



**INTERNATIONAL FRAMEWORK
FOR PORT STATE MEASURES TO
COMBAT IUU FISHING:
Towards more stringent and
binding measures**

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PURPOSE

- to provide an overview of the international framework for port State measures, explaining how these measures have evolved in support of long-term sustainability
- to outline why port State measures have assumed an increasingly important role in fisheries
- to discuss planned future developments to strengthen port State measures in fisheries

OUTLINE

- **Provide background information on the increasing focus on port State measures to combat IUU fishing**
- **Review the international framework for port State measures as they relate to fishing vessels**
- **Outline some of the capacity building considerations required to support the implementation of port State measures**
- **Highlight the need for action through RFMOs to implement port State measures**
- **Discuss developments for an internationally binding instrument on port State measures for fishing vessels**
- **Concluding remarks**

BACKGROUND

- **Port State measures in support of fisheries management have evolved since 1982 when the UN Convention on the Law of the Sea opened for signature**
- **A trend internationally towards more responsible stewardship of natural resources has intensified since UNCED in 1992, encouraging new approaches to resource management and utilization with the overriding goal of long-term sustainability**

BACKGROUND

The recent and intense focus on strengthening port State measures has been prompted by three inter-linked issues.

- 1.** The rise and international prominence of IUU fishing and its impact on fisheries management
- 2.** A lack of effective flag State control by some States: so called “flags of convenience” or “flags of non compliance”
- 3.** The growth of “ports of convenience”



1. LACK OF EFFECTIVE FLAG STATE CONTROL



- Some States are unable (lack of capacity) or unwilling (“flags of convenience”) to exercise effective flag State control over fishing vessels operating beyond areas of national jurisdiction
- These vessels do not normally observe responsible standards of behaviour and international fisheries management norms (e.g. conservation and management measures put in place by RFMOs)
- To address some flag State concerns, there is an international move to develop criteria for the assessment of flag State performance: but this may have little impact on States operating “flags of convenience”

1. RISE AND IMPACT OF IUU FISHING

- IUU fishing is not new but it has become more visible and pronounced in the past 20 years: it is increasingly observed in high-seas fisheries
- It includes a wide range of activities such as unauthorised fishing in EEZs and in RFMO convention areas, taking juvenile and protected species, using prohibited gear, failing to report catches etc
- It is motivated by economic gain and is sometimes, in industrial fisheries, associated with organized crime
- It exploits weak management regimes, preys on developing countries and takes advantage of corrupt administrations with respect to vessel registration, “authorizations to fish” and shore-side operations

2. GROWTH OF “PORTS OF CONVENIENCE”

“Ports of convenience”:

- fail to monitor fishing vessels using their ports
- fail to exercise control over the handling of catches, including catches taken by IUU fishing vessels
- often host companies that own or manage IUU fishing vessels or support their operations

Frequently, “ports of convenience” are located in developing countries where financial considerations (e.g. the sale of essential goods and services) override vessel control and regulatory functions

“Port of convenience” do not assist flag States meet their obligations under international law nor do they assist in preventing IUU caught fish from entering international trade and markets

3. RISE AND IMPACT OF IUU FISHING

- IUU fishing significantly disadvantages honest “authorized” fishers
- IUU fishing is costly for fisheries administrations: lost fishing revenue and funds spent combating it
- Most importantly, undermines national and regional efforts to manage fisheries: inhibits stock rebuilding efforts, hastens the downward slide in many fisheries and potentially affects food and livelihood security for poor communities in developing countries
- IUU fishing is considered increasingly to be an “environmental crime” rather than an administrative offence
- IUU fishing requires strong “political will” and concerted and consistent action, often at a regional level, to curb it

INSTRUMENTS AND INITIATIVES

States that have accepted or ratified binding international instruments have an obligation to implement them.

Many States therefore already have assumed obligations to implement port States measures through instruments such as the 1995 UN Fish Stocks Agreement.

Voluntary or non-binding instruments should be implemented as a demonstration of commitment to international fisheries initiatives but there is no obligation to do so.

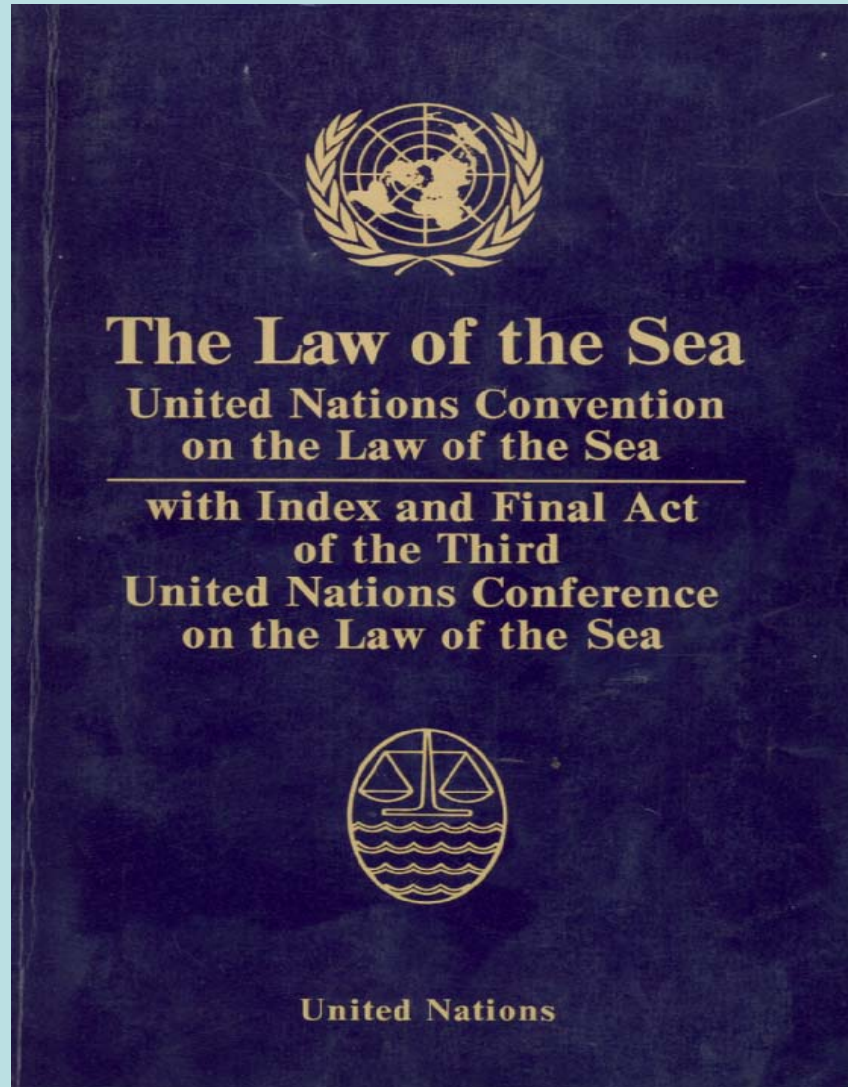
Port State measures are addressed directly or indirectly in the following instruments and initiatives.

- 1982 UN Convention on the Law of the Sea**
- Agenda 21 adopted by UNCED in 1992**
- 1995 UN Fish Stocks Agreement (and the outcome of the 2006 Review Conference)**

INSTRUMENTS AND INITIATIVES

- **1995 FAO Code of Conduct for Responsible Fisheries**
- **2001 FAO International Plan of Action to Prevent, Deter and Eliminate IUU Fishing**
- **2001 World Summit on Sustainable Development outcomes**
- **2005 FAO Model Scheme on Port State Measures to Combat IUU Fishing**
- **Certain UNGA fisheries resolutions and FAO COFI decisions**

1982 UN CONVENTION



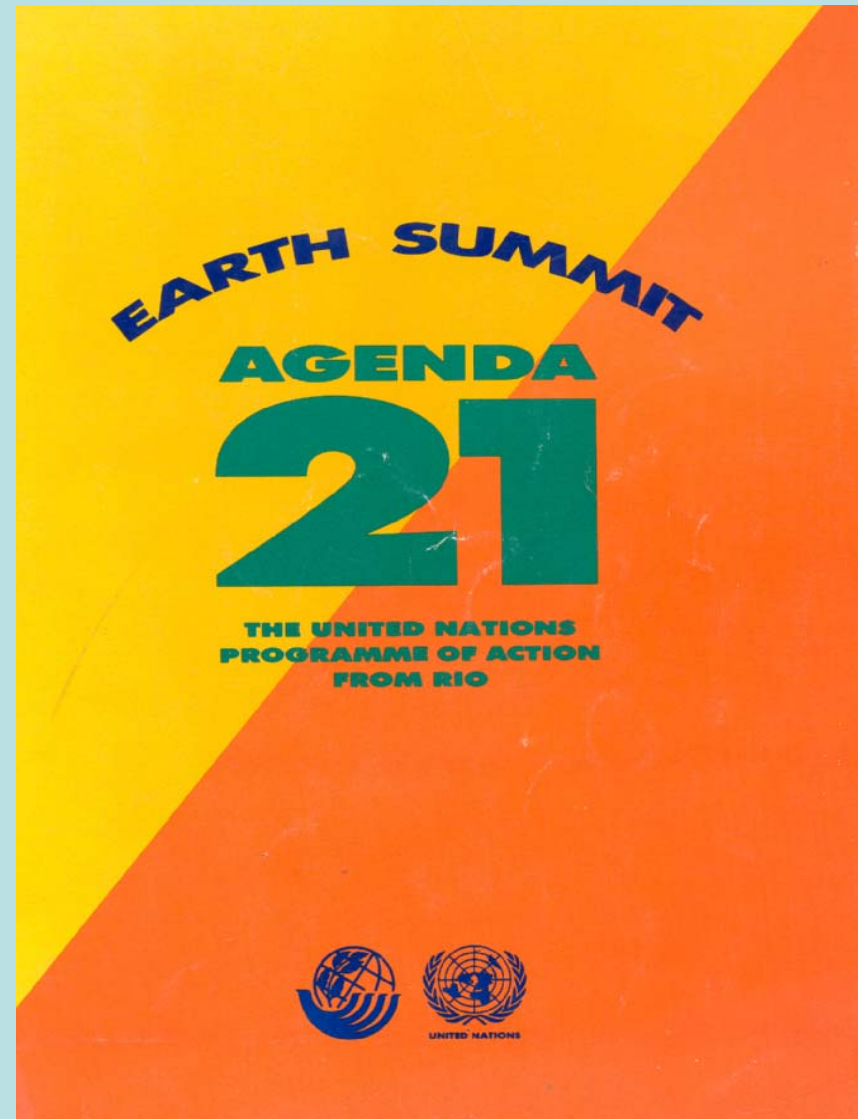
- Landmark achievement in international law: 14 years in the making
- Comprehensive law of the sea regime for both living and non-living resources
- International basis for the protection and use of the world's oceans
- Point of departure for international fisheries instruments

1982 UN Convention

- **Silent on port State measures as they pertain to fishing vessels though Article 218 address enforcement by port States against marine pollution**
- **Port State issues in fisheries were essentially overshadowed in the negotiation of the Convention by other major jurisdictional and fisheries issues (e.g. the extension of territorial seas and national jurisdiction, high seas management issues and the treatment and management of certain fish stocks)**
- **Nonetheless, the thrust and basis of the Convention's fisheries provisions is for the rational conservation and management of resources and the use of measures consistent with international law to achieve that goal**

1992 UNCED: AGENDA 21

UNCED adopted Agenda 21 (Chapter 17 on oceans): a non-binding but “watershed” instrument that has profoundly affected thinking and practice in the fisheries sector (e.g. the application of the precautionary approach in fisheries management)



1992 UNCED: AGENDA 21

Agenda 21 does not address port State measures, per se, but encourages action that could infer stronger port State control to, for example:

- prevent overfishing
- encourage gear selectivity
- curb ocean dumping
- deter reflagging of fishing vessels to avoid conservation and management measures

1993 FAO COMPLIANCE AGREEMENT

AGREEMENT TO PROMOTE COMPLIANCE
WITH INTERNATIONAL CONSERVATION AND MANAGEMENT
MEASURES BY FISHING VESSELS ON THE HIGH SEAS

ACCORD VISANT À FAVORISER LE RESPECT PAR LES
NAVIRES DE PÊCHE EN HAUTE MER DES MESURES
INTERNATIONALES DE CONSERVATION ET DE GESTION

ACUERDO PARA PROMOVER EL CUMPLIMIENTO DE LAS
MEDIDAS INTERNACIONALES DE CONSERVACION Y
ORDENACION POR LOS BUQUES PESQUEROS
QUE PESCAN EN ALTA MAR

促进公海渔船遵守国际养护
及管理措施的协定



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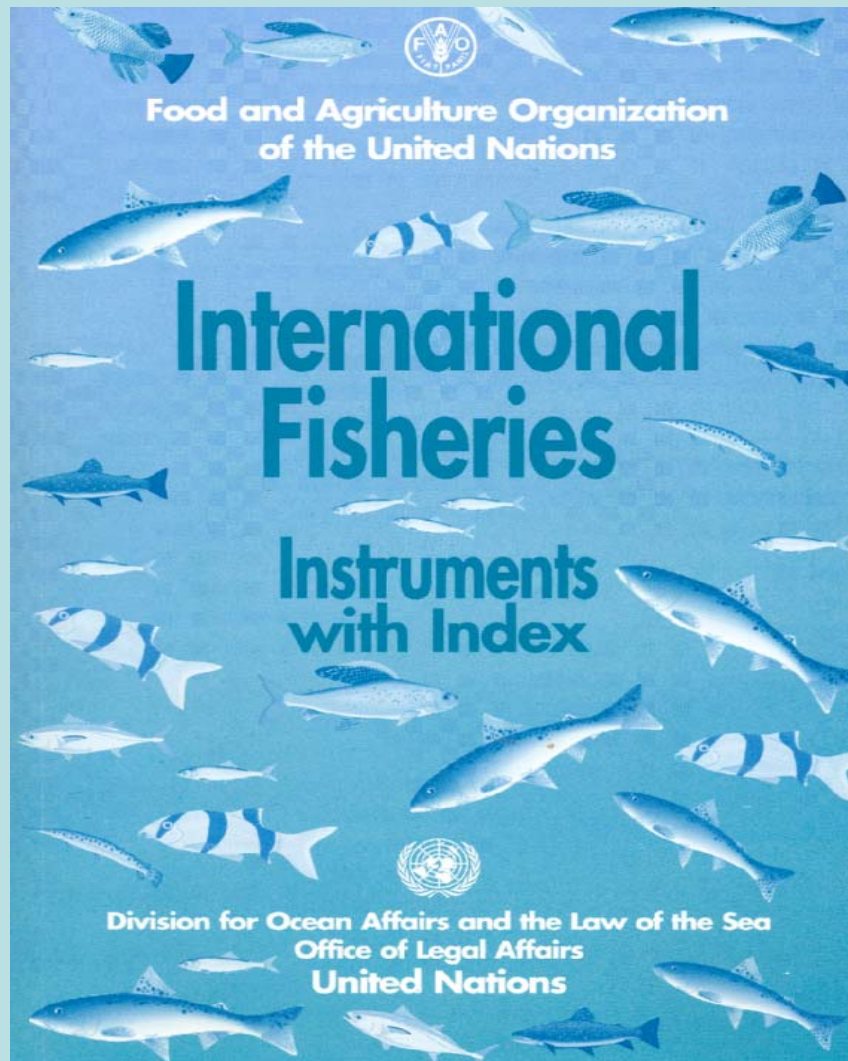
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- Legally binding instrument borne out of UNCED to take action to ensure compliance with international conservation and management measures for high seas resources
- Article V of the Agreement on “international cooperation” provides for port State action, in cooperation with flag States, where there are reasonable grounds to believe that a fishing vessel has undermined international conservation and management measures

1995 UN FISH STOCKS AGREEMENT



- A binding instrument spawned by UNCED that consolidates and extends the principles of the 1982 Convention for straddling and highly migratory fish stocks: they are valuable and form the basis of many of the world's most important commercial fisheries
- Article 23 of the Agreement has strong port State provisions: "A port State has ... a right and duty to take measures ... to promote the effectiveness of ... conservation and management measures ..."

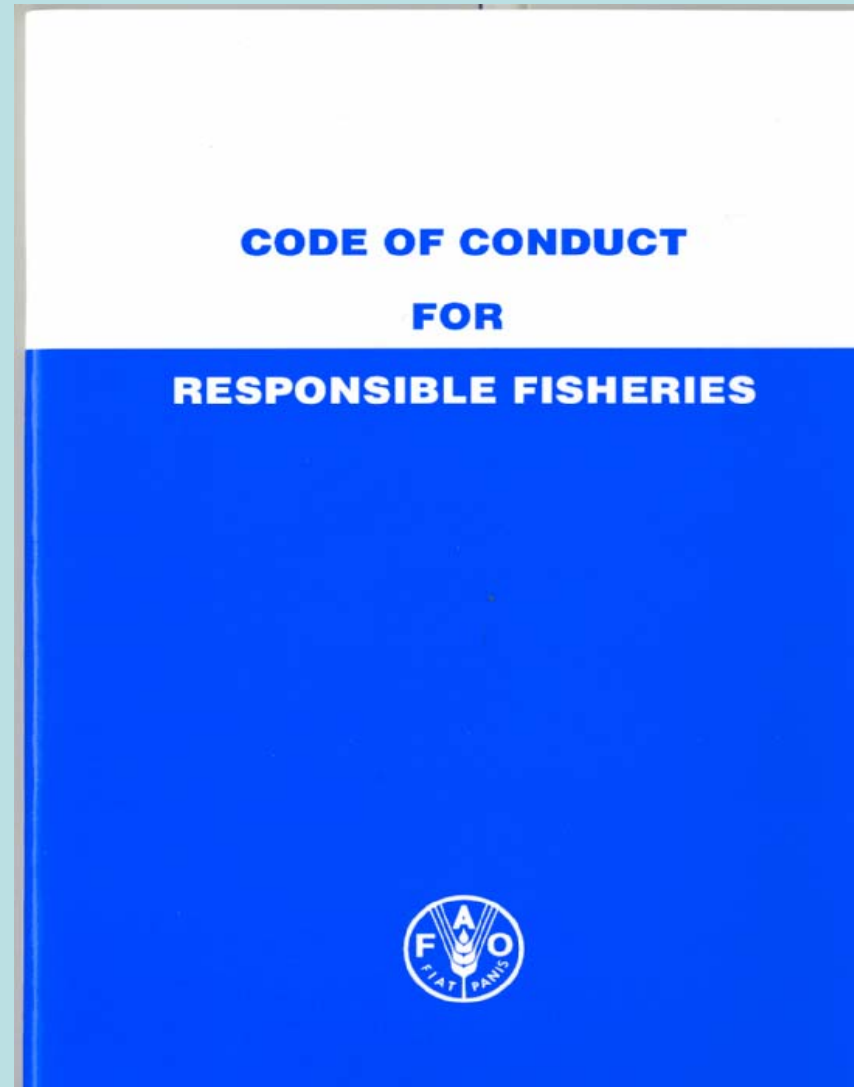
2006 REVIEW CONFERENCE OF FISH STOCKS AGREEMENT

Importantly, the Review Conference called on Parties to cooperate to adopt port State measures, especially those in the FAO Model Scheme and to start a process in FAO to develop a legally binding instrument on minimum standards for port State measures, based on the Model Scheme



1995 FAO CODE OF CONDUCT

- Originated in 1999 at COFI in discussions relating to the use of large-scale pelagic driftnets and the need for “responsible fishing”
- A unique international non-binding instrument setting forth “responsible standards and practice” in fisheries and aquaculture
- It focuses on “responsible behaviour” similar to “codes of ethics” in other professions and sectors (e.g. medical profession)
- Article 8.3 of the Code provides for action by port States to achieve the Code’s objectives and to assist flag States meet their obligations under international law



2001 IPOA-IUU

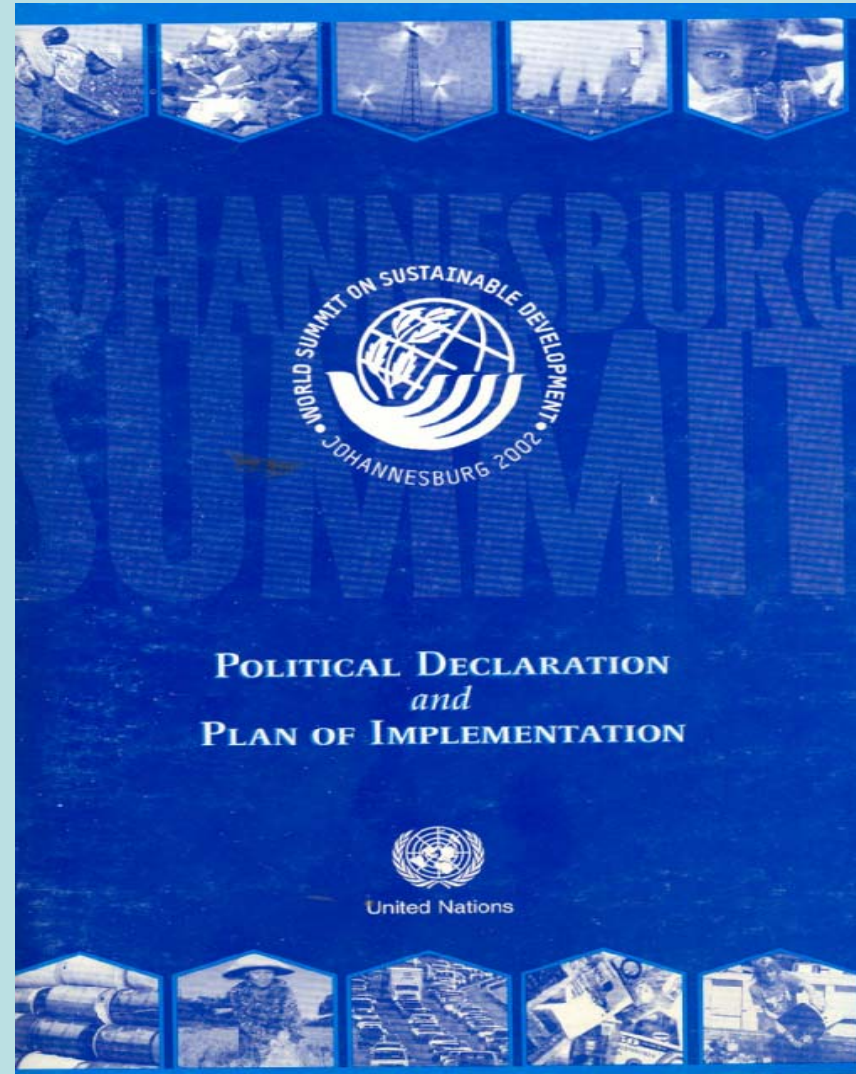
INTERNATIONAL PLAN OF ACTION
TO PREVENT, DETER AND ELIMINATE
ILLEGAL, UNREPORTED AND
UNREGULATED FISHING



- A purpose designed multi-pronged “toolbox” concluded within the Code of Conduct framework to combat IUU fishing in all forms and at all levels in all capture fisheries
- Port State measures are a central feature of the instrument and should be applied by States alone and in concert with other States through RFMOs
- The IPOA-IUU relies heavily on port State action to block IUU caught fish from entering international trade and markets

2001 WSSD OUTCOMES

- The WSSD Plan of Implementation (POI) is intended to give impetus to the implementation of the UNCED principles and the subsequent instruments adopted
- The POI emphasizes the role of fish in the food security, national economic prosperity and human welfare equations
- There is a sharp focus on IUU fishing and measures to combat it
- The POI calls for the full implementation of many international fisheries instruments and sets implementation timeframes for some of them (e.g. IPOA-IUU)



2005 FAO MODEL SCHEME

MODEL SCHEME
ON PORT STATE MEASURES TO COMBAT ILLEGAL,
UNREPORTED AND UNREGULATED FISHING

DISPOSITIF TYPE
RELATIF AUX MESURES DU RESSORT DE L'ÉTAT DU PORT
DANS LE CONTEXTE DE LA LUTTE CONTRE LA PÊCHE
ILLICITE, NON DÉCLARÉE ET NON RÉGLEMENTÉE

MODELO DE SISTEMA
SOBRE LAS MEDIDAS DEL ESTADO RECTOR DEL PUERTO
DESTINADAS A COMBATIR LA PESCA ILEGAL,
NO DECLARADA Y NO REGLAMENTADA



- A “soft law” instrument intended to re-enforce the implementation of the IPOA-IUU on port State measures
- Contains detailed annexes for the strengthening port State controls for fishing vessels
- Is a departure point for the elaboration of the internationally binding instrument on port State measures
- Effective implementation of the Model Scheme implies significant input on capacity development and institutional strengthening

UNGA FISHERIES RESOLUTIONS AND COFI DECISIONS

- Recent UNGA fisheries resolutions have called for enhanced port State controls to combat IUU fishing
- Resolution 61/105 (in 2006) encouraged States to start a process to develop a legally binding instrument on minimum standards for port State measures
- 2007 COFI agreed to proceed with a process to develop a binding instrument on port State measures based on the IPOA-IUU and the Model Scheme



BINDING INSTRUMENT PROCESS FOR DEVELOPMENT

- **September 2007: Expert Consultation (USA):
draft agreement elaborated**
- **June 2008: Technical Consultation (Italy):
negotiation of binding agreement based on
the outcome of the Expert Consultation**
- **March 2009: Consideration and review by
COFI**
- **?? 2009: Agreement open for signature**

CAPACITY BUILDING

- **WSSD and other international fora (e.g. COFI and UNGA) underline the central role of capacity building to enable countries to meet their obligations under international law**
- **FAO's global series of IPOA-IUU regional workshops concluded in 2006: they were supplemented by other capacity building exercises (e.g. MCS)**
- **FAO's capacity building initiatives to strengthen the implementation of port State measures is in train**
- **Capacity building is a major and ongoing challenge to eliminate weak links in port State measures chain**



RFMO ACTION



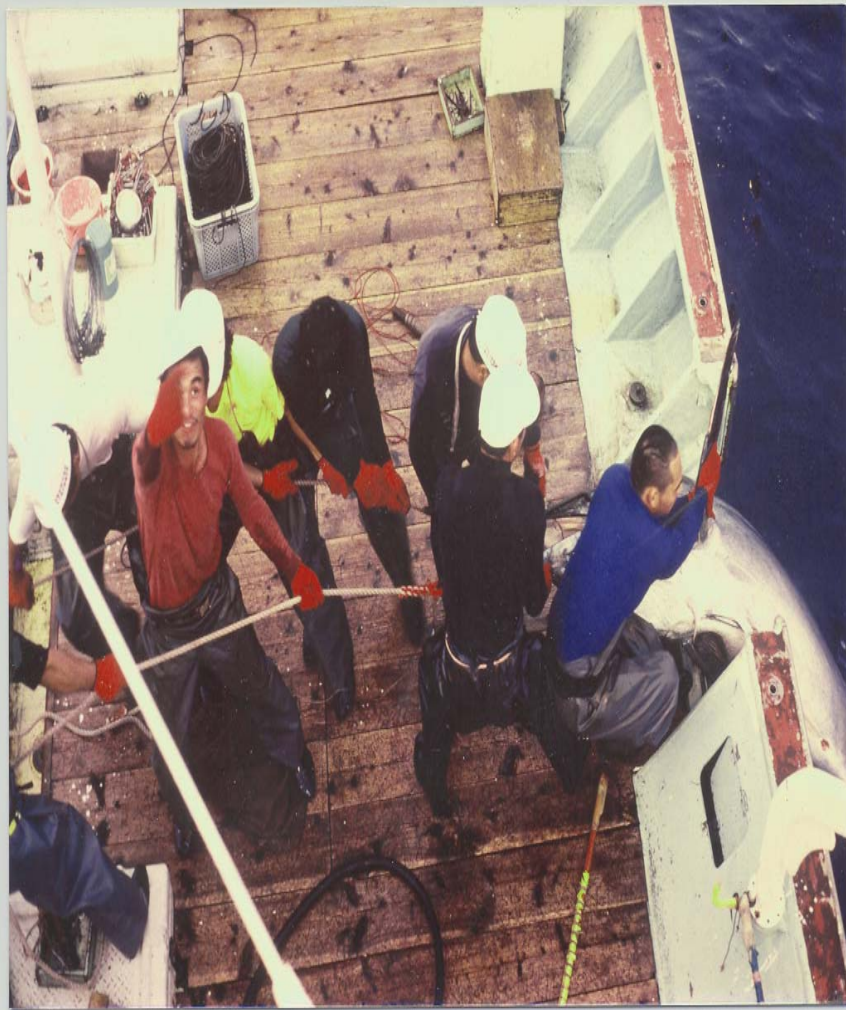
- **Some RFMOs are already addressing and implementing port State measures (e.g. NEAFC, WCPFC, NAFO)**
- **RFMOs have a fundamental role to play in harmonizing measures among members especially for inspection standards and procedures**
- **RFMOs should also adopt measures to require members to supervise catches unloaded and transshipped in their ports and to prohibit their handling if it has determined the catches have undermined conservation and management measures (e.g. 1995 UN Fish Stocks Agreement, IPOA-IUU and Model Scheme)**

RFMO ACTION

- For RFMO measures to be successful there must be maximum participation by members, there should be harmony in approaches and measures should be implemented fully
- Interregional cooperation at a practical level among RFMOs that have adjoining convention areas and/or manage similar stocks (e.g. tuna) is critical if IUU fishing is to be beaten: IUU fishers are highly mobile between regions



LOOKING AHEAD



- **Process for developing a binding international instrument on port State measures has begun**
- **If ultimately agreed, a binding instrument will represent an important development in international law since the 1982 UN Convention does not address port State measures in respect of fishing vessels**

CONCLUDING REMARKS

- Port State measures have been evolving to support improved fisheries management and to curb IUU fishing by blocking the flow of revenue to IUU fishers
- Used in conjunction with fish traceability schemes port State measures have the potential to reduce significantly IUU fishing
- Port State measures will be strengthened through the development of a binding instrument



CONCLUDING REMARKS



- The binding instrument represent minimum standards for port States: they can adopt tougher measures as they see fit and necessary
- Port State measures are only one means of attacking IUU fishing: other means should not be ignored as they are also needed to support action by ports
- To be successful port State measures must be underpinned by strong political commitment and well targeted programmes for capacity building and institutional strengthening

THANK YOU VERY MUCH

