshing /updating;
- Seek resourcing/funding for training courses from donors and donor countries, and
- Identify funding within national budgets.

Issue 6: Information sharing and activity coordination

- Inter- and intragovernment coordination;
 - timely coordination between SEAFDEC member port States;
 - coordination among national authorities, and
 - promote inter-agency cooperation within governments, and
- Coordinate with industry, mindful that it will be closely involved in the implementation of port State measures and possible traceability schemes.

2. Organizations such as APFIC, SEAFDEC and ASEAN are encouraged to forward these issues for future action and cooperation to their upcoming Sessions and Council meetings for consideration and possible follow up.

This document contains the report of the FAO/APFIC/SEAFDEC [Food and Agriculture Organization of the United Nations/Asia Pacific Fisheries Commission/Southeast Asian Fisheries Development Center] Regional Workshop on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing, that was held in Bangkok, Thailand, from 31 March to 4 April 2008. The objective of the Workshop was to develop national capacity and promote bilateral, subregional and/or regional coordination so that countries would be better placed to strengthen and harmonize port State measures and, as a result, implement further the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, the 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing and contribute to the development of a legally-binding instrument on port State measures. The Workshop addressed: the background and framework for port State measures; the FAO Model Scheme including national plans of action to combat IUU fishing and IUU fishing activities in Southeast Asia; the FAO Model Scheme and regional approaches and the 2007 draft Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; key elements of national laws, and the role of the Asia Pacific Fisheries Commission and the Southeast Asian Fisheries Development Center; national coordination and implementation of port State measures; industry perspectives on port State measures, and responses to the questionnaire on port State measures. Working groups were formed to enhance the participatory nature of the Workshop and as a means of engendering broader and deeper discussion on concepts and issues relating to port State measures. A fictitious case study exercise was also undertaken to demonstrate how a port State might deal with a realistic IUU fishing problem. The final session of the Workshop sought to identify key issues to be addressed on a regional basis as follow-up to the Workshop. Funding and support for the Workshop were provided by the FAO Regular Programme, by the Government of Norway through the Trust Fund for Port State Measures (MTF/GLO/206/MUL) and the FishCode Programme (MTF/GLO/125/MUL [Sweden-SIDA] [SWE/05/IUU Port State Measures/IUU fishing]).



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