

**FAO/FFA REGIONAL WORKSHOP TO PROMOTE THE FULL AND EFFECTIVE  
IMPLEMENTATION OF PORT STATE MEASURES TO COMBAT IUU FISHING**

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**PORT STATE MEASURES TO COMBAT IUU FISHING:  
THE FAO MODEL SCHEME ON PORT STATE MEASURES**

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**ABSTRACT**

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

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**ACRONYMS**

CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CDS	Catch Documentation Scheme
COFI	FAO Committee on Fisheries
EEZ	Exclusive economic zone
FAO	Food and Agriculture Organization of the United Nations
FFA	Fisheries Forum Agency
FONC	Flag of non-compliance
IATTC	Inter-American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tuna
IOTC	Indian Ocean Tuna Commission
IMO	International Maritime Organization
IPOA	International plan of action
IUU fishing	Illegal, unreported and unregulated fishing
MOU	Memorandum of Understanding
NAFO	Northwest Atlantic Fisheries Organization
NEAFC	North-East Atlantic Fisheries Commission
RFMO	Regional fisheries management organization
SDP	Statistical Documentation Program
SEAFO	South East Atlantic Fisheries Organisation
UNFA	United Nations Fish Agreement
VMS	Vessel monitoring system
WCPFC	Western Central Pacific Fisheries Commission

## 1. INTRODUCTION

Several international instruments have been agreed concerning the management of world fishery resources, including addressing the issue of IUU fishing. In this context the 1995 United Nations Fish Agreement (UNFA),<sup>1</sup> the FAO Compliance Agreement<sup>2</sup> and the International Plan of Action on IUU Fishing (IPOA–IUU)<sup>3</sup> should be mentioned. Many States in the Western Central Pacific Region are parties to UNFA,<sup>4</sup> while only a few have ratified or acceded to the FAO Compliance Agreement.<sup>5</sup> IPOA–IUU contains several suggested measures for combating IUU fishing, including those to be used by flag States, coastal States, port States and regional fisheries management organisations (RFMOs). Despite the efforts by global organisations, by many regional bodies and States, IUU fishing continues to persist and is in fact increasing in some areas. IUU fishing has been identified as a major threat to fisheries conservation and marine biodiversity. It can lead to collapse of a fishery, which in turn may cause adverse consequences for the livelihood of people depending on them. IUU fishing occurs in all fisheries, whether they are conducted within areas under national jurisdiction or on the high seas.

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

UNFA puts a duty on port States to take measures to promote the effectiveness of sub-regional, regional and global conservation and management measures.<sup>6</sup> Although UNFA applies to straddling fish stocks and highly migratory fish stocks, it could be argued that these duties are common standards that apply to all fish stocks. Relevant measures include the inspection of documents, fishing gear and catch on board the vessel. The IPOA–IUU calls upon port States to take a number of measures as to prevent deter and eliminate IUU fishing.<sup>7</sup> Following the entering into force of UNFA and the FAO Compliance Agreement as well as the adoption of the IPOA–IUU, FAO took up the task of developing minimum standards for control in fishing ports.

## 2. DEVELOPMENT OF THE FAO MODEL SCHEME

Coordinated international work addressing port State control of fishing vessels commenced, however, at the Expert Consultation on IUU fishing in 2000, which was the first working session in the process of developing the IPOA–IUU.<sup>8</sup> Many of the elements concerning port State control suggested by the Expert Consultation was carried over by the FAO Technical Consultation, which produced an agreed text for a draft IPOA–IUU to be considered by the FAO Committee on Fisheries (COFI) in 2001.<sup>9</sup> It should be mentioned that the said Expert Consultation agreed that “States should elaborate a binding agreement on port State controls to deter IUU fishing and related activities”. This was, however, not

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<sup>1</sup> 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.

<sup>2</sup> Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas.

<sup>3</sup> FAO International Plan of Action to Prevent, deter and Eliminate Illegal, Unreported and Unregulated Fishing.

<sup>4</sup> Australia, Cook Islands, Fiji, France (with respect to French Polynesia, New Caledonia and Wallis and Futuna), Kiribati, Marshall Islands, Micronesia (FSM), Nauru, New Zealand, Papua New Guinea, Palau, Samoa, Solomon Islands and Tonga.

<sup>5</sup> Australia, France (with respect to French Polynesia, New Caledonia and Wallis and Futuna) and New Zealand.

<sup>6</sup> Article 23 of UNFA.

<sup>7</sup> Paragraphs 52-64 of IPOA-IUU.

<sup>8</sup> See paragraphs 44-53 of the Report of the Expert Consultation on illegal, unreported and unregulated fishing organized by the Government of Australia in cooperation with FAO (Sydney, Australia, 15-19 May 2000).

<sup>9</sup> FAO Technical Consultations on IUU Fishing, Rome, 2-6 October 2000 and 22-23 February 2001.

included in the final text of the IPOA–IUU. The issue has now been taken up again as the Review Conference on UNFA agreed to initiate a process within FAO to develop, as appropriate, a binding instrument for port State measures.<sup>10</sup>

Harmonized, minimum standards for port control have for many years, under the auspices of the International Maritime Organization (IMO), been applied for the merchant shipping fleet. It is recognized that the majority of fishing vessels are not covered by IMO instruments either because fishing vessels are specifically excluded, are outside the size limitations or the flag States are not parties to the relevant instruments. It has further been noted that it might be difficult to introduce port State inspection procedures for fisheries management purposes within existing instruments.<sup>11</sup>

FAO consequently initiated work to describe basic and minimum port State measures for fishing vessels by convening an Expert Consultation in November 2002, which suggested a draft Memorandum of Understanding (MOU) for subsequent implementation at a regional level.<sup>12</sup> The Expert Consultation recommended FAO to follow-up by, among other things, convening a Technical Consultation addressing principles and guidelines for the establishment of regional MOUs. Such a Technical Consultation was held in summer 2004, which elaborated further on the draft MOU and changed the terminology to a Model Scheme.<sup>13</sup> It is highlighted that concerted action at the regional level should be encouraged and that these principles and guidelines do not prevent the adoption of additional and eventually stricter measures.

COFI adopted the Model Scheme in March 2005 describing basic and minimum port State measures for subsequent action to be taken either through adoption of regional MOU, through RFMOs or at the level of individual port States. COFI expressed strong support in principle for programmes of assistance to facilitate human development and institutional strengthening, including legal assistance, in developing countries to promote the full and effective implementation of port State measures.

### **3. ELEMENTS OF THE FAO MODEL SCHEME**

The objective of the FAO Model Scheme is to counteract IUU fishing, as defined in paragraph 3 of the IPOA-IUU. The scheme is, however, limited to “foreign fishing vessels”, and thereby excludes vessels flying the flag of the port State. It is anticipated that the port State has several other means available for controlling their own vessel seeking their ports. References to ports include all installations used for or intended to be used for landing or transshipment operations of fish and fishery products as well as refuelling or re-supplying, which include supplies of food, equipment and bait as well as change of crew. The target of the scheme is fishing vessels that include support ships, carrier vessels and other vessels directly involved in fishing operations. This reference is very close to the definition of “fishing vessel” used in the Compliance Agreement, although the Compliance Agreement refers to “commercial exploitation of living marine resources” instead of “fishing” and “mother ships” instead of “support ships and carrier vessels”.<sup>14</sup> This implies that the FAO Model Scheme has a broader application than the Compliance Agreement as vessels, which bring catches to ports (i.e. cargo vessels) are specifically included.

Pursuant to paragraph 2.2 of the FAO Model Scheme, port State measures shall promote “the effectiveness of relevant conservation and management measures”. It is suggested that a list of such

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<sup>10</sup> Means of strengthening the implementation of UNFA, agreed at the Review Conference on UNFA, New York 22-26 May 2006.

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

<sup>12</sup> See Report of the Expert Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing, Rome, 4-6 November 2002.

<sup>13</sup> See Report of Technical Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing, Rome, 31 August-2 September 2004.

<sup>14</sup> See Article I (a) of the Compliance Agreement.

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

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

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

The FAO Model Scheme suggests that port States should require all foreign vessels to provide a notification before being granted port access. Such a notice should be submitted at a reasonable time prior to the intention to use the port facilities, allowing the port authorities to examine the information given and be prepared to undertake a possible inspection upon arrival. Even though not explicitly mentioned, it seems quite clear that failure to provide satisfactory information submitted in the prior notification might be a reason for denial of access to port. The scheme suggests, however, the de facto denial of port access (no landing, transshipping, refuelling or re-supplying should be allowed) where there are clear grounds for believing that a vessel has been involved in IUU fishing outside its national waters. Landings and transshipments should not be allowed when; i) a non-party vessel of an RFMO has been observed fishing in areas managed by a particular RFMO or in waters under jurisdiction of a coastal State unless the vessel can establish that the fish were caught outside these areas or in conformity with relevant conservation and management measures (thus, in this situation the vessel should be allowed into port, giving the master of the vessel the possibility to rebut the presumption of IUU fishing), or; ii) a vessel has been identified as an IUU vessel by an RFMO. These two situations should consequently only result in the refusal of landings and transshipments, but the vessel is entitled to receive fuel and other supplies. It is hard to find any justification for treating these differently and there is a question whether this was deliberately agreed or just inconsistent drafting. It should be noted that in cases of distress and force majeure vessels have a right to entry to ports under customary international law.

In principle all foreign fishing vessels should be inspected in port, in particular if it discharges fish and fishery products. However, the FAO Model Scheme recognises that random checks also is a way forward, and suggests that parties to a control system should agree upon an annual total number of inspections corresponding to at least a certain percentage of the number of individual vessels. It should be mentioned that for the merchant fleet the target in the North Atlantic region is 25%.<sup>15</sup>

As mentioned above, the FAO Model Scheme contains detailed inspections procedures, including means of verifying the vessel's identification and authorisations by examining official documents, appropriate contacts with the flag State and other sources of information. There are also detailed provisions for the examination of fish and fishery products, enabling the inspector to determine whether these derive from IUU fishing or not. The FAO Model Scheme further includes an extensive

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<sup>15</sup> See section 1.2 of the Paris MOU on port State control.

list of result indicators that should guide the inspections in port (a check list), such as vessel identification, fishing authorization (licenses/permits), trip information, results of inspection on discharge and possible quantities retained on board.

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

Paragraph 3 of the FAO Model Scheme contains guidelines for the establishment or amendment of port State legislation to reflect certain obligations on masters of fishing vessels and port State inspectors. Such legislation should, among other things, “ensure” that the inspector is granted access by the master of the fishing vessel to all areas, documents and gear relevant for the inspection as well as assisting the inspector. The inspector on the other hand should be required to avoid delays, does not harass and ensure that a report is completed and signed by both parties.

As indicated above, IUU fishing is defined in paragraph of the IPOA–IUU. The FAO Model Scheme in paragraph 4 lists several specific activities that in this context are regarded as IUU fishing. This is not an exhaustive list and is to a great extent drawn upon the activities that are characterised as serious violations in UNFA.<sup>16</sup> If a port State finds that there is reasonable evidence for believing that a foreign fishing vessel has been involved in any of the listed activities, it shall notify the flag State, and if relevant the coastal State and RFMOs.

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

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

#### **4. CURRENT GENERAL REGIONAL SCHEMES**

In fact it was in the South Pacific that port State control of fishing vessels was introduced at a regional level for the first time with the adoption of the Wellington Convention on Drift-nets.<sup>17</sup> The Convention provides for restriction of both access to the ports and the use of service facilities in the ports of parties for vessels involved in drift-net fishing.

RFMOs have a crucial role concerning the management of fisheries, particularly in areas beyond national jurisdiction of any State. There are nine key RFMOs, of which the Western and Central Pacific Fisheries Commission (WCPFC) is one.<sup>18</sup>

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<sup>16</sup> See Article 21.11 of UNFA.

<sup>17</sup> The Convention for the Prohibition of Fishing with Long Drift-nets in the South Pacific, November 1989 (entered into force 20 October 1990).

<sup>18</sup> The others are: the Commission for the Conservation of Antarctic Marine Resources (CCAMLR), the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the Inter-American Tropical Tuna Commission (IATTC), the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Indian Ocean Tuna Commission (IOTC), the Northwest Atlantic Fisheries Organization (NAFO), the North-East Atlantic Fisheries Commission (NEAFC) and the South East Atlantic Fisheries Organisation (SEAFO). The mandates of CCAMLR, NAFO, NEAFC and SEAFO are to manage straddling fish stocks and high seas discrete

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

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

ICCAT has established a port inspection scheme,<sup>19</sup> which includes some minimum standards in order to monitor landings and transshipments, check compliance with ICCAT management measures, including quotas, and collect data and other information. Later it was agreed to ban landings and transshipments from vessels of non-parties identified as having committed a serious infringement.<sup>20</sup> In ICCAT parties are encouraged to enter into bilateral agreements/arrangements that allow for an inspector exchange program designed to promote co-operation, share information and educate each party's inspectors on strategies and operations that promote compliance with ICCAT's management measures.

IOTC has also established a program of inspection in port, instructing members to inspect documents, fishing gear and catch on board fishing vessels in port and to adopt regulations in accordance with international law to prohibit landings and transshipments by non-party vessels. This program was superseded in 2005 by another program, putting some more specific obligations on parties,<sup>21</sup> which include follow-up actions towards a flag State of IUU vessels detected during port inspections, and landing information to be submitted to the IOTC secretariat.

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

## **5. CURRENT SPECIFIC PORT STATE REGULATIONS AT REGIONAL LEVELS**

Several RFMOs have adopted market-related measures aimed at combating IUU fishing, including catch documentation system as well as listings of authorised vessels and IUU vessels. These RFMOs have implicit port State control regimes to which members shall not allow landing and/or import of fish not accompanied by a valid catch document as well as the refusal to allow landings of fish caught by non-authorised vessels or by identified IUU vessels.

### **5.1 Listing of fishing vessels (black & white)**

Several RFMOs have established specific schemes in an attempt to combat IUU fishing, which include listing of vessels determined to be involved in such activities within areas under their competence, so-called negative lists or "black lists". CCAMLR was the first to adopt schemes to promote compliance

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fish stocks, while those of CCSBT, IATTC, ICCAT, IOTC and WCPFC are to manage highly migratory fish stocks.

<sup>19</sup> ICCAT Recommendation 97-10.

<sup>20</sup> ICCAT Recommendation 98-11.

<sup>21</sup> IOTC Resolution 05/03.

with its conservation measures, one concerning parties to CCAMLR and another targeting non-parties.<sup>22</sup> The schemes set out procedures for the establishment and maintenance of lists of fishing vessels found to have engaged in fishing activities in a manner that has diminished the effectiveness of CCAMLR measures. Furthermore, parties to CCAMLR have agreed to take appropriate domestic action against vessels appearing on these lists, such as the refusal to authorise landing or transshipment in ports. IATTC, ICCAT, IOTC, NAFO and NEAFC later established similar systems.<sup>23</sup> All RFMOs have established a policy of transmitting their lists to other RFMOs, and they are put on their respective websites.<sup>24</sup>

Many of these schemes set out activities that should be taken into account when a vessel is considered for the inclusion on a list. The reeling off these activities is not, however, exhaustive as they also include a paragraph referring to “engagement in fishing activities contrary to any other conservation and management measures.” The following activities are relevant for a possible inclusion on one of the lists: i) sighted engaged in fishing activities, ii) fished with a vessel not registered on a required register iii) been denied port access, landing or transshipment pursuant to relevant measures, iv) fished without quota, catch limit or effort allocation, v) failed to report or record catches (or made false reports), vi) violated fish size regulations, vii) fished during closed seasons or in closed areas, viii) used prohibited fishing gear, ix) transhipped with vessels on the IUU vessel list, or x) is without nationality. It should be noted that most of these activities also are regarded as “serious violations” by UNFA.<sup>25</sup>

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

So-called positive lists or “white lists” have been established by RFMOs that manage highly migratory species. ICCAT was the first RFMO to adopt such a measure concerning by the establishment of a record of large scale fishing vessels authorized to operate within their area of competence.<sup>26</sup> The record is based on information submitted by parties and co-operating non-parties. Vessels not entered into the record are deemed not to be authorized to fish for, retain on board, tranship or land tuna and tuna-like species. Parties to ICCAT are required to take a number of measures, amongst them, to prohibit the transshipment and landing of tuna and tuna-like species by large scale fishing vessels that are not entered into the ICCAT record. CCSBT, IATTC and IOTC have adopted similar measures.<sup>27</sup>

## 5.2 Catch documents

CCAMLR has established a Catch Documentation Scheme (CDS) designed to track the landings and trade flows of *Dissostichus* spp (Patagonian toothfish) caught in the CCAMLR area.<sup>28</sup> The objective of the CDS is to enable the Commission to identify the origin of toothfish entering the markets of all parties to the scheme, and help determine whether the fish are caught in a manner consistent with

<sup>22</sup> CCAMLR Conservation Measure 10-07 (2003).

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

<sup>24</sup> See the following: [www.ccamlr.org/pu/E/sc/fish-monit/iuu-vessel-list.htm](http://www.ccamlr.org/pu/E/sc/fish-monit/iuu-vessel-list.htm), [www.iccat.es/iuu.htm](http://www.iccat.es/iuu.htm), [www.iotc.org/English/iuu/search.php](http://www.iotc.org/English/iuu/search.php), [www.neafc.org/measures/iuu\\_b.htm](http://www.neafc.org/measures/iuu_b.htm)

<sup>25</sup> See Article 21, paragraph 11.

<sup>26</sup> ICCAT Recommendation 02-22 (entered into force 3 June 2003).

<sup>27</sup> CCSBT 10 Resolution (2003), IATTC Resolution C-03-07 and IOTC Resolution 02/06.

<sup>28</sup> CCAMLR Conservation Measure 10-06 (2005) and Conservation Measure 10-07(2005).

CCAMLR's measures. The system requires control by port States.<sup>29</sup> A fishing vessel must provide a prior notification, including a declaration that they have not been engaged in IUU fishing, which also shall be confirmed by the flag State of the vessel. Fishing vessels failing to make such a declaration shall be denied port access. If there is evidence that the vessel has fished in contravention of CCAMLR conservation measures, the catch shall not be allowed landed or transhipped.

ICCAT has introduced a Statistical Documentation Program (SDP) for Atlantic bluefin tuna, bigeye tuna and swordfish. ICCAT implements multilateral, transparent trade measures against parties undermining the effectiveness of conservation measures. CCSBT requires a statistical document to be completed for all imports of Southern bluefin tuna. Trade documents will not be validated, or imports accepted from, vessels not appearing on the positive list.<sup>30</sup> IATTC has introduced SDP for bigeye tuna, which requires all bigeye imported into a party to have a statistical document to be validated by the flag State. Furthermore, IATTC has adopted a resolution concerning the use of trade measures to promote compliance.<sup>31</sup> IOTC has agreed on an SDP for frozen bigeye tuna, which is required together with a prior authorization for at-sea or in-port transhipments.

### **5.3 Listing of flag States**

An indirect consequence of the black lists is the identification of States notorious for having flagged vessels engaged in IUU fishing. This has been addressed by CCAMLR, which has adopted a resolution on "Flag of Non-Compliance" (FONC) implying that parties should prohibit landings and transhipments of fish and fish products from vessels flying a FONC.<sup>32</sup> This implies that all fishing vessels flying a FONC should be regarded as IUU vessels when operating in the CCAMLR area.

## **6. ONGOING IMPLEMENTATION WORK OF THE FAO MODEL SCHEME**

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

### **6.1 NEAFC**

NEAFC is in a process of developing a comprehensive and harmonized scheme on port State control for the Northeast Atlantic region, based upon the FAO Model Scheme. The work was initiated at the annual meeting in November 2004, following the outcome of FAO Technical Consultation held in August 2004. Currently NEAFC has adopted two different schemes addressing compliance issues, one for parties and another for non-parties.<sup>33</sup> The latter contains some port State obligations for parties when a non-party vessel is seeking their ports, in particular concerning blacklisted vessels. Currently there are no port State obligations concerning vessels flagged to parties of NEAFC. The control committee of NEAFC has met in three sessions to address the issue,<sup>34</sup> and there have been several informal meetings.

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<sup>29</sup> CCAMLR Conservation Measure 10-03 (2002).

<sup>30</sup> CCSBT Resolution.

<sup>31</sup> IATTC Resolution C-05-04.

<sup>32</sup> CCAMLR Resolution 19/XXI.

<sup>33</sup> The Scheme of Control and Enforcement in Respect of Fishing Vessels Fishing in Areas Beyond the Limits of National Fisheries Jurisdiction in the Convention Area and the Scheme to Promote Compliance by non-Contracting Party vessels with Recommendations Established by NEAFC.

<sup>34</sup> Meetings of the Permanent Committee on Control and Enforcement (PECCOE) in April and October 2005, and in April 2006.

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

While the general provisions of the scheme apply only to areas beyond national jurisdiction (the Regulatory Area) and to “regulated resources”,<sup>35</sup> the provisions for port State control have a much broader scope as they apply the whole Convention Area and to all fisheries resources in that area. Parties to NEAFC shall designate ports where landings and transshipment operations are permitted, which shall be notified to the NEAFC secretariat and put on the NEAFC website. A prior notice of entry into port is required at least three working days in advance. However, a party may establish a shorter notification period due to the distance between the fishing ground and its ports.<sup>36</sup> The notification shall at least include the following vessel information: the vessel name, external identification number, international radio call sign and flag State. The catch information shall include total catch onboard and catch to be landed (by species, live weight in kilo and area of capture). Authorisation to land or tranship shall only be given if the flag State of the vessel confirm in writing that the vessel has caught the fish within a sufficient quota, the quantities have been duly reported, the vessel was authorised to fish within the area of capture and that the presence in that particular area has been verified by VMS data. There are also suggested provisions concerning the qualifications of inspectors, inspection procedures, obligations of the master of the vessel and inspection reports. The scheme also contains detailed infringements procedures, which cover both violations detected at sea and in ports. Infringements that shall be considered to be serious to great extent mirror the listing of IUU fishing activities set out in paragraph 4 of the FAO Model Scheme, with the addition of a cross reference to the above-mentioned provisions on port State control.

## **6.2 SEAFO**

The SEAFO Convention includes a provision on port State measures, which builds upon Article 23 of UNFA.<sup>37</sup> In addition there are included procedures to deal with a possible violation detected during a port inspection. SEAFO agreed at its annual meeting in 2005 on some basic interim port State measures on inspection of foreign fishing vessels, and transmission of information/results to the SEAFO Secretariat.<sup>38</sup> The interim measures include a few elements of the FAO Model Scheme, in particular related to port inspection procedures and result indicators. Parties are considering a full-fledged scheme, based on the FAO Model Scheme, which will be discussed at the annual meeting in 2006.

## **6.3 WCPFC**

The WCPF Convention contains a specific provision on measures to be taken by the port State that is a blueprint of Article 23 of UNFA.<sup>39</sup> These are minimum measures that may be taken by parties to WCPFC, and is thereby voluntary in nature. Work has been initiated for developing a harmonised port State scheme within the organisation. A background paper was presented at the first meeting of its Technical and Compliance Committee (TCC).<sup>40</sup> The Committee recommended that the FAO Model Scheme serves as the basis for such a scheme. To assist in the development of the system, parties were

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<sup>35</sup> “Regulated resources” are those of fisheries resources, which are subject to recommendations under the Convention and are listed in Annex I. There are, however, numerous additional species occurring in the area.

<sup>36</sup> If such derogation is made, the party shall inform the NEAFC secretary, who will put this information on the NEAFC website.

<sup>37</sup> See Article 15 of the Convention on the conservation and Management of Fishery Resources in the South East Atlantic Ocean.

<sup>38</sup> SEAFO Conservation Measure 02/05.

<sup>39</sup> See Article 27 of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

<sup>40</sup> See WCPFC/TCC1/16.

invited to give a description of existing port schemes. The process within WCPFC will continue at the next meeting of TCC, scheduled for December this year.

## **7. NEXT GLOBAL STEPS**

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

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

The Review Conference on UNFA,<sup>41</sup> recognised that a number of port States and RFMOs have developed measures or schemes to prevent the landing and transshipment of illegally caught fish in order to promote compliance with RFMO conservation and management measures. The Conference noted, however, that there is still much to be done in developing such measures or schemes, and that in particular a more coordinated approach among States and RFMOs is required. The Conference recommended that “States individually and collectively adopt all necessary port State measures, particularly those envisioned in the 2005 FAO Model Scheme on Port State Measures to Combat IUU Fishing and promoting minimum standards at the regional level. In parallel initiate, as soon as possible, a process within FAO to develop, as appropriate, a legally binding instrument on minimum standards for port State measures, building on the FAO Model Scheme and the IPOA-IUU.”

## **8. FAO MODEL SCHEME IN THE WESTERN CENTRAL PACIFIC**

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

It is recognized that there is a gap in the management of non-highly migratory fisheries and protection of biodiversity in the marine environment in high seas areas of the South Pacific Ocean, from the most eastern part of the South Indian Ocean through the Pacific towards the EEZs of South American States. Non-highly migratory fisheries in this area are mainly discrete high seas stocks, but some are straddling stocks. A first intergovernmental meeting was convened in New Zealand in mid-February 2006 with the aim to establish a new RFMO with a mandate to manage fish stocks not covered by other RFMOs in the area. The meeting noted that key issues, including the geographical scope, species to be covered, structural options, decision-making processes, composition of a commission and its subsidiary bodies, and provisions for co-operation with existing RFMOs and other arrangements in the region, would need further discussion.<sup>42</sup> It is envisaged that the process will take 3 – 4 years. Australia

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<sup>41</sup> Review Conference held in New York, 22-26 May 2006, in accordance with Article 36 of UNFA.

<sup>42</sup> At the same time States are urged to comply fully with their obligations under international law by taking such measures for their respective nationals and vessels flying their flag, which are engaged in fishing and other related activities, as may be necessary for the conservation and management of living marine resources falling under the intended instrument.

will hold a second meeting in November 2006, which will consider the adoption of interim arrangements to apply prior to the entry into force of the instrument.

## **8.1 Implementation at the regional level**

All members of Forum Fisheries Agency (FFA) are parties to WCPFC, while several States are parties to WCPFC, but not members of FFA.<sup>43</sup> At this stage it is rather unclear whether the new RFMO for the South Pacific will include waters adjacent to all States in the Western Central Pacific as delimitation of the northern boundary is still under consideration. It is foreseen that, amongst the compliance and control issues that will be developed, is also a joint scheme on port State measures.

Consequently there are several options for the development of a full-fledged port State scheme within the region: i) extend the mandate of the a scheme under WCPFC to cover all species, ii) combine the schemes of WCPFC and the South Pacific RFMO,<sup>44</sup> iii) combine schemes of WCPFC, the South Pacific RFMO and establish an additional scheme for the possible outstanding areas of the Western Central Pacific, if required, and iv) one scheme for the whole region, an umbrella or an MOU, that covers all areas and all species.

A scheme or schemes should be based on at least the elements outlined in the FAO Model Scheme such as prior notification requirements, inspection procedures, result indicators and exchange of information. Concerning this latter point, it should be mentioned that work is now proceeding on the harmonization of data formats and procedures for international exchange of information by electronic means. NEAFC and NAFO have developed a format and protocols (the North Atlantic Format) for electronic exchange of fisheries monitoring, inspection and surveillance information.<sup>45</sup> This format is now also used by CCAMLR and SEAFO. This format could also be used for information exchange on control in ports.

When port State schemes are developed, current black listing systems could also be taken into consideration. As indicated above, many RFMOs have adopted such schemes, which include provisions for denial of port access of listed vessels and/or requirements for special actions when in port. IUCN is currently in the process of establishing a global list on irresponsible fishing vessels. All black lists adopted by RFMOs are placed on their websites, accessible to the public. The black lists of RFMOs have been through due processes within the organisations and thus reliable for the possible inclusion on a global list.<sup>46</sup> The planned IUCN global list will, at least as a starting point, be a compilation of all RFMO black lists, and could consequently be used as a basis for specific action also by port States in the Western Central Pacific.

## **8.2 Implementation at a national level**

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

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<sup>43</sup> Canada, China, France (with respect to French Polynesia, New Caledonia and Wallis and Futuna), Japan, Republic of Korea and Philippines.

<sup>44</sup> This may, however, leave some areas in the Western Central Pacific outside the scheme, pending of course an agreement on the area of application for the new RFMO.

<sup>45</sup> The format includes category, data element, field code, type, content and definitions. More information can be found at <http://www.neafc.org/measures/docs/Scheme-2005>.

<sup>46</sup> Currently seven RFMOs have established such schemes, while four RFMOs (CCAMLR, ICCAT, IOTC and NEAFC) have drawn up lists accordingly.

The IPOA–IUU provides that States should, among other measures, deprive nationals under its jurisdiction of the benefits accruing from IUU fishing. In a case related to a fishing vessel, such benefits would of course be the value of the catch. This paragraph is included in the section of the IPOA promoting responsibilities for all States. A similar provision is included in the Code of Conduct, but in the section promoting flag State duties.<sup>47</sup> Even if the IPOA–IUU limits such actions to nationals of a State, it should be considered to widen the application of such measures for all States to take actions, irrespective of the nationality of the IUU fishers. This would be especially relevant for IUU catches intended for landing in a port of another State than the flag State.

It might thus be considered whether these measures shall apply to all foreign fishing vessels or whether separate legislation should apply for vessels having fished within areas of jurisdiction of the port State. As outlined above, prosecution would generally be excluded when IUU fishing has taken place outside areas under the jurisdiction of the port State so other means of reaction would have to be established.<sup>48</sup> However, most of the other elements would be relevant for both categories of fishing vessels.

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

The main lines of the administrative system, which includes the administration of the control services and the power of fisheries (port) inspectors, should be laid down in the basic law. Most legislative traditions would also require that the power to make subsidiary legislation is clearly spelled out in the law itself and so are penalties and clauses setting out offences which sometimes are drafted in very precise and detailed language. Possible regulations or other subsidiary legislation might build on elements discussed above, which could include: scope of application, prior notice of access, denial of access, inspection procedures, criteria for the evaluation of compliance (characterizing IUU fishing), reporting requirements and possible reactions.<sup>49</sup>

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<sup>47</sup> Cf. paragraph 8.2.7 of the Code of Conduct.

<sup>48</sup> This would be even more important the idea is not pursued of making it an offence to enter a port if IUU fishing has been conducted.

<sup>49</sup> Below is an example of provisions for the implementation of port State control of foreign fishing vessels into domestic legislation (some legislative traditions would require quite detailed descriptions of the relevant provisions. A simple approach has been chosen for the Law itself, including the basic elements of such provisions):

I. Fisheries law:

1. Administration

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

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

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

3. Power to establish regulations

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

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

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

5. Forfeiture

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

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

1. Scope of application

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

2. Prior notice of access

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

3. Denial of access

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

4. Inspections

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

5. Criteria for evaluating compliance

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

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

6. Actions

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

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

1. Scope of application

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

2. Prior notice of access

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

3. Inspections

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

#### 4. Penal measures

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

#### 5. Forfeiture

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