

Report of the

**FAO/APFIC WORKSHOP ON IMPLEMENTING THE 2009 FAO
AGREEMENT ON PORT STATE MEASURES TO COMBAT ILLEGAL,
UNREPORTED AND UNREGULATED FISHING**

Bangkok, Thailand, 23–27April 2012



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PREPARATION OF THIS DOCUMENT

This is the final report of the Food and Agriculture Organization of the United Nations (FAO)/Asia-Pacific Fishery Commission (APFIC) Workshop on Implementing the 2009 FAO Agreement on Port State Measures to Combat Illegal, Unreported and Unregulated (IUU) Fishing (the Agreement) that was held at the Concorde Rachada Hotel in Bangkok, Thailand, from 23 to 27 April 2012.

FAO.

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ABSTRACT

This document contains the report of the FAO/APFIC Workshop on Implementing the 2009 FAO Agreement on Port State Measures to Combat Illegal, Unreported and Unregulated (IUU) Fishing (the Agreement), which was held in Bangkok, Thailand, from 23 to 27 April 2012. The workshop focused on the implementation of the Agreement from a legal and policy, institutional and capacity development, and operations stand points. Following the introduction, participants were apprised of IUU fishing characteristics in Southeast Asia including its scope, impact on resources, and economic consequences. The next section addressed the recent work of the regional plan of action to promote responsible fishing practices including measures to combat IUU fishing in Southeast Asia (RPOA). Port State measures in the global context were considered together with the use of port State measures to prevent, deter and eliminate IUU fishing. The key provisions of the Agreement and implications for regional fisheries management organizations (RFMOs) were highlighted along with RFMO practices in supporting the implementation of port State measures. Fisheries fleets and ports in Southeast Asia were the subject of the next section followed by a review of Indian Ocean Tuna Commission (IOTC) Resolution 10/11 on port State measures. The national questionnaire on port State measures that had been provided to the participants in advance of the workshop was analysed. The role of fisheries managers and inspectors in implementing port State measures was considered and ways of moving forward with the implementation process addressed. Stakeholders' perspective on port State measures and good governance issues were reviewed. Participatory activities and role play led to the formulation of action planning and workshop recommendations at the national and regional levels. Opportunities for regional cooperation to implement port State measures were addressed in detail. The anonymous evaluation of the workshop was positive. Funding and support for the workshop were provided by the FAO Regular Programme, Government of the Republic of Korea (Trust Fund GCP/INT/136/ROK), IOTC and the Australian Fisheries Management Authority.

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OPENING OF THE WORKSHOP

1. The Food and Agriculture Organization of the United Nations (FAO)/Asia-Pacific Fishery Commission (APFIC) Workshop on Implementing the 2009 FAO Agreement on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing (the Agreement) was held at the Concorde Rachada Hotel in Bangkok, Thailand, from 23 to 27 April 2012.
2. The Workshop was attended by 29 participants from eight countries from Southeast Asia and four resource persons. A list of participants and resource persons is attached as Appendix B.
3. Mr Simon Funge-Smith, Workshop Coordinator and Senior Fishery Officer and Secretary of APFIC, FAO Regional Office for Asia and the Pacific (RAP), Bangkok, Thailand, called the Workshop to order. He read a statement on behalf of the Assistant Director-General and Regional Representative of the FAO RAP, Mr Hiroyuki Konuma. He noted, *inter alia*, that the Agreement was a tool to address illegal, unreported and unregulated (IUU) fishing in combination with other tools. The Agreement provided countries with a framework around which they could strengthen their efforts to combat IUU fishing. Mr Konuma added that the workshop was intended to provide guidance and support to countries in the Southeast Asian region to implement the Agreement. Mr Konuma's statement is in Appendix D.
4. Mr David Doulman, Technical Secretary and Senior Fishery Liaison Officer, Fisheries and Aquaculture Department, FAO, Rome, Italy, welcomed participants, resource persons and FAO colleagues pointing out that the workshop was timely because IUU fishing around the world remained a priority issue and the implementation of the Agreement was an important means to block the flow of IUU-caught fish from entering national and international markets.
5. Ms Pongthong Onoora, Chief, Marine Law Studies Group (Senior Legal Advisor), Legal Affairs Division, Department of Fisheries, Bangkok, Thailand, was selected as facilitator of the workshop.
6. Mr Doulman made a presentation in which he outlined the objectives of the workshop and its structure. He noted that the workshop was intended to develop capacity and promote regional coordination to strengthen and harmonize port State measures in Southeast Asia. In this respect, he stated that the workshop should bolster the implementation of the 2007 Regional Plan of Action to Promote Responsible Fishing Practices Including to Combating IUU Fishing in the Region (RPOA). He added that the workshop would provide essential information about the Agreement, encourage exchanges of national experiences, examine the role of regional fisheries management organizations and arrangements (RFMOs) and facilitate knowledge building and skills development in relation to the Agreement. Mr Doulman added that working groups would foster individual and group participation in problem solving concerning real world situations. He concluded that, in terms of the outcomes of the workshop, it was anticipated that there would be a heightened awareness about the benefits of the Agreement and the need to take concerted actions to implement it, a comprehensive understanding of the role, responsibilities and obligations of the port State and the importance of harmonizing measures and positions at the regional level.
7. The Agenda for the workshop is attached as Appendix A and the list of documents is attached as Appendix C.

IUU FISHING IN THE REGION, SCOPE, IMPACT ON RESOURCES AND ECONOMIES

8. Mr Funge-Smith made a presentation entitled “IUU fishing in the region, scope, impact on resources and economies”. He noted that the scope of IUU fishing in the Southeast Asian region has been reviewed in a number of FAO, APFIC and Southeast Asian Fisheries Development Center (SEAFDEC) workshops since 2004. He recalled that IUU fishing had also been the subject of other reviews by FAO, APFIC, SEAFDEC and the Asia-Pacific Economic Cooperation Council (APEC) and the RPOA.

9. Mr Funge-Smith explained that IUU fishing in the Southeast Asian region was possibly more complex than other regions for a number of reasons, including the geopolitical boundaries of the Southeast countries meant that many of the countries had exclusive economic zone (EEZ) boundaries with three or more countries; the extensive coastlines of the archipelagic countries, Indonesia and Philippines, presented a major challenge for monitoring, control and surveillance (MCS); since most of the countries in the Southeast Asian region had developing or newly industrialized economies, they had limited MCS capacity and in some cases, were challenged by weak governance mechanisms. He underlined that, as a consequence, IUU fishing was relatively easily undertaken and presented considerable economic opportunities.

10. He reported that IUU fishing has been identified as a pervasive problem in the region, being conducted within countries and between countries, and that this had been recognized through the regional commitments made at the APFIC Twenty-ninth Session (2006), RPOA (2007), APFIC Thirtieth Session (2008) and most recently, the Association of Southeast Asian Nations (ASEAN)-SEAFDEC Resolution (2011).

11. Mr Funge-Smith went on to report that domestic IUU fishing was typically an issue of contravention of management regulations (use of illegal gear, fishing in closed or restricted zones) leading to impacts on resources and economics of fisheries and that it also contributed to conflicts between segments of the fishery (provinces, gear types, or between large and small-scale). He informed the workshop further that the main negative impacts on resources were seen as fishing in nursery areas and growth overfishing and that this issue had been identified in APFIC, FAO and SEAFDEC workshops on IUU fishing. It was generally agreed that much of this was driven by overcapacity in the fishery and limited MCS capacity.

12. Mr Funge-Smith stated that much of the identified IUU fishing activity in Southeast Asia was related to domestic vessels conducting IUU fishing in foreign waters and returning to home ports, and the transshipment of illegally-caught fish and its landing in port in the vessel’s flag State. He added that this was complicated further by bilateral access agreements, joint-venture arrangements and falsification of documents and vessel markings, many of which were related to flag State responsibilities. He concluded that there was a proportion of IUU-caught fish subject to RFMO measures being moved into the region (especially tuna, toothfish, etc.) and that this fish would probably be the immediate focus of the Agreement’s implementation in the region.

13. In discussion that followed, most of the participants noted that they had not yet established model ports but did recognize that in each country there were a limited number of ports (between 1–5 per country) that were designated to receive foreign fishing vessels. They recognized that while national measures existed for the reception and inspection of foreign vessels, considerable scope remained for the harmonization of procedures to ensure regional equivalence, as well as to meet standards expected under the Agreement.

MAIN OUTCOMES OF THE RPOA WORKSHOP ON THE AGREEMENT (MALAYSIA, 7–10 JUNE 2011) AND IMPLEMENTATION OF RECOMMENDATIONS

14. Mr John Davis, resource person and Senior Manager, Compliance Operations, Foreign Compliance Operations, Australian Fisheries Management Authority (AFMA), Darwin, Australia, briefed the workshop on the outcomes of the Inspector Training Workshop on FAO Port State Measures Agreement that was hosted by the Department of Fisheries, Malaysia, from 7 to 10 June 2011. He noted that the training sessions were primarily provided by AFMA officials. The workshop was attended by 32 participants from ten of the 11 RPOA participating countries (Australia, Brunei Darussalam, Cambodia, Indonesia, Malaysia, Papua New Guinea, Singapore, Timor-Leste, Thailand and Viet Nam, Solomon Islands (by invitation) and representatives from the RPOA Secretariat). The purpose of the workshop was to “train the trainer” and its objectives were to give an overall perspective of the Agreement to ensure that participants were:

- familiar with the background, international legal context and purpose of the Agreement;
- conversant with the relevant provisions of the Agreement and its purpose in combating IUU fishing;
- trained in inspection procedures set out in the Agreement;
- able to determine a sampling plan for vessel inspections and understand the importance of doing so;
- familiar with the Agreement documentation and the use of appropriate international coding in the completion of inspection documentation;
- aware of the information available about IUU fishing and informed of the relevant information sharing requirements of the Agreement; and
- able to share their training experience and provide further training in their countries in accordance with the training requirements in the Agreement.

15. The participants were briefed on:

- the history of the Agreement, overview of the purpose and roles as well as responsibilities of the Agreement in the international and regional contexts and its current status;
- port management systems and IUU fishing and related activities in the RPOA using the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) as an example such as known IUU fishing vessels using Members’ ports, IUU fishing vessels having members’ flag, issues relating to implication of landing and trading IUU-caught fish;
- an introduction to the operation of the Agreement that included the application, integration and exchange of information (Articles 3, 5 and 6 of the Agreement);
- operational provisions of the Agreement (Articles 7 to 21) that covered the designation of ports, advance requests for entry, authorization or denial of port services, use of ports and level and priorities for inspection;
- overview inspections and follow-up actions (Articles 12 to 19) that included practical inspections’ training, conduct of inspection, transmittal of inspection results, exchange of information, documents, verification of vessel documentation and using case studies as examples;
- fish product identification using Patagonian toothfish as example species, including other identification techniques, sampling, photographs and videos;
- vessel inspection that included vessel identification, gear and techniques for inspection, measurement of fishing gear, vessel document verification and evidence handling and continuity;
- familiarization with the use of codes in accordance with Annex D of the Agreement;

- application and familiarization with port practices and procedures; and
- training of trainers.

16. The workshop welcomed the comprehensive brief provided on the 2011 Malaysian workshop. The value of the RPOA as a vehicle for implementing the Agreement was recognized.

PORT STATES MEASURES IN THE GLOBAL CONTEXT

17. Mr Doulman made a presentation entitled “Implementing the 2009 Agreement on Port State Measures”. He pointed out that port State measures in support of fisheries management had evolved since 1982 when the United Nations Convention on the Law of the Sea (UN Convention) opened for signature. He added that there had been a strong global trend towards more responsible stewardship of natural resources after the United Nations Conference on Environment and Development (UNCED) in 1992. This important event had encouraged new approaches to resource management and utilization with the overriding goal of long-term sustainability and improved ocean governance. The presentation highlighted the rise and impact of IUU fishing, the effects of a lack of effective flag State control and the growth of ports of non-compliance. A review of important international instruments and initiatives designed to implement port State measures was presented. It was noted that there had been a progressive development of these measures culminating in the adoption of the Agreement. It was recalled that the FAO Committee on Fisheries (COFI) in 2011 had stated that port State measures were a potent means to combat IUU fishing and would be strengthened through the effective and full implementation of the Agreement. However, it was cautioned that port State measures must be underpinned by strong political commitment and well targeted programmes for capacity building and institutional strengthening if they were to be effective.

18. In discussion following the presentation, the relationship between the 2005 FAO Model Scheme on Port State Measures to Combat IUU Fishing (Model Scheme) and the Agreement was raised. It was explained that the Agreement had superseded the Model Scheme. It had not been envisaged initially that the international community would move to negotiate a binding international instrument based on the 2001 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA–IUU) and the Model Scheme.

19. A further clarification was sought in relation to the Agreement and the flag State criteria that were currently being negotiated in FAO. It was pointed out that there was a requirement for port States to take action against flag States that were not performing in accordance with their duties as flag States. In this regard the flag State was required to cooperate with port States. The participants were made aware that the flag State criteria under consideration in FAO would elaborate criteria to address flag States that were not meeting their obligations under international law.

INTRODUCTION TO PORT STATE MEASURES

20. Mr Terje Lobach, resource person and Director, Directorate of Fisheries, Bergen, Norway, made a presentation introducing port State measures. He described the general nature of the measures, including those established for the merchant fleet under International Maritime Organization (IMO). He reviewed some of the main provisions of the Agreement, but focused, in particular, on the operational provisions such as those related to advance notification, determination by port authorities, regulations on the use of ports, inspections and subsequent actions. He explained the linkages to other MCS-related tools such as flag State duties, IUU-vessel lists, sightings and vessel monitoring system (VMS), as well as market- and trade-related measures.

21. Mr Lobach highlighted how port State measures needed to be supported by national policy, laws, institutions operations and capacity and by information systems. He showed a checklist of legal requirements for implementing the Agreement. Concerning institutional arrangements, he underlined the need to develop a national strategy for enhanced coordination and cooperation, including the establishment of clear mandates covering all port activities, as well as enhanced port facilities in cooperation with the broader port authority. He explained that information systems required easy and swift access to topics such as vessel authorizations, RFMO-vessel lists, VMS data, fishing activities, etc.

22. In addition, Mr Lobach explained the consequence of being characterized as a port of non-compliance, in particular in relation to market-related measures. He used examples of ports, including some in Southeast Asia, not adhering to the CCAMLR catch documentation scheme for Patagonian toothfish. Finally, he showed an illustration of how port State measures worked by explaining the Polstar case, where the reefer “Polstar” received fish from five IUU-listed fishing vessels in the North East Atlantic Fisheries Commission (NEAFC) area and was refused access to all ports in Europe, Morocco, and subsequently in Japan and in the Republic of Korea. He demonstrated how, following a journey taking more than three months, the vessel was able to discharge its fish in Hong Kong and reported that “Polstar” was later put on the IUU-vessel list of several RFMOs.

23. Furthermore, Mr Lobach discussed the ongoing process in FAO for establishing criteria on flag State performance, including possible actions against States not meeting the criteria. The close linkages between port State measures and possible market- and trade-related measures were recognized. Some participants acknowledged that not acting in conformity with the Agreement could have economic consequences for countries.

24. In discussion following the presentation, some participants expressed concerns about the possible conflict between inspectors responsible for implementing the IMO Tokyo Memorandum of Understanding (MOU) and those responsible for fisheries control, underlining the need for better coordination among different government agencies. It was also noted that only two countries in the region had acceded to the Agreement (Myanmar and Sri Lanka) and that Indonesia had signed the Agreement.

KEY PROVISIONS OF THE AGREEMENT AND IMPLICATIONS FOR RFMOs

25. Ms Karine Erikstein, Assistant Professional Officer, Development Law Service, FAO, Rome, Italy, gave a presentation entitled “Key Provisions of the FAO Agreement on Port State Measures and implications for RFMOs”. The purpose of the presentation was to provide an overview of the Agreement from a legal point of view, including its central provisions and those that showed the central role RFMOs played under the Agreement. The presentation underlined the point that the Agreement contained legally-binding minimum standards to avoid the development of ports of non-compliance as well as laying down a framework for cooperation and exchange of information, among others. It was noted that port States, as sovereign States, were free to adopt more stringent measures if they so desired.

26. Mr Florian Giroux, resource person and Compliance Officer, Indian Ocean Tuna Commission (IOTC), Seychelles, made a presentation entitled “Obligations of cooperating and non-contracting parties (CPCs) and role of the IOTC Secretariat”. The purpose of the presentation was to present an overview of the key provisions of the IOTC Port State Measures Resolution 10/11, which is attached in Appendix E. Mr Giroux stressed the obligations of the CPCs as flag States and port States as well the role of the IOTC Secretariat.

27. Mr Giroux highlighted the point that IOTC had recognized the importance of port State measures in the fight against IUU fishing more than 10 years ago, starting with its first workshop in 2001 addressing an Integrated Control and Inspection Scheme (Yaizu, Japan). This was followed by the adoption of two resolutions (02/01 then 05/03), culminating in 2011 with the adoption of Resolution 10/11 on port State measures to prevent, deter and eliminate illegal, unreported and unregulated fishing.

28. The presentation addressed the role of the port State and responsibility to create the environment for the effective implementation of the Resolution 10/11 (legal framework: transpose Resolution 10/11 into national legislation and regional legally-binding measures; institutional arrangements/coordination; and capacity development). Reporting obligations of CPCs to the Secretariat were highlighted, such as the designation of ports, the establishment of prior notification and the designation of the competent authority in each port. Mr Giroux pointed out that Resolution 10/11 linked to other compliance and MCS tools adopted by IOTC to combat IUU fishing.

RFMO PRACTICES IN SUPPORTING OF PORT STATE MEASURES IMPLEMENTATION

29. Mr Matthew Camilleri, Fishery Liaison Officer, Fisheries and Aquaculture Department, FAO, Rome, Italy, provided an overview of RFMO practices in supporting the implementation of port State measures. In his presentation, he briefly explained the function of RFMOs in the management of fisheries and conservation of living marine resources and referred to the contexts in which these organizations were mentioned in the Agreement along with their expected role. He also presented a synopsis of port State control-related measures adopted by 10 RFMOs and highlighted some of the common measures and practices in force, including the designation of ports for landings and transshipments by foreign vessels, establishment of authorized vessel lists and IUU-vessel lists, catch documentation schemes, requirements for notification and authorization prior to the vessels' entry into port, criteria and procedures for denial of entry and use of ports, inspection schemes and related procedures for the transmission of results, provisions related to flag State responsibilities, as well as provisions for the submission of relevant reports and publication of information. Furthermore, he addressed the constraints and challenges being faced by RFMOs in the implementation of port State measures particularly when the capacity and/or political will of their Contracting Parties to effectively apply regionally-agreed measures was lacking. He added that while RFMOs individually provide useful information for port control procedures, the development of a one-stop-shop RFMO information system in the future would be highly beneficial. In conclusion, Mr Camilleri explained that in regions where RFMOs were absent, the development of a regional MCS network and/or regional plans of action to combat IUU fishing would enhance communication and cooperation among countries and set common objectives for the region.

30. Mr Davis delivered a presentation giving an overview on the operations of CCAMLR. It focused on the suite of compliance measures implemented by CCAMLR Members including VMS, observer schemes, logbooks and the CCAMLR Catch Documentation Scheme (CDS). CCAMLR port State requirements were examined in detail and compared to the Agreement's requirements to ascertain if CCAMLR's port inspection system supported the implementation of the Agreement. The presentation concluded that the CCAMLR requirements were very similar to those of the Agreement and could be used for implementing the Agreement.

31. In discussion following the presentation, it was noted that while CCAMLR port State requirements supported the Agreement, the requirements were species and area specific in terms of recognizing IUU-listed vessels (the same situation as for IOTC). However, it was clarified that with the implementation of the Agreement, countries would be obliged to recognize IUU fishing vessels on any IUU-vessel list, irrespective of species or area of operation.

32. Mr Giroux made another presentation, introducing the definition of IUU fishing in the context of IOTC. He explained the tools used at international, regional and national levels to combat IUU fishing activities and stressed that flag States had the primary responsibility to control the fishing activities of their vessels. These responsibilities included fishing vessel registration, clear procedures for issuing licences (conditions contained in IOTC resolutions relating to reporting requirements, logbook/VMS, vessel and gear markings and inspections). He also outlined the role of the coastal State and the MCS tools used to control fishing activities of foreign fishing vessels. Mr Giroux presented tools and requirements valid for IOTC including onboard valid authorization from the flag State, listing in the IOTC Record of Authorized Vessels, appropriately marked and fitted VMS unit and reporting requirements (logbook, VMS and inspection reports). He elaborated the role of the port State in implementing IOTC Resolution 10/11 by granting or not granting access to its port. He stressed the importance of performing professional inspections, including the verification of vessel documents (registration/authorization/logbooks/licence), conformity of the vessel and gear markings, and inspection of fish on board (e.g. checks against catches declared in the logbook). The main constraints faced by some CPCs to implement IOTC Resolution 10/11 were discussed. Finally he outlined the lack of interagency cooperation among different authorities exercising port controls that undermined the implementation of IOTC Resolution 10/11.

FISHERIES, FLEETS AND PORTS IN THE REGION

33. Mr Davis and Mr Giroux led discussions relating to fisheries, fleets and ports in the Southeast Asian region.

34. Mr Davis examined the Patagonian toothfish fishery in the southern oceans and discussed the legal and illegal fishing fleets operating in the CCAMLR Convention area that landed catches in Southeast Asian ports. The workshop noted, in discussion, that IUU fishing operators in the southern oceans were targeting Southeast Asian ports, especially those in Malaysia and Singapore. The pattern of operations seemed to be that IUU fishing vessels offloaded their catches in Malaysia and then transited to Singapore to resupply prior to launching their next IUU fishing campaign. A specific example of the IUU fishing vessel, Wutaishan Anuhi 44, was given with the workshop being informed about a letter from the Australian Government to RPOA Members notifying them that the vessel would be seeking to enter a Southeast Asian port in the next few days. Participants were encouraged to ensure that port access was denied to this vessel, or if it was allowed into port, that a full inspection should be undertaken and the results reported back to the RPOA Secretariat and Members.

35. Mr Giroux's presentation addressed the main IOTC fisheries describing the five fleet segments: industrial tuna purse seiners (targeting tropical tunas with vessels from the European Union [EU], Seychelles, Iran [Islamic Republic of], Japan and Thailand), industrial coastal purse seiners targeting neritic tuna species (Thailand, Malaysia and Indonesia), industrial deep-freezing longliners targeting tuna or swordfish (Taiwan Province of China, Japan, China and India), industrial freezing longliners targeting swordfish (EU and Australia) and fresh tuna longliners targeting tropical tunas or swordfish (Indonesia, Malaysia, EU and Seychelles). Mr Giroux then described the flow of catches unloaded in port, transshipped in port and transshipped at sea, elaborating which countries were the main players in each category. The IOTC ports where foreign fishing vessels unloaded catches were presented for each fleet segment with the tuna purse seine vessels unloading in the Seychelles and Madagascar, the deep-freezing longline vessels unloading in South Africa, Mauritius and Singapore, the freezing longline vessels unloading in South Africa and Mauritius, and the fresh-tuna longline vessels unloading in Thailand, Mauritius and Sri Lanka. He stressed that approximately 80 percent of catches were unloaded in foreign ports within the Indian Ocean. He expressed the view that this situation provided opportunities to implement IOTC Resolution 10/11 by inspecting foreign fishing vessels in the convention area. He added

that for the longline fishery, 25 percent of the catch was transhipped at sea, 50 percent of the catch was unloaded in foreign ports, while 25 percent of the catch was unloaded in ports within the territory of the flag State of the vessels or in foreign ports outside the Indian Ocean.

36. Mr Giroux commented on the lack of information concerning designated ports in the region. He stated that in the IOTC context, Resolution 10/11 already provided steps for information sharing between Members for designated ports, the notification period and designation of the competent authority. It was recalled that, as a reporting obligation under the Resolution, CPCs must provide a list of designated ports, competent authorities and the notification period to the IOTC Secretariat. He informed the participants that the list could be downloaded from the IOTC Web site. It was regularly updated by the Secretariat upon receiving information from CPCs (www.iotc.org, under “Quick links”, link name: Designated Ports or www.iotc.org/files/misc/Designated_Ports.zip). Participants at the workshop from IOTC member countries were encouraged to submit information to the Secretariat for uploading to the Web site.

CONSIDERATION OF IOTC’S RESOLUTION 10/11 ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING: STATUS, IMPLEMENTATION AND CHALLENGES

37. Mr Giroux made a presentation entitled “Considerations on the IOTC Port State Measures Resolution: Status, Implementation and Challenges”. Its purpose was to provide the results of a study on the capacity and readiness of five IOTC CPCs (Kenya, Mauritius, Mozambique, Tanzania and Seychelles) to implement IOTC Resolution 10/11. It was highlighted that the capacity to implement the Resolution varied from one CPC to another, and that the CPCs faced the same difficulties and issues with respect to its implementation. He stressed that the Resolution was inadequately understood at the political/senior management level in CPCs. He noted that all CPCs had weaknesses in relation to the powers of inspectors and their right to conduct port State measures in accordance with the Resolution. He added that in most cases, the inspectorates were under staffed and suffered from inadequate training. In addition, inspection reports were not communicated to the IOTC Secretariat as required by the Resolution.

38. Mr Giroux outlined the reporting obligations of CPCs. Due to the low level of compliance, he reminded and encouraged the CPCs participating to the workshop to report to the IOTC Secretariat, as soon as possible, the designated ports, prior notification requirements and the designated competent port authority. The main challenges faced by the CPCs at the political, legal, institutional and operational levels were described. Finally, actions were proposed to improve the implementation of IOTC Resolution 10/11.

NATIONAL QUESTIONNAIRE ON PORT STATE MEASURES

39. Mr Camilleri and Ms Judith Swan, Consultant, Fisheries and Aquaculture Department, FAO, Rome, Italy, reported on the responses to the questionnaire that was circulated to participants in advance of the workshop. A copy of the questionnaire is in Appendix F.

40. Mr Camilleri informed the workshop about the satisfactory outcome of the exercise, undertaken by participants prior to the workshop. He remarked that although it was evident that some difficulty was encountered in answering some questions and that certain terms and concepts were not fully understood, general observations could be deduced from the eight responses received.

41. He pointed out that whilst the knowledge on the countries’ ratification status of international instruments was not always comprehensive, most participants demonstrated their awareness of the

existence of the RPOA–IUU, NPOA–IUU or plans to adopt an NPOA–IUU, all of which contained specific reference to port State measures.

42. Mr Camilleri reported that responses indicated that adequate cooperation and integration among government agencies, having primary responsibility for implementing port State measures, was present in most countries. However, not all countries had drawn up clear lines of decision-making for permitting or denying foreign fishing vessels entry and use of port and some countries did not have sufficient human capacity to carry out port inspections.

43. On operational matters, Mr Camilleri noted that some countries had taken steps to designate ports for inspection of foreign flagged vessels, introduced legal provisions supporting inspectors' duties, and set up inspection procedures. Nonetheless, due to limited human resources, inadequate management and an overlap of authorities' responsibilities, there appeared to be some difficulty in dealing appropriately with vessels presumed to have engaged in IUU fishing.

44. Mr Camilleri added that responses showed that although the maintenance of databases and information-sharing mechanisms were generally limited, some countries had established communication with flag States, coastal States, RFMOs and international organizations. Furthermore, it was observed that procedures were largely absent for a flag State to request a port State to inspect its fishing vessels where clear grounds of IUU fishing existed.

45. With regards to legislation, Mr Camilleri reported that in some cases national legislation included key definitions consistent with Article 1 of the Agreement and provided for, *inter alia*, the requirement for foreign fishing vessels to submit information and acquire authorization prior to entry into port, the denial of entry and/or use of port where there was sufficient proof of IUU fishing, the requirement for flag State vessels to cooperate in inspections by other port States, together with the delivery of fines and penalties in cases of unauthorized entry into port. *Force majeure* or distress were generally recognized as valid conditions to allow entry into port. He added that responses also revealed that the integration and coordination of port State measures with the broader system of port controls and other measures to combat IUU fishing were not always present in national legislation. Finally, he underlined that provisions for taking additional measures in conformity with international law, were often absent.

FISHERIES MANAGERS AND INSPECTORS EXPERIENCES

46. Mr Davis led discussion relating to the roles of fisheries managers and inspectors. His presentation examined the experiences of managers and inspectors in undertaking Agreement-style inspections on both legal and IUU fishing vessels. He examined the documents that should be sought during an inspection, what documents were legitimate, including logbooks, other documents and behavior that could give rise to suspicion that a vessel had engaged in IUU fishing. The presentation also examined some techniques used by IUU-vessel operators to avoid detection including fraudulent documents, misdeclaration of species, frequent vessel renaming and reflagging.

47. Following the presentation, participants spoke of their experiences with inspections. There was a consensus that while inspections were being undertaken, the reporting of their outcomes required improvement. It was noted that some inspecting countries failed to provide feedback to the other RPOA Secretariats and Members.

MOVING FORWARD WITH THE IMPLEMENTATION PROCESS

48. Ms Swan made a presentation on “Moving Forward with the Implementation Process”. She focused on the benefits of establishing a process to identify gaps and constraints and then develop implementation strategies. In this regard, typical constraints were explained in relation to policy, legal, operational, institutional and capacity-development considerations, and checklists for addressing them were elaborated. Some of the key issues included: did relevant national policy, plans or strategies exist?; what were a country’s international obligations and national laws?; were there sufficient operating procedures?; did the institutions have adequate mandates?; and are there interagency cooperative mechanisms, and were there long-term capacity development programmes? Ms Swan drew the attention of participants to FAO Fisheries and Aquaculture Circular No. 1074 that presented thorough consideration of all these matters and provided checklists that could be used to move forward with the implementation process in a robust and effective manner. In discussion, participants supported the process of identifying gaps and constraints and using the checklists as a basis for ongoing implementation activities.

49. Ms Purihitajati Widodo, Head of Sub-division of Regulation on Capture Fisheries, Processing and Marketing, Ministry of Marine Affairs and Fisheries, Legal and Organization Bureau, Indonesia, made a presentation on behalf of the Indonesian participants. She advised the workshop that as an archipelagic coastal State, Indonesia gave importance to implementing the Agreement. She noted that Indonesian waters were targeted by IUU fishing vessels and that implementing the Agreement would assist Indonesia in combating IUU fishing by strengthening cooperation among ports in Southeast Asia. Furthermore, she stated that as a member of IOTC, Indonesia was aware of its obligations to implement IOTC Resolution 10/11. Ms Widodo added that with respect to the Agreement, Indonesia had signed it on 29 December 2009 and was moving towards ratification, including the implementation of the operational mechanisms. She explained that as part of this process, Indonesia had also attempted to evaluate the constraints with existing legal, institutional and operational aspects of the Agreement, including the process of ratification itself, facilities and infrastructure, human resource capacity development and information systems. Finally, she affirmed that these issues and the need to implement the Agreement placed firmer emphasis on the RPOA and enhanced the need for regional cooperation to support stronger port State measures in Southeast Asia.

STAKEHOLDER PERSPECTIVES ON PORT STATE MEASURES

50. Ms Erikstein gave a presentation entitled “Stakeholder Perspectives on Port State Measures”. The purpose of the presentation was to show that port State measures did not only apply to the relationship between States and vessels, but that other actors/stakeholders played an important role. Ms Erikstein identified the different stakeholders and pointed out their interests and roles with respect to port State measures. The presentation concluded that as stakeholders could both enhance and/or undermine such measures, it was important for governments and others to be aware of potential challenges and strengths with stakeholder involvement.

51. Clarification was sought as to how port State measures could impact the role of the exporter. It was explained that consumers in export markets often demanded sustainably caught fish and that, in such cases, exporters preferred to export products from countries that combated IUU fishing by implementing port State measures and other tools. Participants noted that in this way, port State measures could have an impact on the marketing of fish.

GOOD GOVERNANCE AND PORT STATE MEASURES

52. Mr Lobach made a presentation entitled “Good governance and port State measures”. He provided an overview of what general governance referred to as well as how governance was applied to the fisheries sector, including standards and benefits deriving from a good and effective fisheries governance system. He also explained general principles for assessing fisheries governance, including transparent decisions, accountable and representative decision-makers, comprehensive consultations with stakeholders, and sharing of information.

53. Mr Lobach further focused on conflict of interest and corruption. He outlined various types of corruption, and identified bribery, extortion, fraud and “kick backs” as most likely types of corruption in the fisheries context. He also identified corruption risk areas to be related to port entry, use of ports, inspections and actions following an inspection. In addition, he identified potential corruption players to be vessel owners and/or masters, agents, those benefiting from landings, packaging, processing, transshipping and transporting, those providing fuel, gear and other supplies, as well as shipyards. He pointed out that measures against corruption included prevention systems and procedures, deterrence/enforcement and the need to strengthen transparency and accountability.

54. Mr Lobach also addressed how to increase the understanding on the needs and priorities of port State measures among colleagues and politicians, focusing on the need for political will and dissemination of information.

55. In discussion following the presentation, participants highlighted the difficulties in getting politicians involved in port State measures. It was noted that there would probably be a lack of political will until financial losses were sustained by not implementing measures in accordance with the requirements of the Agreement.

56. Two presentations were made by the participants from Thailand. The first presentation was made by Ms Malinee Smithrithee, Director, Fisheries Foreign Affairs Division, Department of Fisheries and Mr Praphan Leepayakoon, Director, Fish Trade Control Section, Fisheries Administration and Management Bureau, Department of Fisheries, concerning national preparedness and priority action relating to port State measures and capacity-building and awareness raising for port State measures. The presentation commenced with an explanation of the organization of the Bureau of Fisheries Administration and Management. A review of fish trade control and inspection was discussed involving sea, land and airports. Legislation concerning controls on the species of fish imported into Thailand was discussed together with catch documentation, which conformed with the relevant European Commission (EC) regulation. It was noted that Thailand also cooperated with CCAMLR concerning requirements for the importation of Patagonian toothfish. Inspection procedures were considered and constraints to the implementation of the Agreement highlighted. It was evident that the principal constraint was the fact that the Department of Fisheries had no powers to inspect fishing vessels, deny entry to port and deny transshipments imports as prescribed in the Agreement. However, the presenters noted that a new fisheries act would partly comply with the Agreement, especially with respect to the denial of IUU fishing vessels entry to port. This new act was still under consideration in the Thai Parliament and it might not be considered until 2014. The presentation looked at several ways of overcoming the constraints outlined and highlighted the importance of conducting capacity building activities in a demonstration port.

57. The second Thai presentation was made by Mr Watchara Chiemanukulkit, Engineer, Professional Level, Ship Standard Bureau, Marine Department, Ministry of Transport, Thailand. It addressed the role of the Marine Department and the implementation of port State control revealing that the Department was responsible for the ship registry, ship surveys and inspection but did not inspect fishing vessels. The presentation reviewed constraints in implementing the Agreement that included a lack of training for

officers on IUU fishing, a lack of national legislation, and no database for targeting ships for inspection. Mr Chiemasukulkit concluded that there would be merit in establishing a global, regional and national database for fishing vessels, the development of national laws and regulations to support the implementation of the Agreement, implementation of a capacity-development programme and the creation of effective communications, cooperation and networks among relevant government agencies.

WORKING GROUP ACTIVITY

58. To enhance the participatory nature of the workshop and to provide participants with the opportunity to address key issues concerning port State measures, three working groups were formed. The working groups focused on legal and policy issues (resource person: Mr Lobach and Ms Erikstein), institutional and capacity-development issues (resource persons: Mr Camilleri and Mr Doulman) and operations considerations (resource persons: Mr Davis and Mr Giroux). Each of the working groups were requested to consider national and regional issues and to identify the main gaps and constraints in implementing the Agreement, identify how the gaps and constraints might be overcome, and identify priorities for action planning and workshop recommendations that would be considered and consolidated on the final day of the workshop. The participants in each of the three working groups are in Appendix G.

59. Following the deliberations in the working groups, the respective chairpersons were invited to present their outcomes in plenary. The outcomes are summarized in Appendix H.

60. Mr Doulman commented that the working groups had arrived at robust and sensible outcomes. He noted that they had encountered difficulties in allocating time to address both national and regional considerations. Some recommendations needed fleshing out to give more detail but this matter could be addressed in the plenary session of the workshop when the recommendations were being finalized. Mr Doulman noted in conclusion that the working groups' outcomes were positive and would contribute to a strong set of recommendations.

61. Mr Lobach commented that there were some overlaps in the findings of the three groups. On regional cooperation he questioned whether SEAFDEC could have a role in coordinating and harmonizing joint efforts. He also pointed out that the relevant RFMOs for this region, CCAMLR, IOTC and Western and Central Pacific Fisheries Commission (WCPFC), all have available species ID guides and supporting tool kits for inspectors. He further noted that Annex B of the Agreement contained detailed guidelines on how to undertake inspections. Finally, he stated that he was a little puzzled that conflict of interest and possible corruption were not recognized as constraints in the implementation of the Agreement.

62. Mr Camilleri congratulated the participants on the quality of the discussions held in each of the working groups and on their ability to identify national and regional issues and needs, as well as to draw up, in the limited time allocated, concrete recommendations to address them. He added that it was evident from the exercise that participants had acquired already from the workshop a better understanding of the exigencies tied up with the implementation of the Agreement and that there was a general desire for the development of capacity-development programmes, and enhanced cooperation in the region. Furthermore, he noted the emphasis placed on the role of the RPOA-IUU and RFBs, together with the importance of setting regional standards for inspection procedures, the development of data collection programmes and information systems, the strengthening of institutional and legal frameworks, as well as improving stakeholder awareness of port State measures and political commitment for the ratification and implementation of the Agreement.

WORKING GROUP PROBLEM-SOLVING EXERCISE

63. The three working groups were requested to consider a fictitious situation involving IUU fishing, port State measures, coastal and flag State issues and RFMO considerations and to formulate appropriate advice. Participants were requested to discuss the role played by the Agreement in addressing the problem, the role that RFMOs played in relation to port State measures and the action taken by port States if the flag State did not meet its obligations. The fictitious situation is in Appendix I. The outcomes of the working groups are also in Appendix I.

CAPACITY DEVELOPMENT IN SUPPORT OF PORT STATE MEASURES

64. Mr Bundit Chokesanguan, Head of Information and Training Division, SEAFDEC, Thailand, made a presentation entitled “Responses to regional requirements to improve fisheries management: capacity development in support of port State measures”. The presentation commenced by noting that Southeast Asian countries had recognized the need to manage fishing capacity and reduce illegal and destructive fishing. It was pointed out that IUU fishing on a massive scale is a major problem in the region and countries were seeking to improve fisheries management. Regional and ASEAN responses were outlined noting the priority given by ASEAN heads of States to combat IUU fishing, to improve traceability and catch documentation and the need to promote capacity development. The basic requirements for achieving these goals were addressed and SEAFDEC initiatives discussed. SEAFDEC’s cooperation with other organizations was highlighted and future actions outlined. These actions included collaboration and cooperation among Members and with regional initiatives, boosting cooperation with neighbouring countries with bilateral a trilateral arrangements and an improvement in the strict implementation of fisheries management measures, specifically with the management of fishing capacity. SEAFDEC’s human resource-development programmes for sustainable fisheries were highlighted. These programmes involved international and regional, local and tailor-made training courses, and study courses.

65. Following the presentation, participants expressed the need for enhanced regional collaboration as a means of addressing IUU fishing. It was noted that SEAFDEC’s activities promoted such collaboration and provided a basis for practical steps to combat IUU fishing, including through the implementation of more effective port State measures.

PROCEDURES FOR IMPORTANT ELEMENTS OF INSPECTION OPERATIONS: EVIDENCE, COMMUNICATIONS, DECISION-MAKING, INFORMATION SYSTEMS AND POLITICAL CONSIDERATIONS

66. Mr Lobach addressed certain procedures for inspections. He focused principally on investigation and evidence. In relation to investigation he explained the role of the investigator and stressed that it was not the investigator’s role to draw conclusions. He noted further that the purpose of an investigation was to establish the facts by obtaining information from those involved *in situ*, examining the place in question, contacting relevant organizations or institutions, accessing registers and approaching specialists and experts. On the collection of evidence, Mr Lobach reviewed the various elements relevant to such a process, including witness statements, satellite data, documents, photo and video evidence and the confiscation of objects. He also explained the required content of an investigation report.

67. In relation to communications, Mr Lobach explained the recent positive developments within the International MCS Network (IMCS), which in March 2012 adopted a comprehensive governing framework, a strategic plan and a business plan. He added that the objective, general principles and rights and obligations of Members were determined clearly. He underlined the important role the Network could

play in relation to port State measures through facilitating cooperation, coordination, collection and exchange of information. Finally, Mr Lobach mentioned that Indonesia, Philippines, Thailand and Viet Nam were Members of the IMCS. He encouraged other countries in Southeast Asia to consider joining the Network.

BRIEFING ON ROLE-PLAY EXERCISE

68. Ms Swan briefed the workshop on the purpose and scope of the role-play exercise. Participants engaged in a role-play exercise that was a fictitious situation but largely based on a recent case of cooperation between countries to combat IUU fishing through use of port State measures, as reflected in the problem-solving exercise. The scenes and roles are described in Appendix J, and involved meetings to advise fisheries ministers in the coastal and port State. There was also a courtroom scene where the vessel master and others were charged with violations of the law. The commentators remarked on the enthusiastic performance by the participants, and how they appreciated the complexity and practicalities of this typical situation. The importance of being innovative and showing ingenuity in such situations was underlined. Participants were encouraged to use the experience to act as trainers to explain the Agreement to their colleagues when they returned to their respective countries.

69. The chairpersons of each of the working groups briefed the workshop on their activities and outcomes. It was apparent that the role play was highly positive and enabled participants to apply concepts and ideas that they had encountered in the workshop. The activity was deemed to be a highly beneficial medium for promoting capacity development.

Commentary on role-play exercise

70. The workshop Secretariat and resource persons commended the efforts of the participants in conducting the role-play exercise and for their improved understanding of the provisions of the Agreement and related international instruments. Their appreciation of the complexities that may arise when dealing with port State control operations and combating IUU fishing was applauded. The commentators added that the enthusiasm of all participants in playing the different roles was a good indication of their motivation and commitment to increase port State control procedures and strengthen legal frameworks within their respective countries. The commentators expressed the view that they hoped the participants found the exercise beneficial and that it presented them with a real case scenario that could serve as a reference in the future.

OPPORTUNITIES FOR FAO/APFIC/SEAFDEC/RPOA SECRETARIAT COOPERATION IN PROMOTING THE IMPLEMENTATION OF THE AGREEMENT

71. Mr Funge-Smith introduced the topic noting that key issues for regional organizations, with respect to port State measures, concerned opportunities for cooperation and the needs of countries.

72. The participant from SEAFDEC noted that many issues relating to port States measures were outside the national jurisdiction of countries. He added that SEAFDEC's focus was on activities within national jurisdiction and that since 2006 many initiatives had been initiated to promote enhanced management and to combat IUU fishing. He added that there was a movement towards enhanced collaboration with the ASEAN Secretariat. He informed participants that a consultative forum had been developed and there was a need to build on this regional mechanism with lead activities for each of the 12 thematic areas that had been identified. It was noted that it would be preferable to consider regional

agreements for different areas for the Southeast Asian region. It was underlined that ASEAN was a strong political entity, and ways and means of working more effectively with it were required.

73. A participant speaking on behalf of the RPOA Secretariat advised the workshop that the RPOA represented a dynamic and proactive mechanism. He added that the Secretariat was an efficient means to promulgate the Agreement and FAO should be encouraged to work with the RPOA for the development of tool kits for inspectors' training. Participants noted that information relating to RPOA activities could be found on the Web site, but in the interest of information sharing it was pointed out that a central Web site containing RFMO requirements relevant to the region would enhance information available to countries. Participants noted also that other activities might be considered at a later stage, including joint patrols and exchange of officers as a means to promote the implementation of the Agreement. The workshop was of the view that the annual meeting of the RPOA could be an effective vehicle to consider progress with the implementation of port State measures in Southeast Asia.

74. The linkages between FAO and RPOA were reviewed briefly. The workshop noted that there could be opportunities to develop a collaborative strategic regional programme to combat IUU fishing that could involve all countries in the region.

75. The Secretary of APFIC explained that the Commission was essentially a policy forum, which had a capacity development focus and a strong partnership approach rather than an implementational role. He added that there was also considerable scope for APFIC to investigate interfaces with FAO. It was noted that APFIC had a robust Web site and that this was a sound means to disseminate information. Support was expressed for the development of resource tool kits including information on port State measures, inspection procedures and the consolidation of IUU fishing vessels lists that would be easily accessible. It was added that the RPOA Secretariat might not have the resources to maintain a Web site but SEAFDEC had the means and capacity to do so. In fact, the workshop recognized that this could be an important role for SEAFDEC as a means of implementing the ASEAN IUU fishing resolutions.

76. The workshop noted that capacity development was a key consideration for the implementation of the Agreement and that it was an issue that bound the organizations in the region. Training opportunities should be consolidated, where appropriate and relevant, and enhanced cooperation in capacity development should be fostered. It was stressed that an integrated tool kit for capacity development would be highly beneficial and an effective means to support the implementation of the Agreement.

77. Mr Giroux indicated that IOTC encouraged synergies among organizations in efforts to implement port State measures and combat IUU fishing. He advised the workshop that IOTC would contribute to relevant regional initiatives and requested that the Commission be kept advised of developments concerning IUU fishing.

78. Mr Doulman explained that FAO, within available resources, supported strongly global efforts to implement the Agreement. The suggestion that RFMO information concerning port State measures be disseminated from a central Web site was supported together with the development of tool kits designed to support the implementation of the Agreement.

79. In discussion, participants noted the following points:

- The role of ASEAN was important to further the implementation of the Agreement.
- The high level support that ASEAN afforded was necessary to achieve high-level political support.
- The collaboration among regional organizations was necessary to facilitate the implementation of the Agreement.

- Capacity development was an essential ingredient to implement the Agreement.
- Malaysia was assessing if the Government should ratify the Agreement. A document outlining the benefits of ratification would be highly appreciated. FAO undertook to develop such a document and to make it available on the Department's Web site, as requested.
- In most countries, more than one agency was involved in the administration of port State measures. In some instances fisheries administrations only controlled and managed fishing gear, other aspects of port States measures were in the hands of marine departments. The need for an integrated mechanism across different agencies was underscored. This division of responsibilities at national level could impede some countries in ratifying the Agreement.
- The workshop was the first step towards implementing the Agreement and moving forward required a strong commitment to combat IUU fishing. Countries must move from discussion to action and implement the provisions of the Agreement, even if they were not in a position to ratify the Agreement at this time.
- Legal assistance was required by some countries to move forward with domestic processes for ratification of the Agreement. FAO could provide such assistance although funding would have to be secured.
- The Agreement should be named in statements at COFI.
- The COFI document addressing IUU fishing contained a section relating to the Agreement and a decision was sought by COFI in relation to Article 21 concerning the establishment of the ad hoc Working Group.

80. Mr Lobach explained that Norway had a real interest in supporting the implementation of the Agreement. He noted that requests for technical assistance could be directed to the Norwegian Agency for Development Cooperation (NORAD) through the Norwegian embassies in each country. He added that the prospectus for the workshop provided good arguments for ratifying the Agreement. He noted that national coordination to address port State measures in Norway had also been a challenge and that a national task force, with a chairperson from the fisheries department, had been established. It worked successfully as a coordinating mechanism. He stressed that a task force was imperative to implement the Agreement.

ACTION PLANNING AND WORKSHOP RECOMMENDATIONS

81. Mr Funge-Smith and Mr Doulman explained the importance of developing an action plan and workshop recommendations to support the implementation of the Agreement in the region. Drawing on the working group activities in relation to the identification of main gaps and constraints in implementing the Agreement, how the gaps and constraints might be overcome, and priorities for action planning and workshop recommendations, participants consolidated the groups' outcomes in the plenary session.

82. Table 1 summarizes and consolidates the outcomes of the three working groups following the plenary review.

Table 1: National and regional recommendations from the Workshop to implement the Agreement¹

| | National recommendations | Regional recommendations |
|-------------------------|---|---|
| General | <ul style="list-style-type: none"> • Promote national training and awareness-raising campaigns on port State measures involving relevant stakeholders. • Develop a national strategy to combat IUU/NPOA or equivalent (as per commitment under RPOA). • Strengthen the understanding of the Agreement through capacity building workshops as part of a national strategy to combat IUU fishing. • Promote ratification, acceptance or approval of the Agreement through statements at COFI meetings and similar international fora. • Formulate guidelines on the implementation of port State measures. • Raising awareness about the possible conflicts of interest including corruption. | <ul style="list-style-type: none"> • Convene an FAO Ministerial meeting/ high level meeting in the ASEAN region on IUU/port State measures. • Conduct regional workshops to promote the benefits of port State measures. • Set up a regional network to improve bilateral and multilateral cooperation particularly in information-sharing. Support from existing RFMOs to establish the network is desired. |
| Legal and policy | <ul style="list-style-type: none"> • Instigate technical advisory input from FAO to promote inter-agency coordination on legal aspects and institutional cooperation for implementing the Agreement. • Formulate new subsidiary legislation or amend the fisheries law and other relevant legislation to accommodate port State measures ensuring provisions: <ul style="list-style-type: none"> ▪ to deny port access if masters do not comply with port State measures requirements. ▪ that vessels do not transship or unload until authorization is given. • Initiate training for legal experts on port State measures. | <ul style="list-style-type: none"> • Conduct a regional training programme on the legal interpretation of the Agreement for legal experts and high ranking officials. • Develop an advisory document on preliminary actions that support port State measures within existing legislation. • Promote subregional arrangements for cooperation on port State measures and combating IUU fishing. • Harmonize policy and legislation bilaterally and at regional level (possibly through the ASEAN mechanism). • Include RFMOs in regional policy and IUU fishing related initiatives. • Promote a regional MOU between competent fishery organizations to share and update information on port State measures. <ul style="list-style-type: none"> ▪ Establish a regional database on national port State measures regulations. ▪ Develop consolidated information on national procedures for access to |

¹ The following recommendations are consistent with the RPOA and ASEAN/SEAFDEC Resolution and Plan of Action.

| | National recommendations | Regional recommendations |
|---|---|---|
| | | ports. <ul style="list-style-type: none"> ▪ WCPFC, IOTC, CCAMLR and the Southern Indian Ocean Fisheries Agreement (SIOFA) could support harmonization on port State measures. |
| Institutional and capacity development | <ul style="list-style-type: none"> • Establish an inter-departmental task force to strengthen inter-agency and intra-agency coordination. • Take steps to implement the NPOA-IUU, or a national strategy to combat IUU/NPOA or equivalent. • Identify the capacity development needs (technical, inspectorate, legal, procedural etc.) for implementing PSM and seek ways to address them through the support of national institutions, RFBs and the international donor community. • Develop national data collection schemes that support the information needs for implementing port State measures and a national integrated database system. • Assess the port facilities in designated ports to establish that they are adequate for effective inspections and that procedures are in place to take necessary actions. | <ul style="list-style-type: none"> • As part of the recommendation to establish an MOU: <ul style="list-style-type: none"> ▪ Convene a regional coordination meeting among relevant RFBs to find agreement on the establishment of a regional database and information system, including a record of authorized vessels, IUU vessel list, list of designated ports and port inspection results. ▪ Strengthen the cooperation among existing RFBs, including through the drawing up of formal agreements and other mechanisms, such as coordination meetings, with the possible assistance of FAO. • As part of regional harmonization activities: <ul style="list-style-type: none"> ▪ Convene a regional working group from the representatives of each country to establish regional standard operating procedures (SOPs) for port inspections. ▪ FAO and existing regional organizations to support the working group activities. • Strengthen the implementation of the RPOA, including securing additional technical and financial resources. In this regard the Secretariat and participating countries are encouraged to secure additional funding. |
| Operations | <ul style="list-style-type: none"> • Determine and notify FAO of the competent authorities for the implementation of port State measures and designated ports and period of notification. • Identify the need for relevant equipment and information guides to support inspection. <ul style="list-style-type: none"> ▪ Include species ID guide (link to RFMO SOP). • Develop a training package to | <ul style="list-style-type: none"> • FAO in conjunction with RFMOs to develop SOPs, species ID guide, language cards and supporting tool kits. Develop and conduct a regional training programme for inspectors including SOP for boarding and inspection in the region. • FAO to provide guidance on web-based information for inspectors. • Under a regional MOU referred above: <ul style="list-style-type: none"> ▪ web-based information / toolkit for inspectors is made available. |

| | National recommendations | Regional recommendations |
|--|--|---|
| | <p>include:</p> <ul style="list-style-type: none"> ▪ verification of quantity of catch on board; ▪ interview masters; ▪ identification of species and DNA sampling; ▪ hold volumetrics; and ▪ verification of documents. • Develop, as required, relevant procedures to ensure the safety and security for inspectors during their work. • Establish access to interpreters for use on vessels during inspections and ensure that the cost for this service is borne by the operator. | <ul style="list-style-type: none"> ▪ establish a scheme for joint and reciprocal inspections |

WORKSHOP EVALUATION

83. Ms Swan invited participants to undertake an anonymous evaluation of the workshop. She noted that it would assist in strengthening workshop delivery in other regions. For this reason, she advised the workshop that the exercise was an important one.

Evaluation

84. Twenty-three responses were received to the workshop evaluation form. Participants were requested to rate the workshop in a total of 12 aspects under three headings: objectives of the workshop, presentation and your expectations of the workshop. A scale of 1–5 was used (1=Low, 3=Medium and 5=High).

- Of the aggregated total number of responses, 90 percent of participants evaluated the workshop as a 4 or 5, with 47 percent indicating 4 and 43 percent indicating 5. The remaining ten percent of responses indicated a 3. No one evaluated the workshop as a 1 or 2.
- The aspects of the workshop where the highest number of responses showed 5 were as follows.
 - Do you consider the objectives of the workshop were met?
 - Were the presentations informative?
 - Were the presenters knowledgeable about their respective areas?
 - Was the workshop a positive learning experience?
- The aspects of the workshop where an equal number of responses were given for 4 and 5 were as follows.
 - Did you benefit from the discussion?
 - Did you benefit from the workshop exercises?
- The aspects of the workshop where the highest number of responses showed 4 were as follows.
 - Do you understand the international, regional and national frameworks that relate to port State measures?
 - Do you now have an idea of the steps needed to implement the Agreement?
 - How do you judge the presentation of the workshop overall?

- Is the content relevant?
 - Did the workshop meet your expectations?
 - Was the time allocated to the training sufficient?
- Of the aspects where a 3 was assigned, nine out of 12 were indicated by only one, two or three persons. The others were:
 - Did you benefit from the workshop exercises? (five persons)
 - Was the time allocated to the training sufficient? (six persons)

Responses to open-ended questions

85. Participants were asked to list three aspects of the workshop that were most beneficial, and three that were least beneficial. They were also asked to suggest ways in which the workshop might be improved, and to provide other comments.

86. The highest number of participants (20) referred to the working groups, exercises and role play as the most beneficial aspects. Twelve participants indicated that they benefited from an improved understanding of the Agreement and 11 expressed their satisfaction with sharing experience and improved understanding of regional cooperation and RFMOs. Seven appreciated the presentations by the resource persons and six the recommendations of the workshop and their potential role in encouraging implementation of the Agreement. Three others referred to learning the stakeholders perspective, two about fisheries management information and one about inspection procedures.

87. There were comparatively few responses to the question about the least beneficial aspects, and this area was left blank on many evaluation forms. Responses were often vague and did not identify the least beneficial aspects very clearly. Generally, three respondents seemed to be unclear about the Agreement, and an additional three believed that the exercises and role play were least beneficial. Only two evaluations designated each of MCS-related issues and the multimedia presentation as least beneficial. One comment each was received that the presentation time was too short and on the obstacles of laws and regulations of each country.

88. A wide range of suggestions were given as to ways in which the workshop might be improved. The most suggestions (seven each) were made in two separate areas: calling for a more practical focus, including excursions to a port and specific improvements to workshop material and content. Interestingly, two responses thought that the role play exercise took up too much time whilst another two suggested that more time be allowed.

89. Regional aspects were addressed in two areas, by three persons each: encouraging more input from the region and placing more emphasis on RFMOs in different respects. There were three suggestions to logistical improvements, and two suggestions that the duration of the workshop could be shortened.

90. Two responses in each of the following areas were given: more in-depth information about IUU fishing; and participants selection and collective participation. Recommendations were made by one person for each of the following: more guidance on the questionnaire response; clearer delivery by resource persons; elements applicable to high seas/areas under national jurisdiction should be more specific; and assistance should be given to the ministry to sign the Agreement.

91. Finally, under other comments, seven responses expressed appreciation and thanks, four suggested additional improvements and one suggested that the same participants should continue to be involved in future meetings.

ANY OTHER MATTERS

92. Participants requested the FAO Secretariat to provide Web-based information concerning the Agreement and contacts for IOTC and RPOA. These contacts are provided below.

Information on the 2009 FAO Port State Measures Agreement

93. Information on the Agreement is available on the FAO Fisheries and Aquaculture Department Web site at www.fao.org/fishery/psm/en. The definition and background information on port State measures, together with information on related instruments and provisions in international law are presented. In addition, a database on port State measures (Port-Lex) is also available and this provides access to port State measures adopted by States to prevent, deter and eliminate IUU fishing.

94. The legal text and status of the Agreement can be consulted through the FAO Legal Office Web site at www.fao.org/Legal/treaties/037s-e.htm. The recent publication “Guide to the background and implementation of the 2009 FAO Agreement on port State measures to prevent, deter and eliminate illegal, unreported and unregulated fishing” is available here www.fao.org/docrep/015/i2590e/i2590e00.pdf

IOTC

95. The contacts for IOTC are as follows:

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 PO Box 1011
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 E-mail: secretariat@iotc.org
 Web site: www.iotc.org

96. Useful links to be consulted include:

- IOTC Active Conservation and Management Measures at www.iotc.org/files/CMM/Current_Resolution.php
- record of authorized vessels at www.iotc.org/English/record/search3.php
- record of active vessels at [www.iotc.org/files/misc/GetActiveVesselList_\(E\).zip](http://www.iotc.org/files/misc/GetActiveVesselList_(E).zip)
- list of IUU vessels at www.iotc.org/English/iuu/search.php and
- designated ports at www.iotc.org/files/misc/Designated_Ports.zip

RPOA

97. RPOA Members seeking information on the regional implementation of the Agreement may seek advice from the RPOA Secretariat which may refer queries to FAO, as appropriate. The Web site address for the RPOA is www.rpoa.seckkp.go.id and the email contact is rpoa_operator@yahoo.com

CLOSURE OF THE WORKSHOP

98. At the closure of the workshop, Mr Funge-Smith thanked participants for their active participation that contributed to the workshop's success. He also thanked partner organizations, resource persons and FAO colleagues. He urged participants when they returned to their countries to share information with colleagues and to seek to promote more effective port State measures in Southeast Asia.

99. Mr Doulman also thanked the participants for their interest in the workshop. He expressed thanks to the resource persons and to the operations specialists from AFMA and IOTC. Mr Doulman noted that the Government of the Republic of Korea had funded a large proportion of the workshop along with the FAO Regular Programme, IOTC and AFMA. He added that the results of the workshop, the first in a global series of regional workshops to support the implementation of the Agreement, were highly encouraging. He praised the skills of the workshop facilitator, Ms Onoora, who was instrumental in the success of the workshop.

100. On behalf of the participants, Ms Smithrithee thanked FAO for organizing the workshop that had been held at a very opportune time. She also thanked the resource persons, FAO staff and the donors for their contributions.

101. Finally the facilitator of the workshop, Ms Onoora, thanked FAO for its confidence in requesting her to facilitate the workshop. She stated that it had been a most enjoyable experience and expressed the hope that countries in Southeast Asia would take concrete steps to implement port State measures as a means of further reducing IUU fishing in the region. She wished participants a very safe trip to their respective countries.

102. The workshop closed at 12.30 hours on 27 April 2012.

Agenda

Opening of the Workshop

IUU fishing in the region, scope, impact on resources and economies

Main outcomes of the RPOA Workshop on the Agreement (Malaysia, 7–10 June 2011) and implementation of recommendations

Port States measures in the global context

Introduction to port State measures

Key provisions of the Agreement and implications for RFMOs

RFMO practices in supporting of port State measures implementation

Fisheries, fleets and ports in the region

Consideration of IOTC's resolution 10/11 on port State measures to prevent, deter and eliminate illegal, unreported and unregulated fishing: status, implementation and challenges

National questionnaire on port State measures

Fisheries managers and inspectors experiences

Moving forward with the implementation process

Stakeholder perspectives on port State measures

Good governance and port State measures

Working group activity

Working Group problem-solving exercise

Capacity development in support of port State measures

Procedures for important elements of inspection operations: Evidence, communications, decision-making, information systems and political considerations

Briefing on role-play exercise

Opportunities for FAO/APFIC/SEAFDEC/RPOA Secretariat cooperation in promoting the implementation of the Agreement

Action planning and workshop recommendations

Workshop evaluation

Any other matters

Closure of the workshop

APPENDIX B

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List of documents

FAO. 2010. *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. Accord relatif aux mesures du ressort de l'État du port visant à prévenir, contrecarrer et éliminer la pêche illicite, non déclarée et non réglementée. Acuerdo sobre medidas del Estado rector del puerto destinadas a prevenir, desalentar y eliminar la pesca ilegal, no declarada y no reglamentada.* Rome. 100 pp.

(also available at

www.fao.org/fi/oldsite/eims_search/1_dett.asp?calling=simple_s_result&lang=en&pub_id=278191)

FAO. 2011. *FAO Port State Measures Agreement - Human resource development. Accord FAO relatif aux mesures du ressort de l'Etat du port – Mise en valeur des ressources humaines. Acuerdo FAO sobre las medidas del Estado rector del puerto – Desarrollo de recursos humanos.* Rome. DVD.

(also available at

www.fao.org/fi/oldsite/eims_search/1_dett.asp?calling=simple_s_result&lang=en&pub_id=286137)

FAO. 2012. *A guide to the background and implementation of the 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.* FAO Fisheries and Aquaculture Circular No. 1074. Rome. 165 pp.

(also available at www.fao.org/docrep/015/i2590e/i2590e00.pdf)

Opening statement
by
Mr Hiroyuki Konuma
Assistant Director General
FAO Regional Office for Asia and the Pacific
Bangkok, Thailand

I would like to welcome you all to this FAO/APFIC Workshop on Implementing the 2009 FAO Port State Measures Agreement to combat IUU Fishing. This Agreement is one of the main tools by which the economic incentives that drive IUU fishing can be removed, it also provides the basis for cooperation between countries, management organizations and other bodies in addressing the problems of IUU fishing and its associated trade.

IUU fishing comes in a variety of forms and the Port State Measures Agreement is a tool to address part of this problem. It should not be seen as a single solution to this complex problem. The strength of the Port State Measures Agreement is that it provides countries with a framework to organize their efforts to combat IUU fishing and associated trade within their countries, through strengthening port controls and inspection and cooperation between competent authorities. It also enables countries and RFMOs to share information and on IUU activities and allows them to take action regardless of where the IUU activity took place. This Agreement is strongly supported by the RFMOs who see it as an important tool in combating IUU fishing and we thank the IOTC for participating in this workshop.

The Port State Measures Agreement is expected to enter into force in 2013, and although the level of countries which have signed the Agreement in this region remains rather low at this moment, several countries have indicated that they are currently engaged in the process of preparing to enter the agreement.

This workshop is intended to provide guidance and support to the FAO/APFIC and SEAFDEC member countries in the region, in order to support their understanding and develop capacity to implement effective Port State Measures. The workshop is also a follow up to earlier awareness raising workshops in the PSM Agreement convened by FAO APFIC and SEAFDEC in 2004, and 2008. It complements the works of the Regional Plan of Action to promote Responsible Fishing Practices including combating IUU fishing in the Region, otherwise known as the RPOA, which many of the countries represented to date have signed. The RPOA identifies the effective implementation of Port State Measures as a cornerstone of the fight against IUU fishing. The recently concluded ASEAN-SEAFDEC resolution also identified the combating of IUU fishing as an important priority and the need for capacity building to do this. This workshop responds to this and FAO welcomes the participation of SEAFDEC in this workshop.

We hope that by the end of the workshop, the participants will have a greater understanding both of the Port State Measures agreement and how it can be used as an effective tool to combat IUU fishing. We also expect that participants will have a clearer idea of the steps and measures which need to be taken at national level to implement the PSM Agreement. It is also expected that we will develop some concrete recommendations on how further cooperation between countries and regional organizations can be developed to improve coordination to combat IUU fishing in the region.

Once again, we welcome you to this workshop and we hope that your week here in Bangkok will be productive and we look forward to your active participation.

Thank you.

IOTC Resolution 10/11 on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

The Indian Ocean Tuna Commission (IOTC):

DEEPLY CONCERNED about the continuation of illegal, unreported and unregulated fishing in the IOTC Area and its detrimental effect upon fish stocks, marine ecosystems and the livelihoods of legitimate fishers in particular in Small Island Developing States, and the increasing need for food security in the region,

CONSCIOUS of the role of the port State in the adoption of effective measures to promote the sustainable use and the long-term conservation of living marine resources,

RECOGNIZING that measures to combat illegal, unreported and unregulated fishing should build on the primary responsibility of flag States and use 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 illegal, unreported and unregulated fishing,

RECOGNIZING that port State measures provide a powerful and cost-effective means of preventing, deterring and eliminating illegal, unreported and unregulated fishing,

AWARE of the need for increasing coordination at the regional and interregional levels to combat illegal, unreported and unregulated fishing through port State measures,

RECOGNIZING the need for assistance to developing countries, in particular Small Island Developing States to adopt and implement port State measures,

TAKING NOTE OF the binding Agreement on port State measures to combat IUU fishing which was adopted and opened for signature within the framework of FAO in November 2009, and desiring to implement this Agreement in an efficient manner in the IOTC Area,

BEARING IN MIND that, in the exercise of their sovereignty over ports located in their territory, IOTC Members and Cooperating non-Contracting Parties (CPCs) may adopt more stringent measures, in accordance with international law,

RECALLING the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, hereinafter referred to as the Convention,

RECALLING 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 of 4 December 1995, the Agreement to Promote Compliance with International Conservation and Management Resolutions by Fishing Vessels on the High Seas of 24 November 1993 and the 1995 FAO Code of Conduct for Responsible Fisheries,

ADOPTS, in accordance with the provisions of Article IX, paragraph 1 of the IOTC Agreement, the following:

PART 1

GENERAL PROVISIONS

1. Use of terms

For the purposes of this Resolution:

- (a) “fish” means all species of highly migratory fish stocks covered by the IOTC Agreement;
- (b) “fishing” means searching for, attracting, locating, catching, taking or harvesting

fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;

(c) “fishing related activities” means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;

(d) “illegal, unreported and unregulated fishing” refers to the activities set out in paragraph 1 of the Resolution 2009/03;

(e) “port” includes offshore terminals and other installations for landing, transshipping, packaging, processing, refueling or resupplying; and

(f) “vessel” means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities.

2. *Objective*

The objective of this Resolution is to prevent, deter and eliminate IUU fishing through the implementation of effective port State measures to control the harvest of fish caught in the IOTC Area, and thereby to ensure the long-term conservation and sustainable use of these resources and marine ecosystems.

3. *Application*

3.1 Each CPC shall, in its capacity as a port State, apply this Resolution in respect of vessels not entitled to fly its flag that are seeking entry to its ports or are in one of its ports, except for:

(a) vessels of a neighbouring State that are engaged in artisanal fishing for subsistence, provided that the port State and the flag State cooperate to ensure that such vessels do not engage in IUU fishing or fishing related activities in support of such fishing; and

(b) container vessels that are not carrying fish or, if carrying fish, only fish that have been previously landed, provided that there are no clear grounds for suspecting that such vessels have engaged in fishing related activities in support of IUU fishing.

3.2 This Resolution shall be applied in a fair, transparent and non-discriminatory manner, consistent with international law.

4. *Integration and coordination at the national level*

Each CPC shall, to the greatest extent possible:

(a) integrate or coordinate fisheries related port State measures with the broader system of port State controls;

(b) integrate port State measures with other measures to prevent, deter and eliminate IUU fishing and fishing related activities in support of such fishing, taking into account as appropriate the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; and

(c) take measures to exchange information among relevant national agencies and to coordinate the activities of such agencies in the implementation of this Conservation and Management Resolution.

PART 2

ENTRY INTO PORT

5. *Designation of ports*

5.1 Each CPC shall designate and publicize the ports to which vessels may request entry pursuant to this Resolution. Each CPC shall provide a list of its designated ports to IOTC Secretariat before 31 December 2010, which shall give it due publicity on

the IOTC website.

5.2 Each CPC shall, to the greatest extent possible, ensure that every port designated and publicized in accordance with point 5.1 has sufficient capacity to conduct inspections pursuant to this Resolution.

6. *Advance request for port entry*

6.1 Each CPC shall require the information requested in Annex 1 to be provided before granting entry to a vessel to its port.

6.2 Each CPC shall require the information referred to in point 6.1 to be provided at least 24 hours before entering into port or immediately after the end of the fishing operations, if the time distance to the port is less than 24 hours. For the latter, the port State must have enough time to examine the above mentioned information.

7. *Port entry, authorization or denial*

7.1 After receiving the relevant information required pursuant to section 6, as well as such other information as it may require to determine whether the vessel requesting entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing, each CPC shall decide whether to authorize or deny the entry of the vessel into its port and shall communicate this decision to the vessel or to its representative.

7.2 In the case of authorization of entry, the master of the vessel or the vessels representative shall be required to present the authorization for entry to the competent authorities of the CPC upon the vessels arrival at port.

7.3 In the case of denial of entry, each CPC shall communicate its decision taken pursuant to point 7.1, to the flag State of the vessel and, as appropriate and to the extent possible, relevant coastal States and IOTC secretariat. The IOTC Secretariat may, if deemed appropriate to combat IUU fishing at global level, communicate this decision to Secretariats of other RFMO's.

7.4 Without prejudice to point 7.1, when a CPC has sufficient proof that a vessel seeking entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing, in particular the inclusion of a vessel on a list of vessels having engaged in such fishing or fishing related activities adopted by a regional fisheries management organization in accordance with the rules and procedures of such organization and in conformity with international law, the CPC shall deny that vessel entry into its ports.

7.5 Notwithstanding points 7.3 and 7.4, a CPC may allow entry into its ports of a vessel referred to in those points exclusively for the purpose of inspecting it and taking other appropriate actions in conformity with international law which are at least as effective as denial of port entry in preventing, deterring and eliminating IUU fishing and fishing related activities in support of such fishing.

7.6 Where a vessel referred to in points 7.4 or 7.5 is in port for any reason, a CPC shall deny such vessel the use of its ports for landing, transshipping, packaging, and processing of fish and for other port services including, *inter alia*, refueling and resupplying, maintenance and drydocking. Points 9.2 and 9.3 of section 9 apply *mutatis mutandis* in such cases. Denial of such use of ports shall be in conformity with international law.

8. *Force majeure or distress*

Nothing in this Resolution affects the entry of vessels to port in accordance with international law for reasons of force majeure or distress, or prevents a port State from permitting entry into port to a vessel exclusively for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

PART 3 USE OF PORTS

9. *Use of ports*

9.1 Where a vessel has entered one of its ports, a CPC shall deny, pursuant to its laws and regulations and consistent with international law, including this Conservation and management resolution, that vessel the use of the port for landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including, *inter alia*, refueling and resupplying, maintenance and drydocking, if:

- a) the CPC finds that the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities required by its flag State;
- b) the CPC finds that the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities required by a coastal State in respect of areas under the national jurisdiction of that State;
- c) the CPC receives clear evidence that the fish on board was taken in contravention of applicable requirements of a coastal State in respect of areas under the national jurisdiction of that State;
- d) the flag State does not confirm within a reasonable period of time, on the request of the port State, that the fish on board was taken in accordance with applicable requirements of a relevant regional fisheries management organization; or
- e) the CPC has reasonable grounds to believe that the vessel was otherwise engaged in IUU fishing or fishing related activities in support of such fishing, including in support of a vessel referred to in point 7.4, unless the vessel can establish:
 - i. that it was acting in a manner consistent with relevant IOTC resolutions; or
 - ii. in the case of provision of personnel, fuel, gear and other supplies at sea, that the vessel that was provisioned was not, at the time of provisioning, a vessel referred to in point 4 of paragraph 7.

9.2 Notwithstanding point 9.1, a CPC shall not deny a vessel referred to in that point the use of port services:

- a) essential to the safety or health of the crew or the safety of the vessel, provided these needs are duly proven, or
- b) where appropriate, for the scrapping of the vessel.

9.3 Where a CPC has denied the use of its port in accordance with this paragraph, it shall promptly notify the flag State and, as appropriate, relevant coastal States, IOTC or other regional fisheries management organizations and other relevant international organizations of its decision.

9.4 A CPC shall withdraw its denial of the use of its port pursuant to point 9.1 in respect of a vessel only if there is sufficient proof that the grounds on which use was denied were inadequate or erroneous or that such grounds no longer apply.

9.5 Where a CPC has withdrawn its denial pursuant to point 9.4, it shall promptly notify those to whom a notification was issued pursuant to point 9.3.

PART 4 INSPECTIONS AND FOLLOW-UP ACTIONS

10. *Levels and priorities for inspection*

10.1 Each CPC shall carry out inspections of at least 5% of landings or

transhipments in its ports during each reporting year.

10.2 Inspections shall involve the monitoring of the entire discharge or transshipment and include a cross-check between the quantities by species recorded in the prior notice of landing and the quantities by species landed or transhipped. When the landing or transshipment is completed, the inspector shall verify and note the quantities by species of fish remaining on board.

10.3 National inspectors shall make all possible efforts to avoid unduly delaying a vessel and ensure that the vessel suffers the minimum interference and inconvenience and that degradation of the quality of the fish is avoided.

10.4 The port CPC may invite inspectors of other CPC to accompany their own inspectors and observe the inspection of landings or transshipment operations of fishery resources caught by fishing vessels flying the flag of another CPC.

11. Conduct of inspections

11.1 Each CPC shall ensure that its inspectors carry out the functions set forth in Annex 2 as a minimum standard.

11.2 Each CPC shall, in carrying out inspections in its ports:

- a) ensure that inspections are carried out by properly qualified inspectors authorized for that purpose, having regard in particular to section 14;
- b) ensure that, prior to an inspection, inspectors are required to present to the master of the vessel an appropriate document identifying the inspectors as such;
- c) ensure that inspectors examine all relevant areas of the vessel, the fish on board, the nets and any other gear, equipment, and any document or record on board that is relevant to verifying compliance with relevant conservation and management resolutions;
- d) require the master of the vessel to give inspectors all necessary assistance and information, and to present relevant material and documents as may be required, or certified copies thereof;
- e) in case of appropriate arrangements with the flag State of the vessel, invite the flag State to participate in the inspection;
- f) make all possible efforts to avoid unduly delaying the vessel to minimize interference and inconvenience, including any unnecessary presence of inspectors on board, and to avoid action that would adversely affect the quality of the fish on board;
- g) make all possible efforts to facilitate communication with the master or senior crew members of the vessel, including where possible and where needed that the inspector is accompanied by an interpreter;
- h) ensure that inspections are conducted in a fair, transparent and non-discriminatory manner and would not constitute harassment of any vessel; and
- i) not interfere with the master's ability, in conformity with international law, to communicate with the authorities of the flag State.

12. Results of inspections

Each CPC shall, as a minimum standard, include the information set out in Annex 3 in the written report of the results of each inspection.

13. Transmittal of inspection results

13.1 The port State CPC shall, within three full working days of the completion of the inspection, transmit by electronic means a copy of the inspection report and, upon request, an original or a certified copy thereof, to the master of the inspected vessel, to the flag State, to the IOTC Secretariat and, as appropriate, to:

- a) the flag State of any vessel that transhipped catch to the inspected vessel;
- b) the relevant CPCs and States, including those States for which there is

evidence through inspection that the vessel has engaged in IUU fishing, or fishing related activities in support of such fishing, within waters under their national jurisdiction; and

c) the State of which the vessel's master is a national.

13.2 The IOTC Secretariat shall without delay transmit the inspection reports to the relevant regional fisheries management organizations, and post the inspection report on the IOTC website.

14. Training of inspectors

Each CPC shall ensure that its inspectors are properly trained taking into account the guidelines for the training of inspectors in Annex 5. CPC shall seek to cooperate in this regard.

15. Port State actions following inspection

15.1 Where, following an inspection, there are clear grounds for believing that a vessel has engaged IUU fishing or fishing related activities in support of such fishing, the inspecting CPC shall:

a) promptly notify the flag State, the IOTC Secretariat and, as appropriate, relevant coastal States, and other regional fisheries management organizations, and the State of which the vessel's master is a national of its findings; and

b) deny the vessel the use of its port for landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including, *inter alia*, refueling and resupplying, maintenance and drydocking, if these actions have not already been taken in respect of the vessel, in a manner consistent with this Conservation and Management Resolution.

15.2 Notwithstanding point 15.1, a CPC shall not deny a vessel referred to in that point the use of port services essential for the safety or health of the crew or the safety of the vessel.

15.3 Nothing in this Resolution prevents a CPC from taking measures that are in conformity with international law in addition to those specified in points 15.1 and 15.2, including such measures as the flag State of the vessel has expressly requested or to which it has consented.

16. Information on recourse in the port State

16.1 A CPC shall maintain the relevant information available to the public and provide such information, upon written request, to the owner, operator, master or representative of a vessel with regard to any recourse established in accordance with its national laws and regulations concerning port State measures taken by that CPC pursuant to sections 7, 9, 11 or 15, including information pertaining to the public services or judicial institutions available for this purpose, as well as information on whether there is any right to seek compensation in accordance with its national laws and regulations in the event of any loss or damage suffered as a consequence of any alleged unlawful action by the CPC.

16.2 The CPC shall inform the flag State, the owner, operator, master or representative, as appropriate, of the outcome of any such recourse. Where other Parties, States or international organizations have been informed of the prior decision pursuant to sections 7, 9, 11 or 15, the CPC shall inform them of any change in its decision.

PART 5

ROLE OF FLAG STATES

17. Role of CPCs flag States

17.1 Each CPCs shall require the vessels entitled to fly its flag to cooperate with the port State in inspections carried out pursuant to this Resolution.

17.2 When a CPC has clear grounds to believe that a vessel entitled to fly its flag

has engaged in IUU fishing or fishing related activities in support of such fishing and is seeking entry to or is in the port of another State, it shall, as appropriate, request that State to inspect the vessel or to take other measures consistent with this Resolution.

17.3 Each CPC shall encourage vessels entitled to fly its flag to land, transship, package and process fish, and use other port services, in ports of States that are acting in accordance with, or in a manner consistent with this Resolution. CPCs are encouraged to develop fair, transparent and non-discriminatory procedures for identifying any State that may not be acting in accordance with, or in a manner consistent with, this Resolution.

17.4 Where, following port State inspection, a flag State CPC receives an inspection report indicating that there are clear grounds to believe that a vessel entitled to fly its flag has engaged in IUU fishing or fishing related activities in support of such fishing, it shall immediately and fully investigate the matter and shall, upon sufficient evidence, take enforcement action without delay in accordance with its laws and regulations.

17.5 Each CPC shall, in its capacity as a flag State, report to other CPCs, relevant port States and, as appropriate, other relevant States, regional fisheries management organizations and FAO on actions it has taken in respect of vessels entitled to fly its flag that, as a result of port State measures taken pursuant to this Resolution, have been determined to have engaged in IUU fishing or fishing related activities in support of such fishing.

17.6 Each CPC shall ensure that measures applied to vessels entitled to fly its flag are at least as effective in preventing, deterring, and eliminating IUU fishing and fishing related activities in support of such fishing as measures applied to vessels referred to in point 3.1.

PART 6

REQUIREMENTS OF DEVELOPING STATES

18. Requirements of developing States

18.1 CPCs shall give full recognition to the special requirements of CPCs developing States in relation to the implementation of this Resolution. To this end, IOTC should provide assistance to CPCs developing States in order to, *inter alia*:

- a) enhance their ability, in particular the least-developed among them and small island developing States, to develop a legal basis and capacity for the implementation of effective port State measures;
- b) facilitate their participation in any international organizations that promote the effective development and implementation of port State measures; and
- c) facilitate technical assistance to strengthen the development and implementation of port State measures by them, in coordination with relevant international mechanisms.

18.2 IOTC shall give due regard to the special requirements of developing CPCs port States, in particular the least-developed among them and small island developing States, to ensure that a disproportionate burden resulting from the implementation of this Resolution is not transferred directly or indirectly to them. In cases where the transfer of a disproportionate burden has been demonstrated, CPCs shall cooperate to facilitate the implementation by the relevant CPCs developing States of specific obligations under this Resolution.

18.3 IOTC shall assess the special requirements of CPCs developing States concerning the implementation of this Resolution.

18.4 IOTC CPCs shall cooperate to establish appropriate funding mechanisms to assist CPCs developing States in the implementation of this Resolution. These mechanisms shall, *inter alia*, be directed specifically towards:

- a) developing and enhancing capacity, including for monitoring, control and surveillance and for training at the national and regional levels of port managers, inspectors, and enforcement and legal personnel;
- b) monitoring, control, surveillance and compliance activities relevant to port State measures, including access to technology and equipment; and
- c) listing CPCs developing States with the costs involved in any proceedings for the settlement of disputes that result from actions they have taken pursuant to this Resolution.

PART 7

DUTIES OF THE IOTC SECRETARIAT

19. Duties of the IOTC Secretariat

19.1 The IOTC Secretariat shall without delay post on the IOTC website:

- a) the list of designated ports,
 - b) the prior notification periods established by each CPC,
 - c) the information about the designated competent authority in each port State
- CPC, d) the blank copy of the IOTC Port inspection report form.

19.2 The IOTC Secretariat shall without delay post on the secure part of the IOTC website copies of all Port inspection reports transmitted by port State CPCs.

19.3 All forms related to a specific landing or transshipment shall be posted together.

19.4 The IOTC Secretariat shall without delay transmit the inspection reports to the relevant regional fisheries management organizations.

20. This Resolution enters into force the 01 March 2011 and shall be applied to CPCs' ports within the IOTC area of competence. The CPCs situated outside the IOTC area of competence shall endeavour to apply this Resolution.

ANNEX 1

Information to be provided in advance by vessels requesting port entry

| | | | | | | | | | | |
|---|---------------------|-------------------|------------------------|-----------------|----------------|----------------|----------------------------------|-----------------|--|--|
| 1. Intended port of call | | | | | | | | | | |
| 2. Port State | | | | | | | | | | |
| 3. Estimated date and time of arrival | | | | | | | | | | |
| 4. Purpose(s) | | | | | | | | | | |
| 5. Port and date of last port call | | | | | | | | | | |
| 6. Name of the vessel | | | | | | | | | | |
| 7. Flag State | | | | | | | | | | |
| 8. Type of vessel | | | | | | | | | | |
| 9. International Radio Call Sign | | | | | | | | | | |
| 10. Vessel contact information | | | | | | | | | | |
| 11. Vessel owner(s) | | | | | | | | | | |
| 12. Certificate of registry ID | | | | | | | | | | |
| 13. IMO ship ID, if available | | | | | | | | | | |
| 14. External ID, if available | | | | | | | | | | |
| 15. IOTC ID | | | | | | | | | | |
| 16. VMS | | No | | Yes: National | | Yes: RFMO(s) | | Type: | | |
| 17. Vessel dimensions | | | Length | | Beam | | Draft | | | |
| 18. Vessel master name and nationality | | | | | | | | | | |
| 19. Relevant fishing authorization(s) | | | | | | | | | | |
| <i>Identifier</i> | <i>Issued by</i> | <i>Validity</i> | <i>Fishing area(s)</i> | <i>Species</i> | <i>Gear</i> | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| 20. Relevant transshipment authorization(s) | | | | | | | | | | |
| <i>Identifier</i> | | <i>Issued by</i> | | <i>Validity</i> | | | | | | |
| <i>Identifier</i> | | <i>Issued by</i> | | <i>Validity</i> | | | | | | |
| 21. Transshipment information concerning donor vessels | | | | | | | | | | |
| <i>Date</i> | <i>Location</i> | <i>Name</i> | <i>Flag State</i> | <i>ID</i> | <i>Species</i> | <i>Product</i> | <i>Catch area</i> | <i>Quantity</i> | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| 22. Total catch onboard | | | | | | | 23. Catch to be offloaded | | | |
| <i>Species</i> | <i>Product form</i> | <i>Catch area</i> | <i>Quantity</i> | | | | <i>Quantity</i> | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |

ANNEX 2**Port State inspection procedures**

Inspectors shall:

- a) verify, to the extent possible, that the vessel identification documentation onboard and information relating to the owner of the vessel is true, complete and correct, including through appropriate contacts with the flag State or international records of vessels if necessary;
- b) verify that the vessel's flag and markings (e.g. name, external registration number, International Maritime Organization (IMO) ship identification number, international radio call sign and other markings, main dimensions) are consistent with information contained in the documentation;
- c) verify, to the extent possible, that the authorizations for fishing and fishing related activities are true, complete, correct and consistent with the information provided in accordance with Annex 1;
- d) review all other relevant documentation and records held onboard, including, to the extent possible, those in electronic format and vessel monitoring system (VMS) data from the flag State or IOTC Secretariat or other relevant regional fisheries management organizations (RFMOs). Relevant documentation may include logbooks, catch, transshipment and trade documents, crew lists, stowage plans and drawings, descriptions of fish holds, and documents required pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- e) examine, to the extent possible, all relevant fishing gear onboard, including any gear stowed out of sight as well as related devices, and to the extent possible, verify that they are in conformity with the conditions of the authorizations. The fishing gear shall, to the extent possible, also be checked to ensure that features such as the mesh and twine size, devices and attachments, dimensions and configuration of nets, pots, dredges, hook sizes and numbers are in conformity with applicable regulations and that the markings correspond to those authorized for the vessel;
- f) determine, to the extent possible, whether the fish on board was harvested in accordance with the applicable authorizations;
- g) examine the fish, including by sampling, to determine its quantity and composition. In doing so, inspectors may open containers where the fish has been pre-packed and move the catch or containers to ascertain the integrity of fish holds. Such examination may include inspections of product type and determination of nominal weight;
- h) evaluate whether there is clear evidence for believing that a vessel has engaged in IUU fishing or fishing related activities in support of such fishing;
- i) provide the master of the vessel with the report containing the result of the inspection, including possible measures that could be taken, to be signed by the inspector and the master. The master's signature on the report shall serve only as acknowledgment of the receipt of a copy of the report. The master shall be given the opportunity to add any comments or objection to the report, and, as appropriate, to contact the relevant authorities of the flag State in particular where the master has serious difficulties in understanding the content of the report. A copy of the report shall be provided to the master; and
- j) arrange, where necessary and possible, for translation of relevant documentation.

ANNEX 3
IOTC Port inspection report form

| | | | | | | | |
|---|---------------------|----------------------|--------------------------|---------------------------|---|-----------------|----|
| 1. Inspection report no | | | | 2. Port State | | | |
| 3. Inspecting authority | | | | | | | |
| 4. Name of principal inspector | | | | ID | | | |
| 5. Port of inspection | | | | | | | |
| 6. Commencement of inspection | | | YYYY | | MM | DD | HH |
| 7. Completion of inspection | | YYYY | | MM | DD | HH | |
| 8. Advanced notification received | | | Yes | | | No | |
| 9. Purpose(s) | LAN | TRX | PRO | | OTH (specify) | | |
| 10. Port and State and date of | | | | YYYY | MM | DD | |
| 11. Vessel name | | | | | | | |
| 12. Flag State | | | | | | | |
| 13. Type of vessel | | | | | | | |
| 14. International Radio Call Sign | | | | | | | |
| 15. Certificate of registry ID | | | | | | | |
| 16. IMO ship ID, if available | | | | | | | |
| 17. External ID , if available | | | | | | | |
| 18. Port of registry | | | | | | | |
| 19. Vessel owner(s) | | | | | | | |
| 20. Vessel beneficial owner(s), if | | | | | | | |
| 21. Vessel operator(s), if different | | | | | | | |
| 22. Vessel master name and nationality | | | | | | | |
| 23. Fishing master name and nationality | | | | | | | |
| 24. Vessel agent | | | | | | | |
| 25. VMS | No | Yes: National | | Yes: RFMOs | | Type: | |
| 26. Status in IOTC, including any IUU vessel listing | | | | | | | |
| Vessel | RFMO | Flag State | Vessel on authorized | | Vessel on IUU vessel list | | |
| | | | | | | | |
| 27. Relevant fishing authorization(s) | | | | | | | |
| <i>Identifier</i> | <i>Issued by</i> | <i>Validity</i> | <i>Fishing area(s)</i> | <i>Species</i> | <i>Gear</i> | | |
| | | | | | | | |
| | | | | | | | |
| 28. Relevant transshipment authorization(s) | | | | | | | |
| <i>Identifier</i> | | | <i>Issued by</i> | | <i>Validity</i> | | |
| <i>Identifier</i> | | | <i>Issued by</i> | | <i>Validity</i> | | |
| 29. Transshipment information concerning donor vessels | | | | | | | |
| <i>Name</i> | <i>Flag State</i> | <i>ID no</i> | <i>Species</i> | <i>Product form</i> | <i>Catch area(s)</i> | <i>Quantity</i> | |
| | | | | | | | |
| 30. Evaluation of offloaded catch (quantity) | | | | | | | |
| <i>Species</i> | <i>Product form</i> | <i>Catch area(s)</i> | <i>Quantity declared</i> | <i>Quantity offloaded</i> | <i>Difference between quantity declared and quantity determined, if any</i> | | |
| | | | | | | | |
| | | | | | | | |
| 31. Catch retained onboard (quantity) | | | | | | | |
| <i>Species</i> | <i>Product form</i> | <i>Catch area(s)</i> | <i>Quantity declared</i> | <i>Quantity retained</i> | <i>Difference between quantity declared and quantity determined, if any</i> | | |
| | | | | | | | |
| | | | | | | | |

| | | | |
|---|------------|-----------|-----------------|
| 32. Examination of logbook(s) and other documentation | <i>Yes</i> | <i>No</i> | <i>Comments</i> |
| 33. Compliance with applicable catch documentation scheme(s) | <i>Yes</i> | <i>No</i> | <i>Comments</i> |
| 34. Compliance with applicable trade information scheme(s) | <i>Yes</i> | <i>No</i> | <i>Comments</i> |
| 35. Type of gear used | | | |
| 36. Gear examined in accordance with paragraph e) of Annex 2 | <i>Yes</i> | <i>No</i> | <i>Comments</i> |
| 37. Findings by inspector(s) | | | |
| 38. Apparent infringement(s) noted including reference to relevant legal instrument(s) | | | |
| 39. Comments by the master | | | |
| 40. Action taken | | | |
| 41. Master's signature | | | |
| 42. Inspector's signature | | | |

ANNEX 4**Information systems on port State measures**

In implementing this Conservation and Management Resolution, each CPC shall:

- a) seek to establish computerized communication;
- b) establish, to the extent possible, websites to publicize the list of ports designated in accordance with point 5.1 and the actions taken in accordance with the relevant provisions of this Conservation and Management Resolution;
- c) identify, to the greatest extent possible, each inspection report by a unique reference number starting with 3-alpha code of the port State and identification of the issuing agency;
- d) utilize, to the extent possible, the international coding system below in Annexes 1 and 3 and translate any other coding system into the international system.

| | |
|------------------------|--|
| countries/territories: | ISO-3166 3-alpha Country Code |
| species: | ASFIS 3-alpha code (known as FAO 3-alpha code) |
| vessel types: | ISSCFV code (known as FAO alpha code) |
| gear types: | ISSCFG code (known as FAO alpha code) |

ANNEX 5**Guidelines for the training of inspectors**

Elements of a training programme for port State inspectors should include at least the following areas:

1. Ethics;
2. Health, safety and security issues;
3. Applicable national laws and regulations, areas of competence and conservation and management resolutions of the IOTC, and applicable international law;
4. Collection, evaluation and preservation of evidence;
5. General inspection procedures such as report writing and interview techniques;
6. Analysis of information, such as logbooks, electronic documentation and vessel history (name, ownership and flag State), required for the validation of information given by the master of the vessel;
7. Vessel boarding and inspection, including hold inspections and calculation of vessel hold volumes;
8. Verification and validation of information related to landings, transshipments, processing and fish remaining onboard, including utilizing conversion factors for the various species and products;
9. Identification of fish species, and the measurement of length and other biological parameters;
10. Identification of vessels and gear, and techniques for the inspection and measurement of gear;
11. Equipment and operation of VMS and other electronic tracking systems; and
12. Actions to be taken following an inspection.

APPENDIX F

Questionnaire on the implementation of the Agreement

The objective of this questionnaire is to provide a basis for assessing whether countries are prepared to implement the Agreement, and if not to identify the main gaps and constraints in order that solutions can be identified. A “gap” signifies that the matter needed for implementation does not exist, and a “constraint” describes the possible reason why there is a gap.

There are many general aspects to implementation, as well as making provision in national legislation. The questionnaire is therefore divided into two parts:

Part I: which relates to general aspects (legal, institutional, operational and information); and

Part II: which relates to the implementation in legislation. To promote informed responses you may wish to request advice from colleagues involved in the various aspects.

If you are unable to answer some questions please continue with other questions that you are able to answer.

The questionnaire has a column for “preliminary evaluation”. This is to indicate an estimation of the degree to which your country is currently prepared to implement the respective components of the FAO Agreement. Please indicate this on a scale of 1 (unprepared) to 5 (fully prepared).

Please return your response to David Doulman (david.doulman@fao.org) with a copy to Gaelle Hermanus (gaelle.hermanus@fao.org) by 2 April 2012.

Thank you very much for completing this questionnaire. The information you provide will help make the workshop a success.

Your name:

Your institution:.....

Your e-mail contact:

Date:

PART I – GENERAL

| Topic | Implementation | Response | Preliminary evaluation |
|---------------------------|--|-----------------|-------------------------------|
| LEGAL | | | |
| International instruments | 1. Identify international instruments that your country has signed or ratified. ¹ | | |
| | a. State whether your country has adequately implemented each instrument in its laws. | | |
| Regional fishery bodies | 2. Identify regional fishery bodies (RFBs) where your country is a member or cooperating non-member. | | |
| | a. Identify any measures or decisions they have adopted in relation to port State measures. | | |
| | b. State whether your country has adequately implemented these measures or decisions. | | |
| National policies, etc. | 3. Identify relevant national policies, strategies and plans, including any NPOA–IUU | | |
| | a. Do they contain specific reference to port State measures? | | |
| | b. If “yes” what do they provide in general? | | |
| National laws | 4. Identify national laws relevant to the implementation of port State measures and the year they were adopted (e.g. fisheries, ports authority, shipping, etc.) | | |
| | a. Are they sufficiently coordinated and up-to-date? | | |
| INSTITUTIONAL | | | |
| Primary responsibility | 5. Which government agency has primary responsibility for implementing port State measures for foreign fishing vessels in your country? | | |
| Other government agencies | 6. Identify other government agencies involved in regulating the movement and inspection of foreign vessels (both fishing and merchant). | | |
| | a. Does adequate cooperation and integration exist among the relevant government agencies? | | |
| | i. if “yes” what form does it take (e.g. MOU, interagency committees, information exchange)? | | |

¹ In particular, the 1982 UN Convention on the Law of the Sea, the 1993 FAO Compliance Agreement, the 1995 UN Fish Stocks Agreement and the Agreement.

| Topic | Implementation | Response | Preliminary evaluation |
|---------------------------------------|---|-----------------|-------------------------------|
| | ii. if “no” what are the main constraints and improvements? | | |
| Decision-making | 7. Are there clear lines of decision-making for permitting or denying foreign fishing vessels entry into port and denying the use of port? | | |
| | a. If “no” what are the main problems? | | |
| Human capacity | 8. Is there sufficient human capacity at such port(s) to carry out inspections of fishing vessels? | | |
| | a. If “no” identify main problem(s). | | |
| Training | 9. Is the human capacity adequately trained to carry out inspections, in line with Article 17 and taking into account the guidelines for training in Annex E of the Agreement? | | |
| | a. If “no” identify the main reasons. | | |
| OPERATIONAL | | | |
| Designation of ports | 10. Has your country identified and published port(s) to which foreign fishing vessels are permitted entry? | | |
| | a. If “yes” what are they published? | | |
| Inspections carried out | 11. Are inspections carried out in your port, of foreign-flagged: | | |
| | a. fishing vessels? | | |
| | b. vessels engaged in fishing-related activities (e.g. carrier vessels)? | | |
| Annual level of inspections | 12. Does your country require an annual minimum level of inspections for fishing vessels? | | |
| | a. If “yes” what is the level? (percentage) | | |
| | b. If no” estimate the level of vessels inspected. (number and percentage) | | |
| Legislative support for inspectors | 13. Does the law adequately support the officers/inspectors by giving them sufficient powers to inspect and require the master/crew to allow and assist them and provide true and accurate information? | | |
| | a. If “no” identify the main gaps and constraints. | | |
| Port calls by foreign fishing vessels | 14. Estimate how many port calls are made by foreign-flagged fishing vessels to your ports annually. | | |
| | a. Estimate what proportion of these vessels: | | |
| | i. have been fishing in your country’s waters; | | |
| | ii. have been fishing beyond your country’s waters; | | |

| Topic | Implementation | Response | Preliminary evaluation |
|----------------------------|--|----------|------------------------|
| | iii. have not been fishing (i.e. reefer, supply vessels, etc). | | |
| Organized crime | 15. Is there any reason to suspect that any fishing vessels calling at your country's port(s) are operated by organized criminal groups? | | |
| | a. If "yes" are there adequate means to detect and prosecute them? | | |
| Refusal of entry into port | 16. Does your country refuse entry to its ports where there is sufficient proof that the vessel has engaged in or supported IUU fishing? | | |
| | a. If "no" what is the main reason? | | |
| Refusal of use of port | 17. Does your country refuse the use of its ports for transshipping, packaging, processing, etc., to vessels: | | |
| | a. <i>prior to inspection</i> for reasons such as being unlicensed, no confirmation by flag State that catch was in accordance with RFMO measures, clear grounds to believe IUU fishing; | | |
| | b. <i>after inspection</i> where there are clear grounds for believing that a vessel had engaged in IUU fishing or fishing related activities; | | |
| | c. if "yes" to (a) or (b), estimate the number of vessels denied the use of port in the past three years. | | |
| Inspection procedures | 18. Are there standard operating procedures for the inspection of fishing vessels in your country's port(s)? | | |
| | a. If "yes": | | |
| | i. are they adequate for establishing sufficient proof of IUU fishing? | | |
| | ii. are they adequately supported by law? | | |
| Results of inspections | 19. Are the results of the inspections transmitted as required under Article 15 of the Agreement? | | |
| | a. If "no", identify the main gaps and constraints. | | |
| INFORMATION | | | |
| Databases | 20. Do adequate databases exist for information relevant for taking port State measures (e.g. IUU vessel lists, authorization requirements of flag and coastal States)? | | |

| Topic | Implementation | Response | Preliminary evaluation |
|---|--|----------|------------------------|
| | a. If “yes” are they integrated with other MCS databases to combat IUU fishing? | | |
| | b. If “no” identify the main gaps and constraints. | | |
| Information sharing | 21. Do information-sharing mechanisms exist as described under Article 16 of the Agreement? | | |
| | a. If “no” identify the main gaps and constraints. | | |
| Communication with flag State, coastal State, RFBs, international organizations | 22. Are adequate lines of communication established with relevant flag States, coastal States, RFMOs and international organizations as a basis for effective communications under the Agreement? | | |
| | a. If “no” identify the main gaps and constraints | | |
| | b. If “yes” are there procedures in place to ensure that the flag State and relevant RFMO are regularly notified where port State measures are taken (e.g. denial of the use of port) or there is sufficient proof of IUU fishing? | | |
| Flag State control | 23. Are procedures in place to request another port State to inspect your country’s fishing vessels where clear grounds of IUU fishing or related fishing activities exist, and to investigate that State’s inspection reports? | | |
| | a. If “no” identify the main gaps and constraints. | | |

PART II – LEGAL

| FAO Agreement Article | Implementation | Response | Preliminary evaluation |
|--------------------------|--|----------|------------------------|
| LEGISLATION | | | |
| Use of terms (Article 1) | 1. Does your national legislation define all key terms consistently with the definitions in Article 1 of the Agreement, in particular: | | |
| | a. conservation and management measures, fish, fishing, fishing related activities, IUU fishing, port, vessel? | | |
| | b. If “no” does it define any of the key terms consistently with the Agreement? | | |
| Application (Article 3) | 2. Does your fisheries legislation apply to all vessels not entitled to fly the national flag, including those engaged in fishing related activities? ² | | |

² Except for subsistence artisanal fishing where there is cooperation to ensure no IUU fishing or related activities; and container vessels not carrying fish, or previously landed fish providing there are no clear grounds for suspecting IUU fishing.

| FAO Agreement Article | Implementation | Response | Preliminary evaluation |
|--|--|----------|------------------------|
| Integration and coordination at the national level (Article 5) | 3. Is there legislation or agreement in your country that: | | |
| | a. underpins coordination of port State measures with the broader system of port controls, including for merchant vessels? | | |
| | b. supports the integration of port State measures with other measures to combat IUU fishing, such as VMS and observer programmes? | | |
| Advance request for port entry (Article 8) | 4. Does your fisheries legislation require information in Annex 1 to be provided in advance of port entry to allow sufficient time for authorities to examine it? | | |
| | a. If “no” identify the gaps in the legislation. | | |
| Port entry, authorization or denial (Article 9) | 5. Does your fisheries legislation: | | |
| | a. require a foreign fishing vessel to have an authorization for entry into port, and present it upon arrival? | | |
| | b. provide for denial of entry into port where there is sufficient proof of IUU fishing (e.g. listing on an RFMO IUU vessel list) except exclusively for inspecting it and taking other actions at least as effective as denial of entry in combating IUU fishing? | | |
| | c. provide for denial of the uses of port where there is sufficient proof of IUU fishing and the vessel is in port? | | |
| Fine, penalty for entry into, use of port where denied (Article 9) | 6. Does your fisheries legislation set deterrent fines and penalties where there has been contravention of: | | |
| | a. a denial for entry into port? | | |
| | b. a denial of the use of port? | | |
| | c. entry into a non-designated port? | | |
| <i>Force majeure</i> or distress (Article 10) | 7. Does your country’s legislation allow entry for <i>force majeure</i> or distress, “exclusively for purposes of rendering assistance to persons, ships or aircraft”? | | |
| Use of ports (Article 11) | 8. Does your fisheries legislation require: | | |
| | a. denial of the use of port before inspection, as required in Article 11(1)(a)-(e) of the FAO Agreement? | | |
| | b. withdrawal only where there is sufficient proof that the grounds were inadequate or erroneous or no longer apply? | | |
| | c. notification of withdrawal of denial? | | |

| FAO Agreement Article | Implementation | Response | Preliminary evaluation |
|--|--|-----------------|-------------------------------|
| Port State actions following inspection (Article 18) | 9. Does your fisheries legislation require denial of use of port where, after inspection, there are clear grounds for believing the vessel has engaged in IUU fishing or fishing related activities, unless the use of port is essential for safety or health reasons? | | |
| | a. If “no”, are there procedures in place to ensure denial of use of port in such circumstances?? | | |
| Port State actions following inspection (Article 18) | 10. Does your country’s legislation provide for taking additional measures in conformity with international law including those requested by or consented to by the flag State? | | |
| Role of flag States (Article 20) | 11. Does your country’s fisheries legislation require vessels flying its flag to cooperate in inspections by other port States? | | |

Composition of the working groups

Working Group 1: Legal and policy (Resource persons: Mr Lobach and Ms Erikstein)

Mr Matsumoto (SEAFDEC)
 Ms Na Pombejra (Thailand)
 Mr Torell (SEAFDEC)
 Mr Ing (Cambodia)
 Mr Abu Hanip (Malaysia)
 Mrs Nguyen Thi Trang (Viet Nam)
 Mrs Widodo (Indonesia)
 Mr Cadapan (Philippines)

Working Group 2: Institutional and capacity development (Resource persons: Mr Camilleri and Mr Doulman)

Ms Indrapim (Thailand)
 Mr Chokesanguan (SEAFDEC)
 Ms Smithrithee (Thailand)
 Ms Beryllinda (Indonesia)
 Mr Bustamah (Malaysia)
 Mr Gianan (Philippines)
 Mr Guterres (Timor-Leste)
 Mr Pham Ngoc (Viet Nam)

Working Group 3: Operational (Resource persons: Mr Davis and Mr Giroux)

Mr Chiemanukulkit (Thailand)
 Mr Leepayakoon (Thailand)
 Ms Xie (Singapore)
 Mr Nguyen Ba Thien (Viet Nam)
 Mr Jaafar (Malaysia)
 Mr Sanz (Philippines)
 Mr Dos Santos Silva (Timor-Leste)
 Mr Poum (Cambodia)
 Mr Abdul Raup (Indonesia)
 Mr Thanamalarat (Thailand)

APPENDIX H

Identification of the main gaps and constraints in implementing the Agreement at the national and regional levels

Working Group 1: Legal and policy

National level:

| Gap or constraint | Measures to address gap or constraint | Priorities for action planning | Workshop recommendations |
|--|---|---------------------------------------|---|
| Lack of political will | <ul style="list-style-type: none"> • Increase the port State measures knowledge at the ministerial/secretary level. • Include the port State measures agenda in the ministerial meeting. • Increase bilateral political dialog. | 2 | FAO Ministerial meeting/high ranking meeting in the ASEAN region on IUU fishing/port State measures. |
| Lack of legal mechanism among agencies concern regarding implementation of the Agreement | <ul style="list-style-type: none"> • Create binding agreement between concerned agencies. • Lack of coordination among relevant agencies for information sharing. | 4 | Need technical input from FAO. |
| Not sign or ratify the Agreement | <ul style="list-style-type: none"> • Being a party of the Agreement through ratification/accession/ acceptance (Philippine's proposal). • Supporting the government to ratify the Agreement. • An urgent preparation for infrastructure, resources, financial etc to implement port State measures. • Pilot project/demonstration on port State measures implementation at designated port. | 1 | Strong recommendation for ratification at COFI meetings. |
| Lack of national legislation/legal framework relating to the implementation of port State measures | <ul style="list-style-type: none"> • At the first stage, incorporate some provisional measures from the Agreement into subordinate legislation, as possible. • For a long-term measure, make an amendment on national legislation to be fully consistent with the Agreement. • Major international fisheries laws should be merged into national laws/regulations. | 3 | <ul style="list-style-type: none"> • Regional training for legal experts on port State measures. • Formulate a new subordinate legislation or amend the fisheries law. • Training campaign for member countries. |

| Gap or constraint | Measures to address gap or constraint | Priorities for action planning | Workshop recommendations |
|---|--|---------------------------------------|---|
| Lack of national strategy for combating IUU fishing | <ul style="list-style-type: none"> Establish a national strategy/national maritime security policy. | 5 | <ul style="list-style-type: none"> Strengthen the understanding of the Agreement can benefits the country/economic/ social impacts to the country. Capacity building workshops. |

Regional level:

| Gap or constraint | Measures to address gap or constraint | Priorities for action planning | Workshop recommendations |
|--|---|---------------------------------------|---|
| Different or Inconsistent interpretation of the provisions of the Agreement in the region | Enlighten high ranking officials such as Ministries or Secretaries regarding the provisions of the Agreement. | 1 | Conduct a regional training program on the legal interpretation of the Agreement for high ranking officials. |
| Lack of ratification or implementation of the Agreement in the region | Encourage countries to study and ratify the Agreement and educate them on the benefits of implementing the Agreement. | 2 | Conduct workshop on capacity building on the higher level. |
| Lack of protocols or guidelines on information sharing or cooperation mechanism in the region as required under Article 6 of the Agreement | Formulate a guideline or protocol on information exchange in the region. | 3 | Conduct workshop on the creation of a guideline or protocol on information sharing or cooperation in the region. |
| Lack of, or different practices or procedures for boarding and inspection in ASEAN countries | Harmonize procedures on boarding and inspection in the region. | 4 | Conduct a regional training program for inspectors and create a harmonized procedure for boarding and inspection in the region. |

Working Group 2: Institutional and capacity development

National level:

| Gap or constraint | Measures to address gap or constraint | Priorities for action planning | Workshop recommendations |
|---|--|--|---|
| The overlapping policies taking within agencies | <ul style="list-style-type: none"> Needs more coordination between agencies. Needs umbrella policy. | <ul style="list-style-type: none"> Review and amend the national regulation/policies. Coordination meeting between agencies. | Encourage the countries to strengthen their inter-agency coordination. |
| There is national plan of action but there is no legal authority to support the plan of action | There must be a legal status to support the plan of action. | Make proposal to be submitted to legislative body for possible enactment. | Encourage the countries to facilitate the submission of the proposal. |
| Human capacities are need to be improved (need more personnel, more resources, and more training) | Needs technical knowledge of fishing activities; needs training of inspection procedure (capacity building in the technical, inspection, legal, and procedural). | <ul style="list-style-type: none"> Prioritization of human resources development. Capacity building for stakeholders related to this constraint. | <ul style="list-style-type: none"> Identify the institutions or organizations for the human resources development, including funding support. Encourage the RFMOs to held capacity building for member countries. |
| Lack of database: IUU list, fishing register | Needs database collection and management. | Inter-agency cooperation for the data collection. | Develop the integrated database system. |

Regional level:

| Gap or constraint | Measures to address gap or constraint | Priorities for action planning | Workshop recommendations |
|--|--|--|--|
| Lack of regional boat registration record both legal and illegally | Establishment regional boat registration record. | Coordination regional meeting regarding the establishment mechanism. | FAO-SEAFDEC-RPOA to organize this coordination regional meeting. |
| Lack of the information of the designation port in the region | Sharing the information of the designation port in the region. | Each country should propose the designation of the port and sharing the information. | Agreement on the identification for the institution to coordinate and manage the information system in the region. |

| Gap or constraint | Measures to address gap or constraint | Priorities for action planning | Workshop recommendations |
|--|--|---|--|
| No standard procedure of port inspection | Harmonizing the regional standard procedure of port inspection. | Set up regional working group from the representatives of each country to establish the common standard of port inspection. | FAO and existing regional organizations should support the working group activities. |
| Weakness of bilateral and multilateral mechanism in the region regarding the information sharing | Improve the bilateral or multilateral cooperation in the region. | Set up the network to improve the regional cooperation. | Support from existing RFBs to the establishment of the network. |
| Formal agreement for the regional cooperation (RFBs) does not exist | Strengthening the cooperation of the existing RFBs. | Coordination meeting among the RFBs and other stakeholders. | Propose FAO to coordinate and manage the meeting. |

Working Group 3: Operational

National level:

| Gap or constraint | Measures to address gap or constraint | Priorities for action planning | Workshop recommendations |
|--|---|---------------------------------------|--|
| Inspectors need to have a clear understanding of the roles and responsibilities of the national agencies responsible for the implementation of PSM | <ul style="list-style-type: none"> • Legal/institutional and capacity working group to advise. | 1 | <ul style="list-style-type: none"> • Each country to determine and notify FAO of the competent authorities for the implementation of PSM. • Each country to formulate guidelines on the implementation of PSM. |
| Lack of supporting equipment/guides or tools e.g. identification of species | <ul style="list-style-type: none"> • Develop species ID guide (several guides already in existence). • Training on species ID. • DNA sample kit. | 2 | <ul style="list-style-type: none"> • Each country to identify the need of supporting equipment for inspection. • SOP to include species ID guide (link to RFMO SOP). |
| Verification of quantity of catch on board | <ul style="list-style-type: none"> • Training on hold volumetric (use FAO guide). • Analysis of the ship plan. • Stability booklet. | 3 | <ul style="list-style-type: none"> • Training package to include verification of quantity of catch on board. |

| Gap or constraint | Measures to address gap or constraint | Priorities for action planning | Workshop recommendations |
|--|--|---------------------------------------|--|
| Safety of inspectors | <ul style="list-style-type: none"> Inspectors are accompanied by support officers. Agencies to notify the whereabouts of inspectors. | 4 | <ul style="list-style-type: none"> Where required, to develop internal safety procedures for inspectors. |
| Lack of cooperation by masters | <ul style="list-style-type: none"> Non-compliance results in denial of port access. | 5 | <ul style="list-style-type: none"> To have a provision in domestic legislation to deny access if masters do not comply. |
| Communication issues e.g. language barrier | <ul style="list-style-type: none"> Communications to take place in English. Engage translator (ship master/agent). Develop language card. | 6 | <ul style="list-style-type: none"> National authority to establish access to interpreter and to determine who fund. |
| Inspection time constraint | <ul style="list-style-type: none"> Landing permit. | 7 | <ul style="list-style-type: none"> Legislation is placed to ensure vessels do not unload until authorization is given. |

Regional level:

| Gap or constraint | Measures to address gap or constraint | Priorities for action planning | Workshop recommendations |
|---|--|---------------------------------------|--|
| Inspector concerns over the requirements to be familiar with multiple RFMO measures (e.g. CCAMLR prohibits gillnet) | <ul style="list-style-type: none"> To develop a SOP supported by a checklist for each RFMOs. | 1 | <ul style="list-style-type: none"> FAO in conjunction with RFMOs to develop SOP, species ID guide, language cards and supporting tool kits. |
| Regional information sharing | <ul style="list-style-type: none"> To develop centralized web-service for inspectors. In the interim period, to develop a clear set of guideline or SOP for the RPOA and training programme. | 2 | <ul style="list-style-type: none"> FAO to provide guidance on such centralized web-service. |
| Joint inspection in the region (assist in harmonizing inspection standards) | <ul style="list-style-type: none"> Undertake joint inspection as guided by SOP. Develop an agreement that establishes terms for inspection. | 3 | <ul style="list-style-type: none"> Regional agreement/ MOU to conduct joint inspections. |

Problem-solving exercise: The Penzance

The problem

The Penzance, a purse seiner flagged in the country of Jollyroger, fished without a licence for one month in the exclusive economic zone (EEZ) of Paradise. Fisheries MCS officials were aware of this because of the reports from their Automatic Identification System (AIS), based on signals from the Penzance.

The MCS officials were also aware that several vessels fishing in the region, also flagged to Jollyroger, held forged licences. These vessels would fish illegally in one country, then travel to another country to offload the fish where officials might not be able to recognize the forgery. They would then seem to be in compliance with the laws of the coastal State, the rules of an applicable RFMO and the FAO Agreement on Port State Measures.

However, Paradise was a developing country and had no patrol vessels or other means of intercepting the Penzance. Using the AIS, MCS officials tracked the Penzance to the port of a nearby coastal State, Ebony. They contacted the Ebony port officials through the Atlantic Tuna RFMO and requested cooperation in port inspection (The Atlantic Tuna RFMO maintained an IUU Vessel List but the Penzance was not on the list).

The inspection was carried out in Ebony, but the master of the Penzance refused to show the inspectors a copy of the vessel licence, contrary to a binding decision of the Atlantic Tuna RFMO. Without that, Ebonian officials did not have enough evidence to keep the Penzance in port. However they did learn that the Penzance was on its way to Muscle, a coastal State in the Indian Ocean with rich tuna fishing grounds.

The Penzance set sail for Muscle, and expected to obtain a license to fish under a fisheries access agreement between Muscle and Reio, a regional economic integration organization of which Jollyroger was a member.

Paradise MCS officials took action. They prepared a letter for their Fisheries Minister to send to her counterpart in Muscle. The letter explained violations under Paradise Regulations, including unlicensed fishing, transshipment and export of fish, and failure to stow gear unless it is authorized to fish. It also noted the expanding and deepening efforts being made by the international community to combat IUU fishing activities, and referred to the United Nations Fish Stocks Agreement, the FAO Agreement on port State measures and the FAO International Plan of Action to combat IUU fishing.

The letter requested Muscle to detain and inspect the Penzance on behalf of Paradise for the purpose of obtaining evidence of IUU fishing activity in Paradise waters. In addition, subsequent assistance was requested towards potential enforcement actions.

Upon receiving the letter, the Fisheries Minister of Muscle asked his MCS officials for advice. They advised their Minister of the value of cooperation, and relevant provisions under the UNFSA (Article 21(5)), as well as the port State measures Agreement (Articles 6, 12, 15 and 18). He ordered the best inspection team to fly to the port where the Penzance had docked and detained the vessel for inspection.

After inspection, the Fisheries Minister of Muscle wrote to his counterpart in Paradise, and confirmed that the licence was forged and illegal fishing had taken place in Paradise. He invited Paradise to send a qualified inspector to Muscle to further investigate the findings, and stated it was now incumbent on Paradise to enter into discussions with Jollyroger as the flag State.

The Minister of Muscle also wrote to Jollyroger and stated that the inspection corroborated the information sent by Paradise, and in accordance with the UNFSA and Port State Measures Agreement they had detained the vessel and were informing them as the flag State to take the appropriate investigative action within three days, or to inform them accordingly as to what Muscle, as the port State, should do.

The Jollyroger Embassy immediately called senior MCS officials in Muscle and threatened legal action unless the Penzance was immediately released and given a licence to fish in the waters of Muscle under the bilateral agreement with Reio. Muscle and Reio were both members of the Indian Ocean Tuna RFMO, which had adopted a binding Resolution on Port State Measures which was almost identical to the FAO Agreement on Port State Measures. It also maintains an IUU vessel List.

The Fisheries Minister of Paradise was out of the country, could not be reached and had instructed her officials not to take any action in her absence. She returned, but because of the temporary lack of communication during a tense situation, Muscle agreed with Jollyroger (which was still threatening legal action) on the release of Penzance. Jollyroger agreed to investigate and Muscle decided not to issue a license to Penzance pending the conclusion of the investigation.

Considerations

International instruments

- Paradise, Muscle and Reio are Parties to the UN Fish Stocks Agreement
- Reio has ratified the FAO Port State Measures Agreement
- Muscle has signed the FAO Port State Measures Agreement
- Paradise has not yet signed or ratified the FAO Port State Measures Agreement.

RFMO membership

- Paradise, Ebony and Reio are members of the Atlantic Tuna RFMO
- Muscle and Reio are members of the Indian Ocean Tuna RFMO

Internal regulation

- Reio has a regulation prohibiting IUU fishing by vessels flying the flag of its members.

The exercise

1. What role does the Agreement play in this problem, considering it has not yet entered into force?
 - Please include considerations relating to its relationship with other international instruments, and its application to States, Regional Economic Integration Organizations and RFMOs.
2. What is the role that the RFMOs play in relation to port State measures in this problem?
 - Please include considerations relating to legal, communications, information, MCS and other relevant issues.
3. What action should Paradise and Muscle take if Jollyroger does not carry out an inspection consistent with its undertaking?
 - Please include international, regional and bilateral considerations.

Reports of the working groups on the problem-solving exercise

Working Group 1: Legal and policy

What role does the FAO Port State Measures Agreement play in this problem, considering it has not yet entered into force?

1. What is the role of Jollyroger as a flag State of Penzance (Jollyroger is a member of a Regional Economic Integration Organization [REIO])?

- Since REIO are parties of UNFSA, FAO PSMA, IOTC RFMO and ATC RFMO;
- And REIO has a national regulation related to IUU fishing;
- Jollyroger has to ensure that vessel flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of other States (IUU fishing).
- Jollyroger as a flag State of Penzance's vessel has to fully comply with the provision of PSMA and UNFSA as a party and it is also has to comply with RFMO's resolution as a contact party.

First conclusions:

As flag State, it failed to fulfill its obligations and to control its own vessels and to undertake certain supportive actions in relation to port State measures (Article 20 of the Agreement and 18 of UNSFA)

2. What is the role of Port States (Ebony and Muscle)?

Although Muscle just signed FAO Port State Measure, but Muscle and REIO are members of UNSFA Agreement and IOTC, in this case Muscle can apply Resolution 10/11 on Port State Measure on IUU. The Specific measures can be applied as follows:

- Promptly notify the Flag State, the IOTC Secretariat, Atlantic and relevant coastal States (Ebony, Paradise, ...), about the results of the inspection findings.
- Deny Penzance the use of its port for landing, transshipping, packaging and processing of fish, and other port services.

What is the role that the RFMOs play in relation to port State measures in this problem?

The role that RFMOs (such as Atlantic Tuna Commission [ATC] and IOTC) play in relation to port State measures in this scenario is become a venue where the parties concerned can discuss for possible legal action against Penzance or its flag State. For example, ATC should be the venue for discussion whether or not Penzance should be included in their IUU list on the basis of the report of Paradise while IOTC should be the venue for discussion whether or not to include the said vessel in their IUU list on the basis of the report of its member state Muscle.

What action should Paradise and Muscle take if Jollyroger does not carry out an inspection consistent with its undertaking?

Since Muscle and REIO (where Jollyroger is a member), which are both the port States in this case, has ratified the Agreement, they are both bound to the provisions of the Agreement specially Article 11.1 (b) on the use of ports. Muscle should deny the use of their port to Penzance in accordance to that provision. Muscle should also inform the RFMO to which the flag State Jollyroger is a part (REIO and IOTC), the results of their inspection on Penzance. In this case, the results corroborated with information sent by Paradise that the said vessel conducted IUU fishing in their EEZ. Using this information, maybe REIO

and IOTC will consider discussing in their meeting whether or not to include Penzance in their respective IUU lists.

For Paradise, since they are a member of ATC and so is the flag State Jollyroger, they are both bound to the conservation and management measures of that RFMO. Paradise should report to the ATC that Penzance conducted IUU fishing in their EEZ and recommend for possible inclusion in the IUU list on the basis of their findings and the inspection report from Muscle.

Finally, Paradise and Muscle should carry out legal action against the flag State Jollyroger in the United Nations should Jollyroger does not carry out inspections consistent with its undertaking because they are all parties to the UNFSA.

Working Group 2: Institutional and capacity development

What is the role that the RFMOs play in relation to port State measures in this problem?

All instruments that REIO is a party applies to Jolly Roger. However, Jolly Roger was not cooperating. Table below shows the relationship of the various international instruments and RFMO.

| | Atlantic Tuna | IOTC | UNFSA | PSM | UNCLOS |
|----------|----------------------|-------------|--------------|------------|---------------|
| Paradise | Y | | Y | | Y |
| REIO | Y | Y | Y | Ratified | Y |
| Ebony | Y | | | | Y |
| Muscle | | Y | Y | Signed | Y |

Information Sharing

Atlantic Tuna RFMO was advised by Paradise about IUU activities of Penzance. The RFMO notified all members including Ebony, Jolly Rogers and REIO about the alleged offence by Penzance.

Communication

Paradise and Muscle to cooperate under UNCLOS Art. 118 and Art. 23 of UNSFA. Muscle confirms IUU to Paradise and Jolly Roger. Paradise advise IOTC of Penzance IUU activity. Paradise also to request Muscle not to issue coastal state license until matter is investigated and resolved. Depending on the type of licence, IOTC should request REIO not to issue licence until satisfactory investigation by JollyRoger.

Working Group 3: Operational

What action should Paradise and Muscle take if Jollyroger does not carry out an inspection consistent with its undertaking?

Paradise:

- Should send a letter to follow up the inspection/action taken by Muscle under the FAO PSMA and UN Fish Stock Agreement, because Muscle signed the Agreement and both countries are the party under UN Fish Stock Agreement;
- Should also inform Atlantic Tuna RFMO about this IUU fishing in Paradise's EEZ;
- Should inform Jollyroger that her fishing vessel (Penzance) caught Tuna in the EEZ of Paradise without licence;

- Should inform Reio regarding the illegal fishing in Paradise's EEZ made by Penzance vessels flag Jollyroger.

Muscle:

- Should response/inform Paradise regarding the her action has taken to the Penzance;
- Should inform Indian Ocean RFMO and Atlantic RFMO that the Penzance fishing illegally in Paradise's EEZ and Muscle is taking investigation and both RFMO should put the Penzance in the IUU list;
- Should inform Jollyroger that the Penzance fishing illegally in the Paradise's EEZ and this vessel is held for investigation by Muscle.

Penzance role play

SUMMARY

Scene 1 – Aboard the Penzance in a Paradise port Representative of ABC Agency (Paradise based), Penzance owner/master

The ship's agent, a representative of ABC Agency, is having a discussion with the person who is both the owner and master of the fishing vessel. They are on board the Penzance, in a Paradise port.

ABC Agency is well known as “a bunch of crooks”. It is owned by nationals of Jollyroger and has offices on three continents. It serves as ships agents for vessels from Jollyroger in many countries, including Muscle. This takes into account that Jollyroger vessels migrate between different regions to follow the fish. It also is involved in drug smuggling.

ABC Agency is sneaky and unethical. It profits by its dishonesty and agents are instructed to be dishonest with the vessel owner and with the Paradise officials.

The owner/master is also sneaky and unethical. He plans to fish in Paradise for a few weeks, offload in Ebony and proceed to Muscle for further tuna fishing.

They are discussing arrangements for a licence to fish in Paradise. The task is for the agent to sell the owner/operator a forged licence.

Scene 2 – Ministry of Fisheries, Paradise Meeting, Minister, Director of Fisheries, Attorney-General, Secretary of Foreign Affairs, Port Authority, Rapporteur

The Minister for Fisheries has been advised that the Penzance, a purse seiner that fishes for tuna, has been fishing illegally in the waters of Paradise. It is probably using a forged license and is sailing to Muscle. Paradise is a developing country and does not have capacity to intercept the vessel in the Fisheries Waters. The Minister wants a full briefing on the situation, and wants to explore the possibility of requesting the cooperation of Muscle.

In this scene, the Minister is chairing a meeting. The meeting's task is to draft a letter to Muscle seeking cooperation, including evidence

Scene 3 – Ministry of Fisheries, Muscle Minister, Director of Fisheries, Attorney-General, Secretary of Foreign Affairs, Communications officer

The Minister for Fisheries has received a letter from the Minister for Fisheries in Paradise. The Penzance is on its way to the port in Muscle, and there is clear evidence to show that there were violations of the Paradise Fisheries Law. The issues are whether Muscle can detain and inspect a vessel at the request of another coastal State, and what has to be done in relation to the flag State, Jollyroger and Reio.

The Minister is chairing a meeting and wants a full briefing on the situation, and wants to be sure there is a legal basis for detaining and inspecting a vessel that may have violated the laws of another coastal State.

The meeting's task is to decide whether to take port State measures and if so what instruction should be given to the inspectors, and how should Jollyroger and Reio be handled.

**Scene 4 – Ministry of Fisheries, Muscle
Same meeting as Scene 3, with Inspector**

The meeting reconvenes, the Chief Inspector reports findings of the inspection. The meeting's task is to decide what to do with the vessel, whether to issue a license, whom to inform and whether to begin legal proceedings.

**Scene 5 – Minister's Office, Muscle
Minister, ABC Agency vessel agent**

The Minister of Fisheries in Muscle is approached by an agent from ABC Agency (Muscle Office) for a settlement.

Scene 6 – Legal proceedings in Muscle

The task is to hold a mock trial.

ROLES

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|-----------------|--|-----------------------------|
| 1. | Penzance Owner/Master | LEEPAYAKOON Praphan |
| 2. | ABC Agency – Vessel Agent (based in Paradise) | CHOKESANGUAN Bundit |
| Paradise | | |
| 3. | Minister | BERYLLINDA Regina Rosa (Ms) |
| 4. | Director of Fisheries | JAAFAR Abdullah |
| 5. | Attorney-General | POUM Sotha |
| 6. | Secretary of Foreign Affairs | DOS SANTOS SILVA Constancio |
| 7. | Port Authority | CHIEMANUKULKIT Watchara |
| 8. | Rapporteur | GIANAN Paciano |
| Muscle | | |
| 9. | Minister | NHUNG Nguyen Thi Trang (Ms) |
| 10. | Assistant to Minister | PHAM NGOC Tuan |
| 11. | Director of Fisheries | ING Try |
| 12. | Attorney-General | GUTERRES Acácio |
| 13. | Secretary of Foreign Affairs | XIE Renhui (Ms) |
| 14. | Communications officer | KULLAVANIJAYA Bundit |
| 15. | Inspector | ABDUL RAUP Syahril |
| 16. | ABC Agency - Vessel Agent (based in Muscle) | INDRAPIM Adhinand (Ms) |
| 17. | Prosecutor | WIDODO Purihitajati (Mrs) |
| 18. | Prosecutor's assistant | SANZ Merlin |
| 19. | Defence Counsel | NA POMBEJRA Doungporn (Ms.) |
| 20. | Defence Counsel Assistant | BUSTAMAH Bakar |
| 21. | Judge | ABU HANIP Halimi |
| 22. | President of Jollyroger Boatowners Association | THANAMALARAT Thewan |
| 23. | Representative of the Happy Tuna Company | CADAPAN Peter Erick |

This document contains the report of the FAO/APFIC Workshop on Implementing the 2009 FAO Agreement on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing (the Agreement), which was held in Bangkok, Thailand, from 23 to 27 April 2012. The workshop focused on the implementation of the Agreement from a legal and policy, institutional and capacity development, and operations stand points. Following the introduction, participants were apprised of IUU fishing characteristics in Southeast Asia including its scope, impact on resources, and economic. The next section addressed the recent work of the regional plan of action to promote responsible fishing practices including measures to combat IUU fishing in Southeast Asia. Port State measures in the global context were considered together with the use of port State measures to prevent, deter and eliminate IUU fishing. The key provisions of the Agreement and implications for regional fisheries management organizations were highlighted along with RFMO practices in supporting the implementation of port State measures. Fisheries fleets and ports in Southeast Asia were the subject of the next section followed by a review of Indian Ocean Tuna Commission Resolution 10/11 on port State measures. The national questionnaire on port State measures that had been provided to the participants in advance of the workshop was analysed. The role of fisheries managers and inspectors in implementing port State measures was considered and ways of moving forward with the implementation process addressed. Stakeholders' perspective on port State measures and good governance issues were reviewed. Participatory activities and role play led to the formulation of action planning and workshop recommendations at the national and regional levels. Opportunities for regional cooperation to implement port State measures were addressed in detail. The anonymous evaluation of the workshop was positive. Funding and support for the workshop were provided by the FAO Regular Programme, Government of the Republic of Korea (Trust Fund GCP/INT/136/ROK), IOTC and the Australian Fisheries Management Authority.

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