

**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 CONTROL:**

**INTERNATIONAL DEVELOPMENTS**

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**ABSTRACT<sup>1</sup>**

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

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## TABLE OF CONTENTS

	Page
1. INTRODUCTION.....	1
2. LINKAGES WITH REGIONAL GOVERNANCE AND OTHER IPOA–IUU TOOLS.....	4
2.1 The rapidly increasing number of new RFBs .....	5
2.2 Strengthened governance in RFMOs .....	6
2.3 Strengthened international information systems.....	8
2.3.1 FAO databases .....	8
2.3.2 International MCS Network for Fisheries Related Activities.....	8
2.4 Strengthened regional information systems.....	9
2.5 Trade and internationally agreed market-related measures to combat IUU fishing .....	9
2.6 Flag State Responsibility .....	11
3. ERA OF THE FAO MODEL SCHEME: SOME RESPONSES AND NEXT STEPS .....	12
3.1 The UN system .....	13
3.1.2 UN General Assembly (UNGA) Resolutions on Sustainable Fisheries.....	13
3.1.3 UN Fish Stocks Agreement Review Conference .....	14
3.2 Ministerial Initiatives and Fora.....	14
3.2.1 Second APEC Ocean-Related Ministerial Meeting (AOMM2), September 2005 .....	14
3.2.2 Ministerially-led High Seas Task Force, February 2006.....	15
3.2.3 11th Conference of North Atlantic Fisheries Ministers (NAFMC), June 2006 .....	15
3.2.4 Ministerial Round Table Conference on Measures Against IUU Fishing, .....	15
August 2006 .....	16
4. CONCLUSION .....	16

## 1. INTRODUCTION

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

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

- The 1982 Paris Memorandum of Understanding on Port State Control (Paris MOU), which established a coordinated control system with respect to vessel safety and pollution prevention standards and equipment.<sup>2</sup>
- MOUs establishing regional port State regimes around the world, which incorporate universal standards and were inspired by procedures agreed under the Paris MOU<sup>3</sup>
- The International Maritime Organization's (IMO) technical conventions, many of which contain provisions for ships to be inspected when they visit foreign ports to ensure that they meet IMO requirements.<sup>4</sup> Although it is acknowledged that the primary responsibility for ships' standards rests with the flag State, port State control is considered to provide a "safety net" to catch substandard ships.
- IMO's global strategy for port State control, incorporating the professional profile, training and qualification requirements and general operating guidelines for control officers. This is to ensure that, while the systems may be regional, the standards applied will be universal.

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

Most recently, the endorsement in March, 2005 by the FAO Committee on Fisheries (COFI) of the Model Scheme on Port State Measures to Combat IUU Fishing (FAO Model Scheme) built upon the international instruments, and paved the way for the emerging international consensus that a binding

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<sup>2</sup> The Paris MOU aims at eliminating the operation of sub-standard ships through a harmonized system of port State control. Annually, over 20.000 inspections take place on board foreign ships in the Paris MOU ports, ensuring that these ships meet international safety, security and environmental standards, and that crew members have adequate living and working conditions. It is implemented by 25 maritime administrations, and has been amended several times to accommodate new safety and marine environment requirements stemming from the International Maritime Organization (IMO) as well as other important developments such as the various EU Directives which address marine safety. Its provisions include targeting of ships for inspection, databases, inspection, officers and detention. An inspection database is maintained. See <http://www.parismou.org/>.

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

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

instrument on port State measures, based on the Model Scheme, be developed.<sup>5</sup> Key fisheries instruments are noted below.<sup>6</sup>

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

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

The **1995 UN Fish Stocks Agreement**<sup>9</sup> took a stronger approach than the Compliance agreement, and referred to the “right and duty” of a port State to take non-discriminatory measures in accordance with international law to promote the effectiveness of sub-regional, regional and global conservation and management measures. It also provided that States may, among other things, inspect documents, fishing gear and catch on board fishing vessels, when they are voluntarily in its ports or at its offshore terminals, and empower their authorities to prohibit landings and transshipments where the catch was taken in a manner which undermines high seas conservation and management measures.

The **1995 FAO Code of Conduct for Responsible Fisheries (Code of Conduct)**, in the context of fishing operations, recommends<sup>10</sup> that port States should take non-discriminatory measures to achieve and assist others in achieving the objectives of the Code of Conduct, and inform other States. Port States should provide assistance to flag States when a fishing vessel is voluntarily in port or at an offshore terminal, and the flag State requests assistance in respect of non-compliance with conservation and management measures, or agreed minimum standards for the prevention of pollution and for safety, health and conditions of work on board fishing vessels.

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

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

<sup>6</sup> For details of provisions in the international instruments, see Doulman, David J., *ibid*.

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

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

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

<sup>10</sup> Under 8.3.1 and 8.3.2.

<sup>11</sup> Paragraphs 52-64.

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

The FAO Technical Guidelines to implement the IPOA–IUU elaborate actions and measures that can be taken to implement the IPOA–IUU, and provide examples of port State measures that can be used as precedent.<sup>12</sup>

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

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

- denial of port access altogether;
- prohibiting the landing, transshipment and/or processing of catch;
- seizure and forfeiture of catch;
- prohibiting the use of port services, such as refuelling, resupplying, repairs;
- prohibiting the sale, trade, purchase, export, import of IUU caught fish;
- initiating criminal, civil or administrative proceedings under national law;
- cooperating with the flag State and/or members of an RFMO on enforcement and/or deterrence.

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

This situation has resulted in many IUU fishing vessels seeking to offload their catch and resupply in ports that do not have or do not implement controls, sometimes referred to as “ports of convenience”. As noted, there are different reasons why a State may not exercise controls, and the need to agree on a definition of “ports of convenience”, was underscored at the UN Fish Stocks Review Conference in May, 2006.<sup>13</sup>

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<sup>12</sup> FAO. Fisheries Department Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. *FAO Technical Guidelines for Responsible Fisheries*. No. 9. Rome, FAO. 2002. See also the FAO website on the IPOA-IUU, which contains information on the IPOA-IUU, NPOAs, related links, publications and meetings:  
[http://www.fao.org/figis/servlet/static?dom=org&xml=ipoa\\_IUU.xml](http://www.fao.org/figis/servlet/static?dom=org&xml=ipoa_IUU.xml)

<sup>13</sup> Report of the Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. New York, 22 to 26 May 2006 A/CONF.210/2006/15. 3 July 2006. paragraph 82.

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

Despite such challenges, the way forward has become clearer as:

- countries continue to progressively strengthen the role of the port State through international instruments;
- the pivotal role of the port State is realized in relation to relevant regional activity, information systems and linkages with other IPOA–IUU tools; and
- international fora firmly support stronger and deeper action based on the FAO Model Scheme.

These elements are described below.

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

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

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

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

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

## 2.1 The rapidly increasing number of new RFBs

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

Consequently, the family of RFBs – already numbering 38 including 17 bodies with a management mandate – is rapidly expanding. As described below, in the past three years five RFBs have been or are being established. This will result in a growing body of international conservation and management measures for which strengthened and coordinated compliance tools will be essential. In this regard, it is foreseen that port State measures will play an increasingly significant role.

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

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

Negotiations to establish the South Pacific Regional Fisheries Management Organisation (SPRFMO) were initiated at the first meeting, held in February 2006. Participants agreed to work to establish, as a matter of priority, a legally binding instrument for the conservation and management of living marine resources, other than species listed in Annex I of the 1982 UN Convention, in the high seas of the South Pacific Ocean.<sup>18</sup> It was also agreed that the second meeting, scheduled for November 2006, will consider the adoption of interim arrangements to apply prior to the entry into force of the instrument, in light of the information and advice provided by the working groups and participants.

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

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

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

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

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

Three of the above organizations - WCPFC, SEAFO and SIOFA – have given early indication of the importance with which they regard the role of port State measures in their regions. In particular, the WCPFC is developing its regional scheme based on the FAO Model Scheme and SIOFA has agreed to carry out port inspections. The other two RFBs under negotiation have considered applying interim measures, but have not yet reached the stage where they can indicate whether port State measures will be among them.

## 2.2 Strengthened governance in RFMOs

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

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

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

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

<sup>20</sup> See the report of the High Seas Task Force, "Port States Measures Final Report - Promoting Responsible Ports", <http://www.high-seas.org/>. Port State measures taken by the following RFMOs are described: CCAMLR, CCSBT, GFCM, IATTC, ICCAT, IOTC, NAFO, NEAFC, SEAFO, WCPFC. Also see Lobach, T., Port State Measures to Combat IUU Fishing: The FAO Model Scheme on Port State Measures, paper prepared for the FAO/FFA Regional Workshop to Promote the Full and Effective Implementation of Port State Measures to Combat IUU Fishing, 28 August – 1 September 2006, Nadi, Fiji.

<sup>21</sup> For example, see FAO. Report of the Fourth Meeting of Regional Fishery Bodies. Rome, 14–15 March 2005. FAO Fisheries Report. No. 778. Rome, FAO. 2005. 29p. It was agreed that RFBs should actively promote linkages among themselves, paragraph 25. This would build upon linkages already established, e.g. among Atlantic RFBs (ICCAT, ICES, NAFO) and tuna organizations (e.g. see notes 31 and 32, below). The draft annotated agenda for the Fifth Meeting of RFBs to be held in Rome in March 2007, notes that the global role of RFBs in promoting responsible fisheries management consistent with the objectives of the *FAO Code of Conduct for Responsible Fisheries* will be considered. It recalled that COFI-26 discussed improving RFMO effectiveness (COFI-26, paragraphs 108(e), 111 and 112), and noted the broadening of such discussions by the UN Fish Stocks Agreement Review Conference and initiatives proposed by the Inter-Ministerial Task Force on IUU Fishing (section 3.2.2 in this paper, below). Key elements include, *inter alia*, assessing/improving RFMO performance, developing new RFMOs for area/stocks not covered by existing arrangements and improving fisheries management capacity globally. Additional points for consideration, in the context of improving effective fisheries management, include the 2007 Tuna RFMO meeting, setting common standards for exchanging information (including within/between RFMOs as well as RFBs) and the possibility of holding a meeting of other high seas RFMOs similar to that to be held for the tuna RFMOs.

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

A number of RFMOs have developed regional plans of action to combat IUU fishing,<sup>23</sup> or have taken other IPOA-IUU consistent measures, and port State measures and/or regional schemes would be an important component of these plans or measures.

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

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

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

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

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

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

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

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

<sup>25</sup> Paragraph 45.

## 2.3 Strengthened international information systems

### 2.3.1 FAO databases

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

Information on IUU fishing vessels is kept in the FAO High Seas Vessel Authorization Record (HSVAR) database. It contains descriptive elements of high seas fishing vessels as well as information on registration and authorization status, infringements and other relevant information. FAO can grant access to the database to countries providing data.<sup>26</sup>

FAO receives data on tuna catches from several countries which do not return information to the tuna agencies or are not members of these organizations. In recent years, some regional tuna bodies<sup>27</sup> have been considering the inclusion of some of these data obtained by FAO in their databases, after the scrutiny and approval of their relevant working groups.

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

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

### 2.3.2 International MCS Network for Fisheries Related Activities

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

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

<sup>27</sup> e.g., Inter-American Tropical Tuna Commission (IATTC), International Commission for the Conservation of Atlantic Tuna (ICCAT), and the Indian Ocean Tuna Commission (IOTC).

<sup>28</sup> A/RES/60/31, paragraph 45.

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

<sup>30</sup> See Report: Illegal, Unreported and Unregulated Fishing, 1<sup>st</sup> Chatham House Update and Stakeholder Consultation Meeting, Chatham House, 10 St James’s Square, London SW, Tuesday 9<sup>th</sup> May 2006.  
[http://www.illegal-fishing.info/item\\_single.php?item=document&item\\_id=91&approach\\_id=](http://www.illegal-fishing.info/item_single.php?item=document&item_id=91&approach_id=)

relation to the UN Convention on the Law of the Sea, the Code of Conduct, the Fish Stocks Agreement, and the IPOA–IUU.

The strengthening of the International MCS Network was recommended by the OECD High Seas Task Force, and is supported by the current UK IUU Action Plan.<sup>31</sup>

#### **2.4 Strengthened regional information systems – RFMOs, members**

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

At the sixth annual meeting of the tuna body secretariats, held on 21 May 2006, the agenda reflected the great strides made by the regional tuna bodies since their initial meeting in 1999, especially with respect to developing cooperation regarding information systems. It covered topics such as a resource monitoring system, an update on trade documentation, an addition to a global list of tuna-fishing vessels and a website. Also covered were the issues of international observers for fishing and reefer vessels, standard codes for dealing with data, and the 2007 meeting of tuna commissions in Kobe, Japan. Among the highlights of accomplishments since 1999 was the compilation of a global list of fishing vessels that would be made available for members' consideration later in the year.

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

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

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

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

<sup>32</sup> Attended by representatives of the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), IATTC, ICCAT, IOTC, and the Secretariat of the Pacific Community (SPC).

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

<sup>34</sup> Paragraphs 65 – 76.

An increasing number of RFMOs have adopted trade and market-related measures.<sup>35</sup> The IPOA–IUU encourages States to take all steps necessary, consistent with international law, to prevent fish caught by vessels identified by the relevant RFMO as having been engaged in IUU fishing from being traded or imported into their territories.<sup>36</sup> To address this situation, many RFMOs have developed catch certification and trade documentation schemes,<sup>37</sup> which enable identification of the vessel that harvested a particular fish.

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

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

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

Port State measures could also contribute to efforts<sup>42</sup> to target businesses involved in IUU fishing, prevent laundering of catches by IUU fishing vessels and to take actions against businesses involved in IUU fishing and other cooperative actions with countries where the businesses are based.<sup>43</sup>

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

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

<sup>36</sup> Paragraph 66.

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

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

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

<sup>40</sup> Paragraphs 73 and 74.

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

<sup>42</sup> e.g., by ICCAT.

<sup>43</sup> ICCAT has undertaken activities in this regard. An example at national level is Iceland, which initiated a campaign to increase awareness of the IUU problem within the fisheries sector itself by writing letters to over a thousand companies that were involved in the fisheries sector. In the letters, they companies were encouraged to be alert to avoid getting involved in supporting IUU activities in any way. It is believed that almost all fisheries

## 2.6 Flag State Responsibility

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

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

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

The following interactions are key issues involving port States and flag States described by the IPOA–IUU. They encourage the port State to report to the flag State where there is clear evidence of IUU fishing activity and also where there are reasonable grounds to suspect that IUU fishing took place beyond the coastal State’s jurisdiction. In the latter case, reports should also be made to the relevant coastal States and RFMO. There is no reference to the need to report to the flag State if the vessel is presumed to have engaged in IUU fishing under measures adopted by an RFMO.

The port State should report the matter to the flag State if it has clear evidence that a vessel that has been granted access to its ports has engaged in IUU fishing activity. In addition, the port State should not allow the vessel to land or transship fish in its ports.<sup>45</sup>

If, in the course of an inspection, it is found that there are reasonable grounds to suspect that the vessel has engaged in or supported IUU fishing in areas beyond the jurisdiction of the port State, the port State should, in addition to any other actions it may take consistent with international law, immediately report the matter to the flag State of the vessel and, where appropriate, the relevant coastal States and regional fisheries management organization. The port State may take other action with the consent of, or upon the request of, the flag State.<sup>46</sup>

States should consider developing within relevant regional fisheries management organizations port State measures building on the presumption that fishing vessels entitled to fly the flag of States not parties to a regional fisheries management organization and which have not agreed to cooperate with that regional fisheries management organization, which are identified as being engaged in fishing activities in the area of that particular organization, may be engaging in IUU fishing. Such port State measures may prohibit landings and transshipment of catch unless the identified vessel can establish that the catch was taken in a manner consistent with those conservation and management measures.<sup>47</sup>

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

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companies want to avoid being in any way linked to these illegal activities and welcome help in avoiding involvement. Speech delivered on behalf of the Icelandic Minister responsible for fisheries, see note 14, *supra*.

<sup>44</sup> Paragraph 9.3. Emphasis added.

<sup>45</sup> Paragraph 56.

<sup>46</sup> Paragraph 59.

<sup>47</sup> Paragraph 63.

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

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

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

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

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

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

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

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

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

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

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

<sup>50</sup> *Ibid.*, e.g., Canada..

<sup>51</sup> *Ibid.*, e.g., Norway.

<sup>52</sup> *Ibid.*, e.g., the European Union.

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

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

### 3.1 The UN system

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

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

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

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

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

#### 3.1.2 UN General Assembly (UNGA) Resolutions on Sustainable Fisheries

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

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

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

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

<sup>56</sup> General Assembly. Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments 17 January 2005. A/RES/59/25.

<sup>57</sup> General Assembly. Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments (not yet issued). A/RES/60/31. 17 November 2005. “42. *Recognizes* the need for enhanced port State controls to combat illegal, unreported and unregulated fishing, urges States to cooperate, in particular at the regional level and through regional and subregional fisheries management organizations and arrangements, and encourages States to apply the model scheme on port State measures endorsed by the Food and Agriculture Organization of the United Nations Committee on Fisheries at its twenty-sixth session in March 2005 at the national and regional levels, promote its application through regional fisheries management organizations and arrangements and bodies and consider, when appropriate, the possibility of developing a legally binding instrument...”

### 3.1.3 UN Fish Stocks Agreement Review Conference

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

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

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

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

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

## 3.2 Ministerial Initiatives and Fora

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

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

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

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

“strengthen efforts to combat IUU fishing including by pursuing the use of at-sea, port-state and trade-related measures, in accordance with international law, as key compliance tools,

<sup>58</sup> Report of the Review Conference, note 13 *supra*.

through APEC capacity building and sharing of best practices, and strengthen efforts to collaborate through MCS regimes and the MCS network.”<sup>59</sup>

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

### **3.2.2 Ministerially-led High Seas Task Force, February 2006**

The Ministerially-led HSTF<sup>60</sup> had an overall goal of setting priorities among a series of practical proposals for confronting the challenge of IUU fishing on the high seas. The end result was an action plan currently being implemented under the leadership of the UK Minister responsible for Fisheries.<sup>61</sup>

The HSTF, in its report on port State measures<sup>62</sup> reviewed the measures adopted by Task Force members and RFMOs<sup>63</sup> and compared them to the Model Scheme. The report also made recommendations to strengthen both national port State measures and develop regional arrangements on port State controls.

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

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

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

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

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<sup>59</sup> Paragraph I.c.v.

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

<sup>61</sup> See <http://www.illegal-fishing.info>. The UK Action Plan was published 9 May 2006 and set out action the UK will take to: advance specific proposals internationally – for example, take action to support developing countries to combat illegal fishing; implement the High Seas Task Force’s proposals domestically – including entering into dialogue with UK Overseas Territories to explore how they might contribute; and facilitate the wider coordination and implementation of the report’s recommendations. The UK is committing approx \$1 million, most of which will come from the Government’s World Summit on Sustainable Development Implementation Fund. A Coordination Unit has been established to facilitate and monitor the implementation of the proposals over the next two years.

<sup>62</sup> <http://www.high-seas.org/> "Port States Measures Final Report - Promoting Responsible Ports"

<sup>63</sup> See Note 20, *supra*.

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

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

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

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

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

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

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

In particular, participants agreed to look at future activities on strengthening Port State Control, through the development of a legally binding instrument as advised by the 2006 United Nations Fish Stocks Agreement Review Conference, and to consider the potential for a comprehensive regional scheme for port State control, based on the FAO Model.<sup>69</sup>

## 4. CONCLUSION

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

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

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

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

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

<sup>68</sup> Communiqué of the Conference.

<sup>69</sup> Consideration of a comprehensive regional scheme is on the agenda for the November, 2006 meeting of NEAFC.

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

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

- the importance of port State controls in efforts to combat IUU fishing, and that it is currently viewed as the weakest, but potentially among the most effective and central links in the web of compliance tools;
- the increasing need for harmonization and cooperation not only at regional level, but globally among relevant RFMOs, particularly in view of the increasingly strengthened fisheries governance at regional level;
- the linkages and synergies with other compliance tools, including the potential contribution of binding measures to the standardization of requirements for certain technological aspects of compliance, such as VMS and information systems, to trade and market-related measures and flag State responsibilities;
- the efficiency and effectiveness of port State controls, including cost-effectiveness and potential integration with port inspection systems that also cover safety, health and security;
- the value and effectiveness of binding port State controls under the 1982 Paris MOU and the IMO Technical Conventions;
- the relatively rapid and repeated expressions of firm support for the two-track approach in the United Nations system and at Ministerial level.

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

It is anticipated that the issue will be considered in the next session of COFI in March, 2007. By that time the international community will have had further opportunities to express its views on the subject, including in the November, 2006 General Assembly Resolution on Sustainable Fisheries. In the meantime, in many quarters, exemplary progress is being made in implementing the FAO Model Scheme at national and regional levels.