July 2009

منظمة الأغذية والزراعة للأمم المتحدة | 联合国粮食及农业组织 | Food and Agriculture Organization of the United Nations | Organisation des Nations Unies pour l'alimentation et l'agriculture | Продовольственная и сельскохозяйственная организация Объединенных Наций | Organización de las Naciones Unidas para la Agricultura y la Alimentación

REGIONAL COMMISSION FOR FISHERIES

Third meeting of the Working Group on Fisheries Management

Doha, Qatar, 20-22 October 2009

REVIEW OF FINDINGS OF THE FAO FISHERIES CIRCULAR RELATING TO FISHERIES LAWS OF CERTAIN MEMBERS OF THE REGIONAL COMMISSION FOR FISHERIES AND IMPLICATIONS FOR FUTURE WORK OF THE WORKING GROUP ON FISHERIES MANAGEMENT

INTRODUCTION

1. In the context of combating illegal, unreported and unregulated (IUU) fishing and related activities, prioritized objectives of the RECOFI Regional Strategy and Priorities for Regional Fisheries Management included promotion of legal discussion and review and revision of fisheries legislation to reflect policy and international commitments. Accordingly, it was agreed to activities to be undertaken included a desk study to review fisheries laws of RECOFI Members, with a focus on gaps and shortcomings in fisheries legislation and measures to be taken to strengthen and harmonize it.

2. The draft desk study was prepared and delivered at the FAO/RECOFI Workshop to Combat Illegal, Unreported and Unregulated Fishing that was held in Muscat, Oman from 30 March to 2 April 2009. The study was later finalized, taking into account comments sought during the Workshop, and published in an FAO Fisheries Circular.[1]

METHODOLOGY AND OUTCOME OF THE ANALYSIS

3. Fisheries laws were provided for the study by seven RECOFI Members,[2] and individual reviews as well as a general synthesis were each undertaken in the context of a framework of key elements of fisheries laws including use of terms; objective, scope and application of the law; institutional and policy provisions; fisheries conservation, management and development; access regime; licensing systems; international aspects; monitoring, control and surveillance; post-

[1] Swan, J. Review of fisheries laws of certain Members of the Regional Commission for Fisheries. *FAO Fisheries and Aquaculture Circular*. No.1049. Rome. FAO. 81p. (in press)

[2] Bahrain, Iran, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

harvest, trade; evidentiary provisions; judicial/administrative processes, and violations and fines/penalties.

4. The synthesis identified general gaps and constraints in legislation across the RECOFI region, with reference to the existing provisions, international instruments and best practices. Possible options for reviewing and overcoming the constraints were suggested, including reference to the implementation of international instruments and strengthening relevant legislative provisions.

5. Four of the seven original laws reviewed were adopted in the 1980s, with some of the older laws being almost identical. Some laws have been amended or expanded through subsequent regulations. Most countries are not parties to many international fisheries instruments that have been developed over the past two decades, with six countries having ratified and one having signed, but not ratified, the 1982 United Nations Convention on the Law of the Sea (1982 UN Convention), none having accepted the 1993 FAO Compliance Agreement and one having ratified the 1995 UN Fish Stocks Agreement. In addition, one country has elaborated a National Plan of Action to Combat Illegal, Unreported and Unregulated Fishing (NPOA-IUU) to implement the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate IUU Fishing (IPOA-IUU). Two new areas being developed on the international front involve port State measures and flag State performance.

6. The 1993 FAO Compliance Agreement and the 1995 United Nations Fish Stocks Agreement focus primarily on high seas fishing activities. However, definitions, principles, management approaches and concepts contained in the latter have been extended, adapted and applied in many national and regional laws and international instruments such as the IPOA-IUU and the draft FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, including by non-parties. This has generally not occurred yet among RECOFI Members, and even the 1982 UN Convention has not been fully implemented by any law.

7. A need therefore emerged from the analysis for most national legislation to be updated to include best practices and implementation of relevant international law and instruments, including new instruments that are being developed to combat IUU fishing. It was recognized that updated national legislation could serve also as a basis for enhanced sub-regional or regional cooperation in fisheries management.

8. At the Oman Workshop, participants expressed appreciation for the review and underscored its usefulness for reviewing legislation at national level and its relevance for the harmonization of fisheries regulation at regional level. It was anticipated that RECOFI Members would review the paper in greater depth. The Workshop acknowledged that there was a need for improvement to the laws and that the review would provide a sound basis for moving forward with RECOFI activities such as the harmonization of management and application of the ecosystem approach to fisheries.

IMPLICATIONS FOR FUTURE WORK OF THE WORKING GROUP ON FISHERIES MANAGEMENT

9. AS THE Working GROUP ON FISHERIES MANAGEMENT CONTINUES ITS WORK TO IDENTIFY WAYS AND MEANS OF SUBREGIONAL AND REGIONAL COOPERATION FOR FISHERIES MANAGEMENT, INCLUDING COMBATING IUU FISHING, THE LEGAL BASIS FOR SUCH COOPERATION WILL BE IMPORTANT. HARMONIZED LEGAL REQUIREMENTS WOULD BE NEEDED FOR such ACTIVITIES AS FISHERIES REPORTING, INFORMATION SHARING, ADOPTING MANAGEMENT MEASURES, LICENSE REQUIREMENTS, OFFENCES AND PENALTIES. IMPORTANTLY, LAWS WOULD NEED TO AUTHORIZE CERTAIN ACTIVITIES BEYOND AREAS OF NATIONAL JURISDICTION CONSISTENT WITH INTERNATIONAL LAW SUCH AS REQUIRING NATIONALS TO HOLD LICENSES AND AUTHORIZING MONITORING, CONTROL AND ENFORCEMENT IN SUCH AREAS.

10. THE MOMENTUM ALREADY ESTABLISHED BY THE LEGAL REVIEW COULD BE HELPFUL AS A BASIS FOR FURTHER REVIEW AND AGREEMENT ON key areas in fisheries laws that need strengthening and harmonization in order to provide a basis for enhanced regional cooperation in fisheries management, and possible processes or mechanisms for harmonization.

11. Of particular importance for enhanced regional cooperation would be components of the laws relating to the use of terms, scope and application of the laws, fisheries conservation, management and development, access regime, licensing, monitoring, control and surveillance and fines/penalties.

12. In parallel, national reviews of fisheries and related legislation could be encouraged, based in part on the findings in the FAO Fisheries Circular. This may be accompanied by an institutional review, to ensure that institutional and human capacity, as well as national institutional and policy coordination, would support any measures or actions taken to enhance sub-regional or regional cooperation in fisheries management.

SUGGESTED ACTION BY THE WORKING GROUP

13. The Working Group is invited to:

- consider the review of fisheries laws of certain RECOFI Members and comment on it, as appropriate;
- consider, as appropriate, implementing the review's findings to enhance and strengthen legislation, and
- provide guidance, as appropriate, to the Secretariat for follow up action.