

Framework Study for
Model Fisheries Legislation
in South East Asia
- REPORT ON AUSTRALIAN LEGISLATION -

Prepared for

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FRAMEWORK STUDY FOR MODEL FISHERIES LEGISLATION IN SOUTH EAST ASIA

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EXECUTIVE SUMMARY

The Regional Plan of Action (RPOA) to Promote Responsible Fishing Practices including Combating Illegal, Unreported and Unregulated Fishing has been adopted by the eleven participating countries of Australia, Brunei Darussalam, Cambodia, Indonesia, Malaysia, Papua New Guinea, the Philippines, Singapore, Thailand, Timor-Leste, and Vietnam. The ability of each country to give effect to the RPOA is, to a large extent, a factor of its legislative fisheries management framework.

To determine the current capacity of each country to fulfil its obligations under the RPOA, the legislation of each has been assessed against 'benchmark measures' under categories based on international and regional instruments and agreements relevant to responsible fisheries management:

- Ecosystem Approach to Fisheries Management
- Data Collection, Monitoring and Research
- Management Plans
- Fishing Vessel Registration
- Flag State Authorisations to Fish and Effective Control over Nationals
- Authorisations to Fish by the Coastal State
- Monitoring, Control and Surveillance
- Port State Controls
- Catch Certification and Other Trade Measure
- Tracking Proceeds of Illegal Fishing
- Reporting Requirements

The legislation of each of the eleven countries has been assessed against these benchmarks to identify the current strengths and weaknesses of each in terms of its ability to implement responsible fishing management practices.

This report contains:

- An overview of (i) the regional and international legal framework (ii) benchmark measures for responsible fisheries practices (iii) a draft legislative model and (iv) capacity building requirements (human and institutional) to implement effective fisheries legislation, and
- A detailed assessment of fisheries legislation specific to Australia only.

Amongst the eleven countries there were a number of strengths noted in the existing legislative arrangements:

- States with recently updated legislation have introduced the concept of ecosystem based fisheries management and/or included related objectives of sustainable management and conservation. These countries include Indonesia, Papua New Guinea, the Philippines, Timor-Leste, Vietnam and to a lesser extent Cambodia.
- Some countries have introduced the requirement for management plans including Australia, Cambodia, Malaysia, Papua New Guinea and Vietnam.
- Vessel registration systems are established in all RPOA member countries except Brunei Darussalam and Cambodia (which requires registration but provides no elaboration of requirements).
- All countries have implemented at least a basic form of general licensing of commercial fishing activities.
- The development and implementation of legislative capacity to track the proceeds of illegal fishing is a new field, although Indonesia, Australia, Vietnam, Thailand, Singapore and Papua

New Guinea have developed initial legislation and implementing systems. Such work has commenced in Timor-Leste and Cambodia; systems are in place in Malaysia and Brunei Darussalam but with limited effectiveness.

There are also a number of gaps and weaknesses identified:

- The vessel registration systems are weakened in most cases by the absence of a requirement to take into account the history of flagging, ownership and compliance of vessels with fisheries laws.
- A consistent weakness across numerous states was the absence of measures to exercise effective port state controls over fishing vessels including designation of ports and the requirement for advanced notice of entry.
- A concerning gap within the region is in laws that provide effective control of nationally flagged vessels outside the Exclusive Economic Zone (EEZ) of the flagging State. Only Australia, Cambodia, Timor-Leste and Vietnam address this requirement to any extent, with the remaining countries enforcing no requirement for its vessels to comply with international agreements or the laws of other states.
- While most states have some broad powers to undertake monitoring, control and surveillance of fishing vessels, only Australia and Papua New Guinea currently implement requirements to comply with vessel monitoring systems and observer programs. Indonesia has introduced a vessel monitoring program but is yet to establish observers on vessels.
- The reporting obligations to FAO and other international and regional organisations are not well articulated across the legislation of most countries – it is absent in Vietnam, Timor-Leste, Thailand, Singapore, Papua New Guinea, Malaysia, Indonesia, Cambodia and Brunei Darussalam. The requirement is reflected somewhat in Indonesian legislation.
- Although all countries have general licensing requirements with respect to commercial fishing there are relative strengths and weaknesses in relation to licensing of foreign fishers within a State's EEZ and the licensing of fishing on the high seas. Further, there are few examples of the requirement to take into account the history compliance, when considering applications for licences.
- In most cases, the fisheries laws do not articulate principles of data collection, compilation, collection and exchange.
- The concept of catch certification has been given a recent increase in profile by the introduction of the European Union (EU) Regulation 1005/2008. As expected, a response to the regulation (which requires the production of a catch certificate with every consignment of wild caught seafood product entering EU member countries) has not been reflected within the legislation of RPOA member countries at this early point.

The gaps identified in the legislation review highlight the need for comprehensive modern legislation to support sustainable fishing practices and to provide a framework for effective cooperation among RPOA members to combat IUU fishing.

With this as a foundation, draft legislative frameworks are provided relevant to each benchmark, drawing on legislation primarily from Australia, New Zealand, Papua New Guinea and the United States. This model legislation is provided to guide RPOA countries in adopting legislative provisions for inclusion in a modern fisheries law which will form the basis for a framework of responsible fishing management practices.

The report also highlights the various target groups needing capacity building in RPOA participating countries in order to effectively implement fisheries legislation - including the composition of such target groups, their capacity requirements, and in particular the types of knowledge and skills needed.

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PART A – OVERVIEW REPORT

1. INTRODUCTION

This report aims to develop a framework for model fisheries legislation to foster development and implementation of comprehensive, compatible and effective fisheries management legislation in participating countries of the Regional Plan of Action (RPOA) to Promote Responsible Fishing Practices including Combating Illegal, Unreported and Unregulated Fishing in the Region. It is expected that developing a framework for model fisheries legislation will make a major contribution to sustainable development in the South East Asian region through improved natural resource governance and that upon implementation, the model legislation will support broader outcomes such as poverty reduction, food security, institutional strengthening, and generally better cooperation between countries in the region.

The report will achieve this objective by developing international and regional benchmark measures for promoting responsible fishing and by identifying gaps against these measures in the domestic legal framework of each RPOA participating countries - Australia, Brunei Darussalam, Cambodia, Indonesia, Malaysia, Papua New Guinea, the Philippines, Singapore, Thailand, Timor-Leste and Vietnam.

The report comprises two parts:

Part A, this part, which contains:

- An Overview of the Regional and International Legal Framework: the sum of which creates the benchmarks for responsible fisheries management.
- Benchmark Measures for Responsible Fishing Practices: based on the collective regional and international legal framework, synthesised into discrete measures of key elements.
- Draft Legislative Model: developed to fulfil the requirements relevant to each benchmark measure, drawing on model legislation primarily from Australia, New Zealand, Papua New Guinea and the United States.
- Capacity Building Requirements: highlighting the capacity building needs of target groups in RPOA participating countries in order to effectively implement fisheries legislation.

Part A is supported by four annexes:

- **Annex 1**, Details of Regional and International Legal Instruments
- **Annex 2**, Details of European Commission Regulation 1005/2008
- **Annex 3**, Matrix of Categories of Benchmark Measures for Responsible Fishing Against Provisions of International and Regional Instruments
- **Annex 4**, Detailed Provisions for Fishing Records

Part B contains the overview of the review of Australia's domestic legislative framework against the benchmark measures and is supported by **Annex 5** containing the detailed assessment.

2. REGIONAL AND INTERNATIONAL LEGAL FRAMEWORK

The regional and international legal instruments collectively form a set of obligations for countries on the development of responsible fishing practices under their own domestic legislation.

This Section provides an overview of these instruments. **Section 2.1** provides a list of all relevant regional and international instruments, while **Section 2.2** provides the status of ratification and adoption of the major agreements by each of the participating countries.

2.1 Overview of the regional and international legal framework

At the international level, there is a range of legally binding fisheries instruments which are relevant to participating countries. These include:

- United Nations Convention on the Law of the Sea (LOSC) (1982)
- Food and Agriculture Organisation (FAO) Compliance Agreement (1993)
- United Nations (UN) Fish Stocks Agreement (1995)
- FAO Port State Measures Agreement (2009)

In addition there is a range of non-legally binding international instruments including:

- FAO Code of Conduct 1995, and its four International Plans of Action (IPOA)
 - IPOA-IUU (2001)
 - IPOA-Capacity (2001)
 - IPOA-Seabirds (2001)
 - IPOA-Sharks (2001)
- UN Resolutions on Driftnet Fishing (1991)
- UN Resolutions on Sustainable Fisheries (2004)
- Rome Declaration on IUU Fishing (2005)
- FAO Model Scheme on Port State Measures to Combat Illegal, Unregulated and Unreported (IUU) Fishing (2009)
- FAO Guidelines (2008)

Regionally, there are a number of organisations which have established fisheries and environment related instruments which influence the country level requirements for fisheries management. These include:

- Food and Agriculture Organisation of United Nations (FAO)
- South East Asian Fisheries Development Centre (SEAFDEC)
- Association of South East Asian Nations (ASEAN)
- Asian Pacific Economic Cooperation (APEC)
- Asia Pacific Fisheries Commission (APFIC)
- Network of Aquaculture Centres in Asia and the Pacific (NACA)
- Western and Central Pacific Fisheries Commission (WCPFC)
- Indian Ocean Tuna Commission (IOTC)

Also considered relevant to the development of model responsible fishing legislation are broader environment-related instruments, trade-related agreements and maritime safety and labour-related agreements.

Of particular relevance is the newly introduced European Commission (EC) Regulation 1005/2008 'establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing' (the EC IUU Regulation), which came into force on 1 January 2010. The

importance of the EC market as an international seafood importer has resulted in the need for legislative reform in all countries exporting seafood to EC member countries, in order to satisfy the requirements for imports, which in summary are:

- a. All consignments of fish and fish product will be prohibited from being imported into EC Member States, unless a catch certificate accompanies them. The catch certificate must contain the harvest details of the fish (e.g. vessel and master's name and number, fishing licence number, date and location of capture, landing weights, details of processing on board) in addition to export, import and transport details.
- b. Relevant authorities of each exporting country are to validate catch certificates and, must have the power to provide such validation and attest to the veracity of the catch certificate.
- c. Exporting countries are required to provide prior notification to the EC certifying their arrangements with respect to conservation and management measures which must be complied with by its fishing vessels.
- d. Exporting countries will be required to verify consignments and associated catch certificates where the importing State doubts its legitimacy and will also be required to accept 'on-the-spot audits' of its catch certification and validation process by the EC.

An overview of each of the international and regional agreements and instruments referred to above are detailed in **Annex 1**. A further summary of the EC Regulation 1005/2008 is provided in **Annex 2**. Relevant elements of the international and regional agreements are the basis of the development of benchmark measures for responsible fishing established in **Annex 3** and summarised in **Section 3**.

2.2 Ratification and adoption status of regional and international instruments

Table 1 outlines the ratification and adoption status of the key regional and international instruments for each of the participating countries. **Table 2** outlines the membership in regional organisations for each of the participating countries.

Table 1: Ratification (accession to) and Adoption of International and Regional Instruments

| | Law of the Sea Convention | UN Fish Stocks Agreement | FAO Compliance Agreement | Port State Measures Agreement 2009 | FAO Code of Conduct | IPOA-IUU | IPOA-Capacity | IPOA-Seabirds | IPOA-Sharks | Chapter 17 of Agenda 21 | Ramsar Convention | CITES | Bonn Convention | Convention on Biological Diversity |
|------------------|---------------------------|--------------------------|--------------------------|------------------------------------|---------------------|----------|----------------|---------------|-------------|-------------------------|-------------------|-------|-----------------|------------------------------------|
| Australia | ✓ | ✓ | ✓ | ✓ _a | ✓ | ✓ | ✗ | ✗ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Brunei | ✓ | ✗ | ✗ | ✗ | ✗ | ✓ | ✗ | ✗ | ✗ | ✗ | ✗ | ✓ | ✗ | ✗ |
| Cambodia | ✗ | ✗ | ✗ | ✗ | ✓ | ✓ | ✗ _b | ✗ | ✗ | ✓ | ✓ | ✓ | ✗ | ✓ |
| Malaysia | ✓ | ✗ | ✗ | ✗ | ✓ | ✓ | ✗ _b | ✗ | ✓ | ✓ | ✓ | ✓ | ✗ | ✓ |
| Indonesia | ✓ | ✓ | ✗ | ✗ | ✓ | ✓ | ✗ | ✗ | ✗ | ✓ | ✓ | ✓ | ✗ | ✓ |
| Papua New Guinea | ✓ | ✓ | ✗ | ✗ | ✗ | ✓ | ✗ | ✗ | ✗ | ✓ | ✓ | ✓ | ✗ | ✓ |
| Philippines | ✓ | ✗ | ✗ | ✗ | ✓ | ✓ | ✗ | ✗ | ✗ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Singapore | ✓ | ✗ | ✗ | ✗ | ✗ | ✓ | ✗ | ✗ | ✗ | ✓ | ✗ | ✓ | ✗ | ✓ |
| Thailand | ✗ | ✗ | ✗ | ✗ | ✓ | ✓ | ✗ _b | ✗ | ✗ | ✓ | ✓ | ✓ | ✗ | ✓ |

| | | | | | | | | | | | | | | |
|-------------|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Timor-Leste | x | x | x | x | x | ✓ | x | x | x | x | x | x | x | ✓ |
| Vietnam | ✓ | x | x | x | ✓ | ✓ | x | x | x | ✓ | ✓ | ✓ | x | ✓ |

a: Australia signed the PSMA on 27 April 2010 but has not yet ratified the Agreement.

b: prepared but not submitted to FAO

Table 2: Membership in Regional Organisations (as at 20 August 2010)

| Country | FAO | SEAFDEC | ASEAN | APEC | APFIC | NACA | INFOFISH | WCPFC | IOTC |
|------------------|-----|---------|-------|------|-------|------|----------|-------|------|
| Australia | ✓ | x | x | ✓ | ✓ | ✓ | x | ✓ | ✓ |
| Brunei | x | ✓ | ✓ | ✓ | x | x | x | x | x |
| Cambodia | ✓ | ✓ | ✓ | x | ✓ | ✓ | ✓ | x | x |
| Indonesia | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | * | ✓ |
| Malaysia | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | x | ✓ |
| Papua New Guinea | ✓ | x | x | ✓ | x | x | ✓ | ✓ | x |
| Philippines | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Singapore | x | ✓ | ✓ | ✓ | x | x | x | x | x |
| Thailand | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | x | ✓ |
| Timor Leste | ✓ | x | x | x | x | x | x | x | x |
| Vietnam | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | x | x | x |

2.3 Tracking Proceeds of Illegal Fishing

2.3.1 Overview and Context

In recent times, the tracking of proceeds of illegal fishing has become an avenue of interest in relation to sustainable fisheries management. The concept is included here as a relevant issue in order to canvass the participating countries in terms of their capacity to track such proceeds.

Tracking the proceeds of crime in fisheries is associated with the issue of 'environmental crime' and activities of transnational organised criminal groups. A number of issues are now regarded as international environmental crime, such as the illegal trade in wildlife, illegal trade in ozone-depleting substances, dumping and illegal transport of hazardous waste, illegal logging and trade in timber, and more recently, IUU fishing. In Australia, criminal syndicates have been associated with IUU fishing for Patagonian toothfish. There have also been reports on the involvement of international criminal networks in the illegal trade of Australian abalone, and other high value, low volume fisheries such as shark fin, seahorse, eels, sea urchins, and trepang. In the Southeast Asian region, the illegal trade for live reef fish into China, Taiwan and Hong Kong has been associated with transnational organised groups.

The concept of IUU fishing and measures to address the problem have been established, and currently remains, within the context of international fisheries law, primarily through the adoption of the FAO IPOA-IUU. When the relationship between IUU fishing and international environmental crime was raised at the meetings of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS) and the Conference of Parties to the UN Convention Against Transnational Organised Crime in 2008, there were divergent views on the matter. It was decided that further studies are required before the link between IUU fishing and transnational crime can be established. To date, the classification of illegal fishing as an environmental crime has not been uniformly and clearly established in either domestic or international law.

However, as more cases emerge on the trade of illegally caught fish perpetrated by organised criminal syndicates and the use of fishing vessels for criminal activities such as drug trafficking and people smuggling, the connection between illegal fishing and transnational organised crime has increasingly become an important concern. It is also recognised in the Southeast Asian region that penalties for fisheries offences, particularly for high value species subject to trade by transnational criminal groups have not been enough to deter such activities; hence the need to make these offences fall into a wider jurisdiction of punishment and connect such activities to organised crime.

In Southeast Asia and the Pacific, organised crimes are mostly linked with predicate offences involving drug, people and firearm trafficking, as well as terrorism, and not with 'environmental offences' such as illegal fishing. Relevant legislation of RPOA participating countries follow this trend, where activities such as terrorism, kidnap for ransom, piracy and armed robbery, drug use and trafficking, illegal gambling, corrupt practices, identity crime, computer crime, and smuggling of goods (including fuel) and people are criminalised, and the proceeds from which are tracked to prevent money laundering. The criminalisation of these illegal activities is provided in criminal codes and other relevant legislation, and measures to track the proceeds of crime are adopted under anti-money laundering and counter terrorism financing legislation. The common features of anti-money laundering legislation in Southeast Asia includes the provision for the freezing, seizure, forfeiture and recovery of 'dirty' money and property, international cooperation, creation of financial intelligence units, requirements on customer identification, record keeping and reporting of covered and suspicious transactions. On the contrary, fisheries violations are not considered predicate offences for money laundering and fisheries legislation in Southeast Asia does not address regulatory fraud, corruption or money laundering.

2.3.2 Regional Cooperation on the Tracking of Proceeds of Crime

An autonomous and collaborative regional organisation was established in the Asia-Pacific region to contribute to the global drive and policy development on anti-money laundering and counter-terrorism. The Asia Pacific Group (APG) on Money Laundering was formed following the awareness raising of the Financial Action Task Force (FATF) on Money Laundering. Funded by Australia, the Asian Secretariat to the FATF was established in 1995 until the APG was officially established in 1997. All RPOA participating countries are members of the APG.

2.3.3 Issues Related to Tracking the Proceeds of Crime from Fisheries

A review of relevant legislation of RPOA participating countries raises a number of issues that prevent the tracking of proceeds of crime from fisheries. Apart from the lack of clear connection and sufficient studies linking illegal fishing (and environmental crime in general) with transnational organised crime, some of the legal impediments which may be identified are:

- The lack of legal provisions providing for fisheries violations as predicate offences to money laundering;
- Mismatch between the threshold amount for transactions and penalties for money laundering predicate offences and fisheries violations;
- The nature of some fisheries violations that may not be deemed as constituting the elements of a crime (i.e. whether an illegal fishing activity is intentional and reckless or a negligent act); and
- The limitation of fisheries legislation to mostly address fisheries management concerns.

3. BENCHMARK MEASURES FOR RESPONSIBLE FISHING

The compilation of international and regional instruments relevant to the development of responsible fishing legislation can be categorised under the following headings:

- Ecosystem Approach to Fisheries Management
- Data Collection, Monitoring and Research
- Management Plans
- Fishing Vessel Registration
- Flag State Authorisations to Fish and Effective Control over Nationals
- Authorisations to fish by the Coastal State (licensing of foreign fishing vessels)
- Monitoring, Control and Surveillance
- Port State Controls
- Catch Certification and other Trade Measures
- Tracking Proceeds of Illegal Fishing
- Reporting Requirements

The full collection of relevant provisions of the instruments against each of the category headings is provided in **Annex 3**. As can be seen, provisions of the international and regional instruments which pertain to each of the categories are lengthy, detailed and highly prescriptive. In addition, although many relate to legislative capacity, others are more a matter of Government policy and/or administration which would be unlikely to be expressed as domestic legislation.

Given this, for each category the full list of relevant provisions has been synthesised into the major legislative based elements which are proposed as the benchmark measures for responsible fishing. The proposed benchmark measures for each category are provided below. The relationship between the benchmark measures and the provisions of the international and regional instruments can be seen in **Annex 3**.

3.1 Ecosystem Approach to Fisheries Management

States are required to:

- Include objectives in legislation relating to ecosystem approach to fisheries management.
- Adopt management measures that take into account the interdependence of fish stocks and effects of fishing on species associated with or dependent on harvested species.
- Adopt measures for the management of migratory species and straddling stocks.
- Adopt measures to minimise waste and bycatch.
- Adopt measures to eliminate destructive fishing practices.
- Adopt measures to control fishing capacity.
- Adopt measures to protect endangered and threatened species; and sensitive and significant habitat (including protected species and closed areas).

3.2 Data Collection, Monitoring and Research

States are required to:

- Collect data in sufficient detail to facilitate effective stock assessment.
- Collect data on non-target species such as bycatch species and dependent species.
- Verify data through appropriate systems.
- Promote research on fisheries as well as on associated ecosystems, particularly on the study of the profiles of all target and non-target stocks, impacts of new types of gears on fisheries

and ecosystems, relationships among populations in the ecosystem and effects of ecosystem changes resulting from fishing pressure, pollution or habitat alteration.

- Advance the scientific basis for incorporating ecosystem considerations, building on existing and future available scientific knowledge.
- Compile fishery-related and other supporting scientific data, including Vessel Monitoring Systems (VMS) and observer data, in an agreed format and provide such data to relevant subregional or regional organisations and/or States (subject to confidentiality requirements in accordance with national law).
- Collect and exchange information on suspected IUU fishing, if possible on a real-time basis, in collaboration with FAO, Regional Fisheries Management Organisations (RFMOs) and other relevant arrangements, and by actively participating in the international monitoring, control and surveillance network.

3.3 Management Plans

States are required to:

- Develop and implement fisheries management plans which encourage responsible fisheries and sustainable use of marine ecosystems.
- Develop and implement international NPOAs.

3.4 Fishing Vessel Registration

States are required to:

- Establish vessel registration systems which establish a genuine link between the State and the ship.
- Avoid flagging vessels with a history of non-compliance.
- Issue Certificates of Registry stating that the ship has the right to fly its flag.
- Develop specific requirements for new and imported vessels.
- Maintain records of fishing vessels entitled to fly their flags and authorised to be used for fishing beyond the Exclusive Economic Zone (EEZ).
- Include in the vessel registry the following information: name of fishing vessel, registration number, previous names (if known/if any) and port of registry; previous flag (if any); International Radio Call Sign (if any); Name and address of owner or owners; where and when built; type of vessel; length; gross register tonnage; moulded depth; beam; power of main engine or engines; type of fishing method or methods; name and address of operator (or manager) or operators managers; name, street address, mailing address and nationality of natural or legal person with beneficial ownership of the vessel; and where this is known, the history of compliance by that vessel, in accordance with national laws, with conservation and management measures or provisions adopted at a national, regional or global level.
- Establish regulations on the marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognisable vessel and gear marking systems.

3.5 Flag State Authorisations to Fish and Effective Control over Nationals

States are required to:

- Establish a licensing system and associated regulations to prohibit fishing on the high seas, in the waters of another state or waters of an RFMO, by vessels which are not duly licensed or authorised to fish, or fishing otherwise than in accordance with the terms and conditions of the license.
- Take into account the history of violations by fishing vessels and operators when considering applications for authorisation to fish by fishing vessels flying its flag.

- Authorise the use of vessels flying its flag for fishing in the high seas, in waters of another state, or waters of an RFMO, only where it is able to exercise effectively its responsibilities in respect of such vessels under the LOSC, the UN Fish Stocks Agreement, and the WCPF Convention, including ensuring that fishing vessels comply with the provisions of such instruments and making it an offence under national legislation to contravene international conservation and management measures and enforce such measures irrespective of where violations occur.
- Require vessels fishing on the high seas, in the waters of another state or waters of an RFMO to carry the license on board at all times and to produce it on demand for inspection by a duly authorised person.
- Create powers to include appropriate terms and conditions on fishing licence (data collection, VMS, observers).
- Investigate and take any action necessary when other States report that they have clear grounds to believe that proper jurisdiction and control with respect to a ship has not been exercised by a flag State.
- Effectively regulate transshipment in order to combat IUU fishing activities and to prevent laundering of illegal catches, including (a) ensure that vessels involved in transshipment at sea have a prior authorisation to tranship and report to the national fisheries administration or designated institution the details of such transshipment, details of the vessels, and the port of landing of the transhipped catch (b) ensure that at-sea transshipment and processing of fish and fish products in coastal State waters are authorised or conducted in conformity with appropriate management regulations (c) establish regulations on transshipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined.

3.6 Authorisations to Fish by the Coastal State

States are required to:

- Formulate laws and regulations pertaining to the licensing of foreign fishing vessels and fishers and equipment in their EEZs.
- Ensure that a license is issued only if the vessel concerned is entered on a record of vessels.
- Avoid licensing a vessel to fish in its waters if that particular vessel has a history of IUU fishing.
- Condition licences with:
 - Species to be caught and catch quotas
 - Seasons and areas of fishing, the types, sizes, and amount of gear, and the type and size of fishing vessel
 - Information required from fishing vessels
 - Requirement to participate in observers programs
 - Requirements to install VMS
 - Details of permitted landing of catch

3.7 Monitoring, Control and Surveillance

States are required to:

- Establish national fisheries Monitoring Control and Surveillance (MCS) measures.
- Develop and implement a VMS in accordance with regional, subregional and global programmes, and require that flagged vessels and vessels of flagged by other States that fish in its EEZ, carry VMS equipment on board.
- Adopt and implement a program of observers on board vessels.

- Regulate for permitting observers of other States or representing an RFMO, to carry out functions agreed under subregional or regional observer programs.
- Encourage harmonisation of national MCS frameworks among neighbouring countries, including joint enforcement operations with other national enforcement agencies.
- Provide financial and technical assistance to developing countries in the implementation of MCS capabilities, including VMS, with the support of FAO and relevant international financial institutions and mechanisms.
- Formulate and apply fair, consistent and transparent sanctions with sufficient severity to effectively prevent IUU fishing and further deprive offenders from accruing benefits from such activities
- Withdraw, suspend, or cancel an authorisation to fish of a vessel if it has been established that the vessel has undermined international conservation and management measures.
- Ensure that a vessel which has been involved in the commission of a serious violation of conservation and management measures for straddling and highly migratory fish stocks does not engage in fishing operations on the high seas until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with.

A coastal State is required to:

- Establish and implement national and internationally-agreed boarding and inspection regime consistent with international law.

An Inspecting State is required to:

- Board and inspect fishing vessels through duly authorised inspectors.
- Inspect the vessel, its licence, gear, equipment, records, fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures.
- Communicate without delay the results of that investigation to the flag State where the flag State authorises the inspecting State to investigate an alleged violation.

A flag State is required to:

- Respond to the notification of the investigating State within 3 working days of its receipt.
- Take the necessary enforcement action with respect to the vessel.
- Authorise the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel.
- Ensure that vessel masters accept and facilitate prompt and safe boarding and disembarkment by the inspectors, and cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures.
- Ensure that its vessel masters do not interfere with the inspectors in the performance of their duties; allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection; ensure that vessel masters provide reasonable facilities to the inspectors.
- Suspend the vessel's authorisation to fish and order the vessel to return immediately to port if the master does not comply with direction. Advise the inspecting State of the action it has taken when the master has refused to cooperate with the inspector.
- Allow the relevant authorities of a coastal State to board and inspect its vessel on the high seas if there are reasonable grounds for believing that the vessel has been engaged in unauthorised fishing of straddling and highly migratory fish stocks within an area under the jurisdiction of a coastal State.

A port state is required to:

- Carry out the inspection of documents, fishing gear and catch on board fishing vessels when a fishing vessel is in its ports or offshore terminals
- Collect information during inspection of fishing vessels at port such as the flag State of the vessel and identification details; name, nationality, and qualifications of the master and the fishing master; fishing gear; catch on board, including origin, species, form, and quantity; total landed and transhipped catch; and other information required by relevant regional fisheries management organisations or other international agreements.
- In case of appropriate management arrangement with the flag State of the vessel, invite that State to participate in the inspection.
- Seek to agree on the minimum levels for inspection of vessels through, as appropriate, regional fisheries management organisations, FAO or otherwise.
- In determining which vessels to inspect, give priority to: (1) vessels that have been denied entry or use of a port; (2) requests from other relevant Parties, States or regional fisheries management organizations that particular vessels be inspected, particularly where such requests are supported by evidence of IUU fishing or fishing related activities in support of such fishing by the vessel in question; and (3) other vessels for which there are clear grounds for suspecting that they have engaged in IUU fishing or fishing related activities in support of such fishing.

3.8 Port State Controls

States are required to:

- Strengthen its measures in ports for fishing vessels, consistent with international law, in order to prevent, deter, and eliminate IUU fishing.
- Ensure that measures are applied to vessels in a fair, transparent, and non-discriminatory manner.
- Publicise ports to which foreign-flagged vessels may be permitted admission and ensure that such ports have the capacity to conduct inspections.
- Require fishing vessels and vessels involved in fishing-related activities seeking permission to enter its ports to provide reasonable advance notice of their entry into port, a copy of their authorization to fish, details of their fishing trip and quantities of fish on board, with due regard to confidentiality requirements, in order to ascertain whether the vessels have engaged in or supported IUU fishing.
- Adopt regulations empowering the relevant national authorities to prohibit landing and transhipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas; and/or when a party 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.
- Deny the use of its ports for landing, transshipping, packaging and processing of fish and for other port services, inter alia, refuelling and resupplying, maintenance and dry-docking, to a vessel which is in port but has been determined to have engaged in IUU fishing.

3.9 Catch Certification

States are required to:

- Develop and implement a system of catch certification which requires that a certificate accompany exported wild caught seafood product.
- Ensure that the certificate contains (1) Basic information such as the name of the fishing vessel, home port and registration number, call sign, licence number, Inmarsat number and

IMO number (if issued); (2) Information on the product (the type of species, catch areas and dates, estimated live weight and verified weight landed, as well as the applicable conservation and management measures and any transshipment at sea); (3) Information and declaration on export and import of the fisheries product (including the vessel name and flag, flight number, airway bill number, truck nationality and registration number, other transport documents and container number).

- Provide a process and the power for a relevant competent authority to validate each catch certificate attesting to the veracity of the details of such certificate.
- Provide assistance in terms of verification of details of a catch certificate, within the stipulated 15 day timeframe, when required by a competent authority of the EC Member State.
- Develop and implement a system of verifiable certification for seafood products which are imported from a third country, processed in the State and re-exported to an EU Member Country.

3.10 Tracking Proceeds of Illegal Fishing

There are no regional or international instruments which require a State to track the proceeds of illegal fishing. For the purposes of canvassing the current ability of each State to undertake such activity, the proposed benchmark measure is:

- Develop cooperation between fisheries administrations and those units responsible for anti-money laundering and financial intelligence units.
- Develop and implement the legislative, surveillance and forensic capacity to track the proceeds of criminal activity related to illegal fishing in conjunction with those of anti-money laundering and financial investigation units.

3.11 Reporting

States are required to:

- Make readily available information included in their records of fishing vessels to relevant regional fisheries management organisations and the FAO.
- Submit, for inclusion in the High Seas Vessel Authorisation Record, data on vessels entitled to fly its flag that are authorised to be used for fishing on the high seas.
- Report to the FAO and relevant RFMO any modifications, additions, deletions to the information included in the record of fishing vessels; any exemption granted to fishing vessels of less than 24 metres in length; all relevant information regarding any activities of fishing vessels flying its flag that undermine the effectiveness of international conservation and management measures (subject to the confidentiality measures adopted by States in their national legislation); evidence supporting a claim of a Party that a fishing vessel not entitled to fly its flag has engaged in an activity that undermines the effectiveness of international conservation and management measures; information pertaining to the grant of authorisation to a fishing vessel that has previously undermined the effectiveness of international conservation and management measures.
- Provide annually statistical, biological and other data and information in accordance with Annex I of the UN Fish Stocks Agreement, and in addition, other data and information as the required by an RFMO.
- Provide information concerning its fishing activities in the RFMO areas, including fishing areas and fishing vessels in order to facilitate the compilation of reliable catch and effort statistics.

- Provide information on boarding and inspections carried out by its authorised inspection vessels and actions taken in response to boarding and inspections of their fishing vessels that resulted in observation of alleged violations.
- Immediately report fishing vessels which have been engaged in IUU fishing to the flag State, coastal State, or regional fisheries management organisation concerned.
- Remit collected information from port inspection to the flag State and where appropriate to FAO and relevant regional fisheries management organisations.
- Promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other relevant international organizations of its decision when a Party has denied the use of its port.

4. DRAFT LEGISLATIVE MODELS

The purpose of this part is to provide a benchmark for countries to guide them in adopting legislative provisions for inclusion in a modern fisheries law.

In this study, it is assumed that all countries have already provided for the declaration of their maritime areas (internal waters, archipelagic waters, territorial sea, EEZ, and where applicable, a contiguous zone and continental shelf), which may of course be covered in a more generally applicable marine spaces law. It is also assumed that they will already have comprehensive laws concerning customs, shipping registration, navigation, ports, labour laws, as well as a suite of environmental laws governing biodiversity, habitat, wildlife and wetlands.

In the examples below, the general phrase “fishery waters” has been used which is intended to include the internal waters, the territorial waters and the exclusive economic zone.

Because each country will have its own practices to decide which person or class of person is the most appropriate for the purpose of conferring powers under a fisheries law, in the examples below the designation “[Minister/Director]” has been used.

It has to be stressed that each provision set out below will still need to be adapted to each country, where the constitution, existing legislation, and drafting practices will need to be taken into account.

4.1 Introductory Sections of the Law

Practice varies considerably from one country to another as to how an Act commences. In some, there is a short preamble, while in the US system, there are usually “legislative findings” which give the background to the reason why a law is being enacted. In some countries, there may be an objectives clause. Although formally different, these different approaches tend to overlap.

Definitions

In common law system countries, it is a well established practice to employ definitions of certain key words used in the Law. Such definitions serve two basic purposes. In the first place, the definition will contain many important elements that are tied up in the use of the word defined. See, for example, the definition of “fish”, “fishing” and “related activities” below. Secondly, it achieves certain efficiency in that crucial elements of the term do not have to be repeated later.

Sometimes a definition might include an element that appears artificial or inaccurate. For example, in the example below, the definition of “fish” includes marine mammals. This is sometimes considered appropriate if a country has no separate marine mammal legislation, and it is considered desirable to bring marine mammals under the fisheries legislation, especially where failure to include them might result in their being no regime at all for dealing with marine mammals. While this often upsets marine biologists, it makes practical sense from a legal point of view. It also illustrates quite well that a definition only makes sense in its context: each definition needs to be assessed for its relevance to the country in question.

Other terms might also need to be defined, depending on the particular regime adopted. For example, Australia has included a definition of “ecologically sustainable development” in its *Fisheries Management Act 1991*. This is considered further below under objectives and principles. Whether or not it needs to be defined will depend in part on how the objectives and principles themselves are stated.

In civil law systems, definitions are used much less, though the practice is increasing. On occasion, in civil law countries, definitions are used more as descriptions than definitions in the normal sense.

Below are the more important definitions that are often employed in fisheries laws.

"Aircraft" means any craft capable of self-sustained movement through the atmosphere and includes a hovercraft;

"arrangement" means a cooperative mechanism established in accordance with international law between two or more States for the purpose, inter alia, of establishing conservation and management measures;

"Driftnet" means a gillnet or other net which is more than 2.5 kilometres in length the purpose of which is to enmesh, entrap or entangle fish;

"Driftnet fishing activities" includes fishing with the use of a driftnet and any related activities including transporting, transshipping and processing any driftnet catch, and provision of food, fuel and other supplies for vessels used or outfitted for driftnet fishing;

"Fish" means any aquatic plant or animal, whether piscine or not; and includes any mollusc, crustacean, coral, sponge, holothurian (beche-de-mer), or other echinoderm, turtle and marine mammal, and includes their eggs, spawn, spat and juvenile stages;

"Fish aggregation device" means any man-made or partly man-made floating, semi-submerged or submerged device, whether or not anchored or deployed, intended for the purpose of aggregating fish, and includes any natural floating object on which a device has been placed to facilitate its location;

"Fish processing" means the producing of any substance or article from fish by any method and includes the cutting, dismembering, cleaning, sorting, loining, freezing, canning, salting and preserving of fish;

"Fishery" or "Fisheries" means one or more stocks of fish or any fishing operation based on such stocks which can be treated as a unit for purposes of conservation and management, taking into account geographical, scientific, social, technical, recreational, economic, and other relevant characteristics;

"Fishing" means –

- (a) searching for, catching, taking or harvesting fish;*
- (b) the attempted searching for, catching, taking or harvesting of fish;*
- (c) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;*
- (d) placing, searching for or recovering any fish aggregating device or associated equipment including radio beacons;*
- (e) any operation at sea in support of or in preparation for any activity described in this paragraph except for operations defined as related activities in this section; or*
- (f) the use of an aircraft in relation to any activity described in this paragraph;*

"Fishing gear" means any equipment, implement, or other thing that can be used in the act of fishing, including any fishing net, rope, line, float, trap, hook, winch, vessel, or aircraft;

"Fishing vessel" means any vessel, ship or other craft which is used for, equipped to be used for or of a type that is normally used for fishing or related activities;

"Flag State" in relation to a vessel that is a foreign vessel, means the State in which the vessel is registered and whose flag the vessel flies;

“Foreign vessel” means any vessel that is not a [name of country] vessel;

“Foreign fishing vessel” means any vessel that is not a [name of country]

“International conservation and management measures” means measures to conserve and manage one or more species of living marine resources that are adopted and applied by global, regional or subregional fisheries organizations or arrangements, consistent with the relevant rules of international law as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982, and the 1995 UN Fish Stocks Agreement;

“Master”, in relation to any vessel, means the person in command or charge, or for the time being in charge, or apparently in command or in charge of the vessel, aircraft or vehicle, but does not include a pilot on board a vessel solely for the purpose of navigation;

“Mobile Transceiver Unit” or “MTU” means a device approved by the [Minister/Director] which is placed on a fishing vessel that transmits, either in conjunction with another device or devices or independently, information or data concerning the position, fishing and such other activities of the vessel as may be required;

“Net sharing” means the transfer of excess fish taken for the purpose of retaining the fish on another purse seine vessel belonging to the same fishing company where there is insufficient well space to accommodate all fish caught in the final set of a fishing trip;

“Observer” means any person authorised to act as observer pursuant to this Act and any person designated in accordance with a treaty, or an access agreement or related agreement to act as observer aboard a vessel licensed under that access agreement;

“Operator”, in relation to any vessel, means the person who, by virtue of ownership, a lease, a sublease, a charter or a sub charter or otherwise, for the time being has lawful possession and control of the vessel, including the master, owner and charterer;

“Owner”, in relation to a fishing vessel, means any person exercising or discharging or claiming the right or accepting the obligation to exercise or discharge any of the powers or duties of an owner whether on his own behalf or on behalf of another, and includes a person who is the owner jointly with any other person or persons and any manager, director or secretary of any body corporate or company;

“Person” means any natural person or business enterprise and includes, but is not limited to, a corporation, partnership, cooperative, association, the Government of [country] or any subdivision thereof, and any foreign government, subdivision of such government or other entity;

“Related activities” includes doing, attempting to do or preparing to do any of the following –

- (a) transshipping any fish or fish products to or from any vessel;*
- (b) storing, processing, or transporting fish or fish products taken from the fishery waters up to the time it is first landed or from the time they are first landed in [country];*
- (c) or refuelling or supplying fishing vessels or performing other activities in support of fishing operations;*

“Serious violation”¹ means –

- (a) fishing without a valid licence, authorisation, fishing right or permit as required under this Act;*

¹ Note: serious violation needs to be defined in the above manner to accord with the definition given to that term in the 1995 UN Fish Stocks Agreement (article 21.11, and Article 25.4WCPF Convention). “Sexual harassment” is not included in these definitions of serious violation, however, it has been included here as there has been some pressure to have it included in the context of regional fisheries management organizations. A policy decision will need to be made by each country whether or not to include it in the definition of serious violation.

- (b) *failing to maintain accurate records of catch and catch-related data, as required by this Act or a licence issued pursuant to this Act, or serious misreporting of catch contrary to this Act or a licence issued pursuant to this Act;*
- (c) *fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established in the fishery waters or by an applicable subregional or regional fisheries management organization or arrangement;*
- (d) *directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;*
- (e) *using prohibited fishing gear;*
- (f) *falsifying or concealing the markings, identity or registration of a fishing vessel;*
- (g) *concealing, tampering with or disposing of evidence relating to an investigation or anticipated investigation;*
- (h) *multiple violations which together constitute a serious disregard of conservation and management measures;*
- (i) *sexual harassment; or*
- (j) *such other violations as may be specified in this Act;*

“Sustainable use” means conserving, using, enhancing, and developing marine resources to enable people to provide for their social, economic, and cultural wellbeing while –

- (a) *maintaining the potential of marine resources to meet the reasonably foreseeable needs of future generations; and*
- (b) *avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment;*

“Transshipment” means the transfer of any or all of the fish on board a vessel onto another vessel, either directly or by off-loading the fish from the vessel onto the shore and thence immediately onto another vessel, for the purposes of transporting that fish elsewhere and does not include net sharing;

Principles and objectives provisions

It is useful to set out the background to clauses that state the basic objectives of fisheries conservation and management which are found (or at least something substantially similar) in many modern fisheries laws. Such clauses reflect a shift from older style legislation where the focus was primarily on setting out a licensing regime, some enforcement powers and penalties, followed by a regulation making power, but with very little, if anything, on conservation principles and objectives. Stating such objectives and principles in fisheries legislation, at least in countries with a common law system is relatively recent, and goes back, generally speaking, to the time of the completion of the LOSC.

In the LOSC, conservation standards were covered by, for the EEZ, article 61. (In the territorial sea and on the continental shelf, no conservation standards were provided for as such). Article 61 states:

Conservation of the living resources

1. *The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.*
2. *The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall cooperate to this end.*
3. *Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant*

environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.

4. *In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.*
5. *Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.*

Substantially similar provisions were adopted for the high seas in article 119.

The heart of article 61 is the reference to maximum sustainable yield (MSY). At the time of its inclusion, it was regarded by many (though with some scientists expressing reservations about it) as a valuable step forward in setting an important global conservation standard. The reference in paragraph 4 to “the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened” was an early partial recognition of what we today would describe as the ecosystem approach to fisheries.

When the UN Fish Stocks Agreement was being negotiated, it was politically very important to avoid giving the impression that the LOSC was being amended (even though most would accept that it was in effect!) Thus, when the general principles were adopted in article 5 of UN Fish Stocks Agreement, it was considered necessary to retain the reference to MSY even though many by that stage considered that it was unsatisfactory as a conservation standard. The solution was to keep it as one of the general principles but to have it surrounded by other more modern principles, including the objective of long term sustainable use, the precautionary approach, ecosystem considerations, and the protection of marine biodiversity.

Article 5 of the UN Fish Stocks Agreement ended up as follows:

In order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate in accordance with the Convention:

- (a) adopt measures to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilization;*
- (b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;*
- (c) apply the precautionary approach in accordance with article 6;*

- (d) *assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;*
- (e) *adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;*
- (f) *minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, (hereinafter referred to as non-target species) and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;*
- (g) *protect biodiversity in the marine environment;*
- (h) *take measures to prevent or eliminate overfishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;*
- (i) *take into account the interests of artisanal and subsistence fishers;*
- (j) *collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as set out in Annex I, as well as information from national and international research programmes;*
- (k) *promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management; and*
- (l) *implement and enforce conservation and management measures through effective monitoring, control and surveillance.*

In effect, MSY was surrounded by other, potentially more stringent, principles and objectives. Further, in Annex II (Guidelines for the Application of Precautionary Reference Points in Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks), paragraph 2 stated:

2. Two types of precautionary reference points should be used: conservation, or limit, reference points and management, or target, reference points. Limit reference points set boundaries which are intended to constrain harvesting within safe biological limits within which the stocks can produce maximum sustainable yield. Target reference points are intended to meet management objectives.

Although worded in non mandatory language (“should”), MSY has increasingly come to be viewed as a limit rather than a target, with the above provision occasionally referred to in support of this. Further, MSY had come to be viewed in many quarters as an inadequate goal for conservation measures. There has consequently been a tendency, not well articulated, to play down the importance of MSY and place greater importance on the precautionary approach, protection of marine biodiversity, and what is now referred to as the ecosystem approach to fisheries management.

It is not necessary to trace the ups and downs here of MSY since 1982. It can be said, however, that, increasingly, despite the inclusion of MSY in the LOSC, and in the 1995 UN Fish Stocks Agreement, there has been a clear trend away from relying on MSY, and surrounding it where necessary, with more demanding principles such as the precautionary approach, the ecosystem approach to fisheries management, and the protection of marine biodiversity. Indeed, in that context, it had largely become redundant.

The draft principles and objectives set out below are drawn from the recently concluded South Pacific Regional Fisheries Management Convention (SPRFMO). Significantly, the reference to MSY

was dropped there. This is justifiable from a legal point of view because the precautionary approach and the ecosystem approach to fisheries set higher standards than MSY, thus, a coastal State is not breaching the minimum obligations set out in article 61 of the LOSC , or for that matter, the UN Fish Stocks Agreement.

Principles and objectives–

- (1) *The [Minister/Director], when performing his or her functions or exercising powers under this [Act], shall -*
- (a) *apply, in particular, the following principles;*
 - (i) *conservation and management of fishery resources shall be conducted in a transparent, accountable and inclusive manner, taking into account best international practices;*
 - (ii) *fishing shall be commensurate with the sustainable use of fishery resources taking into account the impacts on non-target and associated or dependent species and the general obligation to protect and preserve the marine environment;*
 - (iii) *overfishing and excess fishing capacity shall be prevented or eliminated;*
 - (iv) *full and accurate data on fishing, including information relating to impacts on the marine ecosystems in which fishery resources occur, shall be collected, verified, reported and shared in a timely and appropriate manner;*
 - (v) *decisions shall be based on the best scientific and technical information available;*
 - (vi) *marine ecosystems shall be protected, in particular those ecosystems which have long recovery times following disturbance;*
 - (vii) *effective compliance with conservation and management measures shall be pursued;*
 - (viii) *pollution and waste originating from fishing vessels, discards, catch by lost or abandoned gear and impacts on other species and marine ecosystems shall be minimized; and*
 - (b) *apply the precautionary approach and an ecosystem approach in accordance with paragraph 2.*
- 2 (a) *The precautionary approach as described in the Fish Stocks Agreement shall be applied widely to the conservation and management of fishery resources in order to protect those resources and to preserve the marine ecosystems in which they occur, and in particular the Minister shall:*
- (i) *be more cautious when information is uncertain, unreliable, or inadequate;*
 - (ii) *not use the absence of adequate scientific information as a reason for postponing or failing to take conservation and management measures; and*
 - (iii) *take account of best international practices regarding the application of the precautionary approach, including Annex II of the 1995 Agreement.*
- (b) *An ecosystem approach shall be applied widely to the conservation and management of fishery resources through an integrated approach under which decisions in relation to the management of fishery resources are considered in the context of the functioning of the wider marine ecosystems in which they occur to ensure the long-term conservation and sustainable use of those resources and in so doing, safeguard those marine ecosystems.*

An alternative version is provided in the Australian Fisheries Management Act:

Objectives

- (1) *The following objectives must be pursued by the Minister in the administration of this Act and by*

AFMA in the performance of its functions:

- (a) implementing efficient and cost-effective fisheries management on behalf of the Commonwealth; and*
- (b) ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development (which include the exercise of the precautionary principle), in particular the need to have regard to the impact of fishing activities on non-target species and the long term sustainability of the marine environment; and*
- (c) maximising the net economic returns to the Australian community from the management of Australian fisheries; and*
- (d) ensuring accountability to the fishing industry and to the Australian community in AFMA's management of fisheries resources; and*
- (e) achieving government targets in relation to the recovery of the costs of AFMA.*

(2) In addition to the objectives mentioned in subsection (1), or in section 78 of this Act, the Minister, AFMA and Joint Authorities are to have regard to the objectives of:

- (a) ensuring, through proper conservation and management measures, that the living resources of the AFZ are not endangered by over-exploitation; and*
- (b) achieving the optimum utilisation of the living resources of the AFZ; and*
- (c) ensuring that conservation and management measures in the AFZ and the high seas implement Australia's obligations under international agreements that deal with fish stocks; and*
- (d) to the extent that Australia has obligations:
 - (1) under international law; or*
 - (2) under the Compliance Agreement or any other international agreement;**
- (e) in relation to fishing activities by Australian-flagged boats on the high seas that are additional to the obligations referred to in paragraph (c)-ensuring that Australia implements those first mentioned obligations; but must ensure, as far as practicable, that measures adopted in pursuit of those objectives must not be inconsistent with the preservation, conservation and protection of all species of whales.*

This provision is supplemented by section 3A:

Principles of ecologically sustainable development

*The following principles are **principles of ecologically sustainable development** :*

- (1) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equity considerations;*
- (2) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;*
- (3) the principle of inter-generational equity--that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;*
- (4) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;*
- (5) improved valuation, pricing and incentive mechanisms should be promoted.*

4.2 Fisheries management plans

Fisheries management plans are of fundamental importance to the effective management of fisheries. In some countries, the content of the plan is set out in the law itself. The following provision is one that is suited to countries with a common law system and a civil law system. It is important to note that this provision is subject to the general principles set out in the Act.

The provision would also permit the Minister (or whoever has been given the responsibility) to prepare either a general plan for the whole fisheries sector, or to prepare quite specific plans for particular fisheries or types of fishery. Obviously, the situation will vary quite considerably from one country to the next as to how such plans will be developed.

Consideration could also be given to specifying the status of such a plan. Is it to have the same status as a regulation? Should it be submitted to Parliament for approval, or in some countries, to a system of so called “negative disallowance”?

- (1) *The [Minister/Director] may cause a fishery management plan or plans to be prepared in respect of each fishery or category of fisheries.*
- (2) *A fishery management plan shall –*
 - (a) *identify the fishery to be managed;*
 - (b) *describe the status of the fishery;*
 - (c) *specify management measures to be applied to the fishery;*
 - (d) *specify the process for the allocation of any fishing rights provided for in the fishery management plan;*
 - (e) *identify the impact on non target species of fish;*
 - (f) *identify any species of fish which need special protection;*
 - (g) *identify any precautionary measures to be adopted;*
 - (h) *identify how the ecosystem will be protected;*
 - (i) *identify how marine biodiversity will be protected;*
 - (j) *make provision in relation to any other matter necessary for sustainable use of fishery resources.*
- (3) *A fishery management plan for a fishery shall enter into force on a date specified by a notice in [the Government Gazette].*

4.3 Giving effect to international obligations concerning fisheries

The following provision is designed to help countries with a common law system to give effect to obligations arising under regional fisheries bodies, in particular, the conservation and management measures adopted by regional fisheries management organizations to which the country in question is a member. This provision is especially important in a modern fisheries law because many regional fisheries management organizations are making binding conservation and management measures which need to be implemented into national legislation.

For countries with a civil law system, the same provision could also be adapted. For example, the provision below relies on the publication of the specific measures in a formal publication such as the government gazette. It is assumed that in most countries, probably all, it is legally necessary for such texts to be published in order that they can be given domestic legal effect. Failure to publish in some effective formal manner might make it difficult for legal proceedings for breaches of these measures to be instituted successfully in the domestic law of specific countries.

Giving effect to international obligations concerning fisheries

- (1) *The [Minister] shall cause to be published in the [Government Gazette] the texts of all international conservation and management measures adopted by a regional fisheries management organization or arrangement to which [country] is a member.*
- (2) *When the [Minister] publishes a text under subsection (1), the Minister may specify that only a certain part of a conservation and management measure shall have the force of law in [country].*
- (3) *The [Minister] may, for the purpose of giving effect to regional fisheries management organization or arrangement to which [country] is a member, may undertake necessary action in order to give effect to the arrangement required under the agreement.*
- (4) *Necessary action under subsection (3) may include:*
 - (a) *the making of regulations;*
 - (b) *giving notice in the [Government Gazette]; or*
 - (c) *attaching conditions to an existing licence or imposing conditions in future licences.*
- (5) *Any provision of a fisheries management plan endorsed by the [Minister] to give effect to international conservation and management measures shall have the force of law and any person who contravenes the provision commits an offence under this Act.*
- (6) *The [Minister] shall publish in the [Government Gazette] any condition that has been imposed on individual licences issued pursuant to this section.*
- (7) *The publication of a condition under subsection (6) shall be binding on all persons fishing within the fishery waters and all [country] fishing vessels.*
- (8) *Any publication required to be made under subsection (6) shall be made every 6 months after the condition is first imposed, and shall continue for not less than 2 years.*

4.4 Authorisation or licensing regime

The Act should contain provisions concerning the authorisation of fishing (often referred to as a licensing regime). However, this can, depending on the circumstances in each country, range from a simple authorisation to a more complex statutory fishing right regime (sometimes referred to as an individual transferable quota).

In most instances, the regime will need to distinguish between authorisations for fishing vessels of the country in question and authorisations for foreign fishing vessels. Usually it is the vessel that is authorised to fish; however, in some countries it may be the individual or company that is given the licence. In some countries, it is necessary to licence both the individual or company and the vessel.

One of the basic obligations set out in the FAO Compliance Agreement and the UN Fish Stocks Agreement is the requirement that a vessel should only be licensed where the flag state is able to exercise its responsibilities under those agreements. It is important, therefore, to have a general provision along the following suggested below.

A decision will need to be made whether or not to include sport fishing within the overall authorisation regime. Depending on the decision made, this would affect the definition of fishing.

The following provisions are recommended in relation to:

- *Licence or authorisation required for foreign fishing vessels*
- *Licence or authorisation required for [country] fishing vessels*
- *Requirements for [country] fishing vessels outside the fishery waters*
- *Exercise responsibilities under Global and Regional Agreements*

Licence or authorisation required for foreign fishing vessels -

- (1) *A foreign fishing vessel that is in the fishery waters shall act in accordance with international law concerning navigation and the protection and preservation of the marine environment.*
- (2) *No foreign vessel may be used for fishing or for a related activity or other activity provided for in this Act, except in accordance with a valid licence issued pursuant to this Act or an applicable treaty or multilateral access agreement or commercial access agreement.*
- (3) *Where any foreign vessel is used in contravention of subsection (1) or (2), the operator and master of such vessel each commits an offence, and shall be liable on conviction to a fine not exceeding...*
- (4) *An offence against subsection (2) shall constitute a serious violation.*

Licence or authorisation required for [country] fishing vessels –

- (1) *Subject to subsection (2), no vessel shall be used in the fishery waters for fishing;*
 - (a) *related activities;*
 - (b) *any other activity as may be provided under this Act;**otherwise than under the authority of a valid licence, authorisation and fishing right as may be required under this Act, fishery plan or any access agreement or fisheries management agreement entered into pursuant to this Act.*
- (2) *No fishing vessel of [country] shall be used in the fishery waters for fishing and related activities unless that vessel is licensed under this section.*
- (3) *Subject to subsection (4), this requirement shall not apply to any fishing vessel used solely for sport, pleasure, recreational or subsistence fishing.*
- (4) *Any person who uses a vessel for the purpose of a sporting activity carried out in the fishery waters shall be required to obtain a licence under this section where that person intends to sell any fish which he or she catches as a result of the sporting activity.*
- (5) *Where any vessel is used in contravention of subsection (1), the operator and master of such vessel each commits an offence, and shall be liable on conviction to a fine not exceeding*

Requirements for [country] fishing vessels outside the fishery waters -

- (1) *No person may use a [country] fishing vessel for fishing or related activities –*
 - (a) *in the fisheries waters of a foreign country except in accordance with the laws of that country; or*
 - (b) *in an area subject to a treaty or multilateral access agreement except in accordance with that treaty or agreement; or*
 - (c) *on the high seas except in accordance with a licence or authorisation issued in accordance with this Act; or*

(d) in an area subject to international conservation and management measures except in accordance with those measures.

- (2) Where any vessel is used in contravention of subsection (1), the operator and master of such vessel each commits an offence, and shall each be liable on conviction to a fine not exceeding..*

Exercise responsibilities under Global and Regional Agreements -

“The Minister/Director may not issue a permit to a vessel unless the Minister/Director is satisfied that [country] will be able to exercise effectively its responsibilities under any global or regional treaties to which it is a party with respect to that vessel.”

4.5 Statutory Fishing Rights

A decision also needs to be made whether or not to include in the Act a regime of statutory fishing rights. This raises very important policy questions which need to be decided before such a regime is introduced. A possible regime is set out below. However, such a regime is usually backed up by a complex administrative structure which needs to be tailored to the requirements of the country in question. For that reason, the provision below is intended to be indicative of the issues that will need to be addressed, and it is not intended to be a final version.

Statutory Fishing Rights. -

- (1) The Minister may, by Notice published in the Government Gazette, provide for statutory fishing rights of any person or class of persons, and in doing so may make provision through the Notice on the following matters:*
- (a) the method of applying for a right of access or quota share; and*
 - (b) the identification of criteria for determining those eligible to apply for a statutory fishing right; and*
 - (c) the duration of a statutory fishing right; and*
 - (d) the criteria for adjusting the fishing rights allocated from one period to another;*
 - (e) determining whether the statutory fishing right shall be inheritable, leasable, saleable, or divisible;*
 - (f) the number of rights or quota any person may hold at any one time; and*
 - (g) the method of calculation of any quota; and*
 - (h) the circumstances in which a statutory fishing right may lapse, be reduced, be suspended, or cancelled.*
- (2) The Minister shall set up a system for the registration of any statutory fishing rights granted under this section, which shall be open to inspection by members of the public.*

4.6 Terms and conditions attached to a licence

For most legal systems, it is important to permit the government to attach certain conditions to a licence or authorisation. This may be in addition to the power to impose conditions by regulation. Much will depend on the practices of each legal system as to what is acceptable here. There is merit in providing for both the attachment of conditions to a licence or authorisation and to permitting conditions to be set out in regulations.

Conditions of licence or authorisation –

- (1) *Every licence or authorisation issued by the [Minister/Director] shall be in the prescribed form, and may be subject to –*
 - (a) *such conditions as may be prescribed; and*
 - (b) *such special conditions as may be specified under subsection (3).*
- (2) *The [Minister/Director] may, by notice published in the government Gazette, specify conditions additional to those to which any licence or authorisation shall be subject.*
- (3) *Subject to this Act, the [Minister/Director] may attach to any licence or authorisation such special conditions as may be required for the proper management of fisheries, including conditions relating to –*
 - (a) *the type and method of fishing or related activity authorised; and*
 - (b) *the areas within which such fishing or related activities are authorised; and*
 - (c) *the target species and amount of fish authorised to be taken, including any restriction on by-catch, or requirements relating to the protection of certain species of fish; and*
 - (d) *the times within which such fishing or related activities are authorised; and*
 - (e) *restrictions relating to the numbers, types, sizes, specifications or operation of fishing related equipment.*
- (4) *The [Minister/Director] may from time to time, where it is expedient for the proper management of fisheries, vary any special conditions attached to any licence or authorisation.*
- (5) *Where the [Minister/Director] varies any special conditions attached to any licence, the [Minister/Director] shall notify the licence or authorisation holder of the variation as soon as practicable.*
- (6) *Any additional conditions made to a licence or authorisation or variations to conditions of a licence or authorisation made under this section shall not take effect until the licence holder, or in respect of a foreign fishing vessel, the licence holder or agent, has been notified in writing.*

4.7 Control over nationals on foreign vessels

The IPOA-IUU recommended that States should include in their laws provisions which make it an offence for their nationals to work on vessels which are engaged in “IUU” fishing. Although such provisions can be difficult to implement, not least because the evidentiary requirements can be challenging, the inclusion of such a provision does provide one further mechanism for deterring IUU fishing.

Below is a provision which gives effect to this recommendation.

Use of vessels of other flags by [nationals of country] on the high seas –

- (1) *No person, being a national of [country], or a body corporate established under the laws of [country] may use or be employed on a vessel registered in another country for fishing or related activities on the high seas except in accordance with a qualifying authorisation issued by the flag State.*
- (2) *A qualifying authorisation may be issued –*
 - (a) *by a State that is a party to the UN Fish Stocks Agreement; or*
 - (b) *by a State that is a party to the FAO Compliance Agreement; or*
 - (c) *by a State that is a party to, or has accepted the obligations of, a global, regional, or sub-regional fisheries organization or arrangement to which the authorisation relates; or*

- (d) *by a State that –*
 - (i) *is a signatory to the UN Fish Stocks Agreement; and*
 - (ii) *has legislative and administrative mechanisms to control its vessels on the high seas in accordance with that agreement.*
- (3) *For the purpose of subsection (1) any notice given by the Minister in the [Government Gazette], specifying any State or category of States as States that may issue a qualifying authorization shall be conclusive of its contents.*
- (4) *Any person who contravenes subsection (1) commits an offence, and shall be liable on conviction to a fine not exceeding.....*

4.8 Record of fishing vessels

Quite apart from provisions regarding the registration of fishing vessels, it is now accepted that a country should maintain a record of fishing vessels which are authorised to fish either in its own waters or on the high seas or in waters under the jurisdiction of another State. It may be appropriate to exempt small scale artisanal fishing vessels or other vessels below a certain size. The obligation to maintain a record is set out in the FAO Compliance Agreement, the UN Fish Stocks Agreement as well as being promoted in the IPOA-IUU.

The following provision is intended to provide the administrative basis for operating the record. It is accompanied by **Annex 4** which sets out the specific information which needs to be retained in the record.

Record of Fishing Vessels -

- (1) *The [Minister/Director] shall maintain a record of all fishing vessels which are licensed in accordance with this Act.*
- (2) *Subject to subsection (3), the record under subsection (1) shall contain the information as set out in [the Annex to this Act (refer to Annex 5)].*
- (3) *Despite subsection (2), the [Minister/Director] may require further information to be provided if such information is necessary in order comply with relevant measures adopted at any regional or subregional fisheries management organizations of which [country] is a member.*
- (4) *The [Minister/Director] may provide to any relevant regional or subregional fisheries management organization any information on the record as the [Minister/Director] considers necessary.*
- (5) *The information provided by the [Minister/Director] may include information relating to:*
 - a. additions to the record; or*
 - b. deletions from the record; or*
 - c. the withdrawal of any authorization to fish; or*
 - d. a vessel which is no longer entitled to fly the flag of [country].*
- (6) *The owner or operator of any [country] fishing vessel to which this Act applies which intends to fish, or undertakes fishing in waters beyond the fishery waters of [country] shall provide to the [Minister/Director] the information required in subsection (2).*

(7) The owner or operator of any [country] fishing vessel who fails to provide the information required in subsection (2) shall be guilty of an offence and liable to a fine not exceeding.....

4.9 Appointment of authorized officers

A basic provision of most fisheries laws is to identify who are the persons authorized to take certain enforcement actions under the Act. This might be done by appointing a class of persons, for example, police officers, customs officers, and fisheries officers. In addition to appointing local persons, there is now a need to at least allow for the possibility of appointing authorized officers from other States.

The first provision below deals with the appointment of authorized officers, while the second provision deals with the appointment of authorized officers from other countries.

Appointment of authorized officers –

- (1) The [Minister/Director] may appoint any member of staff of the Ministry to be an authorized officer for the purposes of this Act.*
- (2) Every officer of the Ministry who is a fisheries officer at the date of commencement of this Act is deemed to be an authorized officer for the purposes of this Act.*

Appointment of authorized officers from other States –

The [Minister/Director] may, by notice published in the Government Gazette, appoint any person from any other State to be an authorized officer for the purposes of this Act.

4.10 Fisheries research

The fisheries law should provide for the regulation of marine scientific research in the EEZ, the territorial sea, the archipelagic waters, and internal waters. However, under the LOSC, Article 246, it is only in the EEZ that a coastal State has an obligation to permit other States to undertake marine scientific research in certain circumstances.

Bio-prospecting is one aspect of scientific research which is becoming a topic of increasing concern, and it would be important to ensure that it is covered in the regulation making power.

The basic fisheries legislation should contain provisions governing the authorisation of fisheries scientific research. The law should therefore set out clear procedures to be followed for those who wish to undertake such research, and to allow the government to impose certain controls on such research. These controls might be imposed directly as conditions governing the permission to undertake such research. As an alternative, regulations could be adopted which dealt with such research.

The provision set out below is intended to permit the coastal state to control fisheries scientific research by requiring an authorization to which conditions can be attached.

Marine scientific research operations related to fisheries –

- (1) The Minister/Director may authorise any vessel or person to undertake marine scientific research operations related to fisheries in the fishery waters, and may, in granting any such authorisation,*

exempt that vessel or person from the requirements of any fisheries management and conservation measures specified in the authorisation.

- (2) The Minister/Director shall attach such conditions as may be prescribed and may attach such additional conditions as he or she thinks fit and are consistent with those which may be prescribed, to any authorisation granted under subsection (1).*
- (3) Each vessel or person authorised in accordance with this section shall comply with all applicable laws of [country] and any conditions of such authorisation.*
- (4) The Minister may suspend or revoke such authorisation if there is failure to comply with the conditions of the authorisation or the requirements of this Act.*
- (5) Any authorisation or exemption granted under this section shall be in writing.*
- (6) Any person who undertakes or assists in any marine scientific research related to fisheries in the fishery waters –*
 - a. without authorisation under subsection (1); or*
 - b. in contravention of any condition or conditions attached to the authorisation under subsection (2); or*
 - c. in contravention of the requirements of subsection (3),*
 - d. commits an offence and on conviction shall be liable to a fine not exceeding.....*

4.11 Prohibited Fishing Methods

In many countries, there is usually found an outright prohibition on fishing by certain methods, in particular, dynamiting and poisoning, in view of its particularly harmful environmental consequences. These are dealt with separately in their own clauses in part to emphasize the importance of persons not engaging in such activities.

To an extent also large scale driftnet fishing has attracted a similar reaction, especially in the Pacific. Two possible clauses are included here, one dealing with prohibited fishing methods, the other with driftnet fishing.

Prohibited fishing methods –

- (1) Any person who –*
 - (a) permits to be used, uses, or attempts to use any explosive, poison, or other noxious substance for the purpose of killing, stunning, disabling, or catching fish, or in any way rendering fish more easily caught; or*
 - (b) permits to be carried, carries or has in his possession or control any explosive, poison, or other noxious substance in circumstances evidencing an intention of using the explosive, poison, other noxious substance for any of the purposes referred to in paragraph (a),*

commits an offence and shall be liable on conviction to a fine not exceeding.....
- (2) Any explosive, poison, or other noxious substance found on board any fishing vessel shall be presumed, unless the contrary is proved, to be intended for the purposes referred to in subsection (1)(a).*
- (3) Any person who lands, sells, receives, or is found in possession of any fish taken by any means which is in contravention of subsection (1)(a), commits an offence and is liable on conviction to a fine not exceeding...*
- (4) In any proceedings for any offence against this section, a certificate as to the cause and manner of death or injury of any fish, signed by [Minister/Director] or by any person authorized by him or her in writing, shall, until the contrary is proved, be sufficient evidence as to the matters stated in the certificate.*

- (5) *In any proceedings for any offence against this section, the defendant shall be given not less than 14 days notice in writing of the prosecution's intention to adduce a certificate under subsection (4).*

Driftnet fishing activities -

- (1) *No vessel shall:*
(a) be used for or assist in any driftnet fishing activities; or
(b) possess or have on board a driftnet,
in the fishery waters.
- (2) *No person shall engage or assist in any driftnet fishing activities in the fishery waters.*
- (3) *No fishing vessel shall be used for or assist in any driftnet fishing activities.*
- (4) *No vessel which has been used for assisting in driftnet fishing activities may enter a port in [country] except in cases of force majeure.*
- (5) *Where any vessel is used in contravention of subsections (1) or (3), the operator and master each commits an offence, and shall be liable on conviction to a fine not exceeding.....*
- (6) *Every person who contravenes subsection (2) or (4) commits an offence and shall be liable on conviction to a fine not exceeding.....*

This section on driftnets should be supported by the following two definitions:

“Driftnet” means a gillnet or other net which is more than 2.5 kilometres in length the purpose of which is to enmesh, entrap or entangle fish;

“Driftnet fishing activities” includes fishing with the use of a driftnet and any related activities including transporting, transshipping and processing any driftnet catch, and provision of food, fuel and other supplies for vessels used or outfitted for driftnet fishing;

4.12 Port Measures

Port measures have become increasingly important in the last decade as several regional fisheries bodies have adopted in varying degrees port measures as part of their conservation and management measures. In 2009, the FAO adopted a global port measures agreement (Agreement on Port State Measures to Prevent, Deter And Eliminate Illegal, Unreported and Unregulated Fishing). This Agreement has been opened for signature. So far, 16 countries have signed the Agreement. It will enter into force 30 days after the deposit of the 25th instrument of ratification acceptance or approval.

The Port Measures Agreement sets down minimum global standards, however, it is possible that a regional fisheries body could adopt measures that are stricter than those contained in the Agreement itself. Many RFMOs already have in place port measures in their binding conservation and management measures. Thus, the provisions below are intended to reflect not only the provisions of the FAO Port measures Agreement but also the possibility that it may be necessary to provide for a wider range of measures than is covered in the global agreement.

Port measures –

- (1) *The [Minister] may make regulations/decrees concerning the following matters:*

- (a) *the designation and publication of ports to which foreign fishing vessels may be permitted access;*
 - (b) *the designation of port inspectors;*
 - (c) *the training and qualifications of port inspectors;*
 - (d) *establishing the procedures, the contents of and the results to be obtained from an inspection regime, including the adoption of port measures adopted by a sub regional, regional or global fisheries organization, treaty or arrangement;*
 - (e) *prescribing the powers of inspectors, the mode of conducting an inspection, including the power to inspect any area of the fishing vessel, the catch (whether processed or not), taking samples, any fishing gear, equipment or other gear and document which the inspector deems necessary to verify compliance with relevant conservation and management measures;*
 - (f) *requiring the provision of such assistance or information as may be needed in order to undertake inspections;*
 - (g) *requiring, prior to allowing port access to a foreign fishing vessel, that such vessel provides such notice as may be prescribed prior to entering its port or its exclusive economic zone for the purpose of port access, including vessel identification, any authorization to fish, information on its fishing trip and vessel monitoring systems, quantities of fish on board and such other documentation or information;*
 - (h) *regulating or prohibiting the landing, transshipment, packaging or processing of fish, or refuelling or resupplying a vessel, including the prohibition of port access of a vessel which has been identified or reported as having been engaged in or supporting fishing activities in contravention with sub regional, regional or global conservation measures, or where there are reasonable grounds for presuming that a vessel has been engaged in such activity;*
 - (i) *regulating or prohibiting the port access of a vessel that has been included on the list of vessels maintained by subregional, regional or global fisheries organizations that are believed to have engaged in illegal, unregulated or unreported fishing;*
 - (j) *regulating or prohibiting the landing, transshipment, packaging or processing of fish, or refuelling or resupplying a vessel, including the prohibition of port access of a vessel which has been identified or reported as having been engaged in or supporting fishing activities in areas under national jurisdiction in contravention of the laws of a particular country, or fishing on the high seas without an authorization to do so from its flag state or where there are reasonable grounds for presuming that a vessel has been engaged in such activity;*
 - (k) *authorising the cooperation and exchange of information, including inspection results with other States and sub regional, regional or global fisheries organizations;*
 - (l) *providing for a system of appeal against decisions taken in respect of fishing vessels under this section;*
 - (m) *providing for any other measures that may be agreed to by subregional regional or global fisheries organizations, treaty or arrangement.*
- (2) *The [Minister/Director] may prohibit from entering a port of [country] a vessel which has been sighted as being engaged in or supporting fishing in contravention of the conservation and management measures of a regional or sub regional fisheries organization and whose flag State is not a member of nor is it a cooperating non contracting Party to that sub regional or regional fisheries organization, unless it can be established that the catch on board has been taken in a manner consistent with the relevant conservation and management measures. Such a prohibition may apply to an individual vessel or to a category of vessels.*

- (3) *The [Minister] may additionally or in the alternative provide for any of the above matters referred to in paragraph 1 of this section by Notice in the [Government Gazette].*
- (4) *References to ports in this section include offshore terminals and other installations for landing, transhipping, refuelling or resupplying vessels.*
- (5) *Any person who fails to comply with the provisions of this section or with any regulations or orders or notices made in accordance with its provisions commits an offence and shall be liable to a fine not exceeding...*

4.13 Transhipment

The power to control transhipment is fundamental to effective fisheries management, as it is well known that unregulated transhipment often leads to or is associated with “IUU” fishing. This control over transhipment can be achieved in a number of ways. For example, it can be imposed by attaching a condition to a licence or authorisation, or it can be covered by regulation. However, in view of the importance it plays in fisheries management, it is sometimes given its own section. That is the approach adopted below.

An example is:

Transhipment –

- (1) *The [Minister/Director] may authorise in writing any transhipment involving any foreign vessel in the fishery waters where such activity does not constitute a condition of license for fishing, in accordance with any applicable access agreement and any requirements which may be prescribed.*
- (2) *The [Minister/Director] shall attach such conditions as may be prescribed and may attach additional conditions as he or she thinks fit which are consistent with any condition which may be prescribed, to any authorisation granted under subsection (1)*
- (3) *Each person authorised in accordance with this section shall comply with all applicable laws of [country] and any conditions of such authorisation.*
- (4) *The [Minister/Director] may suspend such authorisation if there is failure to comply with the conditions of the authorisation or the requirements of this Act.*
- (5) *Any authorisation granted under this section shall be in writing.*
- (6) *Any person commits an offence who undertakes any transhipment activity in respect of a foreign vessel without an authorisation issued pursuant to this section, and shall be liable on conviction to a fine not exceeding.....*

The definition of “transhipment” set out under definitions above will also give the above clause greater effect.

4.14 Lacey Act provisions

One method to promote compliance that has been adopted in a number of laws is the so called long arm or Lacey Act laws, derived from a legislative provision in the US. Such laws typically make it

unlawful to import fish that has been taken contrary to the laws of another country. Below is an example of such a clause.

Activities contrary to the laws of another State –

- (1) *No person shall, within [country] or in the fishery waters, on their own account or any other capacity;*
 (a) *cause or permit a person acting on his or her behalf; or*
 (b) *use or permit a vessel to engage in fishing or related activity;*
- to take or to import, export, land, transport, sell, receive, acquire or buy any fish or fish product taken, possessed, transported or sold in violation of any law or regulation of another State or of international conservation and management measures.*
- (2) *This section does not apply to fish taken on the high seas contrary to the law of another State where [country] does not recognise the jurisdiction of that State over those fish.*
- (3) *Any person who contravenes subsection (1) commits an offence and upon conviction shall be liable for a fine not exceeding*
- (4) *Where an international agreement with another State provides for a fine, penalty or other determination or any portion of it to be remitted to that State upon conviction or other process pursuant to subsection (2), such remittance shall be made after all cost and expenses incurred by the State have been deducted.*

4.15 Enforcement and compliance provisions

Most fisheries laws, certainly those in the common law world, will have very detailed provisions regarding powers of authorized officers. It is these provisions which give the law “teeth” and are essential ultimately to its effectiveness. In civil law countries these will often be located in a basic Law or Code which will govern all the laws in that country. The following provisions are typical of those found in a common law system, though each country will have slightly different provisions to fit in with their own system. For example there may well be specific provisions of the constitution of the country in question (in particular, if there are fundamental human rights provisions in or attached to the constitution). These will need to be considered before any text can be finally adopted.

The provisions below deal with power of entry and search, power to give directions to the master of a vessel, powers of arrest, power to give directions to master, power to use reasonable force and take copies of documents, powers of seizure, general powers, powers with respect to measures of a regional fisheries management organization, requirement for certain persons to assist an authorized officer, requirements for seized property, removal of parts from seized vessels.

In addition, provisions on observers and the rights and duties of authorized officers and observers have been included here.

Powers of entry and search

- (1) *Subject to subsection (2), an authorized officer may -*
 (a) *enter and search any vessel or vehicle; or*
 (b) *stop and search any person; or*

(c) pass across any land.

- (2) *An authorized officer may only exercise powers under subsection (1) where he or she believes, on reasonable grounds -*
- (a) that an offence is being or has been committed against this Act; or*
 - (b) that -*
 - (i) any fish taken or item used or intended to be used in contravention of this Act; or*
 - (ii) any record or information required by or under this Act to be kept, completed, or provided; or*
 - (iii) any document, or item which may be taken as evidence as to the commission of an offence against this Act -*
- may be concealed for the purposes of avoiding prosecution for an offence under this Act.*
- (3) *An authorized officer may detain any person, vessel, vehicle, or conveyance of any kind, and may retain in his or her custody any parcel, package, record, document, article, gear, apparatus, device, container, fish, or thing for such period as is reasonably necessary to enable the authorized officer to carry out a search under this section.*
- (4) *In this section:*
“enter” includes to stop and board;
“search” means to examine any document, record, article, gear, apparatus, device, container or anything that is contained within the premises being searched.

Power of arrest –

- (1) *An authorized officer may, if he or she believes on reasonable grounds that any person is offending against this Act, or has committed an offence against this Act -*
- (a) order that person to stop the offending act;*
 - (b) request the person to:*
 - (i) provide his or her name by which that person is commonly known; and*
 - (ii) the person's family name or surname,*
 - (iii) the person's date of birth,*
 - (iv) the person's actual place of residence;*
 - (v) the person's occupation;*
 - (vi) provide proof of the information provided under subparagraphs (i) to (vi) above where it is reasonable to obtain proof; and*
 - (c) arrest, without warrant, that person.*
- (2) *If an authorized officer arrests a person under subsection (1) the authorized officer shall cause the person to be delivered into the custody of a member of the Police as soon as practicable and the provisions of the [laws governing criminal procedures] shall apply.*
- (3) *If the offence in respect of which the person has been arrested carries a maximum fine exceedingthat person shall not be entitled automatically to bail.*

Power to give directions to master –

- (1) *An authorized officer may, if he or she believes that a vessel is being or has been used in contravention of the provisions of this Act or of the conditions of any licence issued under this*

Act, require the master to take the vessel, as soon as reasonably practicable, to the nearest available port in [country], or such other port as is agreed between the master and the authorized officer.

- (2) *If an authorized officer has given a direction under subsection (1), he or she may also give to the master or any person on board the vessel any reasonable directions in respect of any activity, method, procedure, item, gear, document, fish, property, or thing while the vessel is proceeding to port.*

Power to use reasonable force and take copies of documents –

- (1) *An authorized officer may use such force as may be reasonably necessary to enable the exercise of his or her powers under this Act.*
- (2) *In exercising powers under this Act, an authorized officer may -*
- (a) make or take copies of any record or document, and for this purpose may take possession of and remove from the place where they are kept any such record or document, for such period of time as is reasonable in the circumstances;*
 - (b) if necessary, require a person to reproduce, or assist the authorized officer to reproduce, in a useable form, information recorded or stored in a document.*

Powers of seizure –

- (1) *An authorized officer may seize -*
- (a) any vessel, vehicle or other conveyance, fishing gear, implement, appliance, material, container, goods, equipment, or thing which the authorized officer believes on reasonable grounds is being or has been or is intended to be used in the commission of an offence against this Act;*
 - (b) any fish which the authorized officer believes on reasonable grounds are being, or have been, taken, killed, transported, bought, sold, or found in the possession of any person, in contravention of this Act, and any fish with which such fish have been intermixed;*
 - (c) any article, record, document, or thing which the authorized officer believes on reasonable grounds is evidence of the commission of an offence against this Act;*
- (2) *Any property seized under subsection (1) shall be delivered into the custody of the [Minister/Director].*

General powers –

- (1) *An authorized officer may do all such acts and things and give such directives as are reasonably necessary for the purposes of exercising any of his or her powers under this Act.*
- (2) *The powers of an authorized officer under this Act are exercisable -*
- (a) within [country];*
 - (b) in the fishery waters;*
 - (c) beyond the fishery waters;*

in relation to any conduct whether or not that conduct occurred in the fishery waters.

- (3) *Subsection (2)(c) does not authorise an authorized officer to exercise any powers under this Act in respect of any foreign vessel or any person aboard any such vessel unless the authorized officer -*
- (a) believes on reasonable grounds that any person on board the vessel has committed an offence in the fishery waters; and*
 - (b) is in hot pursuit of the vessel; and*
 - (c) commenced that pursuit in the fishery waters.*
- (4) *An authorized officer may exercise any powers beyond the limits of the fishery waters in respect of any foreign vessel or any person aboard any such vessel and relating to fisheries inspection, compliance or enforcement provided that the exercise of those powers is authorized by a treaty to which [country] is party, and implemented in [country] by regulation or notification in the Government Gazette, or is otherwise authorized under international law.*

Powers with respect to measures of a regional fisheries management organization -

- (1) *Subject to subsection 2, the [Minister/Director] may authorise an officer of the Ministry to undertake fisheries inspection, compliance and enforcement measures which have been adopted by a regional fisheries management organization of which [country] is a member.*
- (2) *The measures referred to in subsection 1(1) of this section shall be notified in the Government Gazette in accordance with section 10 of this Act.*
- (3) *The [Minister/Director] may cause to be made guidelines with respect to the implementation of the measures which have been notified in the Government Gazette in accordance with this section.*

Persons to assist authorized officer –

- (1) *Any authorized officer or observer exercising any of the powers conferred on him or her by this Act may do so with the aid of such assistants as he or she considers necessary for the purpose.*
- (2) *All persons called upon to assist any authorized officer or observer in the exercise of any of the powers conferred on him or her by this Act are hereby authorized to render such assistance.*

Requirements for seized property, etc. –

- (1) *The [Minister/Director] may, at any time until an information or charge is laid in respect of the alleged offence for which the property was seized, on application by -*
- (a) the person from whom the property was seized; or*
 - (b) the owner or person entitled to the possession of the property seized; and*
- release the property to any such person under bond in such sum and under such sureties and conditions (if any) as the [Minister/Director] may specify.*
- (2) *Where any person to whom property is released under subsection (1) fails to comply with the conditions of any bond or with any condition specified by the [Minister/Director] -*
- (a) the property may be re-seized at any time at the direction of the [Minister/Director]; and*
 - (b) the provisions of this section shall thereupon apply to the property as if it had been seized pursuant to section 62 of this Act; and*

- (c) the [Minister/Director] may, in the case of failure to comply with the conditions of any bond, apply to the [Supreme Court] for an order to forfeit the bond; and
 - (d) where the [Minister/Director] so applies the Registrar shall fix a time and place for the hearing of the application, and shall, not less than 7 days before the time fixed, cause to be served on every person bound by the bond a notice of the time and place so fixed; and
 - (e) if on the hearing of any such application it is proved to the satisfaction of the Court that any condition of the bond has not been kept, the Court may make an order to estreat the bond to such an amount as it thinks fit to any person bound thereby on whom notice is proved to have been served in accordance with this subsection; and
 - (f) any penalty payable in accordance with this subsection shall be recoverable as if it were a fine.
- (3) Where, in the opinion of the [Minister/Director], any fish or other article seized pursuant to this Act may rot, spoil, deteriorate or otherwise perish, the [Minister/Director] may arrange for its sale in such manner and for such price as the [Minister/Director] may determine.
- (4) Where the ownership of any property cannot at the time of seizure be ascertained, the property seized shall be forfeited to the Government and shall be disposed of as directed by the [Minister/Director] after 90 days from the date of seizure if, within that time, it has not been possible to establish the ownership of the property.
- (5) A purchaser for valuable consideration of any fish, article or property sold under subsection (3) or subsection (4) shall derive good and unencumbered title in respect of that fish, article or property (as the case may be).
- (6) Subject to subsection (1), all property seized pursuant to this Act and the proceeds from the sale of any such property pursuant to subsection (3), except where such property has been disposed of by the Government pursuant to subsection (4), shall be held in the custody of the [Minister/Director] acting on behalf of the Government until—
- (a) a decision is made not to lay any information or charge in respect of the alleged offence for which the property was seized; or
 - (b) where such a charge or information is laid, upon the completion of proceedings in respect of the alleged offence for which the property was seized, or such sooner time as the Court may determine.
- (7) Where any information or charge has been laid in respect of the alleged offence for which the property was seized pursuant to subsection (1), and that property remains in the custody of the Government, the Court may at any time, on application by—
- (a) the person from whom the property was seized; or
 - (b) the owner or person entitled to the possession of the property seized;
- release the property under bond to any such person, and any such release may be subject to such sureties and conditions as the Court may specify.
- (8) In determining the value of the bond or other form of security, the Court shall have regard to the aggregate amount of—
- (a) the value of the property to be released;
 - (b) the total maximum fine provided for the offence charged or likely to be charged; and
 - (c) the loss, damages or costs the prosecution would be likely to recover, if a conviction were entered, and the Court may set the value at such aggregate amount.

- (9) *The decision whether or not to lay any information or charge in respect of an alleged offence for which any property is seized under this Act shall be made as soon as reasonably practicable after the property is seized, taken possession of, or detained.*
- (10) *The Government shall not be liable to any person for any spoilage or deterioration in the quality of any fish seized under this Act.*
- (11) *Subject to subsection (10), despite any other provisions of this section, where any property has been seized under this Act, then -*
(a) on a decision being made not to lay an information or charge; or
(b) on the acquittal of any person charged with an offence for which the property is subject to forfeiture –
- such property, or the proceeds from the sale of such property, shall forthwith be released from the custody of the Government of [country] to the person entitled thereto and in the case of proceeds of sale from property under subsection (4) the same shall be paid into the unclaimed monies account and be dealt with in accordance with the [law relating to public finance management].*
- (12) *Despite any other provisions in this section, an authorized officer who at the time of seizure returns to the water any fish seized pursuant to this Act that he or she believes to be alive, shall not be under any civil or criminal liability to the person from whom the fish was seized in the event of a decision being made not to lay an information or charge in respect of the fish, or of the person being acquitted of the charge.*

Removal of parts from seized vessels, etc. –

- (1) *An authorized officer may remove any part from any vessel, vehicle or aircraft held in the custody of the Government for the purpose of immobilizing that vehicle or aircraft.*
- (2) *Any part removed under subsection (1) shall be kept safely and returned to the vessel, vehicle or aircraft upon its lawful release from custody.*
- (3) *No person, otherwise than acting under the authority of the [Minister/Director], shall possess or arrange to obtain any part removed under subsection (1) or possess or arrange to obtain or make any replacement or substitute part for those removed under subsection (1) or shall fit or attempt to fit any part or any replacement or substitute part to a vessel, vehicle or aircraft held in the custody of the Government.*

Observers –

- (1) *The [Minister/Director] may designate in writing persons to act as observers on vessels issued with valid licences or authorizations pursuant to this Act.*
- (2) *Despite subsection (1), observers may be designated in accordance with any fishery plan, or treaty and shall be designated where required by any fishery plan or any agreement or where an observer or class of observers has been certified under the terms of such agreement or other bilateral or multilateral treaty to which [country] is party.*

- (3) *Persons designated in accordance with subsection (2) who are not [country]n shall be subject to the provisions of this Act while carrying out their duties and functions and enforcing their rights.*
- (4) *Observers shall exercise scientific, compliance, monitoring and other functions.*
- (5) *Observers shall be permitted to board any vessel issued with a valid licence or authorization pursuant to this Act and remain on such vessel for the purpose of exercising the observers functions.*
- (6) *The operator, master, and each member of the crew of such vessel shall allow and assist an observer to -*
- (a) board and remain on such vessel for the purpose of carrying out his or her duties and functions, at such time and place as the [Minister/Director] may require;*
 - (b) have full access to and the use of facilities and equipment on board the vessel which the observer may determine is necessary to carry out his or her duties, including -*
 - (i) full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish;*
 - (ii) full access to the vessel's records including its log and documentation for the purpose of records inspection and copying;*
 - (iii) full access to fishing gear on board;*
 - (iv) full access to navigation equipment and radios;*
 - (v) take and remove from the vessel reasonable samples for the purposes of scientific investigation and other relevant information;*
 - (vi) take photographs of the fishing operations, including fish, fishing gear, equipment, charts and records, and remove from the vessel such photographs or film as he or she may have taken or used on board the vessel;*
 - (vii) send or receive messages by means of the vessel's communications equipment; and*
 - (viii) gather any other information relating to fisheries in the fishery waters or other areas as may be authorized by licence or authorization;*
 - (c) carry out the observers duties safely; and*
 - (d) disembark at such time and place as may be determined by the [Minister/Director] or in accordance with an access agreement.*
- (7) *The operator shall provide the observer, while on board the vessel, at no expense to the Government with food, accommodation and medical facilities equivalent to officers or such reasonable standard as may be acceptable to the [Minister/Director].*
- (8) *In addition to the requirements in subsection (7), the [Minister/Director] may require the operator to pay in full the following costs of the authorized observer -*
- (a) travel costs to and from the vessel;*
 - (b) such salary as may be notified by the [Minister/Director], being the full amount of such salary; and*
 - (c) full insurance coverage.*
- (9) *Any operator and master of any vessel with a valid licence issued in accordance with this Act shall allow and assist any observer to have full access to any place within [country] where fish taken in the fishery waters is unloaded or transshipped, to remove samples and to gather any information relating to fisheries in the fishery waters.*

Duties to authorized officers and observers –

- (1) *The operator, master, and each crew member of any fishing vessel, the driver of any vehicle and the pilot and crew of any aircraft shall immediately comply with every instruction or direction given by an authorized officer or observer as appropriate, and facilitate safe boarding, entry and inspection of the vessel, vehicle or aircraft and any fishing gear, equipment, records, fish and fish products.*
- (2) *The operator, master, and each crew member of a vessel, driver of a vehicle and pilot and crew of an aircraft shall ensure the safety of an authorized officer or observer as appropriate in the performance of his duties.*
- (3) *Any person who contravenes subsections (1) or (2), or –*
 - (a) *assaults, obstructs, resists, delays, refuses boarding to, intimidates or fails to ensure the safety of or otherwise interfere with an authorized officer or observer in the performance of his or her duties;*
 - (b) *incites or encourages any other person to assault, resist, or obstruct any authorized officer while in the execution of his powers or duties, or any person lawfully acting under the officer's orders or in his aid;*
 - (c) *uses threatening language or behaves in a threatening or insulting manner or uses abusive language or insulting gestures towards any authorized officer or observer while in the execution of his powers or duties, or any person lawfully acting under an authorized officer's orders or in his aid;*
 - (d) *fails to comply with the lawful requirements or any authorized officer or observer;*
 - (e) *furnishes to any authorized officer any particulars which are false or misleading in any material respect;*
 - (f) *personates or falsely represents himself to be an authorized officer, or who falsely represents himself to be a person lawfully acting under an authorized officer's orders or in his aid;*
 - (g) *resists lawful arrest for any act prohibited by this Act;*
 - (h) *is in breach of any other duty to an authorized officer or authorized observer under this Act; commits an offence.*
- (4) *For the purpose of subsection (3), any person who does not allow any authorized officer, or any person acting under his or her orders or in his or her aid, or an observer to exercise any of the powers conferred on such person by this Act shall be deemed to be obstructing that officer or person.*
- (5) *Any person who, being a master, owner, charterer, agent, or a company established under the laws of [country] which owns, partly owns or controls a fishing vessel which transports an authorized officer or observer outside the fishery waters and causes him or her to disembark outside the territory of jurisdiction of [country], commits an offence and upon conviction shall be liable, in addition to any fine, for all costs of repatriation including board and lodging while out of [country] and direct transportation to [country].*
- (6) *Any person who commits an offence against this section shall be liable on conviction to a fine not exceeding.....*

Identification of authorized officers and observers –

An authorized officer or observer when exercising any of the powers conferred on him or her by this Act shall on request produce identification to show he or she is an authorized officer or observer under this Act.

Electronic tracking devices for vessels, electronic evidence and certificate evidence

Due to the somewhat more rigid rules of evidence that are applied in countries with common law systems compared to those with a civil law type system, it is often necessary to include in the fisheries legislation, usually in the primary Law itself, specific provisions on the use of electronic instruments as evidence. This is in part due to the so called rule against “hearsay” in the common law, which rules out reliance on such information in a trial in the absence of such legislation authorising its use in criminal proceedings.

In civil law systems, these problems usually do not arise due to a very different way of treating evidence in a trial.

Mobile Transceiver Unit (MTU)–

- (1) *The operator of each fishing vessel licensed to fish pursuant to this Act shall be required, as a condition of its licence, to install, maintain and operate a registered mobile transceiver unit (MTU) at all times while in the fishery waters or such other area as may be agreed or designated, and in accordance with -*

 - (a) the manufacturer’s specifications and operating instructions; and*
 - (b) such standards as may be required by any body or organization of which [country] is a member;*
 - (c) such other requirements as may be prescribed.*

- (2) *The operator of each vessel referred to in subsection (1) shall ensure that -*

 - (a) no person tampers or interferes with the MTU and that the MTU is not altered, damaged, disabled or otherwise interfered with;*
 - (b) the MTU is not moved from the required or agreed installed position or removed without the prior written permission of the [Minister/Director];*
 - (c) the MTU is switched on and is operational at all times when the vessel is within the fishery waters or such other area as may be agreed or designated, and at such times prior to entry into such fishery waters or other area as may be prescribed;*
 - (d) upon notification by the [Minister/Director] that the vessel’s MTU has failed to transmit, the directives of the [Minister/Director] are complied with until such time that the vessel’s MTU is functioning properly;*
 - (e) the MTU is registered as the [Minister/Director] may direct or as may be prescribed, at the operator’s expense.*

- (3) *The operator of each vessel referred to in subsection (1) or his or her authorised agent, upon notification by the licensing country of appropriate authority that the vessel’s MTU has failed to report, shall ensure that reports containing the vessel’s name, call sign, position (expressed in latitude and longitude to minutes of arc), and date and time for the report, are communicated to a delegated authority at intervals of 8 hours or such shorter period as specified by the delegated authority, commencing from the time of notification of the failure of the MTU. Such reports must continue until such time as the MTU is confirmed operational by the licensing country of appropriate authority.*

- (4) *If it is not possible to make any one or more of the further position reports described in paragraph (3), or when the [Minister/Director] so directs, the master of the vessel must immediately stow the fishing gear and take the vessel directly to a port identified by the [Minister/Director], and as soon as possible, report to the [Minister/Director] that the vessel is being, or has been, taken to port with gear stowed.*

- (5) Any operator, including the master, owner and charterer, who does not comply with subsections (1), (2), (3) or (4) commits an offence and shall be liable on conviction to a fine not exceeding....., and in addition the applicable licence shall be cancelled.

Status of Information from MTUs –

- (1) All information or data obtained or ascertained by the use of an MTU shall be presumed, unless the contrary is proved, to -
- (a) come from the vessel so identified;
 - (b) be accurately relayed or transferred;
 - (c) be given by the master, owner and charterer of the vessel; and
- evidence may be given of information and data so obtained or ascertained whether from a printout or visual display unit.
- (2) The presumption in subsection (1) shall apply whether or not the information was stored before or after any transmission or transfer.
- (3) An MTU installed and operated in accordance with this Act shall be judicially recognized as notoriously accurate.
- (4) The presumption set out in subsection (3) shall apply whether or not the information was stored before or after any transmission or transfer.
- (5) Any person may give a certificate stating –
- (a) his or her name, address and official position;
 - (b) he or she is competent to read the printout or visual display unit of any machine capable of obtaining or ascertaining information from an MTU;
 - (c) the date and time the information was obtained or ascertained from the MTU and the details thereof;
 - (d) the name and call sign of the vessel on which the MTU is or was located as known to him or her, or as ascertained from any official register, record or other document; and
 - (e) a declaration that there appeared to be no malfunction in the MTU, its transmissions, or other machines used in obtaining or ascertaining the information.
- (6) Ownership of all vessel monitoring system information generated by an MTU required and operating under this Act is vested in the Government of [country].
- (7) All vessel monitoring information shall be classified as confidential information, and shall be subject to such procedures as may be prescribed by regulation.
- (8) Any person who divulges information from a vessel monitoring system, to any person not authorised to receive such information commits an offence and shall be liable on conviction to a fine not exceeding.....

Certificate of Evidence

The [Minister/Director] or any person designated in writing by him or her may give a certificate stating that–

- (a) a specified vessel was or was not on a specified date or dates a fishing vessel of [country], a locally based foreign fishing vessel or a foreign fishing vessel;

- (b) *a specified vessel or person was or was not on a specified date or dates the holder of any specified licence, authorisation or certificate of registration;*
- (c) *an appended document is a true copy of the licence or certificate of registration for a specified vessel or person and that specified conditions were attached to such document;*
- (d) *a particular location or area of water was on a specified date or dates within the fishery waters, or within a closed, limited, restricted or in any other way controlled area of the fisheries waters, or an area of the fisheries waters subject to specified conditions;*
- (e) *an appended chart shows the boundaries on a specified date or dates of the fisheries waters, territorial sea, closed or limited areas or other maritime areas or zones delineated for any specified purpose;*
- (f) *a particular item or piece of equipment is a fishing gear;*
- (g) *the cause and manner of death of or injury to any fish is as stated;*
- (h) *an appended document is a true copy of an approved charter agreement, an access agreement or fisheries management agreement;*
- (i) *a call sign, name or number is that of or allotted under any system of naming or numbering of vessels to a particular vessel;*
- (j) *an appended position or catch report was given in respect of a specified vessel;*
- (k) *a specified vessel, MTU or other item fulfils or does not fulfil registration requirements under this Act, an applicable access agreement or international conservation and management measures other than that specified in paragraph (k), as declared in an appended copy of a statement signed by the administrator of such register;*
- (l) *an appended document is a true certificate of calibration of a specified measuring device;*
- (m) *an offence was committed against the laws of another State, as declared in an appended copy of a statement signed by competent authorities of such State;*
- (n) *international conservation and management measures as defined in this Act are in force as declared in an appended copy of a statement signed by the [Minister/Director], or equivalent, of the international organisation or arrangement which adopted such measures;*
- (o) *a certification as to the condition of fish given under this Act was made in accordance with this Act and was made by the person who is signatory to the certificate;*
- (p) *a photograph is a true and accurate representation of what it is meant to represent;*
- (q) *a photograph was taken by a specified person; or*
- (r) *any specified return, log, record or information required to be kept or furnished under this Act or was not kept or furnished.*

Certificate as to the location of a vessel

- (1) *Where in any proceedings under this Act the place or area in which a vessel is alleged to have been at a particular date and time or during a particular period of time is material to an offence charged, then a place or area stated in a certificate given by a authorised officer shall be prima facie evidence, unless the contrary is proved, of the place or area in which the vessel was at the date and time or during the period of time stated.*
- (2) *A authorised officer shall, in any certificate made in subsection (1), state –*
 - (a) *his or her name, address, official position, country of appointment and provision under which he is appointed;*
 - (b) *the name and, if known, call sign of the fishing vessel concerned;*
 - (c) *the date and time or period of time the vessel was in the place or area;*
 - (d) *the place or area in which it is alleged the vessel was located;*
 - (e) *the position fixing instruments used to fix the place or area stated in (d) and their accuracy within specified limits;*

- (f) *that he or she checked the position fixing instruments a reasonable time before and after they were used to fix the position and they appeared to be working correctly; and*
 - (g) *if a position fixing instrument which is not judicially recognised as notoriously accurate is used, that he or she checked the instrument used as soon as possible after the time concerned against an instrument that is judicially recognised as notoriously accurate.*
- (3) *For the purposes of this section, "authorised officer" includes observers and those charged with similar responsibilities in other States.*

MTU - presumption and certificate

- (1) *All information or data obtained or ascertained by the use of an MTU shall be presumed, unless the contrary is proved, to-*
- (a) *come from the vessel so identified;*
 - (b) *be accurately relayed or transferred;*
 - (c) *be given by the operator, including the master, owner and charterer of the vessel,*
- and evidence may be given of information and data so obtained or ascertained whether from a printout or visual display unit.*
- (2) *The presumption in paragraph (1) shall apply whether or not the information was stored before or after any transmission or transfer.*
- (3) *An MTU installed and operated in accordance with this Act shall be judicially recognised as notoriously accurate.*
- (4) *A authorised officer or other person authorised in writing by the Minister/Director], may give a certificate stating –*
- (a) *his or her name, address and official position;*
 - (b) *he or she is competent to read the printout or visual display unit of any machine capable of obtaining or ascertaining information from an MTU;*
 - (c) *the date and time the information was obtained or ascertained from the MTU and the details thereof;*
 - (d) *the name and call sign of the vessel on which the MTU is or was located as known to him or as ascertained from any official register, record or other document; and*
 - (e) *a declaration that there appeared to be no malfunction in the MTU, its transmissions, or other machines used in obtaining or ascertaining the information.*

Photographic Evidence

- (1) *Where a photograph is taken of any fishing or related activity and simultaneously the date and time and position from which the photograph is taken are superimposed upon the photograph then it shall be presumed unless the contrary is proved that the photograph was taken on the date, at the time and in the position so appearing.*
- (2) *The presumption set out in subsection (1) shall arise only if –*
- (a) *the camera taking the photograph is connected directly to the instruments which provide the date, time and position concerned; and*
 - (b) *the photograph was taken by a authorised officer or observer or under their supervision.*

- (3) Any authorised officer or observer who takes or supervises the taking of a photograph of the kind described in subsection (1) may give a certificate appending the photograph stating-
- (a) his or her name, address, official position, country of appointment and authority under which he or she is appointed;
 - (b) the name and call sign, if known, of any fishing vessel appearing in the photograph;
 - (c) the names of the camera, watch or clock or other instruments supplying the date and time and the position fixing instrument and a declaration that he or she checked those instruments a reasonable time before and after the taking of the photograph and that they all appeared to be working correctly;
 - (d) the matters set out in subsection (2)(a) and (c); and
 - (e) the accuracy of the position fixing instrument used within specified limits.

Validity and procedures for certificate

- (1) Unless the contrary is proved, a document purporting to be a certificate given under this Part shall be deemed to be such a certificate and to have been duly given.
- (2) Where a certificate issued under this Part-
- (a) is served upon a defendant seven or more days, but less than fourteen days, before its production in court in any proceedings under this Act; or
 - (b) is served fourteen or more days before its production in court in any proceedings under this Act and an objection is notified in accordance with subsection (2);
- the certificate shall, unless the contrary is proved, be prima facie evidence of all the facts averred in it.
- (3) Any omission from or mistake made in any certificate issued under this Part shall not render it invalid unless the Court considers such omission or mistake is material to any issue in the proceedings concerned, or the defendant is unduly prejudiced thereby.
- (4) Where in any proceedings a certificate made under this Part is produced to the Court, the prosecution shall not be obliged to call the maker of the certificate and the Court shall, where material, rely on the facts therein unless the contrary is proved.

Presumptions

- (1) All fish found on board any fishing vessel which has been used in the commission of any offence under this Act shall be presumed to have been caught during the commission of that offence, unless the contrary is proved.
- (2) Where, in any legal proceedings under this Act-
- (a) the place in which an event is alleged to have taken place is in issue, the place stated in the relevant entry in the logbook or other official record of any enforcement vessel or aircraft as being the place in which the event took place shall be presumed to be the place in which the event took place; and
 - (b) the production of a written copy or extract of the entry certified by an authorized officer as a true copy of the accurate extract shall be prima facie evidence of an entry in a logbook or other official record of an enforcement vessel or aircraft.
- (3) Where in any legal proceedings relating to an offence under this Act-

- (a) *an authorised officer gives evidence of reasonable grounds to believe any fish to which the charge relates were taken in a specified area of the fisheries waters; and*
 - b) *the court considers that, having regard to that evidence the grounds are reasonable, all the fish shall be presumed to have been so taken, unless the contrary is proved.*
- (4) *Where in any legal proceedings for an offence under this Act-*
- (a) *an authorised officer gives evidence of reasonable grounds to believe that any fish to which the charge relates were taken by the use of driftnets; or*
 - (b) *the Court considers that, having regard to the evidence, the grounds are reasonable;*
- all the fish shall be presumed to have been so taken, unless the contrary is proved.*
- (5) *Where any information is given in respect of a fishing vessel under this Act or an access agreement in relation to any fishing activity of a fishing vessel, it shall be presumed to have been given by the operator, including the master, owner and charterer of the vessel concerned, unless it is proved it was not given or authorised to be given by any of them.*
- (6) *Any entry in writing or other mark in or on any log, chart or other document required to be maintained under this Act or used to record the activities of a fishing vessel shall be deemed to be that of the operator, including the master, owner and charterer of the vessel.*
- (7) *Any position fixing instrument on board a vessel or aircraft used for the enforcement of this Act shall be presumed to be accurate.*

4.16 Bail and bond issues

Article 73.2 of the LOSC states: “Arrested vessels and their crews shall be promptly released upon the posting of a reasonable bond or other security”

The meaning of this provision has been subject to interpretation in cases before the International Tribunal for the Law of the Sea. The most important to date is the Volga Case². In this case, Australia sought, inter alia, to impose as a condition for the release of the vessel an obligation to carry certain VMS equipment.

The Tribunal commented generally about Article 73.2 in the following terms:

In interpreting the expression “bond or other security” set out in article 73, paragraph 2, of the Convention, the Tribunal considers that this expression must be seen in its context and in light of its object and purpose. The relevant context includes the provisions of the Convention concerning the prompt release of vessels and crews upon the posting of a bond or security. These provisions are: article 292; article 220, paragraph 7; and article 226, paragraph 1(b). They use the expressions “bond or other financial security” and “bonding or other appropriate financial security”. Seen in this context, the expression “bond or other security” in article 73, paragraph 2, should, in the view of the Tribunal, be interpreted as referring to a bond or security of a financial nature. The Tribunal also observes, in this context, that where the Convention envisages the imposition of conditions additional to a bond or other financial security, it expressly states so. Thus article 226, paragraph 1(c), of the Convention provides that “the release of a vessel may, whenever it would present an unreasonable threat of damage to the marine environment, be refused or made conditional upon proceeding to the nearest appropriate repair yard”. It follows from the above that the non-financial conditions cannot be considered components of a bond or other financial security for the purpose of

² Case No 11 Russian Federation v. Australia 2002.

applying article 292 of the Convention in respect of an alleged violation of article 73, paragraph 2, of the Convention. The object and purpose of article 73, paragraph 2, read in conjunction with article 292 of the Convention, is to provide the flag State with a mechanism for obtaining the prompt release of a vessel and crew arrested for alleged fisheries violations by posting a security of a financial nature whose reasonableness can be assessed in financial terms. The inclusion of additional non-financial conditions in such a security would defeat this object and purpose.

73. *The Respondent has required, as part of the security for obtaining the release of the Volga and its crew, payment by the owner of one million Australian dollars. According to the Respondent, the purpose of this amount is to guarantee the carriage of a fully operational monitoring system and observance of Commission for the Conservation of Antarctic Marine Living Resources conservation measures until the conclusion of legal proceedings. The Respondent explained that this component of the bond was to ensure "that the Volga complies with Australian law and relevant treaties to which Australia is a party until the completion of the domestic legal proceedings"; that the ship does not "enter Australian territorial waters other than with permission or for the purpose of innocent passage prior to the conclusion of the forfeiture proceedings"; and further to ensure that the vessel "will not be used to commit further criminal offences".*

74. *The Tribunal cannot, in the framework of proceedings under article 292 of the Convention, take a position as to whether the imposition of a condition such as what the Respondent referred to as a "good behaviour bond" is a legitimate exercise of the coastal State's sovereign rights in its exclusive economic zone. The point to be determined is whether a "good behaviour bond" is a bond or security within the meaning of these terms in articles 73, paragraph 2, and 292 of the Convention.*

75. *The Tribunal notes that article 73, paragraph 2, of the Convention concerns a bond or a security for the release of an "arrested" vessel which is alleged to have violated the laws of the detaining State. A perusal of article 73 as a whole indicates that it envisages enforcement measures in respect of violations of the coastal State's laws and regulations alleged to have been committed. In the view of the Tribunal, a "good behaviour bond" to prevent future violations of the laws of a coastal State cannot be considered as a bond or security within the meaning of article 73, paragraph 2, of the Convention read in conjunction with article 292 of the Convention.*

The following is an example from the Papua New Guinea Fisheries Act:

Division 2. - Seizure, Release, Forfeiture.

61. Seizure and Release of Vessel, Etc.

- (1) For the purposes of this section -
 - (a) the vessel's equipment, gear, furniture, appurtenances, stores, cargo and aircraft shall be deemed to form part of the vessel; and
 - (b) "court" means the National Court; and
 - (c) "bond" does not include a performance bond.
- (2) A Fishery Officer may, notwithstanding his powers of seizure set out in this Act seize any item which he has reasonable grounds to believe -
 - (a) has been or is being used in the commission of an offence against this Act; or
 - (b) has been seized or forfeited under this Act; or
 - (c) has been unlawfully removed from custody under this Act.
- (3) A person may, within 60 days of the seizure of a vessel or other property under this section, apply to the court for the release of the vessel or property.

- (4) Upon receipt of an application under Subsection (3), the court may, and in the case of a foreign vessel, shall, unless the vessel or property is required as an exhibit in court proceedings or reasonably required for any further investigation of fisheries offences, order -
- (a) the payment into court of a bond, surety or other security in the total of -
 - (i) the fair market value of the vessel or property; and
 - (ii) the maximum fine or fines provided for the offences charges or likely to be charged; and
 - (iii) the costs likely to be recovered by the prosecution if a conviction is entered; and
 - (b) the release of the vessel or property, upon receipt of the bond, surety or other security referred to in Paragraph (a).
- (5) In the event of an appeal from an order of forfeiture, the Court may continue any such bond, surety or other security deposited in accordance with Subsection (4) during the pendency of the appeal and any retrial or rehearing on remand or may require additional security to be deposited with the court.
- (6) Exoneration of such bond, surety or other security shall be conditional upon the return of the released property to the court without any impairment of its value, or until any final proceedings under the Act have been disposed of or discontinued, and any fines, penalties or other determinations have been paid.
- (7) A vessel or property seized under this Act, or where a security has been paid under Subsection (4), the security, shall be held until any proceedings under this Act have been disposed of or discontinued, and any fines, penalties or other determinations imposed have been paid.
- (8) Where a bond, surety or other security has been paid under Subsection (4) and the vessel or property has been released -
- (a) an order for forfeiture under this Act shall operate as an order for the forfeiture of the sum paid in respect of the value of the vessel or property; and
 - (b) the payment of any fine or penalty ordered upon conviction shall be made from the security; and
 - (c) any order for costs shall be applied against the security.

4.17 Offences

There are two basic approaches of dealing with offences. One is to specify the penalty for each provisions which needs to attract a penalty. See for example, the provisions above concerning licensing or authorization transshipment, use of driftnets, and prohibited fishing methods. Another is to provide a maximum general penalty for all breaches of the Law, leaving it to a court to determine the appropriate level of penalty. There are advantages in setting out the specific penalties for certain breaches of the law as this allows for appropriate levels of penalty for that breach to be indicated to a court. Such an approach can be supplemented by a general penalty covering those breaches of the law for which no specific penalty is provided. This would be useful where it is difficult to predict what level of penalty would be appropriate for breaches of future conservation and management measures adopted by regional fisheries management organizations, or conditions attached to a licence.

One category of offence merits separate treatment, however. These are “serious violations, a term which has been defined above under Interpretation. It is treated separately as it is necessary to demonstrate under the UN Fish Stocks Agreement that such violations have been dealt with effectively. The UN Fish Stocks Agreement in article 19.2 states: “*Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities.*” This would require that penalty levels are sufficiently high to meet this requirement. It is important, therefore to provide for an adequately severe penalty in respect of such breaches.

4.18 Administrative penalties

The judicial process has often been criticized as being unduly lengthy, and that its strict insistence of high standards of proof can lead to too few successful prosecutions for illegal fishing. In many instances, the situation has been ameliorated to a limited extent by providing that fisheries offences are triable summarily, i.e. before a magistrate and without a jury.

One solution has been the introduction of a system of administrative penalties for dealing with fisheries offences. This was specifically referred to in the IPOA-IUU as one possible approach that could be adopted. See paragraph 21 of the IPOA-IUU.

The main advantage of this approach is that it enables the court or tribunal to apply a lower standard of proof than is possible in a full criminal trial (usually accepting proof on the civil standard of balance of possibilities rather than on the criminal standard of beyond reasonable doubt), it makes possible expedited hearings, and it can also include the possibility of a negotiated settlement of the case.

This method has been adopted in the United States and in a number of the island States of the South Pacific. Despite the fact that it involves a possible diminution of their legal rights, it is often popular with fishers as it enables a speedy resolution of their case.

This approach may not work in all countries as there may be constitutional or legal reasons why such a system cannot be introduced.

In some countries, a system of “compounding” of offences is used. This is also an alternative to the use of administrative or civil penalties, but compounding usually lacks the safeguards built into the more formally structured administrative or civil penalty system.

The following example is taken from the Papua New Guinea Fisheries Act, 1998:

PART VII. - ADMINISTRATIVE PROCEEDINGS.

64. Summary administrative panel.

- (1) *A Summary Administrative Panel shall be established for the purpose of making determinations in Summary Administrative Proceedings in accordance with Section 65.*
- (2) *The Board, on the recommendation of the Managing Director, shall appoint one person each from the legal profession and the fishing industry to the Summary Administrative Panel for a term of two years, provided that the consent of the Attorney-General shall be required for a Government lawyer to be appointed as a member of the Summary Administrative Panel.*

- (3) *Each person appointed to the Summary Administrative Panel under Subsection (2) shall notify the Board of an alternate with similar qualifications who may sit on the Summary Administrative Panel in their absence, and the Board shall confirm the appointment of the alternate for a term of two years.*
- (4) *The Summary Administrative Panel shall seek such evidence, advice and information it considers necessary, and shall not be governed by the strict rules of evidence.*
- (5) *The Summary Administrative Panel for each determination shall comprise the Managing Director, who shall be Chairman, and the two persons or their alternates appointed in accordance with Subsections (2) and (3).*
- (6) *Any person serving on a Summary Administrative Panel, other than a governmental lawyer and the Managing Director, shall receive a sitting allowance at a level approved by the Managing Director.*

65. Determination of proceedings.

- (1) *The Managing Director, after consultation and with the consent of the Public Prosecutor, may initiate Summary Administrative Proceedings against any person in violation of this Act.*
- (2) *The decision to initiate Summary Administrative Proceedings for any violation of this Act shall be made within 48 hours of the issuance of a notice of violation by the Managing Director or his designee in consultation with the Public Prosecutor.*
- (3) *Where the person admits in writing to the violation, the Managing Director may handle this matter under the Summary Administrative Proceedings provisions in Section 66.*
- (4) *Where the person denies the violation, the Managing Director shall, after consultation with and the consent of the Public Prosecutor, proceed to determine the violation in Summary Administrative Proceedings, provided that if the Public Prosecutor denies consent to the administrative handling of the violation, the Managing Director shall refer the matter for prosecution.*
- (5) *Where there is a decision to handle the matter in Summary Administrative Proceedings, the person upon whom the notice of violation is served shall be given the notice of the hearing and shall have right to appear, be heard, produce evidence and to counsel retained at his own expense.*
- (6) *The Managing Director shall set a Summary Administrative Proceedings hearing for the violation within 48 hours of the decision to proceed administratively.*
- (7) *The Authority shall conduct the proceedings in accordance with such procedures as may be prescribed.*

66. Summary administrative proceedings.

- (1) *Subject to Subsection (4) the Managing Director may, where -*

- (a) a person who has violated any provision of this Act has, in writing, in a form approved by the Managing Director -*
- (i) admitted to having committed such violation; and*
- (ii) consented to Summary Administrative Proceedings after being fully informed about these Proceedings; and*
- (b) a Summary Administrative Panel has determined that such person has violated this Act, dispose of such violation by accepting on behalf of the State from such person an Administrative Penalty, the amount of which shall be determined by the Summary Administrative Panel and shall not exceed the maximum fine of penalty required under this Act for such violation, plus the fair market value of any fish caught illegally.*
- (2) Where Summary Administrative Proceedings have been initiated under this Act, the person who admits to having committed the offence under Subsection (1)(a), shall be deemed to have waived any right to a judicial hearing and shall -*
- (a) not engage in fishing or carry out any other activity in the fishery waters until the amount of the penalty has been paid in full; and*
- (b) be deemed to have consented to any seizure which took place in accordance with this Act in relation to the offence subject to the Summary Administrative Proceedings.*
- (3) The Summary Administrative Panel, in a Summary Administrative Proceeding, may direct that the strict and technical rules of evidence and procedure and the rules relating to evidence under this Act shall not apply to the proceedings before it, subject to the observation of the principles of natural justice.*
- (4) Summary Administrative Proceedings shall be null and void if the full amount of the penalty as determined by the Summary Administrative Panel under Subsection (1) or (2) is not paid within three days of notification of such penalty assessment to the person subject to the proceedings, and the matter shall immediately revert to a court of competent jurisdiction.*
- (5) On payment of the penalty in full under this section, the Managing Director may order the release of any article seized under this Act or the proceeds of sale of such article on such conditions as he may determine.*
- (6) Summary Administrative Proceedings for any violation shall be satisfied upon the payment of such sum of money determined by the Managing Director and notified in writing, under the signature of all parties, to the court of competent jurisdiction.*
- (7) The Summary Administrative Panel may order that any item used or involved in respect of the violation be seized or confiscated, but shall not impose a term of imprisonment or order the forfeiture of any item used or involved in respect of the violation in Summary Administrative Proceedings.*
- (8) Any decision taken or order given by the Summary Administrative Panel or Managing Director pursuant to this section is final and binding.*
- (9) Any person who engages in fishing or other activity proscribed by Subsection (2) while prohibited from so doing commits an offence.*
- (10) Any person who violates a valid order pursuant to the terms of this Part commits an offence.*

In the United States, there is a well established regime of civil penalties. An example is set out below.

Sec. 308. Civil penalties and permit sanctions 16 u.s.c. 1858

- (a) *Assessment of penalty - Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$100,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require. In assessing such penalty the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay, Provided, That the information is served on the Secretary at least 30 days prior to an administrative hearing.*
- (b) *Review of Civil Penalty - Any person against whom a civil penalty is assessed under subsection (a) or against whom a permit sanction is imposed under subsection (g) (other than a permit suspension for nonpayment of penalty or fine) may obtain review thereof in the United States district court for the appropriate district by filing a complaint against the Secretary in such court within 30 days from the date of such order. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.*
- (c) *Action upon failure to pay assessment - If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.*
- (d) *IN REM jurisdiction - A fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 307 shall be liable in rem for any civil penalty assessed for such violation under section 308 and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.*
- (e) *Compromise or other action by secretary - The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.*
- (f) *Subpoenas - For the purposes of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to*

this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(g) Permit sanctions.—

- (1) In any case in which (A) a vessel has been used in the commission of an act prohibited under section 307, (B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this Act has acted in violation of section 307, (C) any amount in settlement of a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any marine resource law enforced by the Secretary has not been paid and is overdue, or (D) any payment required for observer services provided to or contracted by an owner or operator who has been issued a permit or applied for a permit under any marine resource law administered by the Secretary has not been paid and is overdue, the Secretary may—
 - (i) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;*
 - (ii) suspend such permit for a period of time considered by the Secretary to be appropriate;*
 - (iii) deny such permit; or*
 - (iv) impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person under this Act and, with respect to foreign fishing vessels, on the approved application of the foreign nation involved and on any permit issued under that application.**
- (2) In imposing a sanction under this subsection, the Secretary shall take into account— (A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and (B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.*
- (3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of the transfer.*
- (4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.*
- (5) No sanctions shall be imposed under this subsection unless there has been prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.*

4.19 Regulations

In order to ensure that there is the capacity to enact regulations to deal with sometimes unforeseen issues or points of detail on matters already covered in the main law, most modern fisheries laws contain extensive regulation making powers. These might extend from setting out the content of application forms for licenses to more important matters such as regulating sport fishing, or the use of Fish aggregating devices. In between, they can provide for regulations to supplement the powers already given in the Law itself.

Regulations can also be useful where there may be a need to change provisions regularly, for example, details of data collection requirements.

The provisions below are also in addition to those provisions above which have already authorised the making of regulations

Regulations –

- (1) *The Minister acting on the advice of Cabinet, may make such regulations as may be necessary to give effect to the provisions of this Act and for the due administration thereof.*
- (2) *Without, limiting the generality of subsection (1), regulations made pursuant to this section may provide for all or any of the following –*
 - (a) *prescribing measures for the conservation, management, development, licensing and regulation of fisheries or any particular fishery;*
 - (b) *licensing, authorization or registration in respect of any vessel or class or category of vessels to be used for fishing, related activities or any other purpose pursuant to this Act, including the form, issuing requirements, grounds for denial, terms and conditions and fees, charges, royalties, and other forms of compensation related to such licensing, authorization or registration;*
 - (c) *licensing, authorization or registration in respect of any fisher or class of fisher, fishing gear and other equipment or devices used for fishing;*
 - (d) *the operation of, and conditions and procedures observed by any fishing vessel while in the fishery waters;*
 - (e) *the operation of, and conditions and procedures to be observed by any other vessel which may enter the fishery waters for any purpose under this Act;*
 - (f) *the catching, loading, landing, handling, transshipping, transporting, possession and disposal of fish;*
 - (g) *the import, export, distribution and marketing of fish and fish products, including live fish;*
 - (h) *the manner in which any fishing gear is to be stowed;*
 - (i) *the appointment, powers and duties of authorized officers and observers;*
 - (j) *the duties and procedures to be followed by the master and crew of any vessel in respect of authorized officers and observers;*
 - (k) *rewards to be paid to any person providing information on the operations of foreign vessels leading to a conviction of an offence against this Act;*
 - (l) *the licensing, control and use of fish aggregating devices and the rights to the aggregated fish, and prescribing times and the minimum distances from such devices any vessel may fish around such devices;*
 - (m) *regulating or prohibiting the use of self-contained underwater breathing apparatus and surface supplied air;*
 - (n) *regulating or prohibiting the use of spear guns or other similar devices;*
 - (o) *standards and measures for the safety of local fishermen and fishing vessels;*
 - (p) *regulating aquaculture and access to land leased for aquaculture and to the waters superjacent to such land;*
 - (q) *prescribing the terms and conditions of leases for aquaculture;*
 - (r) *requiring the provision of data or information related to fisheries;*
 - (s) *the control, inspection and conditions of operation of fish processing establishments;*
 - (t) *the management of spawning aggregations;*
 - (u) *the appointment, maintaining of and procedures for agents appointed to receive and respond to process pursuant to this Act;*

- (v) the implementation of any access or related agreement or other agreement or arrangement entered into pursuant to this Act;*
- (w) regulating or prohibiting, either generally or in any specified fishery –*
 - the taking of coral and shells;*
 - (ii) the setting of fish fences or nets;*
 - the taking of aquarium fish; or*
 - aquaculture operations;*
 - the taking of any type or size of fish;*
- (x) prescribing measures for the protection of sea cucumber, trochus, pearl and pearl-shell, turtles, green snails, clams and lobsters;*
- (y) regulating or prohibiting fishing of all kinds within any lagoon or any part of any lagoon, the time or times of year during which such fishing may occur or is prohibited, and approving, restricting or prohibiting the equipment or methods which may be used in connection with such fishing;*
- (z) prescribing the requirements for any catch documentation or certification scheme concerning fish caught, transhipped or processed, including the authorisation of public authorities to attest the veracity of any information certified;*
- (aa) regulating sport fishing;*
- (bb) regulating bioprospecting;*
- (cc) regulating test or exploratory fishing;*
- (dd) setting out the requirements for the contents of fisheries management plans, and the procedures to be followed in their implementation;*
- (ee) prescribing offences against the regulations and penalties for such offences, not exceeding a fine of....., or imprisonment not exceeding 3 years, or both, and, where the offence is a continuing one, a further fine not exceedingfor every day that the offence has continued;*
- (ff) defining the conditions or circumstances under which [country] fishing vessels may be chartered; and*
- (gg) prescribing any other matter, which is required or authorized to be prescribed by this Act.*

4.20 National Implementation of EC regulation 1005/2008

This important regulation is referred to above in **Section 2.2** and covered in detail in **Annex 2**. The most important aspect of the regulation that requires national legislative implementation is the provision of catch certification requirements for vessels flying the flag of the country in question (the details of the certification are discussed in **Annex 2**). Further, the flag state must be empowered to attest the veracity of the information contained in catch certificates.

In view of the fact that such certification might be changed from time to time, it is important to ensure that there is a power to make regulations to deal with this matter. Other countries, regional groupings, or RFMOs may in time impose their own certification requirements, either with respect to specific species (as CCAMLR has with Patagonian Toothfish) or more generally along the lines of the EU.

Partly for these reasons, the following provision has been included above in the regulation making power:

- (z) prescribing the requirements for any catch documentation or certification scheme concerning fish caught, transhipped or processed, including the authorisation of public authorities to attest the veracity of any information certified.*

The EC regulation also requires the flag state to certify that it has in place national arrangements for the implementation, control and enforcement of laws, as well as regulations and conservation

measures which must be complied with by its fishing vessels. For the flag state to be able to do this, it would need to have in place a modern fisheries law which included the elements identified above, especially with respect to an effective licensing or authorisation regime, and a compliance, control and enforcement regime.

4.21 Legislative Options for Tracking the Proceeds of Crime for Fisheries

There are a number of options available to RPOA participating countries to track the proceeds of crime and bridge the gap between fisheries and anti-money laundering legislation. These include:

- (1) Provide for fisheries related offences as an indictable predicate offence for money laundering. This may require the identification of specific types or categorisation of illegal fishing activities that can be construed as transnational organised crime;
- (2) For States using a threshold approach to anti-money laundering, harmonise the level of penalties imposed on fisheries violations and money laundering in order to widen the scope of predicate offences to include illegal fishing;
- (3) Use other types of legislated money laundering predicate offences which may be related to fisheries, such as custom infringements (for fisheries products) or fraudulent or counterfeit transactions (such as the use of fake fishing licences);
- (4) Include a provision in the fisheries legislation that would link such legislation to anti-money laundering laws.

In order to establish an effective regime for the tracking of proceeds of crime from fisheries, other aspects would also need to be considered such as:

- an investigation on the beneficial ownership of vessels and nature of fisheries businesses and operations;
- use of fisheries enforcement mechanisms to support the work of financial intelligence units;
- use of confiscated assets to develop and support programs designed to prevent or reduce organised crime in fisheries;
- intelligence gathering and sharing of information in fisheries;
- strengthened inter-agency cooperation between organisations with fisheries-related functions and those with anti-money laundering functions;
- increase in international cooperation; and
- mutual legal assistance between States.

5. BUILDING CAPACITY TO IMPLEMENT RESPONSIBLE FISHING LEGISLATION

The effective development and implementation of legislation that promotes sustainable management of fisheries resource and responsible fishing requires the adequate capacity of all relevant domestic institutions at both State and local levels of government. As discussed in earlier parts of this Report, RPOA participating countries have different levels of implementation of the benchmark measures necessary to fulfil international and regional obligations and commitments. For example Australia has more developed fisheries legislation than most RPOA participating countries, and Timor-Leste is still in the process of developing its governance structure and mechanisms for fisheries.

The RPOA participating countries also have varying fisheries management concerns and address different forms of IUU fishing. For instance, while valuable commercial fisheries abound under areas of jurisdiction in some RPOA participating countries such as Papua New Guinea, Indonesia and the Philippines, most fisheries in the region are small scale and utilised for subsistence, requiring the application of a different sets of management measures. Countries such as Thailand, Vietnam, and Malaysia are important sources of fishery products destined for international market while Singapore serves as a major transit point for these products. The IUU fishing activities in areas of national jurisdiction and in the shared waters of the South China Sea, the Sulawesi Sea, and the Arafura and Timor Seas range from illegal fishing by traditional fishing vessels to foreign fishing vessels.

This diversity in fisheries and fisheries management issues in the region, as well as the ability of each RPOA participating country to respond to such concerns signify that each RPOA participating country has different requirements to ensure that international benchmark measures for sustainable fisheries are both integrated into its domestic legal and policy framework and effectively implemented.

Recognising the limited financial resources of most RPOA participating countries to ensure effective implementation of domestic fisheries legislation, it is most appropriate to develop a strategic means for capacity building in the region. Addressing current fisheries management problems and gaps in implementation may only result in a piecemeal approach to capacity building and does not guarantee effective management. Such capacity needs to be built on a solid foundation of knowledge and understanding of international fisheries obligations, as well as practical application of relevant measures. This knowledge needs to be entrenched in every institution with fisheries related functions and in every person with fisheries responsibility, particularly policymakers, legislators, fisheries managers, enforcement officers, prosecutors and the judiciary. These functions include fishing vessel registration, safety inspection of fishing vessels, vessel and gear licensing, observer programs, boarding and inspection, port inspection, and involve fisheries and environment departments, foreign affairs, maritime and port authorities, health and customs, immigration, and enforcement authorities such as navy, coastguard, and the police.

This Part of the Report highlights the various target groups needing capacity building in RPOA participating countries, the composition of such groups, and capacity requirements for each target group, in particular the types of knowledge and skills needed in order to effectively implement fisheries legislation.

5.1 Policymakers and Legislators

Policymakers and legislators are responsible for adopting, updating and implementing fisheries policies and legislation. These decision-makers include those involved in developing policies on

resource management and the environment, and those with the power to allocate funds for fisheries management. They are the key persons who translate international and regional obligations and commitments into domestic measures, which are in turn implemented by all stakeholders. Hence it is important for policymakers and legislators not only to understand obligations under international fisheries law but also to appreciate the economic importance of fisheries to the country. The following are the capacity requirements of this target group:

- international obligations of the country in promoting responsible fisheries, including to combat IUU fishing;
- obligations under regional fisheries management organisations and other regional arrangements;
- an understanding of how important fisheries is to the economy and the need for sustainable fisheries;
- update on new international agreements and regulations that impact on the fisheries economy and would require amendment of existing controls on fisheries such as the FAO Port State Measures Agreement to Prevent, Deter, and Eliminate IUU Fishing and the EU IUU Regulation;
- how international and regional agreements can be effectively incorporated in domestic legislation;
- drafting instructions for legislation in simple, straightforward, language to assist in the preparation of more effective laws;
- overview of fisheries management principles and elements of responsible fisheries; and
- an appreciation of the relationship of organisations with fisheries related functions and the need for inter-agency cooperation.

5.2 Fisheries Managers

Fisheries managers, mostly from the fisheries and environment departments, are at the forefront of implementing domestic fisheries regulations. They are given the responsibility to oversee the management of specific fisheries and their interaction with associated species, and ensure that the fisheries habitats are protected through environmental regulations. This may also include those managing fishing vessel registers and records. For this target group, knowledge and understanding on the following areas are desired:

- principles of sustainable fisheries;
- objectives of fisheries management;
- the know how to operationalise fisheries management objectives, particularly through the application of input and output control and other technical measures and effective MCS;
- development of fisheries management plans;
- development of criteria and indicators in assessing the effectiveness of fisheries management plans; and
- the ability to recommend changes or modification to the fisheries management plans.

5.3 Enforcement Officers

The enforcement of fisheries legislation requires not only the knowledge on the benchmark measures for sustainable fisheries and responsible fisheries but also the technical ability to ensure that fisheries management objectives are achieved and regulations are complied with. These enforcement authorities include the police, navy, and civilian authorities and persons with enforcement functions such as fisheries observers and port inspectors, as well as those exercising community based enforcement. These authorities need adequate knowledge and familiarity on the following:

- the role of enforcement in the effective management of fisheries resources and in promoting responsible fishing;
- broad scope of legal framework for fisheries and enforcement jurisdiction;
- ability to distinguish enforcement rights in different maritime zones, and familiarisation with key provisions such as prompt release of vessels;
- Rights and obligations of fisheries observers, boarding and inspection authorities; and port inspectors;
- Catch certification and trade documentation requirements under relevant RFMOs and the EU and US regulations on IUU fishing;
- Principles, elements, and measures of effective MCS;
- Other enforcement mechanisms such as community based fisheries enforcement, risk based approach to enforcement, and self-compliance;
- Scope of fisheries offences and penalty scheme, as well as characteristics of IUU fishing in domestic waters and by national vessels fishing outside areas of national jurisdiction;
- The potential link between IUU fishing and criminal activities;
- How to deal with foreign fishing vessels in areas under national jurisdiction;
- Other relevant issues to fisheries such as health, sanitary, safety and security issues; and
- Cooperation with other enforcement authorities within and among RPOA participating countries.

Other practical skills are also needed in order to ensure effective implementation of fisheries regulations:

- Identification of fishing vessels, gears and fish species;
- Collection, handling, evaluation, and preservation of evidence;
- Incident report writing;
- Verification of information, as well as exchange of information with other enforcement authorities with respect for the security and confidentiality of data; and
- Court examination procedure.

Specific training may be needed for enforcement officers with specific functions such as observing at sea, boarding and inspection; and port inspectors. For this purposes, the capacity requirements need to be tailored based on the procedures of relevant RFMOs providing for observer programmes and boarding and inspection on the high seas. The requirements of the FAO Port State Measures Agreement to Combat IUU Fishing would also need to be reviewed with respect to implementing port inspections and other measures applied in ports.

5.4 Prosecutors and Judges

The effective enforcement of fisheries regulations does not stop with the arrest of fisheries offenders, but may be measured more on the successful application of sanctions of sufficient severity and prosecution of fisheries offences. Prosecutors and judges play a crucial role in achieving this objective. Some RPOA participating countries such as Indonesia are in the process of establishing fisheries courts, creating the need to strengthen judicial proceedings on fisheries cases. The following highlights the capacity needs for the region on this matter, irrespective of whether or not a special court on fisheries exists for the RPOA participating countries:

- Basic principles of sustainable fisheries;
- Jurisdiction of States in different maritime zones, including issues such as the prompt release for foreign vessels in the EEZ and jurisprudence on the matter, and the criteria for a reasonable bond;
- How to treat foreign and domestic vessels in case of breach of fisheries legislation;
- Nature of fisheries offences and the application of administrative and criminal penalties;

- Rules of evidence;
- Cooperation with enforcement officers; and
- The potential link between IUU fishing and criminal activities.

5.5 Advantages in Capacity Building for Specific Target Groups

Capacity building designed for each target group in fisheries has several advantages. One, a common understanding on the international fisheries obligations from the policymakers to the judiciary will lead to the development of a robust fisheries management system that is not dependent on changes in political climate. A more effective management system will promote sustainability in fisheries resources and will increase success in fisheries enforcement. Two, this type of capacity building will encourage knowledge to be communicated to new policymakers, managers, and enforcement officers within the same target audience and may be considered self-sustaining. Three, capacity building across relevant people in fisheries policy formulation, management and enforcement will not only strengthen cooperation among national institutions but also among RPOA participating countries. It will also promote harmonisation of domestic legislation for fisheries. Four, increase in the capacity of the government to manage fisheries resources will gain the cooperation and trust of the fishing industry, encouraging self-compliance.

PART B – AUSTRALIAN LEGISLATION OVERVIEW AND REVIEW AGAINST BENCHMARKS

This section outlines the domestic legislative framework of Australia and assesses this against the benchmark measures established for responsible fishing based on relevant international and regional instruments.

A summary of the detailed assessment is provided in this section, in the form of strengths and weaknesses under the benchmark category headings. The complete assessment which documents the detailed legislation relevant to each benchmark measure is provided in **Annex 5**.

1. SUMMARY OF DOMESTIC LEGISLATIVE FRAMEWORK

Note that some of the summaries outlined here were previously documented in the *Final Report on the Implementation of International Fisheries Instruments and Analysis of Gaps in Domestic Fisheries Management Legislation in the South East Asia Region*, prepared by the Australian National Centre for Ocean Resources and Security for the Department of Agriculture, Fisheries and Forestry in April 2007.

Fisheries Management Act 1991 (Cth)

In Australia, legislative control over fisheries is shared between the Central (Federal) Government and the constituent States and Northern Territory. At the federal level, an independent Australian Fisheries Management Authority (AFMA) was set up by the Fisheries Administration Act 1991, as a statutory authority to manage fisheries on behalf of the Federal Government. The federal legislation on fisheries is reformulated in the Fisheries Management Act 1991, which introduces some new elements.

The *Fisheries Management Act 1991 (Cth)* has provisions on the Australian Fishing Zone, which generally extends to 200 miles from the baselines, prohibition on driftnet fishing, regulation of fishing activities, preparation of management plans, system of statutory fishing rights, fishing permits, terms and conditions relating to foreign fishing, implementation of the FAO Compliance Agreement, surveillance and enforcement, fish receiver permits, port permits to foreign fishing boats, and requirements and procedure for the collection of levies and charges. The Schedule annexed to the Act includes the Treaty between the Governments of certain Pacific Island States and the Government of the United States of America.

The *Fisheries Management Act 1991 (Cth)* is implemented by a number of regulations, including: Fisheries Management Regulations 1992, Fisheries Management (Southern Bluefin Tuna Fishery) Regulations (1 December 2004); Foreign Fishing Licences Levy Act 1991 (18 November 2003); Fishing Levy (All Fisheries) Regulations (S.R. No. 316 of 1996); Fisheries Management (South East Trawl Fishery) Regulations (S.R. No. 217 of 1998); Fishing Levy Regulations 2000 (S.R. No. 336 of 2000); Fisheries Management (Northern Prawn Fishery) Regulations 1995; Fisheries Management (Bass Strait Central Zone Scallop Fishery) Regulations 2002; Fisheries Management (Heard Island and McDonald Islands Fishery) Regulations 2002 (S.R. No. 115 2002); Fisheries Management (Southern and Eastern Scalefish and Shark Fishery) Regulations 2004 (S.R. No. 336 of 2004); Fisheries Management (Southern Squid Jig Fishery) Regulations 2006 (SLI No. 91 of 2006).

Shipping Registration Act 1981 and Shipping Registration Regulations 1981

This Act provides for the registration of ships in Australia. Under the Shipping Registration Act, Australian-owned fishing vessels are exempt from compulsory registration but shall be registered if they apply to be registered and meet relevant conditions.

Environment Protection and Biodiversity Conservation Act 1999

The objects of this Act are: (a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; (b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; (c) to promote the conservation of biodiversity; (d) to promote a cooperative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples; (e) to assist in the cooperative implementation of Australia's international environmental responsibilities; (f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and (g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in cooperation with, the owners of the knowledge. The EPBC Act contains principles of ecologically sustainable development which provide the basis for the Minister to decide whether an action that has, will have or is likely to have a significant impact on certain aspects of the environment. Actions in Commonwealth marine areas affecting the environment include fisheries. The Act also has provisions related to the identification and monitoring of biodiversity and creating bioregional plans, as well on listed threatened species and marine species, whaling, ecological communities, migratory species, and protected areas.

Australian NPOA-IUU

The AUS NPOA-IUU was adopted to implement the IPOA-IUU. It is a compilation of measures already in place in Australia to combat IUU fishing and proposes additional measures that will strengthen Australia's "war on IUU fishers".

Australian Fisheries National Compliance Strategy 2005-2010

This document outlines the strategic objectives that Australian fisheries agencies aims to pursue to promote voluntary compliance and create effective deterrents to illegal fishing activities. The Strategy complements the AUS NPOA-IUU at the same time acknowledges differences in legislation, policies, and management that apply across Commonwealth, State and Territory fisheries.

Australia's Shark-plan

Australia's Shark-plan was developed according to guidelines as set out in the IPOA-Sharks. The overall objective of the IPOA-Sharks and Australia's Shark-plan is to ensure the conservation and management of sharks and their long-term sustainable use. The Shark-plan is a first for Australia in that it is a national guide for managers and interested stakeholders on how to better incorporate shark conservation and management issues into the management of fisheries and the broader marine environment. The Shark-plan is split into two sections. Part A provides a description of why the Shark-plan has been developed and how it will be implemented; lists the conservation and management issues the Shark-plan strives to address; presents the Shark-plan, and associated actions; and provides a discussion of issues relating to its implementation and review. Part B provides a brief overview of Australia's shark fisheries and provides a description of each of the conservation and management measures addressed by the Shark-plan.

Assessment Report for the NPOA-Seabirds

Australia has undertaken an assessment on all Australian longline fisheries and their interactions with seabirds, and gathered information on mitigation measures implemented and trialled to date. The Assessment Report represents the first step in the development of Australia's Seabird-plan. Australia's principal tool through which bycatch mitigation is currently being tackled is the Threat Abatement Plan for the Incidental Catch (or by-catch) of Seabirds during Oceanic Longline Fishing Operations (TAP). The TAP is legislated through the Environment Protection and Biodiversity Conservation Act 1999. Under the TAP, Australian Government-managed longline fishers must choose between a range of measures to minimise the bycatch of seabirds, depending on the circumstances of their particular operations.

Fisheries (Coral Reef Fin Fish) Management Plan 2003

This management plan provides for the use and conservation of coral reef fin fish. This management plan contains measures related to closed waters and regulated fish, regulations on commercial fishery, fishing gear, and fishing methods. It also has provisions concerning other fishing activities such as commercial fishing tours, recreational fishing, and aboriginal and Torres Strait islanders fishing.

Fisheries (East Coast Trawl) Management Plan 1999

This plan provides for the management of the East coast trawl fishery and its application in relation to fishing for trade or commerce in the fishery by the use of trawl nets or by the possession of permitted fish taken under this plan from the fishery. This management plan has provisions on closed waters and regulated fish declarations, use of bycatch reduction devices and of turtle excluder devices, and miscellaneous provisions on threshold percentage for declared fisheries resources.

Fisheries (Spanner Crab) Management Plan 1999

This management plan provides for the use and conservation of spanner crab. It declares which are closed seasons for spanner crab and regulates the taking of spanner crabs. There are provisions related to commercial fishing of spanner crabs in different areas and recreational fishery. This management plan states that the rights of Aborigines and of Torres Strait islanders are not affected by its provisions.

Fisheries (Freshwater) Management Plan 1999

The plan for fresh water fisheries applies to all freshwater of Queensland. Its objectives are to ensure a sustainable taking of freshwater fish and a fair division of access to freshwater fish between commercial fishing, recreational fishing and fishing by Aboriginal and Torres Strait Islanders fishers, to manage freshwater fisheries in such way that sustainable benefit for the community is achieved and to protect fishing resources and their ecosystems from damage caused by non indigenous and noxious fish. Schedule 2 states how these objectives are to be achieved. Achievement of each objective may be measured only in the way stated in that Schedule.

Mud Crab Fishery Management Plan

This Plan implements the Fisheries Act by providing for the management of the mud crab for both commercial and amateur fishery. The Regulations provide for licences, their number and transfer, for the gear to be used and for processing of mud crabs.

Spanish Mackerel Fishery Management Plan

The objectives of this Plan are to control the taking of spanish mackerel from the fishery by commercial fishing licensees, Fishing Tour Operator licensees and amateur fishers; to ensure the fishery is not endangered, detrimentally affected or overexploited by managing the fishery in accordance with the principles of ecologically sustainable development; and to encourage fishing in the fishery by maintaining the level and quality of the yield from the fishery and ensuring Aborigines, commercial fishing licensees, Fishing Tour Operator licensees and amateur fishers have adequate access to the fishery.

2. REVIEW OF AUSTRALIAN DOMESTIC LEGISLATION AGAINST BENCHMARK MEASURES

| Strengths | Weaknesses |
|--|--|
| <p><i>Ecosystem Management:</i></p> <ul style="list-style-type: none"> • Ecosystem based fisheries management and associated principles are embodied in the primary fisheries legislation. • The Environment Protection and Biodiversity Conservation Act sets strict environmental management standards for all Commonwealth managed and export fisheries. <p><i>Data Collection:</i></p> <ul style="list-style-type: none"> • Robust data collection, verification and research programs are implemented. <p><i>Management Plans:</i></p> <ul style="list-style-type: none"> • Legislation requires the production of fisheries management plans. • NPOAs have been prepared for IUU fishing, sharks and a draft is in place for seabirds. <p><i>Vessel Registration:</i></p> <ul style="list-style-type: none"> • The fisheries laws and regulations of Australia provide for the registration and certification of vessels. <p><i>Authorisations to Fish:</i></p> <ul style="list-style-type: none"> • A system of authorisation to fish is in place, including for foreign vessels. <p><i>Effective Control over Nationals:</i></p> <ul style="list-style-type: none"> • Legislation provides control over nationals and foreigners acting in contravention of international fisheries management measures on | <p><i>Management Plans:</i></p> <ul style="list-style-type: none"> • Australia is yet to prepare a NPOA for fishing capacity and complete its NPOA for Seabirds. <p><i>Effective Control over Nationals:</i></p> <ul style="list-style-type: none"> • Requires stronger measures that would establish the obligations of Australian flagged vessels operating under the jurisdiction of a foreign State or on the high seas. |

| Strengths | Weaknesses |
|--|------------|
| <p>the high seas.</p> <p><i>Monitoring, Control and Surveillance:</i></p> <ul style="list-style-type: none"> • Broad monitoring, control and surveillance powers including the requirements for VMS and Observer Programs are implemented. <p><i>Port State Measures:</i></p> <ul style="list-style-type: none"> • Port state measures require advanced notice of entry and approval for foreign fishing vessels to land and tranship product. <p><i>Reporting:</i></p> <ul style="list-style-type: none"> • FAO reporting requirement are included in the primary fisheries legislation. | |

In addition, in its NPOA-IUU Australia has identified the following which it will endeavour to address in order to improve its current measures:

- Introduce effective measures that would prevent an Australian-flagged fishing vessel to be reflagged to a State that is unlikely to exercise effective flag State control over the vessel.
- Implement measures drawn from internationally agreed arrangements that would identify persons and corporate entities engaged in or supporting international crime and pierce the corporate veils which hide the true identity of individuals and companies engaged in or supporting IUU fishing.
- Develop and implement more stringent conditions on the use and activities of fishing support vessels.
- Introduce specific domestic laws and regulations that would enable Australia to take effective enforcement action against fishing vessels without nationality.
- Provide for wider application of VMS and observer programmes to nationally-managed fisheries.
- Review the *Fisheries Management Act 1991* to provide, for all classes of fishing concessions, that the granting of an authorisation to fish to a concession holder should explicitly include conditions in relation to the use of an authorised fishing vessel.
- Develop additional joint fisheries enforcement actions with other countries.
- Develop and implement effective cross-jurisdictional fisheries management arrangements.
- Develop and implement more effective policies and procedures for access to Australian ports and the landing of catch by foreign fishing vessels.
- Develop and implement more effective port State measures to control the activities of Australian-flagged vessels.

ANNEXES

ANNEX 1: SUMMARY OF INTERNATIONAL AND REGIONAL INSTRUMENTS RELEVANT TO STANDARDS OF RESPONSIBLE FISHING

PART I. INTERNATIONAL INSTRUMENTS

Part I provides a summary of the key international instruments that promote the conservation and management of fisheries resources, including the prevention, deterrence, and elimination of IUU fishing.

1. LEGALLY BINDING FISHERIES INSTRUMENTS

1.1 United Nations Convention on the Law of the Sea (1982)

The United Nations Law of the Sea Convention (LOSC) is the most comprehensive ocean treaty upon which most legal instruments on fisheries build on. The LOSC was a product of multilateral negotiations from 1973 through 1982 during the third United Nations Conference on the Law of the Sea (UNCLOS III). The LOSC was opened for signature on 10 December 1982 and came into force on 16 November 1994. The LOSC provides the basic legal framework that regulates all marine sector activities, including the utilisation of the resources of the sea, the preservation of the marine environment and relations among States in so far as marine sector activities are concerned.

The most important aspects of the LOSC with regard to fisheries relate to the establishment of the exclusive economic zone (EEZ), imposition of conservation and management measures for fish stocks in the EEZ, requirements for cooperation among States to manage fish stocks and provisions on the conservation, management and utilisation of high seas fisheries such as the implementation of flag State duties, as well as the duty to cooperate among States to manage high seas fisheries. The LOSC establishes varying degrees of rights and duties of States with respect to the conservation and management of fisheries resources in accordance with the maritime zone where such resources are located (internal waters, archipelagic waters, and territorial seas, exclusive economic zones, continental shelf areas and high seas) as well as on the type of fish stocks (straddling stocks, highly migratory species, marine mammals, anadromous stocks and catadromous species) that occur in them. The LOSC provides for the determination of the allowable catch and the establish conservation measures on the basis of best scientific evidence available which maintains or restores populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors. This determination should take into account the special requirements of developing States, fishing patterns and generally recommended international minimum standards.

1.2 FAO Compliance Agreement (1993)

The Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement) was unanimously approved, subject to acceptance, at the 27th Session of the Conference of the FAO in November 1993 and entered into force on 24 April 2003. The FAO Compliance Agreement was developed in order to address concerns over the practice of reflagging of vessels in order to avoid high seas conservation and management measures determined by regional fisheries organizations. The Compliance Agreement strengthens 'flag-state responsibility' by improving the regulation of fishing vessels on the high seas. This is done through the obligation of parties to the Agreement to maintain an

authorisation and recording system for high seas fishing vessels and to ensure that vessels registered under their flags do not undermine international conservation and management measures.

The Compliance Agreement applies to vessels used or intended for fishing on the high seas. However, a party may exempt fishing vessels less than 24 metres in length, unless the exemption undermines the effectiveness of international conservation and management measures. The Agreement requires a State Party to maintain a record of fishing vessels entitled to fly its flag and authorized for use on the high seas, and to take such measures as are necessary to ensure that all such vessels are entered on that record. It also provided for international cooperation, specifically exchange of information, port state cooperation, and for parties to enter into cooperative agreements or arrangements of mutual assistance on a global, regional, subregional or bilateral basis in order to achieve the objectives of the Agreement.

1.3 UN Fish Stocks Agreement (1995)

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* (UN Fish Stocks Agreement) was adopted on 4 August 1995 by the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks and opened for signature on 4 December 1995 and entered into force on 11 November 2001. The UN Fish Stocks Agreement elaborates upon provisions of LOSC and aims to improve the international management of fishing on the high seas. The UN Fish Stocks Agreement seeks to ensure the long-term conservation and sustainable use of straddling and highly migratory fish stocks by strengthening the legal regime for their conservation and management through global, regional and sub-regional fisheries management organisations (RFMOs). The Agreement provides that conservation and management of straddling and highly migratory fish stocks must be based on the precautionary approach and the best available scientific information. Further, the measures in areas under national jurisdiction and in the adjacent high seas must be compatible and coherent, recognise the special requirements of developing States, and there are effective mechanisms for compliance and enforcement of those measures on the high seas.

1.4 FAO Port State Measures Agreement (2009)

The *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (FAO Port State Measures Agreement) was approved by the FAO Conference at its Thirty-sixth Session on 22 November 2009. The Agreement provides that it shall enter into force thirty days after the date of deposit with the Director-General of the twenty-fifth instrument of ratification, acceptance, approval or accession. The objective of the Agreement is to prevent, deter and eliminate IUU fishing through the implementation of effective port State measures, and thereby to ensure the long-term conservation and sustainable use of living marine resources and marine ecosystems.

The FAO Port State Measures Agreement respects the sovereignty of Parties over their internal, archipelagic and territorial waters or their sovereign rights over their continental shelf and in their exclusive economic zones and allows Parties the exercise of their sovereignty over ports in their territory in accordance with international law, including their right to deny entry thereto as well as to adopt more stringent port State measures than those provided for in the Agreement, including such measures adopted pursuant to a decision of a regional fisheries management organization. The Agreement provides that a Party in its capacity as a port State, may apply this Agreement to vessels not entitled to fly its flag that seek entry to its ports or are in one of its ports, except vessels of a neighbouring State engaged in artisanal fishing for subsistence not engaged in IUU fishing and

container vessels not carrying fish or, if carrying fish, only fish that have been previously landed, provided there are no clear grounds for suspecting that such vessels have engaged in fishing related activities in support of IUU fishing. The Agreement also provides that a Party may, in its capacity as a port State, decide not to apply the Agreement to vessels chartered by its nationals exclusively for fishing in areas under its national jurisdiction and operating under its authority therein which shall be subject to measures by the Party which are as effective as measures applied in relation to vessels entitled to fly its flag.

2. NON-LEGALLY BINDING FISHERIES INSTRUMENTS

Various non-binding instruments specific to fisheries have been adopted to promote sustainable fisheries. Prior to the IPOA-IUU, the FAO Code of Conduct for Responsible Fisheries, UN Resolutions on Driftnet Fishing and other international declarations have been adopted. After the IPOA-IUU has been adopted, other international policy instruments have emerged calling on States to address IUU Fishing such as the UN Resolutions on Sustainable Fisheries, the Rome Declaration on IUU Fishing, and the FAO Model Scheme on Port State Measures to Combat IUU Fishing.

2.1 FAO Code of Conduct (1995)

The Code of Conduct for Responsible Fisheries was initiated in 1991 by the FAO Committee on Fisheries and unanimously adopted on 31 October 1995. While the Code is voluntary in nature, parts of it were based on relevant rules of international law, including those in the LOSC, AO Compliance Agreement, and the UN Fish Stocks Agreement. It is global in scope, and is directed toward both members and non-members of FAO, fishing entities, sub regional, regional and global organizations, whether governmental or non-governmental, and all persons concerned with the conservation of fishery resources and management and development of fisheries, such as fishers, those engaged in processing and marketing of fish and fishery products and other users of the aquatic environment in relation to fisheries. The Code provides principles and standards applicable to the conservation, management and development of all fisheries. It also covers the capture, processing and trade of fish and fishery products, fishing operations, aquaculture, fisheries research and the integration of fisheries into coastal area management.

Within the framework of the Code of Conduct for Responsible Fisheries four international plans of action (IPOAs) have been developed to date. The IPOAs were adopted at the twenty-third Session of the FAO Committee on Fisheries in February 1999 and endorsed by the FAO Council on November 2000. The four IPOAs are voluntary instruments which apply to all States and entities and to all fishers.

2.1.1. IPOA-IUU (2001)

The *International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing* (IPOA-IUU) was adopted by consensus at the Twenty-fourth Session of COFI on 2 March 2001 and endorsed by the Hundred and Twentieth Session of the FAO Council on 23 June 2001. The objective of the IPOA-IUU is to prevent, deter and eliminate IUU fishing by providing all States with comprehensive, effective and transparent measures by which to act, including through appropriate regional fisheries management organizations established in accordance with international law. The IPOA-IUU gives due consideration to the special requirements of developing countries in accordance with Article 5 of the FAO Code of Conduct.

The IPOA-IUU considers it an obligation of all States to give full effect to relevant norms of international law, in particular as reflected in the LOSC, in order to prevent, deter and eliminate IUU fishing. It encourages all States, as a matter of priority, to ratify, accept or accede to the LOSC, the UN Fish Stocks Agreement and the FAO Compliance Agreement and for those States that have not ratified, accepted or acceded to these relevant international instruments to not act in a manner inconsistent with these instruments. The IPOA-IUU provides that States should develop and implement, as soon as possible but not later than three years after the adoption of the IPOA, national plans of action to further achieve the objectives of the IPOA and give full effect to its provisions as an integral part of their fisheries management programmes and budgets. These plans should also include, as appropriate, actions to implement initiatives adopted by relevant regional fisheries management organizations to prevent, deter and eliminate IUU fishing.

The IPOA-IUU provides for cooperation between States through direct cooperation or coordination of their activities or through the relevant regional fisheries management organizations, in preventing, deterring and eliminating IUU fishing. This can be done through the exchange data or information, preferably in standardized format, from records of vessels authorized by them to fish, in a manner consistent with any applicable confidentiality requirements; cooperation in respect of MCS and enforcement in the investigation of IUU fishing, cooperation in the transfer of expertise and technology; cooperation to make policies and measures compatible; cooperate in monitoring, control and surveillance, including through international agreements. The IPOA-IUU contains specific provisions for flag State, coastal State and port State responsibilities and measures in order to prevent, deter and eliminate IUU fishing.

2.1.2. IPOA-Capacity (1999)

The *International Plan of Action for the Management of Fishing Capacity* (IPOA-Capacity) addresses the issue of excess fishing capacity in world fisheries as a problem that contributes substantially to overfishing, the degradation of marine fisheries resources, the decline of food production potential, and significant economic waste. The immediate objective of the IPOA-Capacity is for States and regional fisheries organizations, to achieve an efficient, equitable and transparent management of fishing capacity. In order to achieve this end, the IPOA-Capacity encourages States and regional fisheries organizations with an overcapacity problem to endeavour initially to limit at present level and progressively reduce the fishing capacity applied to affected fisheries. The above objective may be achieved through a series of actions related to four major strategies: (1) the conduct of national, regional and global assessments of capacity and improvement of the capability for monitoring fishing capacity; (2) the preparation and implementation of national plans to effectively manage fishing capacity and of immediate actions for coastal fisheries requiring urgent measures; (3) the strengthening of regional fisheries organizations and related mechanisms for improved management of fishing capacity at regional and global levels; and (4) immediate actions for major transboundary, straddling, highly migratory and high seas fisheries requiring urgent measures.

2.1.3. IPOA-Seabirds (1999)

The *International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries* (IPOA-Seabirds) arose out of concerns over the impacts of the incidental catch of seabirds in various commercial longline fisheries in the world. The key longline fisheries in which incidental catch of seabirds are known to occur are: tuna, swordfish and billfish in some particular parts of oceans; Patagonian toothfish in the Southern Ocean, and halibut, black cod, Pacific cod, Greenland halibut, cod, haddock, tusk and ling in the northern oceans (Pacific and Atlantic). The species of seabirds most frequently taken are albatrosses and petrels in the Southern Ocean, northern fulmars in the North Atlantic and albatrosses, gulls and fulmars in the North Pacific fisheries.

The objective of the IPOA-Seabirds is to reduce the incidental catch of seabirds in longline fisheries where this occurs. Thus, the IPOA- Seabirds applies to States in the waters of which longline fisheries are being conducted by their own or foreign vessels and to States that conduct longline fisheries on the high seas and in the exclusive economic zones (EEZ) of other States. The IPOA-Seabirds provides that States implementing the IPOA should carry out a set of activities in conjunction with relevant international organizations based on an assessment of the incidental catch of seabirds in longline fisheries. The States with longline fisheries should conduct an assessment of these fisheries to determine if a problem exists with respect to incidental catch of seabirds and adopt a National Plan of Action (NPOA) for reducing the incidental catch of seabirds in longline fisheries, if such a problem exists. On the other hand, States which determine that an NPOA is not necessary should review that decision on a regular basis, particularly taking into account changes in their fisheries, such as the expansion of existing fisheries and/or the development of new longline fisheries. The IPOA-Seabirds encourages States to cooperate through regional and subregional fisheries organizations or arrangements, and other forms of cooperation, to reduce the incidental catch of seabirds in longline fisheries, including through bilateral and multilateral arrangements in research, training and the production of information and promotional material.

2.1.4. IPOA-Sharks (1999)

The *International Plan of Action for the Conservation and Management of Sharks* (IPOA-Sharks) arose out of concerns over the increase of shark catches and its consequences for the populations of some shark species in several areas of the world's oceans. The objective of the IPOA-Sharks is to ensure the conservation and management of sharks and their long-term sustainable use. THE IPOA-Sharks encompasses both target and non-target catches and defines a shark as including all species of sharks, skates, rays and chimaeras (Class Chondrichthyes), and the term "shark catch" is taken to include directed, bycatch, commercial, recreational and other forms of taking sharks. The IPOA-Sharks applies to States in the waters of which sharks are caught by their own or foreign vessels and to States the vessels of which catch sharks on the high seas. The IPOA-Sharks provides that States should adopt a national plan of action (Shark Plan) taking into account the experience of subregional and regional fisheries management organizations for the conservation and management of shark stocks if their vessels conduct directed fisheries for sharks or if their vessels regularly catch sharks in non-directed fisheries. The IPOA-Sharks provides that States should carry out a regular assessment of the status of shark stocks subject to fishing so as to determine if there is a need for development of a shark plan. It provides that States which implement the *Shark-plan* should regularly assess its implementation at least every four years for the purpose of identifying cost-effective strategies for increasing its effectiveness; while States which determine that a *Shark-plan* is not necessary should review that decision on a regular basis taking into account changes in their fisheries, but as a minimum, data on catches, landings and trade should be collected.

2.2 UN Resolutions on Driftnet Fishing (1991)

The issue of large-scale pelagic drift-net fishing and its impact on the living marine resources of the world's oceans resulted in the adoption of two UN General Assembly Resolutions, 44/225 and 45/197, both adopted by consensus on 22 December 1989 and 21 December 1990, respectively, which recommended that all members of the international community take certain measures to address the issue. In response, there have been unilateral, regional and international efforts undertaken by members of the international community and international organisations to implement and support the objectives of resolutions 44/225 and 45/197. For example, on 17 May 1991, the Convention for the Prohibition of Fishing with Long Drift-nets in the South Pacific entered into force. Another example was the Castries Declaration in which the Authority of the Organization of Eastern Caribbean States resolved to establish a regional regime for the regulation and

management of the pelagic resources in the Lesser Antilles region that would outlaw the use of drift-nets.

On 20 December 1991, the UN General Assembly adopted Resolution 46/215 which imposed a global moratorium on large-scale pelagic drift-net fishing. The Resolution called upon States to reduce fishing effort by 50 per cent in existing large-scale pelagic high seas drift-net fisheries by lessening the number of vessels involved, the length of the nets and area of operation. The Resolution called on States to ensure global moratorium on large-scale pelagic drift-net fishing on the high seas, including enclosed and semi-enclosed seas. Subsequent resolutions of the UN General Assembly re-affirmed and reiterated concerns over large-scale pelagic drift-net fishing, including unauthorized fishing in zones of national jurisdiction and on the high seas/illegal, unreported and unregulated fishing, fisheries by-catch and discards. Some of these resolutions include: UN General Assembly Resolutions 51/36 of 21 January 1997; 52/29 of 26 January 1998; 53/33 of 6 January 1999; 55/8 of 2 March 2001; and 57/142 of 26 February 2003.

2.3 UN Resolutions on Sustainable Fisheries (from 2004)

There have been several UN General Assembly Resolutions which mention and address the issue of IUU fishing. UN General Assembly Resolution 64/72 of 19 March 2010 emphasised serious concern that IUU fishing remains one of the greatest threats to marine ecosystems with serious and major implications for the conservation and management of ocean resources, and renewed its call upon States to comply fully with all existing obligations and to combat such fishing and urgently to take all necessary steps to implement the IPOA-IUU. The Resolution urged States to take effective measures, at the national, subregional, regional and global levels to deter the IUU fishing activities of any vessel which undermines conservation and management measures that have been adopted by subregional and regional fisheries management organizations and arrangements in accordance with international law. It called upon States not to permit vessels flying their flag to engage in fishing on the high seas or in areas under the national jurisdiction of other States, unless duly authorized by the authorities of the States concerned and in accordance with the conditions set out in the authorization, and to take specific measures, including deterring the reflagging of vessels by their nationals, discouraging vessels flying “flags of convenience” by requiring a “genuine link” be established between States and fishing vessels flying their flags, and to enhance and adopt all necessary port State measures to combat IUU fishing in particular at the regional level and through subregional and regional fisheries management organizations and arrangements, to adopt all necessary port measures, consistent with international law. There have been earlier Resolutions adopted by the UN General Assembly which addressed the issue of IUU fishing within the context of sustainable fisheries. These include UN General Assembly Resolutions 63/112 of 24 February 2009, 62/177 of 28 February 2008; 61/105 of 6 March 2007; and 60/31 of 10 March 2006.

2.4 Rome Declaration on IUU Fishing (2005)

The Rome Declaration on IUU Fishing was adopted by the FAO Ministerial Meeting on Fisheries Rome on 12 March 2005. The Rome Declaration emphasised the responsibility of flag States under international law to effectively control and manage vessels flying their flags, as well as the responsibilities of port and coastal States in controlling IUU fishing. It recognised the importance of effective fisheries monitoring, control and surveillance (MCS) to combat IUU fishing and affirmed that the key tools in this endeavour are integrated MCS, including vessel monitoring systems (VMS), as well as a comprehensive global record of fishing vessels within FAO. It recognised the special requirements of developing countries in combating IUU fishing and, in particular, the need to strengthen their capacity for fisheries management.

The Rome Declaration called for the following new actions: to identify, reduce and ultimately eliminate the economic incentives that lead to IUU fishing and the economic drivers that lead to fleet overcapacity, at the national, regional and global levels; to ensure that measures to address IUU fishing or fleet overcapacity in one fishery or area do not result in the creation of fleet overcapacity in another fishery or area or otherwise undermine the sustainability of fish stocks in another fishery or area, and that such measures do not prejudice the legitimate expansion of fleets in developing countries in a sustainable manner; to develop a comprehensive global record of fishing vessels within FAO, including refrigerated transport vessels and supply vessels, that incorporates available information on beneficial ownership, subject to confidentiality requirements in accordance with national law; to work within RFMOs to facilitate, where appropriate, the exchange of VMS and observer data, subject to confidentiality requirements in accordance with national law; and to supplement existing MCS schemes through measures such as encouraging the fishing fleet to report any suspected IUU fishing activities they observe.

Among others, the States agree upon the need for flag States, port States, coastal States and, where appropriate, RFMOs to effectively regulate transshipment in order to combat IUU fishing activities and to prevent laundering of illegal catches; to develop and ensure effective implementation of national and, where appropriate, internationally agreed boarding and inspection regimes consistent with international law; to strengthen coastal and port State measures for fishing vessels, consistent with international law, in order to prevent, deter, and eliminate IUU fishing; for further international action to eliminate IUU fishing by vessels flying “flags of convenience” as well as to require that a “genuine link” be established between States and fishing vessels flying their flags; and to strengthen RFMOs to ensure that they are more effective in preventing, deterring and eliminating IUU fishing.

2.5 FAO Model Scheme on Port State Measures to Combat IUU Fishing (2009)

The Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing seeks to facilitate the implementation of effective action by port States to prevent, deter and eliminate IUU fishing. The Model Scheme provides that a port State should not allow a vessel to use its ports for landing, transshipping or processing fish if the vessel which caught the fish is entitled to fly the flag of a State that is not a contracting or cooperating party of a regional fisheries management organization or has been sighted as being engaged in, or supporting, IUU fishing activities in the area of that particular regional fisheries management organization or in the waters under the jurisdiction of a relevant coastal State, unless the vessel can establish that the catch was taken in a manner consistent with the relevant conservation and management measures. A port State is also allowed to refuse to allow the vessel to use its port for landing, transshipping, refuelling or re-supplying where there are clear grounds for believing that a fishing vessel has engaged in or supported IUU fishing in waters beyond the limits of its fisheries jurisdiction. In addition, it may not allow a vessel to use its ports for landing or transshipment where it has been established that the vessel is identified by a regional fisheries management organization as engaging in, or supporting, fishing activities in contravention with its conservation and management measures.

The FAO Model Scheme provides that a foreign fishing vessel has engaged in, or supported, IUU fishing activities where there is reasonable evidence that it has engaged in any of the following activities: a) fishing without a valid licence, authorization or permit issued by the flag State or the relevant coastal State; b) failing to maintain accurate records of catch and catch-related data; c) fishing in a closed area, fishing during a closed season or without, or after attainment of a quota; d) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited; e) using prohibited fishing gear; f) falsifying or concealing the markings, identity or registration of the vessel; g) concealing, tampering with or disposing of evidence relating to an investigation; h) conducting multiple violations which together constitute a serious disregard of relevant

conservation and management measures; i) failure to comply with vessel monitoring systems (VMS) requirements; and j) taking or landing undersized fish in contravention with relevant conservation and management measures.

2.6 FAO Guidelines (2008)

The *FAO Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries* were adopted by the twenty-sixth session of the Committee on Fisheries (COFI) in Rome on 7 - 11 March 2005. The Guidelines are voluntary in nature and are applicable to ecolabelling schemes that are designed to certify and promote labels for products from well-managed marine capture fisheries and focus on issues related to the sustainable use of fisheries resources. The guidelines refer to principles, general considerations, terms and definitions, minimum substantive requirements and criteria, and procedural and institutional aspects of ecolabelling of fish and fishery products from marine capture fisheries. The standards for the ecolabelling scheme of products are quantitative and qualitative indicators of the governance system or management regime of a fishery as well as of its outcome in terms of sustainable fisheries and conservation of marine fishery resources and related ecosystems. These standards should not distort global markets and should not create unnecessary obstacles to international trade

The Guidelines sets minimum substantive requirements and criteria for assessing whether a fishery can be certified and an ecolabel awarded to a fishery. However, ecolabelling schemes may apply additional or more stringent requirements and criteria related to sustainable use of the resources. The Guidelines specifies requirements for three areas: management systems, the stock or stocks for which certification is being sought, and consideration of serious impacts of the fishery on the ecosystem. The requirements and criteria are to be based on and interpreted in accordance with agreed international instruments addressing fisheries, in particular the LOSC, the UN Fish Stocks Agreement and the 1995 Code of Conduct for Responsible Fisheries, as well as related documentation including the 2001 Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem. The conformity of the fishery concerned with the requirements and the criteria of the ecolabelling scheme should be made on the basis of criteria and related measurable performance indicators and a corresponding monitoring system, which are to be developed and applied with due consideration to the views and opinions of States, RFMOs and the FAO.

The *International Guidelines for the Management of Deep-sea Fisheries in the High Seas* developed through FAO, which was adopted in August 2008, is another example of a relevant guideline which will provide States and regional fisheries management organisations with a voluntary tool to better manage their fisheries for sustainable use and to protect vulnerable marine ecosystems. The Guidelines are designed to assist States and regional fisheries management organizations (RFMOs) in the implementation of the 2006 UN General Assembly Resolution 61/105 which calls for the protection of deep-sea ecosystems from bottom fisheries on the high seas. The Guidelines, among others, provides criteria by which States and RFMOs should conduct impact assessments of deep-sea fisheries, identify the types of deep-sea ecosystems that are vulnerable to bottom fisheries, and determine the extent to which bottom fisheries may impact such ecosystems using the best scientific information available. In 2008, the UN General Assembly called for the implementation of the FAO Guidelines in UN General Assembly Resolution 63/112 (paragraph 102).

The Guidelines have been developed for fisheries that occur in areas beyond national jurisdiction, referred to as “deep-sea fisheries” although coastal States may apply the Guidelines within their national jurisdiction, as appropriate. The main objectives of the management of deep-sea fisheries are to promote responsible fisheries that provide economic opportunities while ensuring the conservation of marine living resources and the protection of marine biodiversity, by ensuring the

long-term conservation and sustainable use of marine living resources in the deep seas; and preventing significant adverse impacts on vulnerable marine ecosystems. In order to achieve these objectives, States and RFMOs should adopt and implement measures in accordance with the precautionary approach, and the ecosystem approach to fisheries in conformity with the relevant rules of international law, in particular as reflected in the LOSC; and in a manner consistent with other relevant international instruments using the best information available.

3. ENVIRONMENT-RELATED INSTRUMENTS

3.1 Ramsar Convention (1971)

The *Convention on Wetlands of International Importance, especially as Waterfowl Habitat* (Ramsar Convention) was adopted in Ramsar, Iran on 2 February 1971, and entered into force on 21 December 1975. The Ramsar Convention provides the framework for national action and international cooperation for the conservation and sustainable utilisation of wetlands and their resources. The Convention provides that each contracting Party shall designate suitable wetlands within its territory for inclusion in a List of Wetlands of International Importance, which is maintained by the International Union for Conservation of Nature and Natural Resources. A contracting Party shall designate at least one wetland to be included in the List when signing THE Convention or when depositing its instrument of ratification or accession, selected for the List on account of their international significance in terms of ecology, botany, zoology, limnology or hydrology. The inclusion of a wetland in the List does not prejudice the exclusive sovereign rights of the Contracting Party in whose territory the wetland is situated. The contracting Party shall have the right to add to the List further wetlands situated within its territory, to extend the boundaries of those wetlands already included by it in the List, or, because of its urgent national interests, to delete or restrict the boundaries of wetlands already included by it in the List.

The *Ramsar Strategic Plan 2003-2008* in Action 1.2.6 called for an assessment of "the contribution of Ramsar sites and other wetlands to the maintenance of fisheries, including utilizing information available from the Millennium Ecosystem Assessment (MA) and other assessment programmes, and [recommendation of] sustainable management practices which can contribute to the WSSD target of, where possible by 2015, maintaining or restoring depleted fish [fisheries resources] stocks to levels that can produce the maximum sustainable yield." The Conference of the Parties of the Ramsar Convention has also adopted *Resolution IX.4: The Ramsar Convention and Conservation, Production and Sustainable Use of Fisheries Resources*, which urged Contracting Parties to apply as appropriate the recommendations annexed to the Resolution when addressing issues of the sustainable use of fisheries resources in relation to the conservation and wise use of Ramsar sites and other wetlands. The Resolution also urged Contracting Parties to review their policy frameworks and institutional arrangements to ensure that fisheries management authorities and those involved with conserving and/or managing aquatic biodiversity are aware of, complement and support national, subnational and local efforts to implement the Convention. The same Resolution called on Contracting Parties to take the necessary steps within their frameworks for integrated river basin and coastal zone management to maintain or reinstate aquatic biota migration pathways, to reduce the impacts of point source and diffuse pollution in all its forms, to establish and implement environmental flow allocations supporting the conservation of aquatic biota, to protect critical spawning and nursery grounds, and to restore relevant habitats where these have become degraded.

3.2 Convention on the International Trade in Endangered Species of Wild Flora and Fauna (1975)

The objective of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES) is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. The species covered by CITES are listed in three Appendices, according to the degree of protection they need. *Appendix I* includes species threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances. *Appendix II* includes species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival. *Appendix III* contains species that are protected in at least one country, which has asked other CITES Parties for assistance in controlling the trade. Changes to Appendix III follow a distinct procedure from changes to Appendices I and II, as each Party's is entitled to make unilateral amendments to it. CITES protects roughly 5,000 species of animals and 28,000 species of plants against over-exploitation through international trade.

CITES protects these species by subjecting their international trade to certain controls. This includes a licensing system for all import, export, re-export and introduction from the species covered by the Convention. The Convention provides that each State Party must designate one or more Management Authorities in charge of administering that licensing system and one or more Scientific Authorities to advise them on the effects of trade on the status of the species. Further, a species which is listed in CITES may be imported into or exported (or re-exported) from a State party to the Convention only if the appropriate document has been obtained and presented for clearance at the port of entry or exit, which may vary from one country to another.

The CITES Appendices currently include close to 100 commercially-exploited aquatic species of fish, molluscs and echinoderms, including amongst others: European eel, *Anguilla anguilla* (2007 - Appendix II); sawfishes, Pristidae (2007 - Appendix I apart from 1 species on Appendix II); humphead (Napoleon) wrasse, *Cheilinus undulatus* (2004 - Appendix II); Mediterranean date mussel, *Lithophaga lithophaga* (2004 - Appendix II); white shark, *Carcharodon carcharias* (2004 - Appendix II); sea cucumber, *Isostichopus fuscus* (2003 - Appendix III); basking shark, *Cetorhinus maximus* (2002 - Appendix II); pipefishes and seahorses, *Hippocampus* spp. (2002 - Appendix II); whale shark, *Rhincodon typus* (2002 - Appendix II); sturgeons and paddlefish, *Acipenseriformes* (1997 - Appendix II apart from 2 species on Appendix I); and Caribbean queen conch, *Strombus gigas* (1994 - Appendix II); giant clams, *Tridacnidae* (1983 - Appendix II). In addition, CITES has also had significant impact with some non-fish species important either as targeted species in marine harvesting activities or taken as bycatch in fisheries such as a number of whale species and stocks are listed on Appendix I, as are all marine turtle species.

3.3 Convention on the Conservation of Migratory Species (1979)

The purpose of the *Convention on the Conservation of Migratory Species of Wild Animals* (Bonn Convention) is to conserve terrestrial, marine and avian migratory species throughout their range. The Convention was signed in Bonn, Germany on 23 June 1979 and entered into force on 1 November 1983. The Bonn Convention provides for measures to protect, conserve or restore migratory species listed under Appendices I and II of the Convention. Appendix I lists migratory species threatened with extinction on the basis of reliable evidence, including the best scientific evidence available. The Bonn Convention provides that Range States of a migratory species listed in Appendix I shall endeavour to conserve and, where feasible and appropriate, restore those habitats of the species which are of importance in removing the species from danger of extinction; prevent, remove, compensate for or minimize, as appropriate, the adverse effects of activities or obstacles that seriously impede or prevent the migration of the species; and to the extent feasible and

appropriate, to prevent, reduce or control factors that are endangering or are likely to further endanger the species, including strictly controlling the introduction of, or controlling or eliminating, already introduced exotic species. The Convention further provides that Parties that are Range States of a migratory species listed in Appendix I shall prohibit the taking of animals belonging to such species except for scientific purposes; for the purpose of enhancing the propagation or survival of the affected species; to accommodate the needs of traditional subsistence users of such species; or when extraordinary circumstances so require. Appendix II of the Bonn Convention list migratory species which have an unfavourable conservation status and which require international agreements for their conservation and management, as well as those which have a conservation status which would significantly benefit from the international cooperation that could be achieved by an international agreement. The Convention provides that Parties that are Range States of migratory species listed in Appendix II shall endeavour to conclude agreements and give priority to those species in an unfavourable conservation status.

In February 2010, a Memorandum of Understanding on the Conservation of Migratory Sharks was concluded under the auspices of the Bonn Convention which will include all seven shark species in the CMS appendices: the Great White, Basking, Whale, Porbeagle, Spiny Dogfish, Shortfin and Longfin Mako Sharks. These species will benefit from better international protection by fishing nations through reduction of threats, in particular illegal fishing and trade, by enforcing existing laws. This was the first global CMS instrument on commercially exploited species.

3.4 Convention on the Conservation of Biological Diversity (1993)

The objectives of the *Convention on Biological Diversity* (CBD) are “the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.”(Art. I) The CBD recognises that “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.” (Art. III) The CBD was concluded on 5 May 1992 and entered into force on 29 December 1993.

The CBD contains several parallel provisions with the FAO Code of Conduct for Responsible Fisheries which are similar to the key objectives related to sustainable use, conservation and equity. Thus, the two agreements complement each other and the implementation of either of these instruments supports the implementation of the other. Some of these complementary provisions are presented in the following Table:

| Table 1. Examples of complementary articles on introduced species in the FAO Code of Conduct for Responsible Fisheries and the Convention on Biological Diversity | |
|---|---|
| FAO Code of Conduct for Responsible Fisheries | UN Convention on Biological Diversity |
| 9.2.3 Consult with neighbors on making an introduction | 14c Notify neighboring countries when introductions are made |
| 9.2.3 Create information systems | 7d Maintain and organize data |
| 9.2.5 Monitor aquatic environment | 7b Monitor components of bio-diversity |
| 9.3.1 Conserve genetic diversity and ecosystems 9.3.3 Minimize disease transfer | 8d Protect ecosystems 8g Manage living modified organisms 14a Environmental impact assessment |
| 9.3.2 Develop codes of practice | 8h Manage alien species |
| 7.5 Precautionary approach | Prologue - Precautionary approach |

Source: UN Food and Agriculture Organization of the United Nations. Online: <http://www.fao.org/fishery/topic/14906/en>

There were two internationally accepted work plans directly related to fisheries drafted within the framework of the CBD: the *Jakarta Mandate on Marine and Coastal Biological Diversity* and the *Biological Diversity of Inland Water Ecosystems*. Both of these work plans of the CBD contain elements on the conservation of aquatic biodiversity and the habitats that support them, the sustainable use of aquatic resources, the management of alien (introduced) species and genotypes, integrated areas management, the use of the precautionary approach and an ecosystem approaches to development and risk assessment (Malawi Principles).

3.5 Johannesburg Plan of Implementation (2002)

The *Johannesburg Plan of Implementation* was agreed at the World Summit on Sustainable Development (WSSD) which affirmed UN commitment to 'full implementation' of Agenda 21, alongside achievement of the Millennium Development Goals and other international agreements. The Johannesburg Plan of Implementation builds upon the achievements made since the United Nations Conference on Environment and Development held in Rio de Janeiro in 1992. The Plan promotes the integration of the three components of sustainable development: economic development, social development and environmental protection as interdependent and mutually reinforcing pillars. The Plan considers poverty eradication, changing unsustainable patterns of production and consumption and protecting and managing the natural resource base of economic and social development as the overarching objectives of, and essential requirements for, sustainable development.

The Plan recognised that oceans, seas, islands and coastal areas form an integrated and essential component of the Earth's ecosystem and are critical for global food security and for sustaining economic prosperity and the well-being of many national economies, particularly in developing countries. Further, effective coordination and cooperation are required to ensure the sustainable development of the oceans at the global and regional levels, between relevant bodies. Towards these ends, the Plan invited States to ratify or accede to and implement the LOSC, Chapter 17 of Agenda 21, establish an effective, transparent and regular inter-agency coordination mechanism on ocean and coastal issues within the United Nations system; promote integrated, multidisciplinary and multisectoral coastal and ocean management at the national level and encourage and assist coastal States in developing ocean policies and mechanisms on integrated coastal management; strengthen regional cooperation and coordination between the relevant regional organizations and programmes, the regional seas programmes of the United Nations Environment Programme, regional fisheries management organizations and other regional science, health and development organizations; assist developing countries in coordinating policies and programmes at the regional and subregional levels aimed at the conservation and sustainable management of fishery resources and implement integrated coastal area management plans, including through the promotion of sustainable coastal and small-scale fishing activities and, where appropriate, the development of related infrastructure.

The Plan provides that in order to achieve sustainable fisheries, the following actions are required at all levels: maintain or restore stocks to levels that can produce the maximum sustainable yield with the aim of achieving these goals for depleted stocks on an urgent basis and where possible not later than 2015; ratify or accede to and effectively implement the relevant United Nations and associated regional fisheries agreements or arrangements, such as the UN Fish Stocks Agreement, the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas; implement the 1995 Code of Conduct for Responsible Fisheries, , and the relevant international plans of action and technical guidelines of the FAO; urgently develop and implement national and regional plans of action, to put into effect the various FAO IPOAs;

establish effective monitoring, reporting and enforcement, and control of fishing vessels, including by flag States, to further the IPOA-IUU; encourage relevant RFMOs to give due consideration to the rights, duties and interests of coastal States and the special requirements of developing States when addressing the issue of the allocation of share of fishery resources for straddling stocks and highly migratory fish stocks; eliminate subsidies that contribute to IUU fishing and to over-capacity, while completing the efforts undertaken at the World Trade Organization to clarify and improve its disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries; strengthen donor coordination and partnerships between international financial institutions, bilateral agencies and other relevant stakeholders to enable developing countries, in particular the least developed countries and small island developing States and countries with economies in transition, to develop their national, regional and subregional capacities for infrastructure and integrated management and the sustainable use of fisheries; and support the sustainable development of aquaculture, including small-scale aquaculture, given its growing importance for food security and economic development.

3.6 Chapter 17 of Agenda 21 (1992)

Agenda 21 was adopted at the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil, on 3 to 14 June 1992. The World Summit on Sustainable Development (WSSD) held in Johannesburg, South Africa from 26 August to 4 September 2002 strongly reaffirmed the full implementation of Agenda 21. Chapter 17 of Agenda 21 pertains to the protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources.

Chapter 17 states as an objective the commitment of coastal States to integrated management and sustainable development of coastal areas and the marine environment under their national jurisdiction. Chapter 17 recognised that there is a need for the sustainable use and conservation of marine living resources of the high seas. It states that while fisheries on the high seas have considerably expanded; however, management of high seas fisheries, including the adoption, monitoring and enforcement of effective conservation measures, is inadequate in many areas and some resources are overutilized. The causes of these include unregulated fishing, overcapitalization, excessive fleet size, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases and lack of sufficient cooperation between States. In order to address these issues, action by States whose nationals and vessels fish on the high seas, as well as cooperation at the bilateral, subregional, regional and global levels, is essential particularly for highly migratory species and straddling stocks. In order to achieve these objectives, Chapter 17 recommends, among others, that States should take effective action, including bilateral and multilateral cooperation at the subregional, regional and global levels, to ensure that high seas fisheries are managed in accordance with the provisions of the LOSC, give full effect to these provisions with regard to highly migratory species; negotiate, where appropriate, international agreements for the effective management and conservation of fishery stocks; ensure that fishing activities by vessels flying their flags on the high seas take place in a manner so as to minimize incidental catch.; take effective action consistent with international law to monitor and control fishing activities by vessels flying their flags on the high seas to ensure compliance with applicable conservation and management rules, including full, detailed, accurate and timely reporting of catches and effort; take effective action, consistent with international law, to deter reflagging of vessels by their nationals as a means of avoiding compliance with applicable conservation and management rules for fishing activities on the high seas; prohibit dynamiting, poisoning and other comparable destructive fishing practices; and increase the availability of marine living resources as human food by reducing wastage, post-harvest losses and discards, and improving techniques of processing, distribution and transportation.

Chapter 17 also calls for the sustainable use and conservation of marine living resources under national jurisdiction. It provides that Coastal States, particularly developing countries and States whose economies are overwhelmingly dependent on the exploitation of the marine living resources of their exclusive economic zones, should obtain the full social and economic benefits from sustainable utilization of marine living resources within their exclusive economic zones and other areas under national jurisdiction. Towards this end, Chapter 17 recommends, among others, that States should ensure that marine living resources of the exclusive economic zone and other areas under national jurisdiction are conserved and managed in accordance with the provisions of the LOSC, including the the issues of straddling stocks and highly migratory species, assess the potential of marine living resources, including underutilized or unutilized stocks and species, by developing inventories, where necessary, for their conservation and sustainable use; strengthen their legal and regulatory frameworks, where appropriate, including management, enforcement and surveillance capabilities, to regulate activities related to the above strategies; explore the scope for expanding recreational and tourist activities based on marine living resources, including those for providing alternative sources of income compatible with conservation and sustainable development policies and plans; and support the sustainability of small-scale artisanal fisheries.

4. TRADE-RELATED AGREEMENTS

The international trade in fish and fish products are governed international trade rules developed through several rounds of trade negotiations under the General Agreement on Tariffs and Trade (GATT). The 1994 Uruguay Round, established the World Trade Organization (WTO) and concluded a number of important agreements relevant to fisheries.

4.1 General Agreement on Tariffs and Trade (1994)

The *General Agreement on Tariffs and Trade* (GATT), first signed in 1947, was designed to provide an international forum that encouraged free trade between member states by regulating and reducing tariffs on traded goods and by providing a common mechanism for resolving trade disputes. GATT 1994 comprises of the original GATT 1947 and all rectification, amendments, and modifications as agreed by GATT contracting parties in the Uruguay Round, a set of Understandings in 1994, and the Marrakesh Protocol. The World Trade Organization (WTO) was established in 1995 as a successor to the GATT. The WTO sets global rules for trade and provides a forum for trade negotiations and resolving trade disputes between member countries. The rules of the WTO applies to trade in all goods and many services as well as a very broad range of trade issues, from quarantine and technical trade barriers to taxation, subsidies and intellectual property.

The relevant provisions of GATT 1994 for WTO-consistent trade-related measures in combating IUU fishing are Article III (National Treatment on Internal Taxation and Regulation); Article VIII (Fees and Formalities connected with importation and Exportation); Article X (Publication and Administration of Trade Regulations); Article XI (General Elimination of Quantitative Restrictions); Article XIII (Non-discriminatory Administration of Quantitative Restriction); and Article XX (General Exemptions). Article III requires that there should not be any differentiation between domestic and imported products. Any trade measure applied to import shall be equally applied to like domestic products. Article VIII recognizes the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements in order that the production of certificates of origin should only be required to the extent that is strictly indispensable. Article X requires that "...no measure imposing restriction on imports shall be enforced before such measure has been officially published...Each country shall administer a uniform, impartial and reasonable manner on all its law, regulations, decisions and rulings". Article XI does not allow import and export restrictions other than duties, taxes, or other charges. Article XIII prohibits discriminatory quantitative restriction. Article XX provides that GATT 1994 does not prevent a Member country from adopting or enforcing any measure "relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption" as long as such "such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.

4.2 Agreement on Technical Barriers to Trade (1995)

The *Agreement on Technical Barriers to Trade* seeks to ensure that technical negotiations and standards, as well as testing and certification procedures, do not create unnecessary obstacles to trade. Since technical regulations and standards applied to fish products may at times lead to distortions or obstacles to trade such as labelling disputes or testing procedures, the TBT sets the rules for how these should be designed. The Agreement provides that technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, such as national security

requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In the assessment of such risks some of the relevant elements of consideration include available scientific and technical information, related processing technology or intended end-uses of products. When the circumstances or objectives which gave rise to the adoption of the technical regulations no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner, the said technical regulations shall not be maintained.

The Agreement recognises the right of States to establish protection, at levels they consider appropriate, for human, animal or plant life or health or the environment, and does not prevent them from taking measures necessary to ensure that those levels of protection are met. Thus, the agreement encourages States to use international standards where these are appropriate, but it does not require them to change their levels of protection as a result of standardization. An innovative feature of the revised agreement is that it covers processing and production methods related to the characteristics of the product itself. The coverage of conformity assessment procedures is enlarged and the disciplines made more precise.

4.3 Agreement on Pre-shipment Inspection (1995)

The *Agreement on Pre-shipment Inspection* applies to all pre-shipment inspection activities carried out on the territory of Members, whether such activities are contracted or mandated by the government, or any government body, of a Member. Pre-shipment inspection covers all activities relating to the verification of the quality, the quantity, the price, including currency exchange rate and financial terms, and/or the customs classification of goods to be exported to the territory of the user Member. The governments of developing countries employ pre-shipment inspection in order to safeguard national financial interests (for example, prevention of capital flight and commercial fraud as well as customs duty evasion) and to compensate for inadequacies in administrative infrastructures. This is done by employing specialized private companies to check shipment details such as price, quantity, quality of goods ordered overseas. It is the obligations of User Members that pre-shipment inspection activities are carried out in a non-discriminatory manner, and that the procedures and criteria employed in the conduct of these activities are objective and are applied on an equal basis to all exporters affected by such activities; transparent; protects of confidential business information; the procedures avoid conflicts of interest and unreasonable delays.

4.4 Agreement on Rules of Origin (1992)

The objective of the *Agreement on Rules of Origin* is the long-term harmonization of rules of origin, other than rules of origin relating to the granting of tariff preferences, and to ensure that such rules do not themselves create unnecessary obstacles to trade. The Agreement defines "rules of origin" as "laws, regulations and administrative determinations of general application applied by any Member to determine the country of origin of goods provided such rules of origin are not related to contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of paragraph 1 of Article I of GATT 1994." Rules of origin include all rules of origin used in non-preferential commercial policy instruments, such as in the application of: most-favoured-nation treatment; anti-dumping and countervailing duties; safeguard measures; origin marking requirements; any discriminatory quantitative restrictions or tariff quotas; and those used for government procurement and trade statistics.

The harmonization programme established in the Agreement and to be completed within three years of initiation, has not yet been finalized. In this case, the Agreement provides that until the completion of the harmonization programme, contracting parties would be expected to ensure, *inter*

alia, that their rules of origin shall not themselves create restrictive, distorting, or disruptive effects on international trade or unduly pose strict requirements or require the fulfilment of a certain condition not related to manufacturing or processing, as a prerequisite for the determination of the country of origin; they are not more stringent than the rules of origin they apply to determine whether or not a good is domestic and shall not discriminate between other Members, irrespective of the affiliation of the manufacturers of the good concerned; they are administered in a consistent, uniform, impartial and reasonable manner; they are published and changes to their rules of origin or new rules of origin are not applied retroactively; any administrative action taken in relation to the determination of origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination; and that all information that is by nature confidential or that is provided on a confidential basis for the purpose of the application of rules of origin is treated as strictly confidential by the authorities concerned.

4.5 Agreement on Import Licensing Procedures (1994)

The *Agreement on Import Licensing Procedures* seeks to simplify, and bring transparency to, the administrative procedures and practices used in international trade, and to ensure the fair and equitable application and administration of such procedures and practices. The Agreement defines import licensing as “administrative procedures used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing Member.” The Agreement provides that the rules for import licensing procedures shall be neutral in application and administered in a fair and equitable manner.

The Agreement provides that the rules and all information concerning procedures for the submission of applications, including the eligibility of persons, firms and institutions to make such applications, the administrative body(ies) to be approached, and the lists of products subject to the licensing requirement shall be published, and that Members be given the opportunity to make comments upon request. It further provides that application and renewal forms, as well as application and renewal procedures shall be as simple as possible; and applicants allowed a reasonable period for the submission of licence applications. The Agreement provides that applications shall not be refused for minor documentation errors which do not alter basic data contained therein; licensed imports shall not be refused for minor variations in value, quantity or weight from the amount designated on the licence due to differences occurring during shipment, differences incidental to bulk loading and other minor differences consistent with normal commercial practice. It also stipulates that Members shall not be required to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, whether public or private.

The Agreement also provides for automatic import licensing which is defined as import licensing where approval of the application is granted in all cases. Automatic licensing procedures shall not be administered in such a manner as to have restricting effects on imports subject to automatic licensing. In the case of non-automatic licensing, the Agreement provides that procedures shall not have trade-restrictive or distortive effects on imports additional to those caused by the imposition of the restriction and non-automatic licensing procedures shall correspond in scope and duration to the measure they are used to implement, and shall be no more administratively burdensome than absolutely necessary to administer the measure.

4.6 Agreement on the Application of Sanitary and Phytosanitary Measures (1995)

The purpose of the *Agreement on Sanitary and Phytosanitary Measures* is the establishment of a multilateral framework of rules and disciplines to guide the development, adoption and enforcement of sanitary and phytosanitary measures in order to minimize their negative effects on trade. The Agreement recognises that Member may adopt or enforce measures necessary to protect human, animal or plant life or health. However, these measures should not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade. In order to harmonize sanitary and phytosanitary measures on as wide a basis as possible, the Agreement provides that Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist, including the Codex Alimentarius Commission, the International Office of Epizootics, and the relevant international and regional organizations operating within the framework of the International Plant Protection Convention.

The Agreement provides that Members shall ensure that their sanitary or phytosanitary measures are based on an appropriate assessment of the risks to human, animal or plant life or health which takes into account risk assessment techniques developed by the relevant international organizations as well available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; prevalence of specific diseases or pests; existence of pest- or disease-free areas; relevant ecological and environmental conditions; and quarantine or other treatment. The assessment of the risk should also take into account relevant economic factors such as the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease; the costs of control or eradication in the territory of the importing Member; and the relative cost-effectiveness of alternative approaches to limiting risks; and ensure that negative trade effects are minimised.

4.7 Agreement on Subsidies and Countervailing Measures (1995)

The *Agreement on Subsidies and Countervailing Measures* disciplines the use of subsidies and regulates the actions countries can take to counter the effects of subsidies. The Agreement contains a definition of a “subsidy” (Article 1). The Agreement provides that disciplines set out in the agreement only apply to “specific” subsidies or subsidies available only to an enterprise, industry, group of enterprises, or group of industries in the country (or state, etc) that gives the subsidies, which can be domestic or export subsidies. The Agreement applies to agricultural goods as well as industrial products, except when the subsidies are exempt under the Agriculture Agreement’s “peace clause”, which expired in 2003.

The Agreement differentiates between two categories of subsidies: prohibited and actionable. It originally contained a third category: non-actionable subsidies which existed for five years, ending on 31 December 1999, and was not extended. Prohibited subsidies refer to subsidies that require recipients to meet certain export targets, or to use domestic goods instead of imported goods. This type of subsidy is prohibited because they are specifically designed to distort international trade. A country can resort to the WTO dispute settlement procedures to challenge a prohibited subsidy which is subject an expedited timetable for action by the Dispute Settlement body. Once the subsidy is determined to be indeed prohibited, it must be immediately withdrawn; otherwise, the complaining member is authorized to take countermeasures. The complaining country can also impose countervailing duties if domestic producers are hurt by imports of subsidized products.

On the other hand, for actionable subsidies, the complaining country must show that the subsidy has an adverse effect on its interests; otherwise, the subsidy is permitted. This can happen in three

instances: when one country's subsidies hurt a domestic industry in an importing country; when rival exporters from another country are hurt when the two compete in third markets; and when domestic subsidies in one country can hurt exporters trying to compete in the subsidizing country's domestic market. The subsidy must be withdrawn or its adverse effect must be removed after the Dispute Settlement Body rules that the subsidy does have an adverse effect. The complaining country is allowed to impose countervailing duty if domestic producers are hurt by imports of subsidized products.

4.8 Draft WTO Rules on Fisheries Subsidies (2007)

It has been long recognised that inappropriate subsidies as a significant factor contributing to overfishing and to the over-capitalization of fishing fleets. In 2001, WTO ministers gathered in Doha, Qatar, called on member States to "clarify and improve" WTO rules on fishery subsidies. In 2002, the heads of State gathered at the World Summit for Sustainable Development in Johannesburg, South Africa, called on governments to eliminate harmful fisheries subsidies through effective new WTO rules. In 2004, a major UNEP workshop held in Geneva provided concrete suggestions on "how" fishery subsidies could be reformed within the framework of WTO rules. In 2005, WTO ministers in Hong Kong issued a significantly strengthened negotiating mandate that expressly called for a prohibition on subsidies that contribute to overcapacity and overfishing, with special and differential treatment (S&DT) for developing countries. In November 2007, the WTO Draft WTO Rules on Fisheries Subsidies was issued by the chairman of the Negotiating Group on Rules.

The 2007 Draft Text on Fisheries Subsidies contains: prohibiting a broad range of capacity- or effort enhancing subsidies, as well as subsidies that affect fishing on 'unequivocally overfished stocks'; exemptions for specific types of subsidies from the prohibition (e.g. for vessel safety or reducing vessel capacity); only allowing permitted fisheries subsidies where basic fisheries management systems are in place; allowing developing countries to use most prohibited subsidies, subject to fisheries management and other conditionalities; creating a mechanism for involving FAO in the review of measures taken to fulfil fisheries management criteria; strengthening WTO reporting rules for subsidies.

In December 2008, a new 'Roadmap' for discussions was issued, which aims to reach sufficient agreement among the Members in order to prepare a new draft text. The December 2008 Roadmap contains the following main elements: the listing of prohibited subsidies, with an explanation of why they contribute to overcapacity and overfishing; for a specific subsidy not to be prohibited, there will have to be an explanation of why it does not contribute to overcapacity and overfishing; if special and differential treatment (SDT) is allowed for developing States, subsidies must not contribute to overcapacity or overfishing. The Roadmap seriously considers how conditionalities might be applied, monitored and enforced, as well as fisheries management conditionalities. It also considers the issue of the evidence needed to take action against an illegally-subsidising Member, and scientific and technical expertise drawn on in the event of a dispute and stressed the need for the formulation of notification mechanisms for Members to report on subsidies they are providing.

5. MARITIME SAFETY AND LABOUR-RELATED AGREEMENTS

5.1 Torremolinos Convention (1977) and its Protocol (1993)

The 1997 *Torremolinos International Convention for the Safety of Fishing Vessels* was the first international convention on the safety of fishing vessels. The Convention, which applies to fishing

vessels of 24m in length and over, provided for safety requirements for the construction and equipment of new, decked, seagoing fishing vessels, including vessels processing their catch. It also contained provisions which pertained to matters such as construction, watertight integrity and equipment; machinery and electrical installations and unattended machinery spaces; fire protection, detection, extinction, and fire fighting; protection of the crew; lifesaving appliances; emergency procedures, musters and drills; radiotelegraphy and radiotelephony; and shipborne navigational equipment. The Convention, with its stringent provisions, did not receive sufficient ratifications to enter into force.

In 1993, a Protocol to the Convention was adopted (*the Torremolinos Protocol*) which updated and amended the 1977 Convention taking into account technological evolution and the need to take a pragmatic approach to encourage ratification of the Convention. The Torremolinos Protocol contained provisions which dealt with the construction, stability, machineries, fire protection, protection of crew, life saving equipment, emergency procedures, radio communications, navigation equipment, vessel certification and port state control. Some of these provisions are restricted to fishing vessels of more than 45 m. The Protocol has not yet entered into force as it still lacks the fifteen ratifications needed for its entry into force.

5.2 International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (1995)

The *International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel* (STCW-F Convention) provides the standard regulatory framework for the training and certification of fishing vessel personnel. The Convention complements the 1978 STCW Convention as amended in 1995, which deals with the training and certification of seafarers. The STCW-F Convention addresses the training and certification standards for skippers and watchkeepers on fishing vessels of more than 24 m, for engineers on vessels producing more than 750kW, and for crew in charge of radio communications. The Convention also requires basic (pre-sea) safety training for all fishing vessel personnel. The Convention embraces the concept of competency-based training and does not deal with manning levels. The STCW-F Convention has not yet entered into force as it still lacks the fifteen ratifications needed for its entry into force.

5.3 The Work in Fishing Convention (2007)

The *Work in Fishing Convention*, adopted on 14 June 2007, applies to all fishers and fishing vessels engaged in commercial fishing operations. The Convention seeks to ensure that decent conditions of work for fishers on board fishing vessels by establishing minimum requirements for work on board; conditions of service; accommodation and food; occupational safety and health protection; medical care and social security. The Convention addresses, among others, the following subjects: the responsibilities of fishing vessel owners and skippers for the safety of the fishers on board and the safety of the vessels (Article 8); minimum age for work on board fishing vessels and for assignment to certain types of activities (Article 9); medical examination and certification required for work on fishing vessels, with the possibility of exceptions for smaller vessels or those at sea for short periods (Articles 10 to 12); manning and hours of rest (Articles 13 and 14); crew lists (Article 15); fishers' work agreements (Articles 16 to 20); repatriation (Article 21); recruitment and placement of fishers, and use of private employment agencies (Article 22); payment of fishers (Article 23); on board accommodation and food (Articles 25 to 28); medical care at sea (Article 29); occupational safety and health (Articles 31 to 33); social security (Articles 34 to 37); and protection in the case of work-related sickness, injury or death (through a system for fishing vessel owners' liability or compulsory insurance, workers' compensation or other schemes) (Articles 38 to 39). The

Convention also includes provisions concerning compliance and enforcement by flag States and ports States (Articles 40 to 44).

5.4 Voluntary Codes and Guidelines

There are several voluntary guidelines prepared by the FAO, the IMO and the ILO which are non-mandatory in nature. These include the FAO/ILO/IMO Document for Guidance on Fishermen's Training and Certification, the revised Code of Safety for Fishermen and Fishing Vessels, and revised FAO/ILO/IMCO Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels. These Voluntary Guidelines provide useful recommendations in order to safeguard fishermen's lives whilst the 1977 Torremolinos Protocol and the STCW-F Convention have yet entered into force.

The revised *Code of Safety for Fishermen and Fishing Vessels*, 2005, has two parts: Part A, "Safety and health practices for skippers and crews" was adopted in 1968, while Part B, "Safety and health requirements for the construction and equipment of fishing vessels," was adopted in 1974. Part A is an educational tool dealing with the fundamentals of safety and health while Part B is intended to serve as a guide to those concerned with framing national laws and regulations. The Safety Code applies to fishing vessels of 24m in length and over, excluding recreational fishing vessels and processing vessels. The *Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels*, 2005, cover the design, construction and equipment of fishing boats between 12m and 24m in length and undecked fishing vessels of any size. The *Document for Guidance on Fishermen's Training and Certification* applies to the training and certification of both small-scale and industrial maritime fisheries. It is intended to provide guidance when national training schemes and courses are instituted, amended or developed for the vocational training of any category of fishing vessel personnel. However, the additional guidance on training is complementary to, and not intended to supersede, the knowledge requirements specified in these ILO and IMO Conventions and recommendations. In the case of fishing vessels of less than 24m in length, or powered by main propulsion machinery of less than 750 kW propulsion power, certification is not prescribed, but may be introduced at the discretion of the competent administration.

PART II. REGIONAL INSTRUMENTS

Part II provides a summary of the key REGIONAL instruments that promote the conservation and management of fisheries resources, including the prevention, deterrence, and elimination of IUU fishing.

1. FAO DECLARATIONS

1.1 Rome Declaration on Illegal, Unreported, and Unregulated Fishing (2005)

This declaration was adopted by Ministers and Ministers' Representatives on 12 March 2005 as recognition of the harmful and worldwide consequence of IUU fishing on the sustainability of both large- and small-scale fisheries. The Ministers expressed their commitments and renewed their efforts to concentrate and intensify their efforts to implement fully all the international instruments for the sustainable use of marine living resources.

1.2 Strategy for Improving Information on Status and Trends of Capture Fisheries (2003)

The Strategy for Improving Information on Status and Trends of Capture Fisheries is a voluntary instrument elaborated within the framework of the FAO Code of Conduct for Responsible Fisheries that applies to all states and entities. Its overall objectives are to provide a framework, strategy and plan for the improvement of knowledge and understanding of fishery status and trends as a basis for fisheries policy-making and management for the conservation and sustainable use of fishery resources within ecosystems. The required actions fall under nine major areas, with a primary emphasis on the need for capacity building in developing countries.

1.3 Reykjavik Declaration on Responsible Fisheries in Marine Ecosystem (2001)

This declaration is a result of the Reykjavik Conference on Responsible Fisheries in the Marine Ecosystem held in October 2001 in Iceland. It recognises that sustainable fisheries management should incorporate ecosystem considerations which entail taking into account the impacts of fisheries on the marine ecosystem and the impacts of the marine ecosystem on fisheries.

1.4 Bangkok Declaration and the Strategy for Aquaculture Development (2000)

This declaration was a result of the Conference on Aquaculture in the third Millennium which was held in 2000. It discusses the priorities and strategies for the development of aquaculture for the next two decades in the light of the future economic, social and environmental issues and advances in aquaculture technologies. The participants to the Conference declared that the aquaculture sector should continue to be developed towards its full potential, making a net contribution to global food availability (para. 2.18) and that aquaculture policies and regulations should promote practical and economically viable farming and management practices that are environmentally responsible and socially acceptable (para. 2.20)

1.5 Rome Declaration on the Implementation of the Code of Conduct for Responsible Fisheries (1999)

This declaration was adopted by the FAO Ministerial Meeting on Fisheries in March 1999. The Ministerial Meeting emphasised that the achievement of the sustainable management of both capture fisheries and aquaculture was of great importance for world food security, for the attainment of national economic and social goals and for the well-being and livelihoods of individuals and families involved in fisheries. It was concerned that many of the world's major marine fishery resources were subject to overfishing, destructive and wasteful fishing practices and excess capacity, resulting in reduced yields and economic returns. The Ministerial Meeting was similarly concerned at the growing amount of illegal, unregulated and unreported fishing activities being carried out, including fishing vessels flying "flags of convenience". The Meeting welcomed the adoption of the International Plans of Action on sharks, seabirds, and capacity, within the framework of the FAO Code of Conduct.

1.6 Kyoto Declaration on the Contribution of Fisheries to Food Security (1995)

This declaration was adopted at the International Conference on the Sustainable Contribution of Fisheries to Food Security in December 1995. The declaration emphasised that unless appropriate action is taken, the combination, at the global level, of population increase and economic growth, in conjunction with continued overfishing, excess fishing capacity and degradation of the aquatic environment, will place enormous strains upon the fishery sector's capability to sustain its necessary contribution to food security. It also recognised that many developing countries face major challenges in ensuring a sustainable contribution from subsistence, artisanal and commercial

fisheries to their food security. The declaration emphasised the need for international cooperation and support which will be important in ensuring capacity building, information exchange and the provision of technical and financial assistance.

1.7 Cancun Declaration on Responsible Fishing (1992)

This declaration was adopted at the International Conference on Responsible Fishing in May 1992. The participants to the conference recognised the need to improve fishing practices and fisheries management to avoid overexploitation of fisheries resources or loss of biodiversity. The declaration emphasised the vital need for fishing to continue and develop within a comprehensive and balanced system under the concept of “responsible fishing”.

2. SOUTHEAST ASIAN FISHERIES DEVELOPMENT CENTRE

The Southeast Asian Fisheries Development Centre SEAFDEC is an autonomous intergovernmental body established as a regional treaty organisation in 1967 to promote fisheries development in Southeast Asia. SEAFDEC aims to develop the fishery potentials in the region through training, research, and information services to improve the food supply by rational utilisation and development of the fisheries resources.

SEAFDEC has adopted regional guidelines in line with promoting responsible fisheries to implement the FAO Code of Conduct for Responsible Fisheries. These guidelines are the: Regional Guidelines for Responsible Fishing Operations in Southeast Asia; Regional Guidelines for Responsible Fisheries Management in Southeast Asia; Regional Guidelines for Co-management using Group User Rights for Small-scale Fisheries in Southeast Asia; and Regional Guidelines for Fishery Statistics for Capture Fisheries in Southeast Asia.

2.1 Regional Guideline for Responsible Fishing Operations in Southeast Asia (2003)

The objectives of the Regional Guideline is to clarify the requirements, prioritise the required action; and identify the areas which require special consideration in the regional context, contained in the FAO Code of Conduct of Responsible Fisheries. The Southeast Asian nations believe that while the FAO Code of Conduct is a comprehensive and global guiding principle to achieve sustainable fisheries, global and non discriminatory application of the global code of Conduct to the specific regions or countries may require some modification in order to be effectively implemented in specific circumstances. In the Southeast Asian Region, the three following specific regional situations must be fully considered for inclusion in the modifications and applications of the FAO Code of Conduct: cultural situation; fisheries structure; and ecosystem. The Regional Guidelines also takes into account the significant economic importance of inland fisheries in the region.

Since the Regional Guidelines for Responsible Fishing Operations was prepared based on the Article 8 Fishing Operations of the Code of Conduct for Responsible Fisheries, the original Article and paragraph numbers were retained in the Guidelines. The Regional Guidelines were prepared in line with the objectives stipulated in Chapter II. The Guidelines are a mix of the composition of 1) general comments for paragraphs from regional points of view, 2) Specific considerations for regional application; and, 3) required follow up activities, if any. The left column is the original paragraph with numbers shown for easy reference, while the modified regional guidelines are shown in the right column for consideration by the States for action (page 19).

The SEAFDEC Program on the Regionalisation of the Code of Conduct for Responsible Fisheries including Phase 1: the Regional Guidelines for Responsible Fishing Operations is principally aimed at supporting the implementation of the FAO Code of Conduct by ASEAN Countries. However, it is hoped that the countries, which share similar specific fisheries circumstances can use it as a relevant reference (page 5).

2.2 Regional Guidelines for Responsible Fisheries Management in Southeast Asia (2003)

The Regional Guidelines for Responsible Fisheries in Southeast Asia – Responsible Fisheries Management was developed through a series of regional consultations to supplement the Code of Conduct for Responsible Fisheries for the implementation by the ASEAN Member Countries at the national level. Although the Regional Guidelines has been prepared for the ASEAN Member Countries it is hoped that any countries in Asia, which share similar specific fisheries circumstances will also find it useful. The objectives of the regional guidelines are to:

- Clarify the requirements of the FAO Code of Conduct for Responsible Fisheries;
- Identify and prioritise the required actions;
- Identify the issues that require special consideration in the regional context;
- Facilitate the formulation of regional policies to enable the implementation of the FAO Code of Conduct in the member countries of the Association of Southeast Asian Nations (ASEAN); and
- Facilitate the formulation and implementation by the ASEAN Member Countries of national codes of practice for responsible fisheries management.

2.3 Regional Guidelines for Co-Management Using Group User Rights for Small-Scale Fisheries in Southeast Asia (2005)

The Guidelines are considered as supplementary directives to the Regional Guidelines for Responsible Fisheries in Southeast Asia: Fisheries Management. They are intended to provide a regional reference or checklist for countries that are interested in implementing and improving the management of their small-scale fisheries (co-management approach) using group user rights. It should be noted that the Guidelines, in their nature, generalise issues in the broader context of regional fisheries rather than focusing on specific national situation. It is therefore suggested that the actual application of the Guidelines would require appropriate adjustment or modification, including the terminology used in the guideline so as to fit the national or local specifics on social, economic and legal situations (page A-8).

2.4 Regional Guidelines for Fishery Statistics for Capture Fisheries in Southeast Asia (2008)

The Guidelines are intended to provide a regional reference or checklist for countries in the ASEAN region that are interested in reviewing and/or improving national fishery statistical systems. It should be noted that these Guidelines generalise issues in the broader context of regional fisheries rather than focusing on specific national situation. Therefore, it is suggested that the actual application of the Guidelines would require appropriate adjustment or modification. The Guidelines consist of six sections on the following: General Principles; National Fishery Statistical Systems; Capacity Building for National Fishery Statistical System; National Inter-agency Coordination; Collaboration among ASEAN Member Countries and International/Regional Organisations; and Follow-up actions.

3. ASSOCIATION OF SOUTHEAST ASIAN NATIONS

The Association of Southeast Asian Nations (ASEAN) aims to accelerate economic growth, social progress and cultural development in the region and promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries in the region and adherence to the principles of the United Nations Charter. The ASEAN has adopted a number of ministerial understandings, memoranda of understanding, agreements, resolutions, and plans of action related to responsible fishing.

3.1 ASEAN Ministerial Understanding on Fisheries Cooperation (1983)

This agreement was signed to encourage ASEAN countries to take cooperative action in their national and regional development programmes. Cooperation in fisheries envisaged by the Ministerial Understanding is in the following areas: the management and conservation of fisheries resources in the EEZ, sharing and transfer of technology; aquaculture, and post-harvest technology. In the management and conservation of fisheries resources in the EEZ, the ASEAN nations are expected to exchange information and expertise relevant to fisheries development and management; coordinate action in fisheries resources research activities undertaken by national institutes in the member countries; undertake appropriate action in the evaluation and management of shared stocks and migratory species; and undertake appropriate action for the rational utilisation of fisheries resources in the EEZ.

3.2 Agreement on the Conservation of Nature and Natural Resources (1985)

This agreement requires its Parties to adopt measures, unilaterally or through concerted action, necessary to maintain essential ecological process and life support systems, preserve genetic diversity, and ensure the sustainable utilisation of harvested natural resources under their jurisdiction in accordance with scientific principles and with a view of attaining the goal of sustainable development.

3.3 Memorandum of Understanding on ASEAN Sea Turtle Conservation and Protection (1997)

The objective of this MOU is to promote the protection, conservation, replenishment and recovery of sea turtles and of the habitats based on the best scientific evidence and taking into account the environmental, socio-economic and cultural characteristics of the Parties. Parties to MOU have the obligation to consider harmonising their existing national laws and regulations and enact new laws on sea turtle conservation and protection to suit current situations.

3.4 Resolution on Sustainable Fisheries for Food Security for the ASEAN Region (2001)

Adopted on 24 November 2001 at the ASEAN-SEAFDEC Conference on Sustainable Fisheries for Food Security in the New Millennium: "Fish for the People" in Bangkok, Thailand.

This resolution was adopted as a result of a conference that recognised the importance of sustainable fisheries for food security and the livelihoods and well-being of the ASEAN people. The Ministers, in adopting this resolution emphasised the need to formulate regional guidelines to implement the FAO Code of Conduct for Responsible Fisheries, taking into account the specific social, economic, cultural, ecological and institutional contexts and diversity of ASEAN fisheries. It also recognised the need to progressively replace the open access nature of fisheries resources with limited access regimes through the introduction of rights-based fisheries which may also facilitate the management of fishing capacity and promote the use of responsible fishing gears and practices.

The Resolution also emphasised the need to increase aquaculture production in a sustainable and environmentally-friendly manner, improve post-harvest technologies, and strengthening of ASEAN approaches on international trade.

3.5 Plan of Action on Sustainable Fisheries for Food Security for the ASEAN Region (2001)

This Plan of Action was adopted on 24 November 2001 at the ASEAN-SEAFDEC Conference on Sustainable Fisheries for Food Security in the New Millennium: “Fish for the People” in Bangkok, Thailand. It was adopted for the ASEAN region to be used as a guideline to develop programmes, projects and activities for the implementation of the Resolution on Sustainable Fisheries.

3.6 Vientiane Action Programme 2004-2010 (2004)

The Vientiane Programme was adopted to implement the vision of establishing an open, dynamic and resilient ASEAN Community by 2020. It aims to address the development issues and special needs of the less developed ASEAN member countries and sub-regional areas and strengthen ASEAN’s institutional framework to ensure that it is responsive to the challenges and needs of moving towards an ASEAN Community. The Vientiane Action Programme calls for the implementation of ASEAN-SEAFDEC’s Resolution and Plan of Action on Sustainable Fisheries, as well as the utilisation of good practices for aquaculture.

3.7 Cebu Resolution on Sustainable Development (2006)

This resolution expresses the commitment of ASEAN member countries to address global environmental issues through national and regional cooperation and active participation at international fora. These issues include the need to conserve biodiversity in the region.

4. ASIA PACIFIC ECONOMIC COOPERATION

The Asia Pacific Economic Cooperation (APEC) is the forum for facilitating economic growth, cooperation, trade and investment in the Asia-Pacific region. It is the only inter-governmental grouping in the world which operates on the basis of non-binding commitments. APEC has a number of working groups which include a Fisheries Working Group and a Marine Resource Conservation Working Group. These working groups are guided by the declarations and plans of action adopted by APEC, particularly the Seoul Oceans Declaration and the Bali Plan of Action.

4.1 Osaka Agenda (1995)

The Osaka Action Agenda is the template for future APEC work toward sustained economic development throughout the APEC region and aims to implement the Bogor Declaration. The Osaka Action Agenda represents the three pillars of trade and investment liberalisation, their facilitation, and economic and technical cooperation. The agenda on marine resource conservation come under the pillar of economic and technical cooperation. APEC’s common policy concepts on marine resource conservation are: (1) addressing coastal zone planning and management; (2) enhancing coordination in the implementation of relevant UNCED recommendations; and (3) reviewing and resolving marine algal toxin issues. In terms of fisheries, the common policy concepts are: (1) promoting conservation and sustainable use of fisheries resources, the sustainable development of aquaculture, as well as habitat preservation; (2) solving common fisheries resource management problems and aquaculture disease control; (3) enhancing the food safety and quality of fish and

fisheries products; and (4) promoting sector specific work relating to trade and investment liberalisation and facilitation.

4.2 Seoul Oceans Declaration, The 1st APEC Ocean-related Ministerial Meeting (2002)

The Seoul Ocean Declaration (SOD) lays out domestic and regional actions to promote the conservation and management of living marine resources in the APEC region. The SOD calls on APEC economies to facilitate, through exchange of information, effective regional implementation of global fisheries instruments in achieving responsible fisheries and sustainable aquaculture. It also resolves to eliminate IUU fishing in the APEC region.

4.3 The Bali Plan of Action and Joint Ministerial Statement, Bali (2005)

The Bali Plan of Action (BPA) contains practical commitments for the rest of the decade which will guide the priorities of APEC and its working groups that deal with oceans related issues, as well as demonstrate its regional commitment to global oceans and fisheries priorities. The BPA is considered the blueprint for APEC-wide reflects APEC's resolve to undertake tangible domestic and regional actions, as resources and capacity permit, in the areas of: (1) ensuring the sustainable management of the marine environment and its resources; (2) providing for sustainable economic benefits from the oceans; and (3) enabling sustainable development of coastal communities. The BPA has its basis on the Seoul Oceans Declaration, LOSC, UN Fish Stocks Agreement, FAO Compliance Agreement, CBD, CITES, FAO Code of Conduct for Responsible Fisheries, WSSD, Johannesburg Plan of Implementation, Millennium Declaration.

4.4 Eighteenth APEC Ministerial Meeting, Ha Noi, Vietnam (2006)

In this meeting, Ministers emphasised the importance of sustainable economic development in the fisheries and aquaculture sectors, which are of particular importance to many APEC economies. The Ministers emphasised that in order to maximise economic benefits from the oceans, efforts must be taken to facilitate and sustain trade and access to markets for fish and fishery products. Ministers also noted that illegal fishing undermines free and fair trade in fisheries products and directed the APEC Fisheries Working Group to develop programs to assess the impacts of illegal fishing activities, enforce fisheries management measures, and address overcapacity in fishing fleets and report back to Ministers on their progress.

5. ASIA PACIFIC FISHERY COMMISSION

The Asia Pacific Fishery Commission (APFIC), formerly the Indo-Pacific Fisheries Council (IPFC), is the first fishery body of the Asia-Pacific region. It was established in 1948 by FAO under Article XIV of its Constitution and is one of the longest established regional fishery bodies. APFIC's main function is to promote the full and proper utilisation of living aquatic resources through the development and management of fishing and culture operations and through the development of related processing and marketing activities in conformity with the objectives of its members. APFIC acts as a consultative forum that works in partnership with other regional organisations and arrangements and members. It provides advice, coordinates activities, and acts as an information broker to increase knowledge of fisheries and aquaculture in the Asia Pacific region to underpin decision making.

The initial objective of APFIC was to increase the food supply for the steadily expanding populations after the Second World War. In recent years, the work of the Commission has focused more on

management-oriented resources research to back up management decisions and the promotion of responsible fisheries, taking into account social, economic and environmental aspects of fisheries development. Two regional programmes originated by the Commission--the Network of Aquaculture Centres in Asia and the Pacific (NACA) and the Marketing Information and Technical Advisory Services for Fishery Products in the Asia and the Pacific Region (INFOFISH). With the support of their respective Members, those regional programmes were transformed into inter-governmental bodies. These bodies have since expanded their work and made outstanding contributions for the benefit of the countries in the Asia-Pacific region.

5.1 Relevant Initiatives to Address IUU Fishing

Several projects and consultations and workshops have been organised by APFIC to address national and regional issues of fisheries and aquaculture development and assist member countries to implement the FAO Code of Conduct for Responsible Fisheries. These projects include the Elaboration of a National Plan of Action to Prevent, Deter, and Eliminate IUU Fishing; Addressing the Quality of Information on Inland Fisheries (AQUIIF); and Strengthening National Capabilities in Seafood Trade Policy, including Risk Assessment and Traceability. Regional workshops were also conducted under the auspices of APFIC, particularly on vessel monitoring systems (2004), IUU fishing in Southeast Asian subregion (2004), sea turtle conservation and fisheries (2004); and IUU fishing in South Asian subregion (2006).

In the 2006 Status and Potential of Fisheries and Aquaculture in Asia and the Pacific, two issues emerged: IUU fishing and food safety and trade. In the 29th Session of APFIC, IUU fishing was identified as the biggest threat to the sustainable development of fisheries and aquaculture in the Asia-Pacific region. Because a large part of the region is under the jurisdiction of States, IUU problems generally arise from either (i) nationals fishing in contempt of national and district laws and regulations or (ii) from encroachment of foreign vessels and fishers in another country's EEZ. Hence, the 29th Session of APFIC emphasised that "(d)eterring, and hopefully, eliminating IUU, therefore, is a responsibility of all APFIC Members."

In a recent review of the capacity of APFIC Members to manage IUU fishing, it was noted that many Members did not even have the necessary legislation to deal with the problem. Many Members also have insufficient MCS capacity to deal with domestic infringements, let alone foreign encroachments. Informal access agreements, often between fishing companies and other business associates, aggravate the problem. To combat IUU, APFIC Members are called on to take actions on two things:

- (1) Mainstream fisheries co-management so that local communities can become more self-reliant in preventing IUU fishing in their local areas; and
- (2) Adopt broader bi-lateral and sub-regional cooperation among countries in deterring IUU fishing in the region, starting with the development of national plans of Action in support of the FAO International plan of Action to deter and eliminate IUU fishing.

In the 29th Session, APFIC called on its members to consider the recommendations made at the Twenty-six Session of the FAO Committee on Fisheries.

6. WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION

The objective of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean is to ensure, through effective management, the

long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean in accordance with the United Nations Convention on the Law of the Sea and the UN Fish Stocks Agreement (WCPFC Convention, art. 2). The WCPFC has adopted the following Resolutions and Conservation and Management Measures of the WCPFC as of 27 August 2007³:

- Resolution 2005-01. Resolution on the Incidental Catch of Seabirds. 16 December 2005.
- Resolution 2005-02. Resolution on Reduction of Overcapacity. 16 December 2005
- Resolution 2005-03. Resolution on Non-Target Fish Species. 16 December 2005
- Resolution 2005-04. Resolution to Mitigate the Impact of Fishing for Highly Migratory Fish species on Sea Turtles (Replaced by Conservation and Management Measure 2008-03). 16 December 2005.
- Resolution 2008-01. Resolution on Aspirations of Small Island Developing States and Territories. 12 December 2008.
- Conservation and Management Measure 2004-01. Record of Fishing Vessels and Authorization to Fish (Replaced by Conservation and Management Measure 2009-01). 8 December 2004.
- Conservation and Management Measure 2004-02. Cooperating Non-Members (Replaced by Conservation and Management Measure 2008-02). 8 December 2004.
- Conservation and Management Measure 2004-03. Specifications for the Marking and Identification of Fishing Vessels. 8 December 2004.
- Conservation and Management Measure 2004-04. Resolution on Conservation and Management Measures. 8 December 2004.
- Conservation and Management Measure 2005-01. Conservation and Management Measures for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean (Replaced by Conservation and Management Measure 2008-01). 16 December 2005.
- Conservation and Management Measure 2005-02. Conservation and Management Measure for South Pacific Albacore. 16 December 2005.
- Conservation and Management Measure 2005-03. Conservation and Management Measure for North Pacific Albacore. 16 December 2005
- Conservation and Management Measure 2006-01. Conservation and Management Measures for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean (Replaced by Conservation and Management Measure 2008-01). 15 December 2006
- Conservation and Management Measure 2006-02. Conservation and Management Measure to Mitigate the Impact of Fishing For Highly Migratory Fish Stocks on Seabirds (Revised and replaced by Conservation and Management Measure 2007-04). 15 December 2006
- Conservation and Management Measure 2006-03. Conservation and Management Measure for Swordfish in the South West Pacific (Replaced by Conservation and Management Measure 2008-05). 15 December 2006
- Conservation and Management Measure 2006-04. Conservation and Management Measure For Striped Marlin in the Southwest Pacific. 15 December 2006.
- Conservation and Management Measure 2006-05. Conservation and Management Measure for Sharks in the Western and Central Pacific Ocean (Replaced by Conservation and Management Measure 2008-06). 15 December 2006.
- Conservation and Management Measure 2006-06. Commission Vessel Monitoring System (Revised and replaced by Conservation and Management Measure 2007-02). 15 December 2006.
- Conservation and Management Measure 2006-07. Conservation and Management Measure for the Regional Observer Programme. 15 December 2006.

³ To clarify the legal implications of the range of decisions that the WCPFC may take, the Second Meeting of the Commission in 2005 adopted the following nomenclature for its decisions. Resolutions describe non-binding statements and recommendations addressed to members of the Commission and Cooperating non-members while Conservation and Management Measures describe binding decisions relating to conservation and management measures.

- Conservation and Management Measure 2006-08. Western and Central Pacific Fisheries Commission Boarding and Inspection Procedures. 15 December 2006.
- Conservation and Management Measure 2006-09. Conservation Measure to Establish a List of Vessels presumed to Have Carried out Illegal, Unreported and Unregulated Fishing Activities in the Western and Central Pacific Ocean (Replaced by Conservation and Management Measure 2007-03). 11 December 2006.
- Conservation and Management Measure 2007-01. Conservation and Management Measure for the Regional Observer Programme. 7 December 2007.
- Conservation and Management Measure 2007-02. Commission Vessel Monitoring System. 7 December 2007.
- Conservation and Management Measure 2007-03. Conservation and Management Measure to Establish a List of Vessels presumed to Have Carried out Illegal, Unreported and Unregulated Fishing Activities in the WCPO. 7 December 2007.
- Conservation and Management Measure 2007-04. Conservation and Management Measure to Mitigate the Impact of Fishing for Highly Migratory Fish Stocks on Seabirds. 7 December 2007.
- Conservation and Management Measure 2008-01. Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean. 12 December 2008.
- Conservation and Management Measure 2008-02. Cooperating Non-Members (Replaced by Conservation and Management Measure 2009-11). 12 December 2008.
- Conservation and Management Measure 2008-03. Conservation and Management of Sea Turtles. 12 December 2008.
- Conservation and Management Measure 2008-04. Conservation and Management Measure to Prohibit the use of Large Scale Driftnets on the High Seas in the Convention Area. 12 December 2008.
- Conservation and Management Measure 2008-05. Conservation and Management of Swordfish (Replaced by Conservation and Management Measure 2009-03). 12 December 2008.
- Conservation and Management Measure 2008-06. Conservation and Management of Sharks (Replaced by Conservation and Management Measure 2009-04). 12 December 2008.
- Conservation and Management Measure 2009-01. WCPFC Record of Fishing Vessels and Authorization to Fish (Revised). 11 December 2009.
- Conservation and Management Measure 2009-02. Conservation and Management Measure on the Application of High Seas FAD Closures and Catch Retention. 11 December 2009.
- Conservation and Management Measure 2009-03. Conservation and Management for Swordfish. 11 December 2009.
- Conservation and Management Measure 2009-04. Conservation and Management for Sharks. 11 December 2009.
- Conservation and Management Measure 2009-05. Conservation and Management Measure Prohibiting Fishing on Data Buoys. 11 December 2009.
- Conservation and Management Measure 2009-06. Conservation and Management Measure on Regulation of Transshipment. 11 December 2009.
- Conservation and Management Measure 2009-07. Conservation and Management Measure for Pacific Bluefin Tuna. 11 December 2009
- Conservation and Management Measure 2009-08. Charter Notification Scheme. 11 December 2009.
- Conservation and Management Measure 2009-09 Conservation and Management Measure for Vessels without Nationality 11 December 2009
- Conservation and Management Measure 2009-10. Conservation and Management Measure to Monitor Landings of Purse Seiners at Ports so as to Ensure Reliable Catch Data by Species. 11 December 2009.
- Conservation and Management Measure 2009-11. Cooperating Non-Members 11 December 2009.

ANNEX 2: DETAILED OVERVIEW OF THE EUROPEAN COMMISSION REGULATION 1005/2008: ESTABLISHING A COMMUNITY SYSTEM TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING

The EC Regulation 1005/2005, applies to IUU fishing and associated activities carried out within the jurisdiction of EC Member States, in addition to activities carried out by Community and non-Community vessels on the high seas or in waters under the jurisdiction of a third state.

This comprehensive Regulation provides for the establishment of:

- port state controls over third country fishing vessels;
- catch certification requirements;
- establishment of an EC IUU vessel list;
- and the establishment of a list of non-cooperating third countries.

Fishing vessels subject to the EC IUU Regulation are broadly defined to include 'any vessel of any size used for or intended for use for the purposes of commercial exploitation of fishery resources, including support ships, fish processing vessels, and vessels engaged in transshipment and carrier vessels equipped for the transportation of fishery products, except container vessels'.

The EC IUU Regulation applies to any products which fall under Chapter 03 and Tariff headings 1604 and 1605 of the combined nomenclature established by Council Regulation (EEC) No. 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the common customs tariff, with the exception of products listed in Annex 1 of the Regulation. Appendix B paper provides a list of these products and exemptions.

Catch certification requirements

Form and Validation of the Certificate

Chapter III of the IUU Regulation starts with the premise that the importation into the EC of fishery products obtained from IUU fishing shall be prohibited. In general, the importation of fishery products into the EC is only allowed when it is accompanied by a catch certificate, completed by the master of the fishing vessel and validated by the flag state of the vessel.

To be valid, the catch certificate must contain all information specified in the template documents shown in Annex II of the IUU Regulation, including:

- Basic information such as the name of the fishing vessel, home port and registration number, call sign, licence number, Inmarsat number and IMO number (if issued);
- Information on the product (the type of species, catch areas and dates, estimated live weight and verified weight landed, as well as the applicable conservation and management measures and any transshipment at sea);
- Information and declaration on export and import of the fisheries product (including the vessel name and flag, flight number, airway bill number, truck nationality and registration number, other transport documents and container number).

The Regulation allows that catch documents and any related documents that are validated in conformity with catch documentation schemes adopted by Regional Fisheries Management Organisation (RFMO), and recognised by the EC as complying with the requirements of the IUU Regulation, will be accepted as catch certificates in respect of the products from species to which such catch documentation schemes apply.

The commission has produced a Technical Note which relates largely to the catch certificate and the processes surrounding it. Although the status and enforceability of the Technical Note are not certain, it provides far more prescription around completing the catch certification, the validation process and the undertaking of the 'notifications' under Article 20. The full Technical note can be viewed at:

http://ec.europa.eu/fisheries/cfp/external_relations/illegal_fishing/pdf/technical_note_en.pdf

Indirect Importation

Indirect importation of fishery products (i.e. where products are transported through or processes in a third countries other than the flag state) are also subject to the validation of a catch certificate by the competent authorities. Verifiable documentation or certification is required of products constituting one single consignment which are transported in the same form to the EC from a third country other than the flag state. Similarly, verifiable certificates are required for products constituting one single consignment which have been processed in a third country other than the flag state. Where this is the case, proper documentation is required of every step of transshipment or transit, as well as the exact description of the unprocessed and processed products and their respective quantities.

The IUU Regulation gives wide powers to the competent authorities of EC Member States to implement all the controls they deem necessary for the validation of the catch certificate and other information provided. In addition to the inspection of fishing vessels at port, these control measures may consist of examining the products, verifying declaration data and the existence and authenticity of documents, examining the accounts of operators and other records, inspecting means of transport, including containers and storage places of the products, and carrying out official enquiries.

Importers are required to submit validated catch certificates to the competent authorities of the EC Member State to which the product is intended to be imported at least three working days before the estimated time of arrival into the territory of that state. However, an importer who has been granted the status of an approved economic operator has the option of merely advising the EC Member State of the arrival of the products and keeping the validated catch certificates for verification by the competent authority at a later stage when the fisheries product has entered the territory of the EC state. Article 16(3) of the IUU Regulation, provides criteria for the grant of an approved economic operator status.

A range of actions may be taken by EC Member States against third country fishing vessels that have not complied with the catch certification requirements. EC Member States are permitted to refuse importation of fisheries products without having to request additional evidence or send a request for assistance to the flag state on a number of discretionary grounds.

Assistance of the competent authority

The competent authority of the EC Member State may, for the purpose of verification, request the assistance of the competent authorities of the flag state or of a country other than the flag state from which fishery products have been indirectly imported.

In this case the request will state the reasons why the competent authority of the Member State has doubts as to the validity of the certificate, of the statements contained therein and/or the compliance of the products with conservation and management measures. A copy of the catch certificate and relevant documentation will be forwarded. The Regulation provides that the

procedure for verification shall be completed within 15 days of the date of verification request. Where the flag state authority cannot meet the deadline, the verifying authorities in the Member State may grant an extension which shall not exceed a further 15 days. The release of the product in question shall be suspended during the verification process with the cost of storage borne by the operator.

Flag State Notifications and Cooperation with Third Countries

Article 20 states that the acceptance of catch certificates validated by a given flag State for the purposes of the Regulation shall be subject to the condition that the Commission has received a notification from the Flag State concerned certifying that:

- (1) it has in place national arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by its fishing vessels; and
- (2) its public authorities are empowered to attest the veracity of the information contained in catch certificates and to carry out verifications of such certificates on request from the Member States.

The notification shall also include the necessary information to identify those authorities including the names, addresses and official seal prints of the public authorities situated in their territories which are empowered to:

- register fishing vessels under their flag;
- grant, suspend and withdraw fishing licences to their fishing vessels;
- attest the veracity of information provided in the catch certificates referred to in Article 13 and validate such certificates;
- implement, control and enforce laws, regulations and conservation and management measures which must be complied with by their fishing vessels;
- carry out verifications of such catch certificates to assist the competent authorities of the Member States through the administrative cooperation referred to in Article 20(4);
- communicate sample forms of their catch certificate in accordance with the specimen in Annex II; and
- update such notifications.

The notification shall also include sample forms of the catch certificate to be used by the State concerned, in accordance with the specimen in Annex II of the Regulation (Appendix C). The forms actually used during export/import transactions will have to be identical to the model communicated in the notification.

The article also provides for the EC to conduct 'on-the-spot' audits to verify the effective implementation of cooperative arrangements around this Regulation.

EC IUU vessel list

A central feature of the IUU Regulation is the creation of a Community IUU vessel list which will contain information on vessels identified by the EC and the Member States as having engaged in IUU fishing. The IUU list is to be established based on compliance with the Regulation catch data and trade information obtained from a range of sources.

The IUU vessel list will also include IUU vessels listed by RFMOs on their respective IUU lists. There are numerous actions that may be taken by EC Member States against vessels on the Community

IUU vessel list including withdrawal of fishing authorisations or special fishing permits; the confiscation of catches and, where appropriate, fishing gear; and the refusal of flag states to grant their flag to IUU fishing vessels.

EC list of non-cooperating third countries

The IUU EC Regulation also provides for the establishment of a list of non-cooperating third countries. A state may be identified as a non-cooperating third country if it fails to discharge the duties incumbent upon it under international law as a flag, port, coastal or market state and to take action to prevent, deter and eliminate IUU fishing activities. The listing of such states is based on a number of considerations and factors, including:

- examination of measures taken by the state concerned in respect of recurrent IUU fishing activities carried out or supported by vessels flying its flag or by its nationals, or by vessels operating in its waters or using its ports, or of access of fisheries products stemming from IUU fishing activities into its market;
- whether the state concerned effectively co-operates with the EC by providing a response to requests made by the European Commission to investigate, provide feedback or follow-up to IUU fishing and associated activities;
- whether the state concerned has taken effective enforcement measures in respect of the operators responsible for IUU fishing, and in particular whether sanctions of sufficient severity to deprive the offenders of the benefits accruing from these activities have been applied;
- whether the history, nature, circumstances, extent and gravity of the manifestations of IUU fishing activities have been considered;
- (for developing countries), the existing capacity of their competent authorities;
- the ratification of or accession of the states concerned to international fisheries instruments, in particular to the Law of the Sea, UN Fish Stocks Agreement and the FAO Compliance Agreement;
- the status of the state concerned as a contracting party to regional fisheries management organisations, or the state's agreement to apply the conservation and management measures established by such organisations;
- any acts or omissions by the state concerned that may have diminished the effectiveness of applicable laws, regulations or international conservation and management measures;
- where appropriate, specific constraints of developing countries, in particular in respect to monitoring, control and surveillance of fishing activities.

The IUU Regulation requires the prohibition on the importation into the EC of fishery products caught by fishing vessels flying the flag of non-cooperating third countries, and non-acceptance of catch certificates accompanying such products. In cases where the identification of a non-cooperating state is justified by the lack of appropriate measures adopted by the state in relation to IUU fishing activities affecting a given stock or species, the prohibition of importation may only apply in respect of this stock or species.

Port control of third country fishing vessels

Chapter II of the IUU Regulation deals with inspections and control of third country fishing vessels seeking access to the ports of EC Member States. Under this chapter, landings or transshipments by third country fishing vessels shall only take place in designated ports of EC Member States and subject to specific conditions. Masters of third country fishing vessels intending to enter the ports of an EC Member State are required to notify and submit specific information to the competent authorities of the relevant EC Member State at least three working days before the estimated time of arrival at the port.

The notice of intention to enter into port is to be accompanied by a validated catch certificate if the third country fishing vessel in question carries fisheries products on board. The responsibility to verify the accuracy of the information transmitted by the third country fishing vessel in the prior notice and the catch certificate rests with the EC Member State. A third country fishing vessel may be granted authorisation to access the port if fishery products on board are accompanied by a catch certificate and after other information provided to the competent authorities of the relevant EC Member State has been verified as complete. Where the information provided by the fishing vessel is not complete or its verification is pending, an EC Member State, acting as a port state, may authorise port access or permit all or part of a landing in port, but must keep the fisheries products concerned in storage under the control of the competent authorities until the rest of the required information has been received or the verification process is completed. If the verification process is not completed within 14 days of the landing, the EC port Member State may confiscate and dispose of the fish in accordance with its national laws. Storage costs are required to be borne by the operators of the vessel.

Masters of third country fishing vessels intending to use the ports or transshipment facilities of an EC Member State are also required to submit a declaration indicating the quantity of fishery products by species to be landed or transhipped, in addition to the date and place of each catch. EC port Member States are required to retain such declarations for a minimum period of three years and notify the European Commission on a quarterly basis of quantities landed or transhipped by third country fishing vessels.

EC Member States are required to carry out inspections in their ports of at least 5 per cent of landings and transshipment operations by third country fishing vessels each year. The proposed Regulation also requires the mandatory inspection of all fishing vessels that have been sighted as, or are presumed to have conducted, IUU fishing and have been reported via the Community alert system, or been listed in an RFMO IUU list. The inspection may cover the fishing vessel's documents, logbook, fishing gear, catch on board and other possible evidence that might be of relevance to the alleged IUU fishing activities.

If the results of inspection disclose evidence that a third country fishing vessel has engaged in IUU fishing, the EC port Member State is required not to authorise the landing or transshipment of its catch in port. In such circumstances, the EC port Member State is to immediately notify its decision to the European Commission and transmit notification to the competent authority of the vessel's flag state. Where the suspected IUU fishing has taken place on the high seas or in the maritime waters of a third country, the EC port Member State is required to co-operate with the flag state in carrying out investigations into the suspected breach and, where appropriate, in applying penalties consistent with international law.

Further Information from the EC

The EC has stated (on its web portal) that before 2010 it will establish implementing rules to ensure an efficient implementation of the Regulation. It has also stated that a practical handbook will also be published during mid 2009 for the benefit of stakeholder and authorities in the EC and in third countries.

As at April 2009, the EC advised that it is working on finalising the implementation of the regulation and the development of technical provisions and a technical handbook to ease the implementation of the Regulation.

There is a suggestion in this that although the Regulation has been passed, its application is still subject to change (i.e. areas covered/exemption) and that there may still be scope for negotiation regarding its contents.

ANNEX 3: MATRIX OF CATEGORIES OF BENCHMARK MEASURES FOR RESPONSIBLE FISHING AGAINST PROVISIONS OF INTERNATIONAL AND REGIONAL INSTRUMENTS

| Benchmark measures | International and Regional Instrument Reference |
|---|--|
| 1. Ecosystem approach to fisheries management | |
| <ul style="list-style-type: none"> • Include objectives in legislation relating to ecosystem approach to fisheries management • Adopt management measures that take into account the interdependence of fish stocks and effects of fishing on species associated with or dependent on harvested species • Adopt measures for the management of migratory species and straddling stocks • Adopt measures to minimise waste and bycatch • Adopt measures to eliminate destructive fishing practices • Adopt measures to control fishing capacity • Adopt measures to protect endangered and threatened species; and sensitive and significant habitat (including protected species and closed areas) | <p>Commitments to instrument</p> <ul style="list-style-type: none"> • Become party to the LOSC, FAO Compliance Agreement, and the UN Fish Stocks Agreement, and abide by their provisions [2005 Rome Declaration, para. 6, 1999 Rome Declaration, para. 12(h)]. • Take steps to effectively implement the LOSC, UN Fish Stocks Agreement, FAO Compliance Agreement, and the FAO Code of Conduct [Kyoto Declaration, para. 5]. • Collaborate with other States and relevant intergovernmental and non-governmental organisations and financial institutions to promote the effective implementation of the FAO Code of Conduct [1999 Rome Declaration, para. 12(d)]. <p>Ecosystem based fisheries management</p> <ul style="list-style-type: none"> • Adopt measures to minimise wastes, discards, catch by lost or abandoned gear, pollution originating from fishing vessels, catch of non-target species, both fish and non-fish species, and impacts on associated or dependent species, in particular endangered species and promote the development and use of selective, environmentally safe and cost-effective fishing gear and techniques [WCPFC Convention, Art. 5(e)]. • Develop and facilitate the use of diverse approaches and tools, including the ecosystem approach, the elimination of destructive fishing practices, the establishment of marine protected areas consistent with international law and based on scientific information, including representative networks by 2012 and time/area closures for the protection of nursery grounds and periods, proper coastal land use and watershed planning and the integration of marine and coastal areas management into key sectors [Chapter 17, Agenda 21; (JPOI)] Accord the highest priority to achieving sustainability of both capture fisheries and aquaculture within the framework of the ecosystem approach [1999 Rome Declaration, para. 12(c)]. • Adopt conservation and management measures that take into account the interdependence of fish stocks and effects of fishing on species associated with or dependent on harvested species in the EEZ and on the high seas [LOSC, Art. 61(3), 61(4), and 119(1)(a) and (b); UN Fish Stocks Agreement, Art. 5(d) and (e); Agenda 21, para. 17.46; FAO Code of Conduct, para. 6.2 and 7.2.3]. • Develop and promote, in an integrated manner, better coastal and oceans management using an ecosystem-based approach, including for sub-regional areas, river basins and watersheds adjacent to coastal areas [APEC, SOD, para. 1]. • Engage in fisheries management reform, where appropriate, through RFMO reform, by advocating the application of an ecosystem approach to fisheries management [APEC, BPA, para. I.c.iv]. • Improve the enabling environment by encouraging technology transfer contributing to sustainable management [Reykjavik Declaration, para. 8]. • Provide alternative social support measures (including employment) [APFIC, Report of the 29th Session]. • Consider harvesting a multiple trophic levels in a manner consistent with sustainable development of these resources [Kyoto Declaration, para. 14]. • Improve the protection of critical sites for the replenishment of fisheries, such as spawning and aggregation sites [APEC, BPA, para. |

| Benchmark measures | International and Regional Instrument Reference |
|--------------------|--|
| | <p>I.c.xiii].</p> <ul style="list-style-type: none"> • Prevent adverse effects of non-fisheries activities on the marine ecosystems and fisheries [Reykjavik Declaration, para. 4] • Facilitate reduction in “race for fish” through rights based fisheries and co-management [APFIC, Report of the 29th Session]. • Consider the effect of structures or materials like artificial reefs and fish aggregating devices, as well as facilities such as maricultures and stationary nets and other artificial structures in the aquatic environment which have one or more effect on the following: <ul style="list-style-type: none"> - Effect to aggregate fish schools; - Effect to attract spawners; - Effect to limit certain fishing activities in the areas; and - Effect to promote the ownership concept over the water surface by the fishers [SEAFDEC Fishing Operations, para. 8.11.1(2)]. • Conserve and sustainably use biological diversity and its components in the aquatic environment and, in particular, prevent practices leading to irreversible changes, such as extinction of genes and species, genetic erosion and/or large-scale destruction of habitats [Kyoto Declaration, para. 12]. • Ensure rich biological diversity is conserved, and sustainably managed, and the benefits arising from these biological and genetic resources are fairly and equitably shared toward enhancing social, economic and environmental well-being [ASEAN Vientiane Action Programme, sec. 3.3(ii)]. • Be aware of the importance of maintaining the biodiversity and extent of aquatic habitats and ecosystems to the conservation and management of tropical fisheries [SEAFDEC Fisheries Management, para. 7.2.2(4)]. • Protect biodiversity in the marine environment [WCPFC Convention, Art. 5(f)]. • Maintain the productivity and biodiversity of important and vulnerable marine and coastal areas, including in areas within and beyond national jurisdiction [(JPOI) Chapter 17 of Agenda 21] • Implement the work programme arising from the Jakarta Mandate on the Conservation and Sustainable Use of Marine and Coastal Biological Diversity of the Convention on Biological Diversity, including through the urgent mobilization of financial resources and technological assistance and the development of human and institutional capacity, particularly in developing countries [(JPOI); chapter 17 of Agenda 21] <p>Management of Migratory species</p> <ul style="list-style-type: none"> • Take into account the biological unity and other biological characteristics of stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned in establishing compatible conservation and management measures [WCPFC Convention, Art. 8(2)(a)]. • Acknowledge the importance of migratory species being conserved and of Range States agreeing to take action to this end whenever possible and appropriate, paying special attention to migratory species the conservation status of which is unfavourable, and taking individually or in co-operation appropriate and necessary steps to conserve such species and their habitat (CCNS). • Acknowledge the need to take action to avoid any migratory species becoming endangered (CCNS) • Promote, co-operate in & support research relating to migratory species(CCNS) ; • Endeavour to provide immediate protection for migratory species included in Appendix I of the CCNS (CCNS); and • Endeavour to conclude Agreements covering the conservation and management of migratory species included in Appendix II of the CCNS (CCNS). • Parties that are Range States of a migratory species listed in Appendix I shall prohibit the taking of animals belonging to such species. |

| Benchmark measures | International and Regional Instrument Reference |
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| | <p>Exceptions may be made to this prohibition only if:</p> <ol style="list-style-type: none"> the circumstances so require; provided that such exceptions are precise as to content and limited in space and time taking is for scientific purposes; the taking is for the purpose of enhancing the propagation or survival of the affected species; the taking is to accommodate the needs of traditional subsistence users of such species; or extraordinary. Such taking should not operate to the disadvantage of the species (CCNS). <ul style="list-style-type: none"> Parties that are Range States of migratory species listed in Appendix II shall endeavour to conclude AGREEMENTS where these should benefit the species and should give priority to those species in an unfavourable conservation status (CCNS) . Parties are encouraged to take action with a view to concluding agreements for any population or any geographically separate part of the population of any species or lower taxon of wild animals, members of which periodically cross one or more national jurisdiction boundaries (CCNS) . <p>Control of fishing capacity</p> <ul style="list-style-type: none"> Identify, reduce and ultimately eliminate the economic incentives that lead to IUU fishing and the economic drivers that lead to fleet overcapacity, at the national, regional and global levels [2005 Rome Declaration, para. 4]. Undertake to manage the number of authorisations to fish and the level of fishing effort commensurate with the fishing opportunities available to that member in the Convention Area [WCPF Conservation and Management Measure 2004-01, para. 1(e)]. Ensure that measures to address IUU fishing or fleet overcapacity in one fishery or area do not result in the creation of fleet overcapacity in another fishery or area or otherwise undermine the sustainability of fish stocks in another fishery or area, and that such measures do not prejudice the legitimate expansion of fleets in developing countries in a sustainable manner [2005 Rome Declaration, para. 4]. Establish mechanisms to curb, deter or eliminate excess fishing capacity so as to ensure the sustainable use of the fishery resources. Such mechanisms may be effected in a number of ways (e.g. buy-back scheme, zonation, closed seasons, mesh size regulations, etc.) after assessment on the status of the resources have been undertaken [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1]. Take measures to prevent the build-up of excess fishing capacity where fisheries resources are considered to be under-exploited [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 2]. <ul style="list-style-type: none"> Identify steps needed to limit access (right-based fisheries) when over-capacity exists. Suggested measures include: implementing an improved system of national and local registration of fishing vessels; freezing the number of fishing vessels at existing levels; reducing the number of vessels at the appropriate rate with due consideration on socio-economic impacts, e.g. buy-back schemes, reallocating of number of vessels; alternative employment in other economic sectors through subsidy programs, on an adaptive basis that takes into account the best available information; closely monitoring the impact of vessel reduction on the fisheries resources including prevention of any new entry into the overexploited fishery; providing training on alternative occupational skills and incentives (including vessel buy back system) to encourage boat owners and fishers to leave over-exploited fisheries; and developing appropriate indicators to assist in the management of fishing capacity [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1(3)]. Promote and strengthen awareness and consensus at all levels on the economic nature of fisheries management, in particular the management of fishing capacity [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1(5)]. Ensure that other sector policies are compatible with policies aimed at managing capacity, especially those that may directly or |

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| | <p>indirectly provide incentives to further increase fishing capacity [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1(7)].</p> <ul style="list-style-type: none"> • Include information on ownership and capacity of vessel in registry of fishing vessels [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1(8)]. • Regularly collect data and information on the status and trend of the fisheries in support of the management of fishing capacity [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1(9)]. • Apply a precautionary approach to management of capacity in case of uncertainty regarding the state of the fishery resources [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1(10)]. • Implement management measures for fishing capacity, whenever possible, before the resources are over-exploited to avoid severe social and economic consequences [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1(11)]. • Consider the socio-economic impacts caused by the reduction and relocation of fishing capacity and take appropriate measures to mitigate negative social consequences [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1(12)]. • Facilitate equitable application of the national plan of action to manage fishing capacity in coastal fisheries [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1(1)]. • Reduce the number of fishing boats and level of fishing effort using government incentives [para. A.5]. <p>Gear regulation</p> <ul style="list-style-type: none"> • Take into account, in the design of fishing gears, qualified assessments of impacts on the sustainability of fisheries, giving due consideration to the specific characteristics and biodiversity of different fishing areas [Cancun Declaration, para. 5]. • Promote the development and use of selective fishing gear and practices that minimise waste of catch of target species and minimize bycatch of non-target species [Cancun Declaration, para. 6]. • Promote fisheries through research and development aiming at: (iii) reduction of discard mortality; (iv) development and use of selective, environmentally safe and cost-effective fishing gear and techniques [Kyoto Declaration, para. 15]. • Introduce improved selectivity of fishing gears/ fishing practices [APFIC, Report of the 29th Session]. • Develop and introduce fishing gear and practices that can reduce or exclude the incidental catch to the extent practicable [SEAFDEC Fishing Operations, para. 8.4.8(1)]. • Check whether fishers are using the appropriate selective and environmentally friendly and safe fishing gear and practices before issuing a fishing license [Fishing Operations, para. 8.5.1(1)]. SEAFDEC • Take into consideration the following factors in developing selective fishing gear and devices: <ul style="list-style-type: none"> - the survival rate in escape from the gear [SEAFDEC regional guidelines Fishing Operations, para. 8.4.5(3)]. - operation of the fishing gear in the correct season and in the right area [SEAFDEC regional guidelines Fishing Operations, para. 8.4.5(4)] - formulation of required rules and regulation [Fishing Operations, para. 8.4.5(5)]. - Habitat disturbance, aside from bio-diversity, and contamination and pollution, generation of debris and rubbish, direct mortality and predator-prey relationships [SEAFDEC regional guidelines Fishing Operations, paras. 8.4.7(4) and (5)]. • Give special consideration to destructive fishing gear and practices which have serious effect upon the bio-diversity in the fragile ecosystem [Fishing Operations, para. 8.4.8(1)]. SEAFDEC • Eliminate the use of illegal and destructive fishing gears and practices by building awareness of their adverse impacts and developing and promoting responsible and selective fishing gears and practices [ASEAN Plan of Action on Sustainable Fisheries, para. A.3]. |

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| | <ul style="list-style-type: none"> • Consider appropriate measures regulating destructive fishing practices when revising the FAO Technical Guidelines on Ecosystem-based Fisheries Management [APFIC, Report of the 29th Session of COFI, para. 92]. • Reduce trawling and push net effort (and clearly monitor the effect of capacity reduction) [APFIC, Report of the 29th Session]. • Conduct an assessment of longline fisheries to determine if a problem exists with respect to the incidental catch of seabirds [IPOA-Seabirds, para. 12]. <p>Management of bycatch species</p> <ul style="list-style-type: none"> • Implement measures to reduce bycatch resulting in unintentional mortality [APEC, BPA, para. I.c.ix]. • Encourage vessels operating in fisheries managed under the WCPFC Convention to avoid to the extent practicable, the capture of all non-target fish species that are not to be retained [Resolution 2005-03, para. 1]. • Promptly release to the water unharmed any non-target fish species that are not to be retained [WCPFC Resolution 2005-03, para. 2]. • Promote the use of environmentally sound technologies, such as fishing gear and practices that minimise impact on non-target species [Agenda 21, para. 17.46(c), 17.74(d), and 17.87(c)] and maintain biodiversity and conserve aquatic ecosystems [FAO Code of Conduct, Art. 6.6 and 12.10]. • Give special consideration to economic and marketing research for discards especially for the catch by shrimp trawl fishing. Research activities that should be considered to solve the problems are: <ul style="list-style-type: none"> - Fish behaviour studies; - Development of selective fishing gear and practices; - Marketing study on target and non-target species; - Study on operational parameters (duration of fishing trip, mother boat operation); - Investigation of facilities on the vessels (facility and capacity of the preservation of catch, size of fish-hold, etc.); - Study on the survival of escaped fish; and - Study on the economic effect of using selective fishing gear and devises [SEAFDEC Fishing Operations, para. 8.5.3(1)]. • Implement measures to reduce bycatch resulting in unintentional mortality [APEC, BPA, para. I.c.ix]. • Encourage vessels operating in fisheries managed under the WCPFC Convention to avoid to the extent practicable, the capture of all non-target fish species that are not to be retained [Resolution 2005-03, para. 1]. • Promptly release to the water unharmed any non-target fish species that are not to be retained [WCPFC Resolution 2005-03, para. 2]. • Set a clear policy on the minimization of incidental catch including juveniles and aquatic animals [SEAFDEC Fishing Operations, para. 8.5.1(6)]. <p>Rehabilitation</p> <ul style="list-style-type: none"> • Initiate central and local government level strategies and action plans to monitor and rehabilitate degraded coastal habitats including coral reefs, mangrove forests, sea-grass beds [Fishing Operations, para. 8.4.7(2)]. SEAFDEC • Check and reverse degradation of the environment and loss of fisheries habitats by employing rehabilitation and mitigation measures to improve ecological condition by: SEAFDEC <ul style="list-style-type: none"> - Securing the migration routes and spawning areas for the commercially important species under either national or regional efforts. - Reducing negative impacts caused by human activities, and - Integrating inland fisheries management within the multi-purpose use framework of water resources [Fisheries Management, para. |

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| | <p>7.3.5 ADD. 1(2)].</p> <ul style="list-style-type: none"> • Support all activities that may lead to the recovery of depleted stocks, which may include the rehabilitation of fisheries resources via establishment of marine protected areas, artificial reefs, closed areas, closed seasons, and restocking programmes [Fisheries Management, para. 7.2.2(5)]. SEAFDEC <p>Closed areas and seasons</p> <ul style="list-style-type: none"> • Develop closed areas (marine parks, marine protected areas) in areas such as coral reefs to protect fragile coastal ecosystems [Fisheries Management, para. 7.6.10 ADD. 1(10)]. SEAFDEC • Strongly implement management measures such as closed areas and seasons in critical habitats (e.g. coral reefs, seagrass beds, mangrove areas, etc.) which are important for sustaining fish stocks [Fisheries Management, para. 7.6.9(2)]. SEAFDEC • Consider area or seasonal closure to protect critical stages of life cycle of fisheries resources [Fisheries Management, para. 7.6.4 ADD. 1(8)]. SEAFDEC • Establish, in areas under its jurisdiction, terrestrial, freshwater, coastal or marine protected areas for the purpose of safeguarding the ecological and biological processes essential to the functioning of the ecosystems of the region [ASEAN Agreement on the Conservation of Nature and Natural Resources, Art. 13(1)]. • Use a range of tools for sustainable development such as marine protected areas [SOD, para. 3]. • Initiate the identification of ecologically and biologically significant areas and apply, as appropriate, area-based measures, such as marine protected areas, consistent with international law and based on best available scientific information, to manage and conserve these areas [APEC, BPA, para. I.b.ii]. • Develop technical guidelines on the design, implementation and testing of marine protected areas [APFIC, Report of the 29th Session of COFI, para. 103]. • Protect juvenile nursery areas (refugia/closed areas, seasonal closures) [APFIC, Report of the 29th Session]. • Take necessary measures to protect coastal wetlands and other areas of critical fisheries habitat from all kinds of degradation [Cancun Declaration, para. 8].Regional • Improve the conservation of vulnerable areas by managing activities having a destructive impact on these areas and associated species [APEC, BPA, para. I.b.xiv]. <p>Threatened, endangered and protected species</p> <ul style="list-style-type: none"> • Ban fishing and taking of rare, threatened and endangered species [Fisheries Management, para. 7.2.2(7)]. SEAFDEC • Protect and restore endangered marine species as part of fisheries management measures [Agenda 21, para. 17.74(c)]. • Develop programs to help developing economies contribute to marine turtle conservation based on FAO Guidelines to Reduce Sea Turtle Mortality in Fishing Operations, as well as implement the Indian Ocean and Southeast Asia turtle Memorandum of Understanding and the Inter-American Convention on the Protection and Conservation of Marine Turtles [APEC, BPA, para. I.c.x]. • Implement the conservation and management of marine turtles (2002 Regional Meeting on “Fish Trade and Environment”) by: SEAFDEC <ul style="list-style-type: none"> - Conducting comprehensive and quantify assessments on the factors of either fisheries or non-fisheries sectors (e.g. pollution, coastal area development, tourism, transportation, etc.) and their impacts on the reduction of marine turtle population; - Using the outcomes of these assessment as the basis to strengthen the current measures to conserve marine turtles; |

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| | <ul style="list-style-type: none"> - Collating and disseminating the outcomes of these assessments to enhance the awareness of the importance on marine turtle conservation; - Publicising marine turtle conservation programs and activities; - Emphasising that a comprehensive marine turtle conservation program is most effective for marine turtle conservation [SEAFDEC Fisheries Management, para. 7.6.1 ADD. 1(1)]. • Implement the FAO guidelines to Reduce Sea Turtle Mortality in Fishing Operations [WCPFC Resolution 2005-04, para. 1]. • Collect and provide to the WCPFC all available information on interactions with sea turtles managed under the Convention [WCPFC Resolution 2005-04, para. 2] • Enhance the implementation of respective turtle mitigation measures that are already in place and collaborate with other CCMs in the exchange of information in the area [WCPFC Resolution 2005-04, para. 3]. • Require purse seine vessels flying its flag to: <ul style="list-style-type: none"> - avoid encirclement of sea turtles to the extent practicable, and if encircled or entangled, take all practicable measures to safely release sea turtles; - take all reasonable efforts whenever a sea turtle is sighted in the net to rescue the turtle before it becomes entangled in the net, including if necessary, the deployment of a speedboat; - stop net roll, if a turtle is entangled in the net and assist the recovery of the turtle before returning it to the water; and • Take necessary measures to monitor fish aggregating devices and consider FAD designs and use that reduce the likelihood of sea turtle entanglement [WCPFC Resolution 2005-04, para. 4]. • Require longline vessels flying their flags to carry on board and when sea turtle interactions occur, employ the necessary equipment for the prompt release of incidentally caught sea turtles [WCPFC Resolution 2005-04, para. 5(iii)]. • Undertake research trials of appropriate size circle hooks in commercial pelagic longline fisheries and on the use of circle hooks in recreational and artisanal fisheries [WCPFC Resolution 2005-04, para. 5(i) and (ii)]. • Take actions to incorporate shark fisheries management measures within national fisheries management policy and framework. (2002 Regional Meeting on “Fish Trade and Environment”) [Fisheries Management, para. 7.6.1 ADD. 2(1)] SEAFDEC • Use species composition as an indicator for better understanding of dynamic of shark fisheries [Fisheries Management, para. 7.6.1 ADD. 2(2)]; SEAFDEC • Improve coordination mechanisms with the industries to collect and understand the status and trend of shark fisheries [Fisheries Management, para. 7.6.1 ADD. 2(2)]. SEAFDEC • Develop pilot projects to understand and manage shark fisheries[Fisheries Management, para. 7.6.1 ADD. 2(2)]; SEAFDEC • Promote research activities to maximise utilisation of harvested sharks and identification of species of shark products [Fisheries Management, para. 7.6.1 ADD. 2(2)]. SEAFDEC • Develop the capacity of APEC economies to implement domestic plans of action for shark conservation and management [APEC, BPA, para. I.c.xi]. • Require fishers to fully utilise any retained catches of sharks [WCPFC Conservation and Management Measure 2006-05, para. 6]. • Encourage the release of live sharks that are caught incidentally and are not used for other purpose [WCPFC Conservation and Management Measure 2006-05, para.10]. • Employ one or more of the seabird mitigation measures provided in Conservation and Management Measure-2006-02, such as side setting with a bird curtain and weighted branch lines, night setting with minimum deck lighting, tori line, weighted branch lines, blue- |

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| | <p>dyed bait, deep setting line shooter, underwater setting chute and management of offal discharge [WCPFC Conservation and Management Measure 2006-02, para. 2].</p> <ul style="list-style-type: none"> • Undertake research to further develop and refine measures to mitigate seabird bycatch [WCPFC Conservation and Management Measure 2006-02, para. 7]. • Adopt measures aimed at ensuring that seabirds captured alive during longlining are released alive and in as good condition as possible [WCPFC Conservation and Management Measure 2006-02, para. 9]. <p>Optimal utilisation</p> <ul style="list-style-type: none"> • Increase the available supply of fish and fishery products for human consumption, nationally and internationally, through: (i) making optimum use of harvests and reducing post-harvest losses; (ii) developing, improving and sharing appropriate storage, processing and distribution technology; and (iii) developing and promoting effective systems ensuring the safety of food of aquatic origin, including harmonisation of international regulations [Kyoto Declaration, para. 16]. • Introduce and provide support for the development of technologies to optimise the utilisation of catch and reduce post-harvest losses, wasters and discards in industrial and small-scale fisheries [ASEAN Plan of Action on Sustainable Fisheries, para. C.1]. • Promote fisheries through research and development aiming at: (i) optimum use of unexploited or underexploited resources; (ii) identification of new, harvestable, aquatic resources; (iii) reduction of discard mortality; (iv) development and use of selective, environmentally safe and cost-effective fishing gear and techniques [Kyoto Declaration, para. 15]. • Promote fisheries through research and development aiming at: (i) optimum use of unexploited or underexploited resources; (ii) identification of new, harvestable, aquatic resources [Kyoto Declaration, para. 15]. <p>Cooperation and networks</p> <ul style="list-style-type: none"> • Strengthen, improve and establish regional and international fisheries management organisations and incorporate in its work ecosystem considerations and improve cooperation between those bodies and regional bodies in charge of managing and conserving the marine environment [Reykjavik Declaration, para. 3] regional) • Exchange research and information on ecosystems to ensure conservation and sustainable management [APEC, BPA, para. I.a.viii]. • Implement measures after consultations with neighbouring states and promote participatory approach in the formulation and implementation of fisheries policies [SEAFDEC Fisheries Management, para. 7.1.1(1)]. |
| 2. Data Collection, Monitoring and Research | |
| <ul style="list-style-type: none"> • Collect data in sufficient detail to facilitate effective stock assessment. • Collect data on non-target species such as bycatch species and dependent species. • Verify data through appropriate systems. • Promote research on fisheries as well as on associated ecosystems, particularly on the study of the profiles of all target and non- | <p>The principles for data collection, compilation and exchange that need to be adopted by a State are:</p> <ul style="list-style-type: none"> • Timely collection, compilation and analysis of data [UN Fish Stocks Agreement, Annex I Art. 1(1); FAO Code of Conduct, Art. 7.4.4]. • Provision of training, financial, and technical assistance to developing States to enhance their capacity to implement data collection and verification, observer programmes, data analysis and research projects supporting stock assessments [UN Fish Stocks Agreement, Annex I Art. 1(2)]. • Taking into account the operational characteristics of each fishing method to facilitate stock assessment [UN Fish Stocks Agreement, Annex I Art. 2(a)]. • Verification of data through an appropriate system [UN Fish Stocks Agreement, Annex I Art. 2(b)]. |

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| <p>target stocks, impacts of new types of gears on fisheries and ecosystems, relationships among populations in the ecosystem and effects of ecosystem changes resulting from fishing pressure, pollution or habitat alteration.</p> <ul style="list-style-type: none"> • Advance the scientific basis for incorporating ecosystem considerations, building on existing and future available scientific knowledge. • Compile fishery-related and other supporting scientific data, including VMS and observer data, in an agreed format and provide such data to relevant subregional or regional organisations and/or States (subject to confidentiality requirements in accordance with national law). • Collect and exchange information on suspected IUU fishing, if possible on a real-time basis, in collaboration with FAO, RFMOs and other relevant arrangements, and by actively participating in the International MCS Network. | <ul style="list-style-type: none"> • Compilation of fishery-related and other supporting scientific data in an agreed format and provision of such data to relevant subregional or regional organisations [UN Fish Stocks Agreement, Annex I Art. 2(c) and 2(e)]. • Cooperation among States in the exchange of data [UN Fish Stocks Agreement, Annex I Art. 2(c)]. • Agreement among States, within the framework of subregional or regional fisheries management organisations or arrangements, on the specification of data and the format in which they are to be provided [UN Fish Stocks Agreement, Art. 14(2)(a) and Annex I Art. 2(d)]. • Separate or joint analysis of data by scientists of flag States and relevant subregional or regional organisations [UN Fish Stocks Agreement, Annex I Art. 2(f)]. • Collection of data in sufficient detail to facilitate effective stock assessment and provision of such data in a timely manner to subregional or regional fisheries management organisations [UN Fish Stocks Agreement, Art. 14(1)(b); FAO Code of Conduct, Art. 7.4.6]. <p>General measures</p> <ul style="list-style-type: none"> • Adopt the “Regional Plan of Action for the Improvement of Fishery Statistics” and the “Minimum Requirement of a National Fishery Statistical System in ASEAN Region”, with due regard to the current needs and issues of fisheries in the region [SEAFDEC Fisheries Management, para. 7.4 ADD. 1(1)]. • Promote and enhance data collection necessary for the conservation and sustainable utilisation of fisheries resources [Cancun Declaration, para. 4]. • Develop data collection and research programmes to assess the impact of fishing on non-target and associated or dependent species and their environment [WCPFC Convention, Art. 6(1)(c)]. • Approach the implementation of the FAO Code of Conduct, in particular as it relates to Article 7 (Fisheries Management), especially Article 7.4.2 and Article 12 (Fisheries Research), by considering ways to expand the scope of status and trends reporting to meet the responsibilities for research and the dissemination of information on the effects of climatic, environmental and socioeconomic factors on fishery conservation and management [Strategy for Improving Information, para. 29]. • Build capacity at both national and local levels to collect, compile, analyse and disseminate quality statistical data and information in a timely manner as an empirical basis for formulating policies and decisions for fisheries management [SEAFDEC Fisheries Management, para. 7.4 ADD. 1(1)]. • Recognise that many small-scale fisheries and multi-species fisheries, particularly in developing countries, are not well monitored and that awareness needs to be raised on the importance of monitoring these fisheries [Strategy for Improving Information, para. 24]. • Consider broadening the collection of information on the status and trends of fisheries to support further development of fisheries management incorporating ecosystem considerations [Strategy for Improving Information, para. 30]. • Collect information on various management measures, conflicts between commercial and coastal fisheries, by-catch, retained catch, waste, incidental catch, fishing gear inventory and other problem areas [SEAFDEC Fishing Operations, para. 8.4.3(3)]. • Consider the evolving needs for information on fishing operations in addition to the statistical data. Required information may cover not only fishing operations and fish stock but also socio-economic data including number of boats and potential catch effort [SEAFDEC Fishing Operations, para. 8.4.3(1)]. • Ensure that competent government authorities in coordination with the fishing industry and competent units of the Government offices in charge of coastal fisheries jointly establish baseline data and implement mechanisms to continuously produce the required data and information [SEAFDEC Fishing Operations, para. 8.4.3(2)]. • Implement an enumerator and scientific observer program in certain important fishing bases. The enumerators will collect catch data |

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| | <p>from the landing places, fish auction hall, fishery markets or fishers villages in their areas. Scientific observers will collect catch data onboard and discards. [SEAFDEC Fishing Operations, para. 8.4.3(5)].</p> <ul style="list-style-type: none"> • Improve the collection of statistical data on inland capture fisheries, covering all major ecosystems, catchment, types, sizes and importance of the fisheries at species level for planning and development process [SEAFDEC Fisheries Management, para. 7.3.5 ADD. 1(1)]. • Ensure that for catch assessment and other basic surveys, the database should be capable of producing all required standard outputs automatically to facilitate use of data [SEAFDEC Fisheries Statistics, para. 27]. • Report and present information required to make policy decisions [SEAFDEC Fisheries Statistics, para. 28]. • Develop a Food Balance Sheet as a means of assessing data quality and consistency [SEAFDEC Fisheries Statistics, para. 29]. • Publish yearly statistical yearbook. National fishery statistical yearbook should be produced as soon as possible but not more than 2 years of completion of data collection considering the need for up-to-date statistical information and required work in the statistics production process [SEAFDEC Fisheries Statistics, para. 30]. <p>Data collection methodologies</p> <ul style="list-style-type: none"> • Collect data from different sources using different methodologies to allow cross-checking of results for errors [SEAFDEC Fisheries Statistics, para. 19]. • Collect data through a combination of landing site sample surveys for catch and effort, a census for the structural parameters (boats and gears) as well as surveys for marketing, processing and some livelihood parameters, for marine fisheries (medium-scale and large-scale fisheries) [SEAFDEC Fisheries Statistics, para. 20]. • Collect data through a combination of sample surveys for catch and effort for those sectors of the fishery that can be managed through gear and effort restrictions may be conducted, for inland fisheries [SEAFDEC Fisheries Statistics, para. 21]. • Assess fish production/consumption and involvement for the small-scale family fishing sector in consumption (household) surveys [SEAFDEC Fisheries Statistics, para. 21]. • Use indicator surveys for pilot areas or fisheries using sampling surveys for catch and effort on a small-scale. This can be extrapolated over larger areas or other fisheries to obtain an overall estimate [SEAFDEC Fisheries Statistics, para. 22]. • Estimate total fish production with less emphasis on effort and more emphasis on involvement and auxiliary information to gauge the status of the fishery, e.g. socio-economic, consumption or fish trade surveys [SEAFDEC Fisheries Statistics, para. 22]. • Obtain information from fishers and other stakeholders, e.g. middlemen [SEAFDEC Fisheries Statistics, paras. 23 and 24]. • Select appropriate data collection methods [Fisheries Statistics, para. 15]. • Participate in and support the development of cost-effective methods for acquiring and validating data on small-scale and multi-species fisheries, including rapid appraisal methodologies and other approaches for data-poor situations and participatory processes that closely associate the fishers and their organizations to the data collection schemes [Strategy for Improving Information, para. 25]. <p>Monitor and Improve Data Collection</p> <ul style="list-style-type: none"> • Monitor data collection, analysis and reporting system and ensure the sustainability of the system to meet the needs of fishery policy-making and management, and the agreed requirements of regional fishery bodies and arrangements and FAO, and take corrective actions as appropriate [Strategy for Improving Information, para. 45]. • Develop and implement mechanisms for the improvement of fisheries information, the application of research to enhance the |

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| | <p>availability of best scientific evidence, and the adoption of a continuing process for the enrichment of fishery status and trends information to support conservation, management and sustainable use of fishery resources at local, regional and global levels [Strategy for Improving Information, para. 46].</p> <ul style="list-style-type: none"> • Enhance capacity to collect data to ensure that the coverage of fisheries information is as complete as possible and includes all sectors, in particular the data necessary to evaluate small-scale and multi-species fisheries [Strategy for Improving Information, para. 25]. • Evaluate the actions needed to improve information on the status and trends of fisheries, address these requirements on a priority basis, and report on the improvements made, as part of their biennial report to FAO on the Code of Conduct [Strategy for Improving Information, para. 47]. • Review the required statistical data to accommodate new and emerging requirements, such as classification of commercially important fish species, etc. [SEAFDEC Fisheries Statistics, para. 14]. • Clearly determine the objectives and minimum requirements of fishery statistical data and information with particular reference to national and local requirements [SEAFDEC Fisheries Management, para. 7.4 ADD. 1(1)]. • Expand the classification of some major commercial shark species into the national fisheries statistics considering the national fisheries on sharks (2002 Regional Meeting on “Fish Trade and Environment” [SEAFDEC Fisheries Management, para. 7.4 ADD. 1(5)]. • Provide a better understanding of status, trends & utilisation of “low value/trash fish” for planning and management [APFIC Report of the 29th Session]. • Adopt common terminology for data collection in relation to low value/trash fish [APFIC Report of the 29th Session]. <p>Data verification</p> <ul style="list-style-type: none"> • A State is required to establish mechanisms for verifying fishery data such as: • Position verification through vessel monitoring systems; • Scientific observer programmes to monitor catch, effort, catch composition (target and non-target) and other details of fishing operations; • Vessel trip, landing and transshipment reports; and • Port sampling [UN Fish Stocks Agreement, Art. 14(1)(c) and Annex I Art. 6]. • Participate in the development of criteria and methods to ensure information quality and security for the purposes of best scientific evidence, in accordance with internationally agreed standards and practices, through mechanisms for data verification, and in a manner consistent with applicable confidentiality requirements [Strategy for Improving Information, para. 39]. <p>Statistic Systems</p> <ul style="list-style-type: none"> • Investigate and identify current constraints of fisheries statistical systems [SEAFDEC Fishing Operations, para. 8.1.3(1)]. • Strengthen its national fishery statistical system and maximise its use for fisheries planning and management and develop standard definitions and classifications to facilitate regional fishery statistics and information exchanges [ASEAN Resolution on Sustainable Fisheries, para. A.7]; • Seek mechanisms to improve fisheries statistical systems, regional compatibility and standardisation to meet the management requirements on trans-boundary fish stocks [SEAFDEC Fishing Operations, para. 8.1.3(1)]. • Maximise the use of national fisheries statistical systems by focusing on clear objectives and timely results directly related to fishery management decision-making and planning processes [ASEAN Plan of Action on Sustainable Fisheries, para. A.1]. |

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| | <ul style="list-style-type: none"> • Consider provision of sustained government support for the improvement and refinement of national fishery statistical systems [SEAFDEC Fisheries Management, para. 7.4 ADD. 1(2)]. • Review national fishery statistical systems to identify areas needing improvement [SEAFDEC Fisheries Management, para. 7.4 ADD. 1(1)]. • Prioritise statistical data and information needs with particular reference to practical indicators for fisheries management and specific requirements of the region's fisheries [SEAFDEC Fisheries Management, para. 7.4 ADD. 1(1)]. <p>Types of data to be collected</p> <p>For purposes of facilitating stock assessment and standardising fleet composition and vessel fishing power, the fishery data to be collected would need to include:</p> <ul style="list-style-type: none"> • Time series of catch and effort statistics by fisheries and fleet [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)]. • [SEAFDEC Fishing Operations, para. 8.1.3(2)], [WCPFC Convention, Art. 5(i)]. • Total catch in number, nominal weight, or both, by species (both target and non-target) as is appropriate to each fishery [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)]. • Discard statistics, including estimates where necessary, reported as number or nominal weight by species, as is appropriate to each fishery [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)]. [FAO Code of Conduct, Art. 12.4] [WCPFC Convention, Art. 5(i)], [SEAFDEC Fishing Operations, paras. 8.4.3(4) and (6)]. • Effort statistics appropriate to each fishing method [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)]. • Fishing location, date and time fished and other statistics on fishing operations as appropriate [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)]. • Composition of the catch according to length, weight and sex [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)]. • Other biological information supporting stock assessments such as information on age, growth, recruitment, distribution and stock identity [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)]. • Other relevant research, including surveys of abundance, biomass surveys, hydro-acoustic surveys, research on environmental factors affecting stock abundance, and oceanographic and ecological studies [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)]. • Vessel identification, flag and port of registry [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)]. • Vessel type [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)]. • Vessel specifications (e.g. material of construction, date built, registered length, gross registered tonnage, power of main engines, hold capacity and catch storage methods) [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)]. • Fishing gear description (e.g. types, gear specifications and quantity) [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)]. • Navigation and position fixing aids [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)]. • Communication equipment and international radio call sign [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)]. • Crew size [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)]. <p>Exchange of data Requirements to exchange and share data</p> <ul style="list-style-type: none"> • Contribute and exchange, on a regular basis and through competent organisations, available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks [LOSC, Art. 61(5) and 119(2)]. • Exchange information, with another State or through FAO, with respect to activities of fishing vessels flying the flags of non Parties that undermine the effectiveness of international conservation and management measures [FAO Compliance Agreement, Art. VIII(3); UN Fish |

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| | <p>Stocks Agreement, Art. 7(2)].</p> <ul style="list-style-type: none"> • Make aggregated information from catch and transshipment reports available, in a full, timely, and regular manner, and as appropriate to relevant, national, regional and international organisations [IPOA-IUU, para. 50]. • Share the scientific, technical, and statistical data with other flag States and relevant coastal States through appropriate subregional or regional fisheries management organizations or arrangements [UN Fish Stocks Agreement, Art. 14(1)(a) and Art. 7(1)]. • Disseminate data subject to the terms on which they have been provided [UN Fish Stocks Agreement, Annex I Art. 1(1)]. • Enhance international cooperation including the appropriate transfer of technology, in remote sensing and satellite surveillance of fishing vessels to combat IUU fishing, particularly in remote areas with lack of deployment of MCS facilities [2005 Rome Declaration, para. 6]. • Work within RFMOs to facilitate the exchange of VMS and observer data, subject to confidentiality requirements in accordance with national law [2005 Rome Declaration, para. 4]. • Exchange information on suspected IUU fishing, if possible on a real-time basis, in collaboration with FAO, RFMOs and other relevant arrangements, and by actively participating in the International MCS Network [2005 Rome Declaration, para. 5]. <p>Support the compilation and integration of data</p> <ul style="list-style-type: none"> • Participate in, or support coordinated efforts for the compilation of a global inventory of fisheries and fish stocks (biological management units) or stock-complexes as a basis to improve the completeness of available information on the status and trends of fisheries and for inclusion in FIGIS [Strategy for Improving Information, para. 32]. • Collaborate with FAO to develop the definitions, form, content, methods and implementation (including the definition and allocation of responsibilities and the estimation of costs) of a programme for the compilation of a global inventory of fisheries and fish stocks (or stock-complexes), noting the requirements for and coordinating efforts with the actions being undertaken through IPOAs [Strategy for Improving Information, para. 33]. • Provide the FAO Fisheries Global Information System (FIGIS) with the best scientific information available [Strategy for Improving Information, para. 36]. • Support FAO and other FIGIS partners in the organisation of and participation in pilot projects and workshops to further develop and implement FIGIS, to develop training materials, and to conduct training [Strategy for Improving Information, para. 37]. • Support, both directly or through participation in regional fishery bodies and arrangements, development of FIGIS by: <ul style="list-style-type: none"> - providing national user requirements for outputs from and inputs to the system; - participating in national, regional and international processes to define the protocols for information exchange, quality assurance or quality rating, and transparency provisions to be specified in partnership agreements; - contributing timely information to FIGIS; - facilitating a systematic synthesis of information on fishery status and trends from national to regional and global levels; and - participating in complementary information and communication technology initiatives aimed at improving the generation and dissemination of research based knowledge relevant to sustainable development [Strategy for Improving Information, para. 35]. • Seek and agree on arrangements to facilitate the provision and exchange of information on the status and trends of fisheries with FAO and address the roles and entitlements of the partners, information quality, transparency and confidentiality [Strategy for Improving Information, para. 41]. • Formalise arrangements for working groups composed of fishery experts and set up by countries or regional fisheries bodies and |

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| | <p>arrangements to analyse fisheries data and fish stocks information towards the evaluation of their status and trends [Strategy for Improving Information, para. 43].</p> <ul style="list-style-type: none"> • Work with FAO to ensure the participation of fishery experts from around the world in working groups, particularly where these working groups contribute to capacity building in developing countries [Strategy for Improving Information, para. 44]. • Apply regionally standardised definitions and classifications for statistical data to facilitate regional compilation, analysis and data exchange [ASEAN Plan of Action on Sustainable Fisheries, para. A.11]. • Support, upgrade and expand regional fisheries statistical systems by developing regionally compatible methodologies for national statistical data to facilitate regional fisheries assessment and data exchange [SEAFDEC Fisheries Management, para. 7.4 ADD. 1(3)]. • Use regionally comparable statistical methodologies to facilitate regional compilation and exchange of data [SEAFDEC Fisheries Management, para. 7.4 ADD. 1(1)]. • Agree with other States on the standards for collection, reporting, verification, and exchange of data on fisheries for highly migratory and straddling fish stocks [UN Fish Stocks Agreement, Art. 10(e)]; [Strategy for Improving Information, para. 26]. <p>Research</p> <ul style="list-style-type: none"> • Study the effectiveness of multi-species management [Kyoto Declaration, para. 13]. • Promote research activities to assess the volume and the composition of discards [SEAFDEC Fishing Operations, para. 8.4.3(7)]. • Systematically assess the impacts of fishing, aquaculture and other activities affecting the marine environment, particularly in coastal areas [Cancun Declaration, para. 7]. • Promote research on fisheries as well as on associated ecosystems [FAO Code of Conduct, Art. 2(i) and 6.4], particularly on the study of the profiles of all target and non-target stocks [Agenda 21, para. 17.57], impacts of new types of gears on fisheries and ecosystems [FAO Code of Conduct, Art. 12.11], relationships among populations in the ecosystem [FAO Code of Conduct, Art. 7.2.3], and effects of ecosystem changes resulting from fishing pressure, pollution or habitat alteration (FAO Code of Conduct, Art. 12.5). • Advance the scientific basis for incorporating ecosystem considerations, building on existing and future available scientific knowledge by: <ul style="list-style-type: none"> - identifying and describing the structure, components, and functioning of relevant marine ecosystems, diet composition and food webs, species interactions and predator-prey relationships, the role of habitat and the biological, physical and oceanographic factors affecting ecosystem stability and resilience; - building or enhancing systematic monitoring and natural variability and its relations to ecosystem productivity; - improving the monitoring of bycatch and discards in all fisheries to obtain better knowledge of the amount of fish actually taken; - supporting research and technology development of fishing gear and practices to improve gear selectivity and reduce adverse impacts of fishing practices on habitat and biological diversity; and - assessing adverse human impacts of non-fisheries activities on the marine environment as well as the consequences of these impacts for sustainable use [Reykjavik Declaration, para. 5; APEC, SOD, para. 9]. • Assess the impacts of fishing, other human activities and environmental factors on target stocks, non-target species, and species belonging to the same ecosystem or dependent upon or associated with the target stocks [WCPFC Convention, Art. 5(d)]. • Assess habitats in shallow water areas to be given higher priority [SEAFDEC Fishing Operations, para. 8.4.7(3)]. • Encourage research on species interaction and carefully consider the sizable cost involved in assessment work on tropical fisheries which may include several environmental parameters and multi-species nature of fish stocks [SEAFDEC Fisheries Management, para. 7.2.3(1)]. • Study fish behaviour with utmost priority. Special consideration should also be given in areas where abundant juveniles exist and |

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| | <p>appropriate action including declarations of closed areas and seasons to fish should be taken [SEAFDEC Fishing Operations, para. 8.5.1(6)].</p> <ul style="list-style-type: none"> • Research on the multi-species composition in the catch and resources to clarify specific situations of tropical fisheries [SEAFDEC Fishing Operations, para. 8.5.4(3)]. • Develop an agreed set of factors to be applied in defining marine ecosystems in the Asia-Pacific region, and establish a key set of variables to monitor and to assess changes in these ecosystems [APEC, BPA, para. I.b.i]. • Build expertise through education and training for collecting and processing the biological, oceanographic, ecological and fisheries data needed for designing, implementing and upgrading management strategies [Reykjavik Declaration, para. 7]. • Assess the impact on the environment and fisheries resources of new fishing gear, practices and methods [SEAFDEC Fishing Operations, para. 8.5.1(2)]. • Study selective, environmentally safe and cost-effective gear and techniques to minimise the catch component of waste and juveniles, which may cause negative impacts on ecosystem [SEAFDEC Fisheries Management, para. 7.6.9(1)]. • Undertake studies on excess fishing capacity, but should not delay the implementation of appropriate action to regulate fishing capacity based on existing information [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1(4)]. • Study the existing marking systems and research into gear designs, operation and installation which can prevent or reduce gear loss, or which may aid recovery of lost gear should be promoted [SEAFDEC Fishing Operations, para. 8.2.4(7)]. |
| <h3>3. Management Plans</h3> | |
| <ul style="list-style-type: none"> • Develop and implement fisheries management plans which encourage responsible fisheries and sustainable use of marine ecosystems. • Develop and implement international NPOAs. | <p>General requirements for fisheries management plans, policies and strategies</p> <ul style="list-style-type: none"> • Translate long-term management objectives into management actions, formulated as a fishery management plan or other management framework [FAO Code of Conduct Art. 7.3.3]. • Introduce immediately effective management plans with incentives that encourage responsible fisheries and sustainable use of marine ecosystems, including mechanism for reducing excessive fishing efforts to sustainable levels [Reykjavik Declaration, para. 2]. • Adopt effective fisheries planning and management standards which will promote the maintenance of the quantity, quality, diversity and economic availability of fisheries resources [Cancun Declaration, para. 1]. • Take steps to improve management systems as part of the practice of responsible fishing [Cancun Declaration, para. 1]. • Formulate a national policy and fisheries management plan in accordance with agreed regional guidelines for the implementation of the FAO Code of Conduct [SEAFDEC Fisheries Management, para. 7.1 ADD.1(1)]. • Establish a committee which consists of representatives from relevant agencies to formulate the fisheries management policy [SEAFDEC Fisheries Management, para. 7.1 ADD.1(2)]. • Develop appropriate implementation programs on the improvement of fisheries management including awareness building and human resources development [SEAFDEC Fisheries Management, para. 7.1 ADD.1(3)]. • Incorporate fisheries management into the national development plan [SEAFDEC Fisheries Management, para. 7.1 ADD.1(4)]. • Implement the Regional Guidelines for Responsible Fishing Operations and Responsible Aquaculture in Southeast Asia [SEAFDEC Fisheries Management, para. 7.1 ADD.1(5)]. • Formulate national management objectives and frameworks. However, specific management policy, mechanisms and approaches should be considered for the implementation of the management actions for inland capture, coastal and commercial fisheries [SEAFDEC |

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| | <p>Fisheries Management, para. 7.1.1(1)].</p> <ul style="list-style-type: none"> • Harmonise the national fisheries management policy on coastal fisheries within the framework of sustainable management adopted by regional and sub-regional organisations [SEAFDEC Fisheries Management, para. 7.1.1(1)]. • Promote and implement responsible fishing technologies and practices through the formulation of appropriate strategies, policy and action plans to ensure the sustainable use of fisheries resources, and to maintain food and livelihood security in the region [SEAFDEC Fisheries Management, para. 7.6.4 ADD. 1(1)]. <p>Ecosystem based fisheries management plans and policies</p> <ul style="list-style-type: none"> • Attach high priority to the implementation of the international plans of action, on sharks, seabirds, and fishing capacity, and put in place within the framework of national plans, measures to achieve the balance between harvesting capacity and available resources [1999 Rome Declaration, para. 12(f)]. • Address the issues on the management of inland capture fisheries in the same context of coastal fisheries management in terms of policy, mechanisms and approaches, considering the size and dispersed distribution pattern of the inland capture fisheries in the region [SEAFDEC Fisheries Management, para. 7.3.5 ADD. 1 (1)]. • Develop the national policy and plan on the rehabilitation of the coastal ecosystem [SEAFDEC Fisheries Management, para. 7.6.10 ADD. 1(1)]. • Endeavour to develop, adopt and implement management plans based on scientific studies and aiming at preventing the decrease in the size of any harvested population to levels below those which ensure its stable recruitment and the stable recruitment of those species which are dependent upon, or related to them; • Endeavour to develop, adopt and implement management plans based on scientific studies and aiming at maintaining the ecological relationship between harvested, dependent and related populations of living resources of the ecosystem considered; • Endeavour to develop, adopt and implement management plans based on scientific studies and aiming at preventing changes or minimising risk of changes in the ecosystem considered with are not reversible over a reasonable period of time [Art. 4]. • Endeavour to develop, adopt and implement management plans based on scientific studies and aiming at restoring depleted populations to levels that would ensure stable recruitment. • Develop management plans for the use of FADs (anchored and drifting) within waters under national jurisdiction [WCPFC Conservation and Management Measure 2005-01, para. 13]. • Develop management plans for the use of FADs (anchored and drifting) in areas beyond national jurisdiction to be submitted to the Commission by 1 January 2008. These plans should include strategies to limit the interaction with juvenile bigeye and yellowfin tuna [WCPFC Conservation and Management Measure 2006-01, para. 4]. • Develop management plans for the use of FADs (anchored and drifting) within waters under national jurisdiction [WCPFC Conservation and Management Measure 2005-01, para. 13]. • Develop management plans for the use of FADs (anchored and drifting) in areas beyond national jurisdiction to be submitted to the Commission by 1 January 2008. These plans should include strategies to limit the interaction with juvenile bigeye and yellowfin tuna [WCPFC Conservation and Management Measure 2006-01, para. 4]. <p>Adoption of NPOA-Seabirds A State with a longline fishery is required to:</p> |

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| | <ul style="list-style-type: none"> • Design, adopt, and implement a national plan of action for reducing the incidental catch of seabirds in longline fisheries if a problem exists with respect to the incidental catch of seabirds [IPOA-Seabirds, para. 12] • Adopt an NPOA-Seabirds no later than 2001 [IPOA-Seabirds, para. 17], which contain the following elements: <ul style="list-style-type: none"> - prescription of mitigation measures; - research and development; - education, training and publicity; and - data collection [IPOA-Seabirds, Part II]. • Take into account experience acquired in regional management organisations when developing an NPOA-Seabirds [IPOA-Seabirds, para. 12]. • Review assessments on the problem of the incidental catch of seabirds if it has earlier determined that an NPOA-Seabirds is not necessary [IPOA-Seabirds, para. 13]. • Immediately adopt an NPOA-Seabirds and implement it within two years if, based on a subsequent assessment, the State determines that the problem on the incidental catch of seabirds exists [IPOA-Seabirds, para. 13]. <p>Adoption and Implementation of Shark-plan</p> <p>A State with a shark fishery is required to:</p> <ul style="list-style-type: none"> • Adopt a national plan of action for the conservation and management of shark stocks if its vessels conduct directed fisheries for sharks or if its vessels regularly catch sharks in non-directed fisheries [IPOA-Sharks, para. 18]. • Strive to have a Shark-plan by 2001 [IPOA-Sharks, para. 20]. • Adopt a Shark-plan that contain a description of the prevailing state of shark stocks, populations, associated fisheries and management framework and its enforcement; and strategies for achieving the objectives [IPOA-Sharks, Appendix A]. • Adopt a Shark-plan that addresses the following objectives: <ul style="list-style-type: none"> - Ensure that shark catches from directed and non-directed fisheries are sustainable; - Assess threats to shark populations, determine and protect critical habitats and implement harvesting strategies consistent with the principles of biological sustainability and rational long-term economic use; - Identify and provide special attention, in particular to vulnerable or threatened shark stocks; - Improve and develop frameworks for establishing and co-ordinating effective consultation involving all stakeholders in research, management and educational initiatives within and between States; - Minimise unutilised incidental catches of sharks; - Contribute to the protection of biodiversity and ecosystem structure and function; - Minimise waste and discards from shark catches in accordance with Article 7.2.2(g) of the FAO Code of Conduct (for example, requiring the retention of sharks from which fins are removed); - Encourage full use of dead sharks; - Facilitate improved species-specific catch and landings data and monitoring of shark catches; and - Facilitate the identification and reporting of species-specific biological and trade data [IPOA-Sharks, para. 22]. • Carry out a regular assessment of the status of sharks stocks subject to fishing so as to determine if there is a need for development of a shark plan [IPOA-Sharks, para. 21]. |

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| | <ul style="list-style-type: none"> • Take into account the experience of subregional and regional fisheries management organisations when developing a Shark-plan [IPOA-Sharks, para. 18]. • Facilitate consultation and the effective participation of industry, fishworkers, environment and other interested organisations in the development of the Sharks-plan [IPOA-Sharks, para. 21; FAO Code of Conduct, Art. 6.13]. • Assess the implementation of the Shark-plan regularly, at least every four years, for the purpose of identifying cost-effective strategies for increasing its effectiveness [IPOA-Sharks, para. 23]. • Convene a workshop to promote the further implementation of the IPOA-Sharks and workshops to encourage regional and national plans of action [APFIC Report of the 29th Session of COFI, para. 15]. <p>Adoption of NPOA-Capacity</p> <p>A State is required to:</p> <ul style="list-style-type: none"> • Develop, implement and monitor national plans of action for managing fishing capacity, taking into account, inter alia, the effect of different resource management systems on fishing capacity [IPOA-Capacity, para. 19]. • Develop means to monitor fishing capacity systematically and accurately, and regularly assess any imbalance with available fishery resources and management objectives [IPOA-Capacity, para. 20]. • Develop, adopt and make public, by the end of 2002, national plans for the management of fishing capacity and, if required, reduce fishing capacity in order to balance fishing capacity with available resources on a sustainable basis [IPOA-Capacity, para. 21]. • Give due consideration, in the development of national plans, to socio-economic requirements, including the consideration of alternative sources of employment and livelihood to fishing communities which must bear the burden of reductions in fishing capacity [IPOA-Capacity, para. 22]. • Assess the possible impact of all factors, including subsidies, which contribute to overcapacity when developing an NPOA-Capacity [IPOA-Capacity, para. 25]. • Ensure that the matter of fishing capacity is addressed in an ongoing manner even if the State decides that a national plan to manage capacity is not necessary [IPOA-Capacity, para. 23]. • Review the implementation of its national plans to manage capacity at least every four years for the purpose of identifying cost effective strategies for increasing effectiveness. [IPOA-Capacity, para. 24]. <p>Adoption of NPOA-IUU</p> <p>A State is required to</p> <ul style="list-style-type: none"> • Develop and implement, as soon as possible but not later than three years after the adoption of the IPOA (or 2004), NPOAs to further achieve the objectives of the IPOA-IUU and give full effect to its provisions as an integral part of their fisheries management programmes and budgets [IPOA-IUU, para. 25]. • Adopt an NPOA-IUU that would include actions to implement initiatives adopted by relevant regional fisheries management organisations to prevent, deter and eliminate IUU fishing [IPOA-IUU, para. 25]. • Encourage full participation and engagement of all interested stakeholders, including industry, fishing communities and non-governmental organisations in formulating an NPOA-IUU [IPOA-IUU, para. 25]. |

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| | <ul style="list-style-type: none"> Review the implementation of the NPOA-IUU at least every four years after its adoption for the purpose of identifying cost-effective strategies to increase their effectiveness [IPOA-IUU, para. 26]. Ensure that national efforts to prevent, deter and eliminate IUU fishing are internally coordinated [IPOA-IUU, para. 27]. Develop and implement national and regional plans of action to combat IUU fishing [2005 Rome Declaration, para. 3]. |
| 4. Fishing Vessel Registration | |
| <ul style="list-style-type: none"> Establish vessel registration systems which establish a genuine link between the State and the ship. Avoid flagging vessels with a history of non-compliance. Issue Certificates of Registry stating that the ship has the right to fly its flag. Develop specific requirements for new and imported vessels. Maintain records of fishing vessels entitled to fly their flags and authorised to be used for fishing beyond the EEZ. Include in the vessel registry the following information: name of fishing vessel, registration number, previous names (if known/if any) and port of registry; previous flag (if any); International Radio Call Sign (if any); Name and address of owner or owners; where and when built; type of vessel; length; gross register tonnage; moulded depth; beam; power of main engine or engines; type of fishing method or methods; name and address of operator (or manager) or operators managers; Name, street address, mailing address and nationality of the natural or legal persons responsible for managing the operations of the vessel; name, street address, mailing address and nationality of natural or legal person with beneficial ownership of the vessel; name and ownership history of the | <p>Fishing vessel registration A flag State is required to:</p> <ul style="list-style-type: none"> Establish a genuine link between the State and the ship [LOSC, Art. 91(1); Rome Declaration para 5]. Fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag [LOSC, Art. 91(1)]. Issue documents such as Certificates of Registry stating that the ship has the right to fly its flag [LOSC, Art. 91(2); FAO Code of Conduct, Art. 8.2.2]. Take effective action, consistent with international law, to deter reflagging of vessels as a means of avoiding compliance with applicable conservation and management rules for fishing activities on the high seas [Cancun Declaration, para. 13]. Avoid flagging vessels with a history of non-compliance [IPOA-IUU, para. 38 and 40; UN Fish Stocks Agreement, Preamble; FAO Compliance Agreement, Preamble, Agenda 21, para. 17.52] except where: <ul style="list-style-type: none"> the ownership of the vessel has subsequently changed and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of the vessel; or having taken into account all relevant factors, the flag States determines the flagging of the vessel would not result in IUU fishing [IPOA-IUU, para. 36]. Establish policies and legislation on national authorisations for all fisheries (including license, appropriate registration and fishing rights for coastal fisheries) [SEAFDEC Fishing Operations, para. 8.2.4(1) and (6)]. Improve vessel registration systems [Bali Plan of Action on Sustainable Fisheries para. A.1]. <p>Maintain Records of Fishing Vessel Registration A flag State is required to:</p> <ul style="list-style-type: none"> Maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size [LOSC, Art. 91(2)(a)]. Maintain records of fishing vessels entitled to fly their flags and authorised to be used for fishing [UN Fish Stocks Agreement, Art. 18(3)(c); FAO Compliance Agreement, Art. III(6), IV, VI(1), and VI(2); and FAO Code of Conduct, Art. 8.2.1]. The information that would need to be included in a record of fishing vessels are: <ul style="list-style-type: none"> name of fishing vessel, registration number and port of registry; previous flag (if any); Name and ownership history of the vessel, and where this is known, the history of compliance by that vessel, in accordance with national laws, with conservation and management measures or provisions adopted at a national, regional or global level; and International Radio Call Sign (if any); |

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| <p>vessel, and where this is known, the history of compliance by that vessel, in accordance with national laws, with conservation and management measures or provisions adopted at a national, regional or global level.</p> <ul style="list-style-type: none"> Establish regulations on the marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognisable vessel and gear marking systems. | <ul style="list-style-type: none"> Name and address of owner or owners; Where and when built; Type of vessel; Length; Name and address of operator (or manager) or operators (managers); Type of fishing method or methods; Moulded depth; Beam; Gross register tonnage; Vessel dimensions, and where appropriate, a photograph, taken at the time of registration or at the conclusion of any more recent structural alterations, showing a side profile view of the vessel [IPOA-IUU, para. 42]. Power of main engine or engines [FAO Compliance Agreement, Art. VI(1) and (2)]. Name, address and nationality of the natural or legal person in whose name the vessel is registered; Name, street address, mailing address and nationality of the natural or legal persons responsible for managing the operations of the vessel; Name, street address, mailing address and nationality of natural or legal person with beneficial ownership of the vessel; <ul style="list-style-type: none"> Maintain records of fishers, which should, whenever possible, contain information on their service and qualifications, including certificates of competency, in accordance with their national laws [FAO Code of Conduct, Art. 8.1.8]. Maintain appropriate and compatible national records of fishing vessels, further specifying conditions for access to information [IPOA-Capacity, para. 17]. Create and maintain mechanisms to collect the required information on vessels operating in waters of States other than those of the flag State, or on the high seas. The FAO Technical Guidelines can be referred to for more detailed information [SEAFDEC Fishing Operations, para. 8.2.1(1)]. <p>Marking Requirements</p> <p>A flag State is required to:</p> <ul style="list-style-type: none"> Fully implement vessel marking requirements in accordance with the FAO Standard Specification and Guidelines for the Marking and Identification of Fishing Vessels and any applicable regional fisheries management organisation requirements [2005 Rome Declaration, para. 5]. Mark small-scale fishing vessels in conformity with nationally recognised marking systems. The provincial code in lettering and/or numbering can be applied to national standard marking systems [SEAFDEC Fishing Operations, para. 8.2.4(8)]. Consult with concerned fisheries subsectors and national and local government authorities and raise awareness on the necessity to mark fishing vessels and gears [SEAFDEC Fishing Operations, paras. 8.2.4(3) and (5)]. Ensure that owners, managers, and fishers comply with the appropriate marking of fishing vessels and gear [SEAFDEC Fishing Operations, para. 8.2.4(10)]. Conduct intensive nationwide information dissemination on the legal provisions and guidelines on the marking of fishing vessels and gear [SEAFDEC Fishing Operations, para. 8.2.4(9)]. |

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| | <ul style="list-style-type: none"> • Mark fish Aggregating Devices (FADs) placed on the high seas, EEZs or archipelago seas to identify its owner and position. For owner identification, a FAD should be marked with an International Telecommunication Union Radio Call Sign (IRCS) which identifies the name and address of the owners. For position identification, a FAD should be marked with an electronic device (transponder or radio beacon), a radar reflector, or lamp as well as flags and/or shapes [SEAFDEC Fishing Operations, para. 8.11.3(2)]. • Mark not only fishing gears and vessels for both large- and small-scale fishing vessels but also Fish Aggregating Devices (FADs) such as payaos [SEAFDEC Fishing Operations, paras. 8.2.4(2), (5), and (8)]. • Establish regulations on the marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognisable vessel and gear marking systems, [UN Fish Stocks Agreement, Art. 18(3)(d); FAO Code of Conduct, Art. 8.2.3 and 8.2.4; SEAFDEC, Fishing Operation, para 8.2.3 (1)]. <p>A CCM is required to ensure that operators of vessels:</p> <ul style="list-style-type: none"> • Mark the vessels for their identification with their International Telecommunication Union Radio Call signs (IRCS) [WCPFC Conservation and Management Measure 2004-03, para. 2.1.1]. • Mark vessels to which an IRCS has not been assigned, with the characters allocated by the International Telecommunication Union (ITU), or characters of national identification as may be required under bilateral fishery agreements, flowed by the fishing authorisation or vessel registration number assigned to the vessel by the member of the Commission concerned, the identifier being the WCPFC Identification Number (WIN) [WCPFC Conservation and Management Measure 2004-03, para. 2.1.1]. |
| <p>5. Flag State Authorisations to Fish and Effective Control over Nationals</p> | |
| <ul style="list-style-type: none"> • Establish a licensing system and associated regulations to prohibit fishing on the high seas, in the waters of another state or waters of an RFMO, by vessels which are not duly licensed or authorised to fish, or fishing otherwise than in accordance with the terms and conditions of the license. • Take into account the history of violations by fishing vessels and operators when considering applications for authorisation to fish by fishing vessels flying its flag • Authorise the use of vessels flying its flag for fishing in the high seas, in waters of another state, or waters of an RFMO, only where it is able to exercise effectively its responsibilities in respect of such vessels under the LOSC, the UN Fish Stocks Agreement, and the WCPF Convention, | <p>General benchmark measures</p> <ul style="list-style-type: none"> • Establish policies, legislation, and regulations on national authorisations for all fisheries [SEAFDEC Fishing Operations, paras. 8.2.4(1) and (6)] and establish ways to practically implement them [SEAFDEC Fishing Operations, para. 8.1.2(2)]. • Establish a licensing system to cover at least major fisheries [SEAFDEC Fishing Operations, para. 8.1.2(1)]. • Investigate licensing mechanisms and identify areas for improvement [SEAFDEC Fishing Operations, para. 8.1.2(2)]. • Adopt practical mechanisms for the licensing of small-scale fishers that would guide their conduct and ensure that such mechanisms are elaborated in national registration systems [SEAFDEC Fishing Operations, para. 8.1.9(1)]. • Introduce rights-based fishery management through licensing and community fishing rights [ASEAN Plan of Action on Sustainable Fisheries para. 1]. • Coordinate linkages of all Government agencies that separately issue Certificates of Registration and authorisation to fish [SEAFDEC Fishing Operations, para. 8.1.2(3)]. <p>Authorisation to Fish on the high seas, RFMO area or the EEZ of another State(by the flag state)</p> <p>A flag State is required to:</p> <ul style="list-style-type: none"> • Ensure that only vessels with authorisations to fish conduct fishing operations in areas under the jurisdiction of regional fisheries management organisations and on the high seas [IPOA-IUU, para. 44; UN Fish Stocks Agreement, Art. 18(3); FAO Compliance Agreement, Art. III(2); FAO Code of Conduct, Art. 8.2.2]. |

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| <p>including ensuring that fishing vessels comply with the provisions of such instruments and making it an offence under national legislation to contravene international conservation and management measures and enforce such measures irrespective of where violations occur.</p> <ul style="list-style-type: none"> Require vessels fishing on the high seas, in the waters of another state or waters of an RFMO to carry the license on board at all times and to produce it on demand for inspection by a duly authorised person. Create powers to include appropriate terms and conditions on fishing licence (data collection, VMS, Observers). Investigate and take any action necessary when other States report that they have clear grounds to believe that proper jurisdiction and control with respect to a ship has not been exercised by a flag State. Effectively regulate transshipment in order to combat IUU fishing activities and to prevent laundering of illegal catches, including (a) ensure that vessels involved in transshipment at sea have a prior authorisation to tranship and report to the national fisheries administration or designated institution the details of such transshipment, details of the vessels, and the port of landing of the transhipped catch (b) ensure that at-sea transshipment and processing of fish and fish products in coastal State waters are authorised or conducted in conformity with appropriate management regulations (c) establish regulations on transshipment on the high seas to ensure that the effectiveness of | <ul style="list-style-type: none"> Ensure that fishing vessels operating in waters of other States comply with the regulations of the coastal State and that they secure appropriate fishing authorisation from the flag State [SEAFDEC Fisheries Management, para. 7.6.2(2)]. Issue appropriate authorisation to fish so that fishing vessels may operate in international waters or waters under national jurisdiction [SEAFDEC Fisheries Management, para. 7.6.2(1)]. Include the following information in an authorisation to fish: <ul style="list-style-type: none"> the name of the vessel, and where appropriate, the natural or legal person authorised to fish [IPOA-IUU, para. 46.1]; the areas, scope and duration of the license[IPOA-IUU, para. 46.2]; the species, fishing gear authorised, and where appropriate, other applicable management measures [IPOA-IUU, para. 46.3]. Establish regulations to prohibit fishing on the high seas by vessels which are not duly licensed or authorised to fish, or fishing on the high seas by vessels otherwise than in accordance with the terms and conditions of the license [UN Fish Stocks Agreement, Art. 18(3)(b)(ii)]; Require vessels fishing on the high seas to carry the license on board at all times and to produce it on demand for inspection by a duly authorised person [UN Fish Stocks Agreement, Art. 18(3)(b)(iii); IPOA-IUU, para. 46]; Prohibit any fishing vessel entitled to fly its flag to be used for fishing for highly migratory fish stocks in the Convention area beyond areas of national jurisdiction unless it has been authorised to do so by the appropriate authority [WCPFC Convention, Art. 24(2), Conservation and Management Measure 2004-01, para. 2]. Take necessary measures to ensure that any fishing vessel flying its flag conducts fishing in areas under the national jurisdiction of another State only where the vessel holds an appropriate licence, permit or authorisation, as may be required by such other State [WCPF Conservation and Management Measure 2004-01, para. 1(d)]. <p>Criteria for issue of authorisation</p> <ul style="list-style-type: none"> Ensure that it does not issue a license to any fishing vessel previously registered in the territory of another Party which has undermined the effectiveness of international conservation and management measures unless that the flag State is satisfied that <ul style="list-style-type: none"> any period of suspension by another Party of an authorisation for such fishing vessel to be used for fishing on the high seas has expired; no authorisation for such fishing vessel to be used for fishing on the high seas has been withdrawn by another Party within the last three years; there is sufficient information available on the circumstances in which the authorisation to fish was suspended or withdrawn; the ownership of the fishing vessel has changed and the previous owner or operator has no further legal, beneficial or financial interest in, or control, of the fishing vessel [FAO Compliance Agreement, Art. III(5)]. Ensure that no authorisation to fish in the Convention area is issued to a vessel that has a history of IUU fishing, unless the ownership of the vessel has subsequently changed and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no legal, beneficial or financial interest in, or control of the vessels, or the member concerned is satisfied that, having taken into account all relevant facts, the vessel is no longer engaged in or associated with IUU fishing [WCPF Conservation and Management Measure 2004-01, para. 1(f)]. Take into account the history of violations by fishing vessels and operators when considering applications for authorisation to fish by fishing vessels flying its flag [Conservation and Management Measure 2004-01, para. 1(h)]; Take necessary measures to ensure that the owners of the vessels on the WCPFC Record of Fishing Vessels flying its flag are citizens, |

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| <p>conservation and management measures is not undermined.</p> | <p>residents or legal entities within its jurisdiction so that any control or punitive actions can be effectively taken against them [Conservation and Management Measure 2004-01, para. 1(i)].</p> <p>Terms and conditions of authorisations</p> <ul style="list-style-type: none"> • Establish regulations to apply terms and conditions to the license, authorisation or permit sufficient to fulfil any subregional, regional or global obligations of the State [UN Fish Stocks Agreement, Art. 18(3)(b)(i)]; • Flag states should establish conditions under which a fishing license may be issued, including: <ul style="list-style-type: none"> - vessel monitoring system [IPOA-IUU, para. 47]; - catch reporting conditions [IPOA-IUU, para. 47]; - reporting and other conditions for transshipping, where transshipment is permitted [IPOA-IUU, para. 47]; - observer coverage [IPOA-IUU, para. 47]; - maintenance of fishing and related logbooks [IPOA-IUU, para. 47, [SEAFDEC Fishing Operations, para. 8.5.1(1)]; - navigational equipment [IPOA-IUU, para. 47]; - marking of vessels and gear requirements [IPOA-IUU, para. 47]; - compliance with other international conventions and national regulations with respect to maritime safety, protection of the marine environment, and conservation and management measures [IPOA-IUU, para. 47]. • Coastal states should establish conditions of the license, including: <ul style="list-style-type: none"> - Species to be caught and catch quotas [LOSC, Art. 62(4)] ; - Seasons and areas of fishing, the types, sizes, and amount of gear, and the type and size of fishing vessel [LOSC, Art. 62(4), SEAFDEC Fishing Operations, para. 8.5.1(1)]; - Information required from fishing vessels [LOSC, Art. 62(4), SEAFDEC Fishing Operations, para. 8.5.1(1)]; - Observers [LOSC, Art. 62(4)]. ; and - Landing of catch [LOSC, Art. 62(4)]. <p>A CCM is required to ensure that the following conditions are imposed on a fishing licence:</p> <ul style="list-style-type: none"> • That the fishing vessel only conducts fishing within areas under the national jurisdiction of other States only where the fishing vessel holds any licence, permit or authorisation that may be required by other State [WCPFC Convention, Art. 24(3)(a)]. • That the fishing vessel is operated on the high seas in the Convention Area in accordance with the requirements of Annex III on the terms and conditions for fishing [WCPFC Convention, Art. 24(3)(b)]. • Comply with the markings and other technical specifications related to the marking of fishing vessels [Conservation and Management Measure 2004-03, para. 2.1.3(b) and 2.2]. <p>A CCM is required to:</p> <ul style="list-style-type: none"> • Provide in the authorisation of fishing vessels: <ul style="list-style-type: none"> - the specific areas, species and time periods for which the authorisation is valid; - permitted activities by the vessel; - prohibition of fishing, retention on board, transshipment or landing by the vessel in areas under the national jurisdiction of another State except pursuant to a licence, permit or authorisation that may be required by such other State; |

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| | <ul style="list-style-type: none"> - other specific conditions [WCPFC Conservation and Management Measure 2004-01, para. 3]. <p>An operator of a fishing vessel is required to:</p> <ul style="list-style-type: none"> • Comply with the applicable national laws and regulations of a coastal State party to the Convention [WCPFC Convention, Annex III Art. 2]. • Allow and assist any person identified as an observer under the regional programme to: <ul style="list-style-type: none"> - embark at a place and time agreed to; - have full access to and use of all facilities and equipment on board which the observer may determine is necessary to carry out his or her duties - remove samples - disembark at an agreed place and time; and - carry out all duties safely [WCPFC Convention, Annex III Art. 3(1)] • Not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with observers in the performance of their duties [WCPFC Convention, Annex III Art. 3(2)]. • Provide the observer with food, accommodation and medical facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel [WCPFC Convention, Annex III Art. 3(3)]. • Comply with any procedures established by the Commission to verify the quantity and species transhipped, and any additional procedures and measures adopted by the Commission with respect to transhipment in the Convention area [WCPFC Convention, Annex III Art. 4(1)]. • Allow authorised person by the Commission or by the member of the Commission in whose designated port or area a transhipment takes place to have full access to and use of facilities and equipment which the authorised person may determine is necessary to carry out his or her duties [WCPFC Convention, Annex III Art. 4(2)]. • Record and report vessel position, catch or target and non-target species, fishing effort and other relevant fisheries data in accordance with the standards set out in Annex I of the UN Fish Stocks Agreement. <p>Regulation of Transhipment</p> <p>A State is required to:</p> <ul style="list-style-type: none"> • Ensure that all fishing, transport, and support vessels involved in transhipment at sea have a prior authorisation to tranship and report to the national fisheries administration or designated institution the details of such transhipment, details of the vessels, and the port of landing of the transhipped catch [IPOA-IUU, para. 49] • Ensure that at-sea transhipment and processing of fish and fish products in coastal State waters are authorised or conducted in conformity with appropriate management regulations [IPOA-IUU, para. 51.6] • Establish regulations on transhipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined [UN Fish Stocks Agreement, Art. 18(3)(h)]. • Encourage fishing vessels, to the extent practicable, to conduct transhipment in port [WCPFC Convention, Art. 29(1)] • Effectively regulate transhipment in order to combat IUU fishing activities and to prevent laundering of illegal catches [2005 Rome Declaration, para. 5]. |

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| 6. Authorisations to fish by the Coastal State (licensing of foreign fishing vessels) | |
| <ul style="list-style-type: none"> • Formulate laws and regulations pertaining to the licensing of foreign fishing vessels and fishers and equipment in their EEZs. • Ensure that a license is issued only if the vessel concerned is entered on a record of vessels. • Avoid licensing a vessel to fish in its waters if that particular vessel has a history of IUU fishing. • Condition licences with: <ul style="list-style-type: none"> - Species to be caught and catch quotas - Seasons and areas of fishing, the types, sizes, and amount of gear, and the type and size of fishing vessel - Information required from fishing vessels - Requirement to participate in observers programs - Requirements to install VMS - Details of permitted landing of catch | <p>A coastal State is required to:</p> <ul style="list-style-type: none"> • Formulate laws and regulations pertaining to the licensing of foreign fishing vessels and fishers and equipment in their EEZs [LOSC, Art. 62(4)(a)]. • Ensure that no vessel undertakes fishing activities within its waters without a valid license issued by the coastal State and the flag State [IPOA-IUU, para. 51.3]. • Ensure that a license is issued only if the vessel concerned is entered on a record of vessels [IPOA-IUU, para. 51.4]. • Avoid licensing a vessel to fish in its waters if that particular vessel has a history of IUU fishing [IPOA-IUU, para. 51.8] • Support the use of limited entry through a licensing system to control and regulate new or exploratory fisheries [SEAFDEC Fisheries Management, para. 7.5.4(1)]. • Elaborate policies on the enforcement of the authorisation to fish by the kind of fisheries, whether provincial or district levels and implement as far as practicable [SEAFDEC Fishing Operations, para. 8.1.2(5)]. |
| 7. Monitoring, Control and Surveillance | |
| <p>States are required to:</p> <ul style="list-style-type: none"> • Establish national fisheries MCS measures. • Develop and implement a VMS in accordance with regional, subregional and global programmes, and require that flagged vessels and vessels of flagged by other States that fish in its EEZ, carry VMS equipment on board. • Adopt and implement a program of observers on board vessels. • Regulate for permitting observers of other | <p>Standard obligations</p> <ul style="list-style-type: none"> • In enforcing fisheries laws and regulations, undertake a range of MCS activities such as boarding, inspection, arrest and judicial proceedings to ensure the proper conservation and management of fisheries resources in the EEZ (LOSC, Art. 73). • Ensure that all fisheries policy makers and managers consider the full range of available MCS options, strategies and tools, take necessary actions to fully implement the IPOAs and any applicable MCS measures adopted by relevant RFMOs and that fishers have an understanding of their role in MCS [2005 Rome Declaration, para. 3]. • Apply specific MCS-related measures from the commencement of the fishing activity to the final destination of caught fish in order to effectively deter, prevent, and eliminate IUU fishing (IPOA-IUU, para. 24). • Establish national fisheries MCS measures, including law enforcement, and where appropriate, other useful management measures like observer programs, inspection schemes and vessel monitoring systems [SEAFDEC Fisheries Management, para. 7.7.3(1)]. • Enhance its MCS program [APEC, BPA, para. I.b.iv]. |

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| <p>States or representing an RFMO, to carry out functions agreed under subregional or regional observer programs.</p> <ul style="list-style-type: none"> Encourage harmonisation of national MCS frameworks among neighbouring countries, including joint enforcement operations with other national enforcement agencies. Provide financial and technical assistance to developing countries in the implementation of MCS capabilities, including VMS, with the support of FAO and relevant international financial institutions and mechanisms. Formulate and apply fair, consistent and transparent sanctions with sufficient severity to effectively prevent IUU fishing and further deprive offenders from accruing benefits from such activities Withdraw, suspend, or cancel an authorisation to fish of a vessel if it has been established that the vessel has undermined international conservation and management measures. Ensure that a vessel which has been involved in the commission of a serious violation of conservation and management measures for straddling and highly migratory fish stocks does not engage in fishing operations on the high seas of until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with. <p>A coastal state is required to:</p> <ul style="list-style-type: none"> Establish and implement national and internationally-agreed boarding and inspection regime consistent with | <ul style="list-style-type: none"> Strengthen efforts to combat IUU fishing including by pursuing the use of at-sea measures, in accordance with international law, as key compliance tools [APEC, BPA, para. I.c.v]. Strengthen national enforcement capabilities to deter any unauthorised fishing within national jurisdiction and ensure compliance with national legislation and international law [SEAFDEC Fisheries Management, para. 7.6.2(3)]. Differentiate methodology for MCS and enforcement for small-scale and coastal fisheries [SEAFDEC Fishing Operations, para. 8.1.4(1)]. Provide opportunities in the training and education of fishers and fisheries staff in implementing MCS system [SEAFDEC Fisheries Management, para. 7.1.7(1) and (2)]. <p>Community Participation</p> <ul style="list-style-type: none"> Promote general public awareness and stakeholder participation regarding the various benefits of MCS should be promoted [SEAFDEC Fisheries Management, para. 7.1.7(1)]. Supplement existing MCS schemes through measures such as encouraging the fishing fleet to report any suspected IUU fishing activities they observe [2005 Rome Declaration, para. 4]. Decentralise or delegate certain management functions on MCS to designated communities or local governments as appropriate and take measures to legitimately implement these systems [SEAFDEC Fisheries Management, para. 7.1.7(3)]. Consider the existence of traditional systems, which could be used in terms of monitoring and controlling the resources [SEAFDEC Fisheries Management, para. 7.1.7(4)]. <p>Vessel Monitoring System</p> <p>A State has the obligation to:</p> <ul style="list-style-type: none"> Develop and implement a VMS in accordance with regional, subregional and global programmes [UN Fish Stocks Agreement, Art. 18(3)(g)(iii); Art. 5(j) and 18(3)(e); FAO Code of Conduct, Art. 7.7.3] Require its vessels to carry VMS equipment on board [IPOA-IUU, para. 24.3]. Require vessels of other States that fish in its EEZ to submit certain information, such as vessel position reports [LOSC, Art. 62(4)(e)]. Ensure that all large-scale fishing vessels operating on the high seas are fitted with VMS no later than December 2008, or earlier if so decided by the flag State or any relevant RFMO [2005 Rome Declaration, para. 3]. <p>A CCM is required to:</p> <ul style="list-style-type: none"> Require fishing vessels that fish for highly migratory fish stocks on the high seas in the Convention area to use near real-time satellite position-fixing transmitters [WCPFC Convention, Art. 24(8)]. Require its fishing vessels that fish in the Convention area in areas under the national jurisdiction of another member to operate near real-time satellite position-fixing transmitters in accordance with the standards, specification and procedures determined by the coastal State [WCPFC Convention, Art. 24(9)]. Cooperate with other members to ensure compatibility between national and high seas VMS [WCPFC Convention, Art. 24(10), Conservation and Management Measure 2006-06, para. 8(b)]. Ensure that fishing vessels on the high seas in the Convention area comply with the requirements established by the Commission for the |

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| <p>international law.</p> <p>An Inspecting State is required to:</p> <ul style="list-style-type: none"> • Board and inspect fishing vessels through duly authorised inspectors. • Inspect the vessel, its licence, gear, equipment, records, fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures. • Communicate without delay the results of that investigation to the flag State where the flag State authorises the inspecting State to investigate an alleged violation. <p>A flag State is required to:</p> <ul style="list-style-type: none"> • Respond to the notification of the investigating State within 3 working days of its receipt. • Take the necessary enforcement action with respect to the vessel. • Authorise the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel. • Ensure that vessel masters accept and facilitate prompt and safe boarding and disembarkment by the inspectors, and cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures. • Ensure that its vessel masters do not interfere with the inspectors in the performance of their duties; allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection; ensure that vessel masters provide reasonable facilities to the | <p>purposes of the Commission VMS and are equipped with ALCs that shall communicate such data as determined by the Commission [Conservation and Management Measure 2006-06, para. 8(a)].</p> <p>Observer Programs</p> <ul style="list-style-type: none"> • To place observers on board vessels in exercising their sovereign right over marine resources in its EEZ [LOSC, Art. 62(4)(g); FAO Code of Conduct, para. 7.7.3]. • Implement a national observer programme [IPOA-IUU, paras. 24.4, 47.4, and 80.9; FAO Code of Conduct, para. 8.4.3; SEAFDEC Fishing Operations, para. 8.4.3(5)] • Participate in subregional or regional observer programmes, and permit observers of other States to carry out functions agreed under such programmes [Art. 18(3)(g)(ii)]. <p>CCM is required to:</p> <ul style="list-style-type: none"> • Ensure that fishing vessels flying its flag in the Convention area, except for vessels that operate exclusively within waters under the national jurisdiction of the flag State, are prepared to accept an observer from the regional observer programme [WCPFC Convention, Art. 25(4)]. • Ensure that observers do not unduly interfere with the lawful operations of the vessels and give due consideration to the operational requirements of the vessel and communicate regularly with the captain or master for this purpose [WCPFC Convention, Art. 28(6)(d)]. <p>Boarding and inspection</p> <p>A State is required to</p> <ul style="list-style-type: none"> • Develop and ensure effective implementation of national and internationally agreed boarding and inspection regimes consistent with international law [2005 Rome Declaration, para. 5]. <p>A coastal State is required to:</p> <ul style="list-style-type: none"> • Undertake measures such as boarding and inspection in exercising its rights to conserve and manage living resources in the EEZ [LOSC, Art. 73(1)]. • Establish and implement national and internationally-agreed boarding and inspection regime consistent with international law [IPOA-IUU, paras. 24.10 and 80.8; UN Fish Stocks Agreement, Art. 21(2)]. <p>An inspecting State, through its duly authorised inspectors, is required to:</p> <ul style="list-style-type: none"> • Board and inspect fishing vessels through duly authorised inspectors [UN Fish Stocks Agreement, Art. 21(1)]. • Inspect the vessel, its licence, gear, equipment, records, fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures [UN Fish Stocks Agreement, Art. 22(2)]. • Inform all States whose vessels fish on the high seas in the subregion or region of the form of identification issued to its duly authorised inspectors [UN Fish Stocks Agreement, Art. 21(4)] • Clearly mark the vessel used for boarding and inspection to be identifiable as being on government service [UN Fish Stocks Agreement, Art. 21(4)]. |

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| <p>inspectors.</p> <ul style="list-style-type: none"> • Suspend the vessel's authorisation to fish and order the vessel to return immediately to port if the master does not comply with direction. Advise the inspecting State of the action it has taken when the master has refused to cooperate with the inspector. • Allow the relevant authorities of a coastal State to board and inspect its vessel on the high seas if there are reasonable grounds for believing that the vessel has been engaged in unauthorised fishing of straddling and highly migratory fish stocks within an area under the jurisdiction of a coastal State. <p>A port state is required to:</p> <ul style="list-style-type: none"> • Carry out the inspection of documents, fishing gear and catch on board fishing vessels when a fishing vessel is in its ports or offshore terminals • Collect information during inspection of fishing vessels at port such as the flag State of the vessel and identification details; name, nationality, and qualifications of the master and the fishing master; fishing gear; catch on board, including origin, species, form, and quantity; total landed and transhipped catch; and other information required by relevant regional fisheries management organisations or other international agreements. • In case of appropriate management arrangement with the flag State of the vessel, invite that State to participate in the inspection. • Inspect the number of vessels in its ports | <ul style="list-style-type: none"> • Secure evidence and promptly notify the flag State of the alleged violation where, following a boarding and inspection, there are clear grounds for believing that a vessel has engaged in any activity contrary to conservation and management measures for straddling and highly migratory fish stocks [UN Fish Stocks Agreement, Art. 21(5)]. • Communicate without delay the results of that investigation to the flag State where the flag State authorises the inspecting State to investigate an alleged violation [UN Fish Stocks Agreement, Art. 21(7)]. • Remain onboard the vessel and secure evidence, where, following a boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation, and the flag State has either failed to respond or failed to take action [UN Fish Stocks Agreement, Art. 21(8)]. • Further require the master to assist in further investigation including, where appropriate, by bringing the vessel without delay to the nearest appropriate port [UN Fish Stocks Agreement, Art. 21(8)]. • Immediately inform the flag State of the name of the port to which the vessel is to proceed [UN Fish Stocks Agreement, Art. 21(8)]. • Take all necessary steps to ensure the well-being of the crew regardless of their nationality [UN Fish Stocks Agreement, Art. 21(8)]. • Observe international rules and generally accepted practices and procedures relating to the safety of the vessel and the crew, minimise interference with fishing operations and, to the extent practicable, avoid action which would adversely affect the quality of the catch on board [UN Fish Stocks Agreement, Art. 21(10)]. • Ensure that boarding and inspection is not conducted in a manner that would constitute harassment of any fishing vessel [UN Fish Stocks Agreement, Art. 21(10)]. • Release the vessel to the flag State along with full information on the progress and outcome of its investigation [UN Fish Stocks Agreement, Art. 21(12)]. • Only take actions which are proportional to the seriousness of the violation [UN Fish Stocks Agreement, Art. 21(16)]. • Board and inspect a fishing vessel, and if appropriate take action in accordance with international law, where there are reasonable grounds for suspecting that such vessel on the high seas is without nationality [UN Fish Stocks Agreement Art. 21(17)]. • Present credentials to the master of the vessel and produce a copy of the text of the relevant conservation and management measures or rules and regulations in force in the high seas area in question pursuant to those measures [UN Fish Stocks Agreement, Art. 22(1)]. • Initiate notice to the flag State at the time of the boarding and inspection. • Do not interfere with the master's ability to communicate with the authorities of the flag State during the boarding and inspection [UN Fish Stocks Agreement, Art. 22(1)]. • Provide a copy of a report on the boarding and inspection to the master and to the authorities of the flag State, noting thereon any objection or statement which the master wishes to have included in the report [UN Fish Stocks Agreement, Art. 22(1)]. • Promptly leave the vessel following completion of the inspection if they find no evidence of a serious violation [UN Fish Stocks Agreement, Art. 22(1)]. • Avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances [UN Fish Stocks Agreement, Art. 22(1)]. <p>A flag State is required to:</p> <ul style="list-style-type: none"> • Respond to the notification of the investigating State within 3 working days of its receipt [UN Fish Stocks Agreement, Art. 21(6)]. • Take the necessary enforcement action with respect to the vessel [UN Fish Stocks Agreement, Art. 21(7)]. |

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| <p>required to reach an annual level of inspection sufficient to achieve the objective of this Agreement. Seek to agree on the minimum levels for inspection of vessels through, as appropriate, regional fisheries management organisations, FAO or otherwise.</p> <ul style="list-style-type: none"> In determining which vessels to inspect, give priority to: (1) vessels that have been denied entry or use of a port in accordance with this Agreement; (2) requests from other relevant Parties, States or regional fisheries management organizations that particular vessels be inspected, particularly where such requests are supported by evidence of IUU fishing or fishing related activities in support of such fishing by the vessel in question; and (3) other vessels for which there are clear grounds for suspecting that they have engaged in IUU fishing or fishing related activities in support of such fishing. | <ul style="list-style-type: none"> Authorise the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel [UN Fish Stocks Agreement, Art. 21(7)]. Ensure that vessel masters accept and facilitate prompt and safe boarding by the inspectors [UN Fish Stocks Agreement, Art. 22(3)]; Ensure that vessel masters cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures [UN Fish Stocks Agreement, Art. 22(3)]; Ensure that its vessel masters do not obstruct, intimidate or interfere with the inspectors in the performance of their duties; Allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection [UN Fish Stocks Agreement, Art. 22(3)]; Ensure that vessel masters provide reasonable facilities, including, where appropriate, food and accommodation, to the inspectors [UN Fish Stocks Agreement, Art. 22(3)]; and Facilitate safe disembarkation by the inspectors [UN Fish Stocks Agreement, Art. 22(3)]. Direct the master of the vessel to submit immediately to boarding and inspection in the event that the master refuses to accept boarding and inspection, except in circumstances where, in accordance with generally accepted international regulations, procedures and practices relating to safety at sea, it is necessary to delay the boarding and inspection [UN Fish Stocks Agreement, Art. 22(4)] Suspend the vessel's authorisation to fish and order the vessel to return immediately to port if the master does not comply with such direction [UN Fish Stocks Agreement, Art. 22(4)]. Advise the inspecting State of the action it has taken when the master has refused to cooperate with the inspector [UN Fish Stocks Agreement, Art. 22(4)]. Allow the relevant authorities of a coastal State to board and inspect its vessel on the high seas if there are reasonable grounds for believing that the vessel has been engaged in unauthorised fishing of straddling and highly migratory fish stocks within an area under the jurisdiction of a coastal State [Art. 20(6)]. <p>A port state is required to:</p> <ul style="list-style-type: none"> Take measures to promote the effectiveness of subregional, regional and global conservation and management measures, such as the inspection of documents, fishing gear and catch on board fishing vessels when a fishing vessel is in its ports or offshore terminals [UN Fish Stocks Agreement, Art. 23(2); WCPFC Convention, Article 27(2)]. Collect information during inspection of fishing vessels at port such as the flag State of the vessel and identification details; name, nationality, and qualifications of the master and the fishing master; fishing gear; catch on board, including origin, species, form, and quantity; total landed and transhipped catch; and other information required by relevant regional fisheries management organisations or other international agreements [IPOA-IUU, para. 58]; Ensure that inspections are carried in accordance with minimum standards (documented in Annex B), by inspectors that are properly qualified and authorised for that purpose taking into account guidelines provided in Annex E [DAPSM, Article 13] Ensure that the inspector: <ul style="list-style-type: none"> prior to the inspection, presents to the master of the vessel an appropriate document identifying the inspector as such [DAPMS, Article 13.b); examines all relevant areas of the vessel, the fish on board, the nets and other gear, equipment, and any document or record on board that is relevant to verifying compliance with relevant conservation and management measures [DAPMS, Article 13.c); Require the master of the vessel to give inspectors all necessary assistance and information, and to present relevant material and |

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| | <p>documents as may be required or certified copies thereof [DAPMS, Article 13.d)</p> <ul style="list-style-type: none"> • In case of appropriate management arrangement with the flag State of the vessel, invite that State to participate in the inspection [DAPMS, Article 13.e); • Make all possible efforts to avoid unduly delaying the vessel to minimise 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 [DAPMS, Article 13.f); • 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 [DAPMS, Article 13.g] • Ensure that inspections are conducted in a fair, transparent and non-discriminatory manner and would not constitute harassment of any vessel [DAPMS, Article 13.h); and • Not interfere with the master’s ability, in conformity with international law, to communicate with the authorities of the flag State [DAPMS, Article 13.i); • Inspect the number of vessels in its ports required to reach an annual level of inspection sufficient to achieve the objective of this Agreement [DAPSM] • Seek to agree on the minimum levels for inspection of vessels through, as appropriate, regional fisheries management organisations, FAO or otherwise [DAPSM]. • In determining which vessels to inspect, give priority to: <ul style="list-style-type: none"> - vessels that have been denied entry or use of a port in accordance with this Agreement; - requests from other relevant Parties, States or regional fisheries management organizations that particular vessels be inspected, particularly where such requests are supported by evidence of IUU fishing or fishing related activities in support of such fishing by the vessel in question; and - other vessels for which there are clear grounds for suspecting that they have engaged in IUU fishing or fishing related activities in support of such fishing.[DAPSM, Article 12]. <p>In order to effectively implement the boarding and inspection regime of the Commission, a CCM is required to:</p> <ul style="list-style-type: none"> • Ensure that fishing vessels flying its flag accept boarding by duly authorised inspectors in accordance with the boarding and inspection procedures established by the Commission [WCPFC Convention, Art. 26(3)]. • Carry out boarding and inspection on the high seas of fishing vessels engaged in or reported to have engaged in a fishery regulated pursuant to the Convention [WCPFC Conservation and Management Measure 2006-08, para. 5] • Ensure that vessels flying its flag accept boarding and inspection by authorised inspectors in accordance with the procedures [WCPFC Conservation and Management Measure 2006-08, paras. 7 and 18-27]. • Implement boarding and inspection procedure in a transparent and non-discriminatory manner, taking into account, inter alia: <ul style="list-style-type: none"> - such factors as the presence of observers on board a vessel and the frequency and results of past inspections; and - the full range of measures to monitor compliance with the provisions of the Convention and agreed conservation and management measures, including inspection activities carried out by the authorities of Members of the Commission in respect of their own flag vessels [WCPFC Conservation and Management Measure 2006-08, para. 9]. • Give priority for boarding and inspection efforts to the following: <ul style="list-style-type: none"> - fishing vessels that are not on the WCPFC Record of Fishing Vessels and are flagged to Members of the Commission; - fishing vessels reasonably believed to engage or to have been engaged in any activity in contravention of the Convention or any |

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| | <p>conservation and management measure adopted;</p> <ul style="list-style-type: none"> - fishing vessels whose flag Member does not dispatch patrol vessels to the area of application to monitor its own fishing vessels; - fishing vessels without observers on board; - large-scale tuna fishing vessels; - fishing vessels with a known history of violating conservation and management measures adopted by international agreement or any country's national laws and regulations [WCPFC Conservation and Management Measure 2006-08, para. 10]. <ul style="list-style-type: none"> • Provide the following information to the Commission if it intends to carry out boarding and inspection activities: <ul style="list-style-type: none"> - with respect to each inspection vessel it assigns to boarding and inspection activities under these procedures: <ol style="list-style-type: none"> i. details of the vessel (name, description, photograph, registration number, port of registry (and, if different from the port of registry, port marked on the vessel hull), international radio call sign and communication capability); ii. notification that the inspection vessel is clearly marked and identifiable as being on government service; iii. notification that the crew has received and completed training in carrying out boarding and inspection activities at sea in accordance with any standards and procedures as may be adopted by the Commission. - with respect to inspectors it assigns pursuant to these procedures: <ol style="list-style-type: none"> i. the names of the authorities responsible for boarding and inspection; ii. notification that such authorities' inspectors are fully familiar with the fishing activities to be inspected and the provisions of the Convention and conservation and management measures in force; and iii. notification that such authorities' inspectors have received and completed training in carrying out boarding and inspection activities at sea in accordance with any standards and procedures as may be adopted by the Commission [WCPFC Conservation and Management Measure 2006-08, para. 13]. • Avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties [WCPFC Conservation and Management Measure 2006-08, para. 28]. • Prepare a full report on each boarding and inspection carried out pursuant to these procedures in accordance with a format that may be specified by the Commission and transmit a copy of the report inspection report to the authorities of the fishing vessel being inspected, as well as the Commission, within three full working days of the completion of the boarding and inspection [WCPFC Conservation and Management Measure 2006-08, para. 30]. • Observe activities or conditions that would constitute a serious violation [WCPFC Conservation and Management Measure 2006-08, para. 32]. • Upon receipt of a notification under paragraph 32, the authorities of the fishing vessels shall without delay: <ul style="list-style-type: none"> - assume their obligation to investigate and, if the evidence warrants, take enforcement action against the fishing vessel in question and so notify the authorities of the inspection vessel, as well as the Commission; or - authorize the authorities of the inspection vessel to complete investigation of the possible violation and so notify the Commission [WCPFC Conservation and Management Measure 2006-08, para. 33]. • Engage in surveillance aimed at identifying fishing vessels of non-members undertaking fishing activities in the Convention area, attempt to inform such fishing vessel, and if warranted request permission from the fishing vessel and/or flag State of the vessel to board the vessel [Conservation and Management Measure 2006-08, paras. 43 and 44]. <p>Participation in the International MCS network</p> |

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| | <ul style="list-style-type: none"> • Reciprocal enforcement measures (Lacey Act type measures) • Initiate joint enforcement operations with other national enforcement agencies (e.g. navy, maritime police, coastguard) in situations where shortage of manpower is evident to undertake an effective surveillance [SEAFDEC Fisheries Management, para. 7.7.3(1)]. • Encourage harmonisation of national MCS frameworks among neighbouring countries [SEAFDEC Fisheries Management, para. 7.1.7(1)]. • Strengthen efforts to collaborate through MCS regimes and the MCS network [APEC, BPA, para. I.b.iv]. • Provide financial and technical assistance to developing countries in the implementation of MCS capabilities, including VMS, with the support of FAO and relevant international financial institutions and mechanisms [2005 Rome Declaration, para. 9] . • Investigate, at the request of any other member, any alleged violation by its nationals, or fishing vessels owned or controlled by its nationals, of the provisions of the Convention or conservation and management measures adopted by the Commission [WCPFC Convention, Art. 23(5) and 25(2)]. • Provide a report on the progress of the investigation to the requesting member and to the Commission, including details of any action taken or proposed to be taken in relation to the alleged violation [WCPFC Convention, Art. 25(2)]. • Draw the attention of the flag State of a fishing vessel which is believed to have engaged in an activity that undermines the effectiveness of conservation and management measures adopted for the Convention area [WCPFC Convention, Art. 25(10)]. • Notify the Executive Director of any factual information showing that there is reasonable grounds to suspect that a vessel that is not on the WCPFC Record of Fishing Vessels is or has been engaged in fishing for or transshipment of highly migratory fish stocks in the Convention area [Conservation and Management Measure 2004-01, para. 12]. <p>Fisheries prosecution</p> <ul style="list-style-type: none"> • Refer the case to its authorities if the member is satisfied that sufficient evidence is available in respect of an alleged violation by a fishing vessel flying its flag with a view of instituting proceedings without delay and where, appropriate, detain the vessel concerned [WCPFC Convention, Art. 25(3)]. • Ensure that the vessel concerned does not engage in fishing activities until such a time as all outstanding sanctions imposed by the flag State have been complied with [WCPFC Convention, Art. 25(4)]. • Ensure that the vessel complies promptly with any sanctions which may be imposed by the coastal State in accordance with national laws and regulations [WCPFC Convention, Art. 25(4)]. • Establish arrangements for making available to prosecuting authorities of other members evidence relating to alleged violations [WCPFC Convention, Art. 25(5)]. • Immediately and fully investigate cases where there are reasonable grounds for believing that a fishing vessel on the high seas has engaged in unauthorised fishing within an area of national jurisdiction of a member of a Commission [WCPFC Convention, Art. 25(6)]. <p>Sanctions</p> <ul style="list-style-type: none"> • Formulate and apply consistent and transparent sanctions with sufficient severity to effectively prevent IUU fishing and further deprive offenders from accruing benefits from such activities [IPOA-IUU, para. 21; UN Fish Stocks Agreement, Art. 19(2); FAO Compliance Agreement, Art. III(8); FAO Code of Conduct, Art. 8.2.7]. • Apply sanctions in a fair, transparent, and non-discriminatory manner [IPOA-IUU, paras. 52 and 65]. • Take enforcement actions in the EEZ such as the arrest of foreign fishing vessels and subjecting them to judicial proceedings [LOSC, Art. 73(1)]. |

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| | <ul style="list-style-type: none"> • Ensure that arrested vessels and their crews are promptly released upon posting of a reasonable bond or other security [LOSC, Art. 73(1)]. • Exclude imprisonment or any form of corporal punishment for fisheries violations by foreign fishing vessels in the EEZ [LOSC, Art. 73(3)]. • Withdraw, suspend, or cancel an authorisation to fish of a vessel if it has been established that the vessel has undermined international conservation and management measures [UN Fish Stocks Agreement, Art. 19(2) and 22(4); FAO Compliance Agreement, Art. III(8); FAO Code of Conduct, Art. 7.7.2] • Refuse to issue an authorisation to fish until after a certain period of time [FAO Compliance Agreement, Art. III(5)(b)]. • Refuse, withdraw or suspend authorisations to serve as masters or officers on such vessels [UN Fish Stocks Agreement, Art. 19(2); FAO Code of Conduct, para. 8.1.9]. • Ensure that a vessel which has been involved in the commission of a serious violation of conservation and management measures for straddling and highly migratory fish stocks does not engage in fishing operations on the high seas of until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with [UN Fish Stocks Agreement, Art. 19(1)(e)]. |
| 8. Port State controls | |
| <ul style="list-style-type: none"> • Strengthen its measures in ports for fishing vessels, consistent with international law, in order to prevent, deter, and eliminate IUU fishing. • Ensure that measures are applied to vessels in a fair, transparent, and non-discriminatory manner. • Publicise ports to which foreign-flagged vessels may be permitted admission and ensure that such ports have the capacity to conduct inspections. • Require fishing vessels and vessels involved in fishing-related activities seeking permission to enter its ports to provide reasonable advance notice of their entry into port, a copy of their authorization to fish, details of their fishing trip and quantities of fish on board, with due regard to confidentiality requirements, in order to ascertain whether the vessels have engaged in or supported IUU fishing. • Adopt regulations empowering the relevant national authorities to prohibit landing and transshipments where it has | <p>General A port State is required to:</p> <ul style="list-style-type: none"> • Make known to other States details of regulations and measures with respect to port State control of fishing vessels [FAO Code of Conduct, Art. 8.3.1]. • Ensure that measures are applied to vessels in a fair, transparent, and non-discriminatory manner [LOSC, Art. 25(3), 119(3), and 227; UN Fish Stocks Agreement, Art. 23(1); FAO Code of Conduct, para. 8.3.1; IPOA-IUU, para. 52] • Strengthen its measures in ports for fishing vessels, consistent with international law, in order to prevent, deter, and eliminate IUU fishing [2005 Rome Declaration, para. 5]. • Strengthen efforts to combat IUU fishing by pursuing the use of port State measures [APEC BPA, para. 1.b.v]. • Undertake follow up work on the 2004 FAO Technical Consultation to Review Port State Measures to Combat IUU Fishing, especially with respect to operationalising the model scheme agreed at the Consultation [APFIC Report of the 29th Session of COFI, para. 25]. <p>Designation of Ports</p> <ul style="list-style-type: none"> • Publicise ports to which foreign-flagged vessels may be permitted admission and ensure that such ports have the capacity to conduct inspections [IPOA-IUU, para. 57], [DAPSM, Article 7]; • Designate one or more of its ports as transshipment ports for the purpose of the WCPFC Convention [WCPFC Convention, Art. 29(1)]. <p>Advanced entry of notice</p> <ul style="list-style-type: none"> • Require fishing vessels and vessels involved in fishing-related activities seeking permission to enter its ports to provide reasonable advance notice of their entry into port, a copy of their authorization to fish, details of their fishing trip and quantities of fish on board, with due regard to confidentiality requirements, in order to ascertain whether the vessels have engaged in or supported IUU fishing [IPOA-IUU, para. 55]. • Provide port access to fishing vessels in case of force majeure [IPOA-IUU, paras. 53-54]. • Request information in Annex A to be provided before granting entry to a vessel to its port and require that this information is provided |

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| <p>been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas; and/or when a party 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.</p> <ul style="list-style-type: none"> Deny the use of its ports for landing, transshipping, packaging and processing of fish and for other port services, inter alia, refuelling and resupplying, maintenance and drydocking, to a vessel which is in port but has been determined to have engaged in IUU fishing. | <p>sufficiently in advance to allow adequate time for the port State to examine such information [DAPSM, Article 8]</p> <ul style="list-style-type: none"> Decide whether to authorise or deny entry of the vessel to its port based on the information provided and communicate this decision to the vessel or to its representative. [DAPSM, Article 9.1] Take receipt of the authorisation for entry from the vessel master or representative upon the vessel's arrival at port. [DAPSM, Article 9.2] In the case of denial, communicate its decision to the flag State of the vessel and, as appropriate and to the extent possible, relevant coastal States, regional fisheries management organisations and other international organisations. [DAPSM, Article 9.3] <p>Port enforcement</p> <ul style="list-style-type: none"> Take necessary steps to prevent any breach of the conditions associated with a port call [LOSC Art. 25(2)]. Not discriminate in form or in fact against the fishing vessels of any State [WCPFC Convention, Art. 27(1)]. Adopt regulations empowering the relevant national authorities to prohibit landing and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas [UN Fish Stocks Agreement, Art. 23(3); WCPFC Convention, Art. 27(3); IPOA IUU para 56 & 59]. Deny entry of vessels into its ports when a party 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 relevant regional fisheries management organisation in accordance with the rules and procedures of such organisation and in conformity with international law. [DAPSM, Article 9.4] Deny the use of its ports for landing, transshipping, packaging and processing of fish and for other port services, inter alia, refuelling and resupplying, maintenance and drydocking, to a vessel which is in port but has been determined to have engaged in IUU fishing [DAPSM, Article 9.6] Deny (pursuant to its laws and) a vessel that has entered one of its ports 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: <ul style="list-style-type: none"> the Party 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; the Party 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; the Party 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; 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 taking into due account paragraphs 2 and 3 of Article 4; or the Party 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 paragraph 4 of Article 9, unless the vessel can establish: <ul style="list-style-type: none"> that it was acting in a manner consistent with relevant conservation and management measures; or 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 paragraph 4 of Article 9. [DAPSM, Article 11]. |

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| | <ul style="list-style-type: none"> • Withdraw its denial of the use of its port pursuant to paragraph 1 of this Article 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. Where a Party has withdrawn its denial pursuant to paragraph 4 of this Article, it shall promptly notify those to whom a notification was issued pursuant to paragraph 3 of this Article. [DAPSM, Article 11.4 and 11.5 • Safeguard the confidentiality of information collected in accordance with national law [IPOA-IUU, para. 60]. • Provide assistance to flag States, when a fishing vessel is voluntarily in a port or at an offshore terminal of the port State and the flag State of the vessel requests the port State for assistance in respect of non-compliance with subregional, regional or global conservation and management measures or with internationally agreed minimum standards for the prevention of pollution and for safety, health and conditions of work on board fishing vessels [FAO Code of Conduct, Art. 8.3.2]. <p>IUU vessel list</p> <p>In implementing the IUU list scheme of the WCPFC, a CCM is required to:</p> <ul style="list-style-type: none"> • Notify the owner of the vessels of its inclusion on the IUU Vessel List and the consequences which result from being included in the List [Conservation and Management Measure 2006-09, para. 16(a)]. • Take all the necessary measures to eliminate IUU fishing activities, including, if necessary, the withdrawal of the registration or the fishing licenses of these vessels, and to inform the Commission of the measures taken in this respect [Conservation and Management Measure 2006-09, para. 16(b)]. • Take all necessary non-discriminatory measures under applicable legislation, international law, and pursuant to paragraphs 56 and 66 of the IPOA-IUU, to: <ul style="list-style-type: none"> - ensure that fishing vessels, support vessels, mother ships or cargo vessels flying their flag do not participate in any transshipment or joint fishing operations with, support or re-supply vessels on the IUU Vessel List; - ensure that vessels on the IUU Vessel List that enter ports voluntarily are not authorized to land, tranship, refuel or re-supply therein but are inspected upon entry; - prohibit the chartering of a vessel on the IUU Vessel List; - refuse to grant their flag to vessels on the IUU Vessel List in accordance with paragraph 1f of Section A in Conservation and Management Measure 2004-01; - prohibit commercial transactions, imports, landings and/or transshipment of species covered by the WCPFC Convention from vessels on the IUU Vessel List; - encourage traders, importers, transporters and others involved, to refrain from transactions in, and transshipment of, species covered by the WCPFC Convention caught by vessels on the IUU Vessel List; - collect, and exchange with other CCMs, any appropriate information with the aim of searching for, controlling and preventing false import/export certificates for species covered by the WCPFC Convention from vessels on the IUU Vessel List [Conservation and Management Measure 2006-09, para. 17]. • Not take any unilateral trade measures or other sanctions against vessels on the draft or provisional IUU Vessel Lists or that have been removed from the IUU Vessel List, on the grounds that such vessels are involved in IUU fishing activities [Conservation and Management Measure 2006-09, para. 19]. • Request the removal of the vessel from the List during the intersessional period by providing information demonstrating that: |

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| | <ul style="list-style-type: none"> - it has adopted measures that will ensure that the vessel complies with all WCPFC measures; - it will be able to assume effectively its responsibilities as regards the monitoring and control of the vessel's fishing activities in the Convention Area; - it has taken effective action in response to the IUU fishing activities that resulted in the vessel's inclusion in the IUU Vessel List, including prosecution and imposition of sanctions of adequate severity. - the vessel has changed ownership and that the new owner can establish that the previous owner no longer has any legal, financial or real interests in the vessel or exercises control over it, and that the new owner has not participated in IUU fishing activities [Conservation and Management Measure 2006-09, para. 20]. <ul style="list-style-type: none"> • Comply with the requirements relating to the time period for transmitting comments to the Director with respect to the Draft IUU Vessel List and modification of the IUU Vessel list [Conservation and Management Measure 2006-09, paras. 5, 6, and 23]. |
| <p>9. Catch Certification and other Trade Schemes</p> | |
| <ul style="list-style-type: none"> • Develop and implement a system of catch certification which requires that a certificate accompany exported wild caught seafood product. • Ensure that the certificate contains (1) Basic information such as the name of the fishing vessel, home port and registration number, call sign, licence number, Inmarsat number and IMO number (if issued); (2) Information on the product (the type of species, catch areas and dates, estimated live weight and verified weight landed, as well as the applicable conservation and management measures and any transshipment at sea); (3) Information and declaration on export and import of the fisheries product (including the vessel name and flag, flight number, airway bill number, truck nationality and registration number, other transport documents and container number). • Provide a process and the power for a relevant competent authority to validate each catch certificate attesting to the veracity of the details of such certificate. | <p>EC Regulation 1005/2008</p> <p>The importation of fishery products into the EC is only allowed when it is accompanied by a completed catch certificate validated by the flag state of the vessel.</p> <p>To be valid, the catch certificate must contain all information specified in the template documents shown in Annex II of the IUU Regulation, including:</p> <ul style="list-style-type: none"> • Basic information such as the name of the fishing vessel, home port and registration number, call sign, licence number, Inmarsat number and IMO number (if issued); • Information on the product (the type of species, catch areas and dates, estimated live weight and verified weight landed, as well as the applicable conservation and management measures and any transshipment at sea); • Information and declaration on export and import of the fisheries product (including the vessel name and flag, flight number, airway bill number, truck nationality and registration number, other transport documents and container number). <p>A range of actions may be taken by EC Member States against third country fishing vessels that have not complied with the catch certification requirements. EC Member States are permitted to refuse importation of fisheries products without having to request additional evidence or send a request for assistance to the flag state on a number of discretionary grounds.</p> <p>Relevant authorities of each exporting country are to validate catch certificates and in doing so, must have the power to provide such validation and attest to the veracity of the catch certificate.</p> <p>Assistance of the competent authority</p> <p>The competent authority of the EC Member State may, for the purpose of verification, may request the assistance of the competent authorities of the flag state or of a country other than the flag state from which fishery products have been indirectly imported.</p> |

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| <ul style="list-style-type: none"> • Provide assistance in terms of verification of details of a catch certificate, within the stipulated 15 day timeframe, when required by a competent authority of the EC Member State. • Develop and implement a system of verifiable certification for seafood products which are imported from a third country, processed in the State and re-exported to an EU Member Country. | <p>In this case the request will state the reasons why the competent authority of the Member State has doubts as to the validity of the certificate, of the statements contained therein and/or the compliance of the products with conservation and management measures. A copy of the catch certificate and relevant documentation will be forwarded. The Regulation provides that the procedure for verification shall be completed within 15 days of the date of verification request. Where the flag state authority cannot meet the deadline, the verifying authorities in the Member State may grant an extension which shall not exceed a further 15 days. The release of the product in question shall be suspended during the verification process with the cost of storage borne by the operator.</p> <p>Indirect importation of fishery products (i.e. where products are transported through or processes in a third countries other than the flag state) are also subject to the validation of a catch certificate by the competent authorities. Verifiable documentation or certification is required of products constituting one single consignment which are transported in the same form to the EC from a third country other than the flag state. Similarly, verifiable certificates are required for products constituting one single consignment which have been processed in a third country other than the flag state. Where this is the case, proper documentation is required of every step of transshipment or transit, as well as the exact description of the unprocessed and processed products and their respective quantities.</p> |
| 10. Tracking Proceeds of Illegal Fishing | |
| <ul style="list-style-type: none"> • Develop and implement the legislative, surveillance and forensic capacity to track the proceeds of criminal activity related to illegal fishing. • Develop cooperation between fisheries administrations and those units responsible for anti-money laundering and financial intelligence units. | <p>There are no regional or international instruments which require a State to track the proceeds of illegal fishing. The proposed benchmark has been developed for the purposes of canvassing the current ability of each State to undertake such activity.</p> |
| 11. Reporting | |
| <ul style="list-style-type: none"> • Make readily available information included in their records of fishing vessels to relevant regional fisheries management organisations and the FAO. • Submit, for inclusion in the High Seas Vessel Authorisation Record, data on vessels entitled to fly its flag that are authorised to be used for fishing on the high seas. • Report to the FAO and relevant RFMO any | <p>Reporting of fishing vessel registrations</p> <p>A State is required to:</p> <ul style="list-style-type: none"> • Make readily available information included in their records of fishing vessels [FAO Compliance Agreement, Art. VI(1) and (2)]. • Submit, for inclusion in the High Seas Vessel Authorisation Record, data on vessels entitled to fly its flag that are authorised to be used for fishing on the high seas [2005 Rome Declaration, para. 6]. • Supply detailed information on fishing vessels flying its flag to relevant regional fisheries management organisations, in accordance with the requirements adopted by those regional organisations [2005 Rome Declaration, para. 6]. • Report the following to FAO: <ul style="list-style-type: none"> - any modifications to the information included in the record of fishing vessels; |

| Benchmark measures | International and Regional Instrument Reference |
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| <p>modifications, additions, deletions to the information included in the record of fishing vessels; any exemption granted to fishing vessels of less than 24 metres in length; all relevant information regarding any activities of fishing vessels flying its flag that undermine the effectiveness of international conservation and management measures (subject to the confidentiality measures adopted by States in their national legislation); evidence supporting a claim of a Party that a fishing vessel not entitled to fly its flag has engaged in an activity that undermines the effectiveness of international conservation and management measures; information pertaining to the grant of authorisation to a fishing vessel that has previously undermined the effectiveness of international conservation and management measures.</p> <ul style="list-style-type: none"> • Provide annually statistical, biological and other data and information in accordance with Annex I of the UN Fish Stocks Agreement, and in addition, other data and information as the required by an RFMO. • Provide information concerning its fishing activities in the RFMO areas, including fishing areas and fishing vessels in order to facilitate the compilation of reliable catch and effort statistics. • Provide information on boarding and inspections carried out by its authorised inspection vessels and actions taken in response to boarding and inspections of their fishing vessels that resulted in observation of alleged violations. • Immediately report fishing vessels which | <ul style="list-style-type: none"> - any additions to the record; - any deletions from the record by reason of: (a) the voluntary relinquishment or nonrenewal of the fishing authorisation by the fishing vessel owner or operator; (b) the withdrawal of the fishing authorisation issued in respect of the fishing vessel; (c) the fact that the fishing vessel concerned is no longer entitled to fly its flag; (d) the scrapping, decommissioning or loss of the fishing vessel concerned; or (e) any other reason; - any exemption granted to fishing vessels of less than 24 metres in length, the number and type of fishing vessels involved and the geographical areas in which such fishing vessel operate; - all relevant information regarding any activities of fishing vessels flying its flag that undermine the effectiveness of international conservation and management measures, including the identity of the fishing vessel or vessels involved and measures imposed by the Party in respect of such activities, subject to the confidentiality measures adopted by States in their national legislation; - evidence supporting a claim of a Party that a fishing vessel not entitled to fly its flag has engaged in an activity that undermines the effectiveness of international conservation and management measures; - information pertaining to the grant of authorisation to a fishing vessel that has previously undermined the effectiveness of international conservation and management measures, including the identification of the vessel and the owner or operator, and as appropriate, any other information relevant to the Party's decision [FAO Compliance Agreement, Art. VI]. <p>A CCM is required to:</p> <ul style="list-style-type: none"> • Report the following information to the Commission in respect of each fishing vessel entered in the record of fishing vessels: <ul style="list-style-type: none"> - Name of fishing vessel, registration number, WCPFC Identification Number (WIN), previous names (if known), and port of registry; - Name and address of owner or owners; - Name and nationality of master; - Previous flag (if any); - International Radio Call Sign; - Vessel communication types and numbers (INMARSAT A, B and C numbers and satellite telephone number); - Colour photograph of vessel; - Where and when built; - Type of vessel; - Normal crew complement; - Type of fishing method or methods; - Length; - Moulded depth; - Beam; - Gross register tonnage; - Power of main engine or engines; - The nature of the authorisation to fish granted by the flag State; - Carrying capacity, including freezer type, capacity and number and fish hold capacity; - The form and number of the authorisation granted by the flag State including any specific areas, species and time periods for which it is valid [WCPFC Convention, Annex IV; Conservation and Management Measure 2004-01, para. 5]. |

| Benchmark measures | International and Regional Instrument Reference |
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| <p>have been engaged in IUU fishing to the flag State, coastal State, or regional fisheries management organisation concerned.</p> <ul style="list-style-type: none"> • Remit collected information from port inspection to the flag State and where appropriate to FAO and relevant regional fisheries management organisations. • Promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other relevant international organizations of its decision when a Party has denied the use of its port. | <ul style="list-style-type: none"> • Promptly inform the Commission of any additions to the record fishing vessels entitled to fly its flag and authorised to be used for fishing in the Convention area beyond its area of national jurisdiction, and any deletions from the record [WCPFC Convention, Art. 24(6); Conservation and Management Measure 2004-01, para. 6]. • Submit to the Executive Director, information requested by the Executive Director with respect to fishing vessels entered in its national record of fishing vessels within 15 days of such request [WCPFC Conservation and Management Measure 2004-01, para. 7] • The results of review of its own internal actions and measures taken pursuant to the record of fishing vessels, including sanctions and punitive actions and in a manner as regards disclosure [WCPFC Conservation and Management Measure 2004-01, para. 10]; <p>Reporting of fisheries data and management measures</p> <p>A State is required to:</p> <ul style="list-style-type: none"> • Build its capacity to conform to the FAO Strategy for Fisheries Status and Trends Report and provide comprehensive data on fisheries to relevant RFMOs, including reporting on the impacts of fishing [APEC BPA, para. 1..a.i]. • Provide annually statistical, biological and other data and information in accordance with Annex I of the UN Fish Stocks Agreement, and in addition, other data and information as the Commission may require [WCPFC Convention, Art. 23(2)(a)]. • Provide information concerning its fishing activities in the Convention area, including fishing areas and fishing vessels in order to facilitate the compilation of reliable catch and effort statistics [WCPFC Convention, Art. 23(2)(b)]. • Provide information on steps taken to implement the conservation and management measures adopted by the Commission [WCPFC Convention, Art. 23(2)(c)]. • Keep the Commission informed of the measures they have adopted for the conservation and management of highly migratory fish stocks in areas within the Convention Area under their national jurisdiction [WCPFC Convention, Art. 23(3)]. • Keep the Commission informed of the measures it has adopted for regulating the activities of fishing vessels flying its flag in the Convention area [WCPFC Convention, Art. 23(4)]. • Include the following in its Annual Report to the Commission: <ul style="list-style-type: none"> - a report on the steps taken to implement the Resolution on Mitigating the Impact of Fishing for Highly Migratory Fish Species on Sea Turtles [WCPFC Resolution 2005-04, para. 11]; - all catches of North pacific albacore every six months, except for coastal fisheries which shall be reported on an annual basis [WCPFC Conservation and Management Measure 2005-03, para. 3]; - all catches of albacore north of the equator and all fishing effort north of the equator in fisheries directed at albacore [WCPFC Conservation and Management Measure 2005-03, para. 4]; - complete and accurate data relating to the bigeye yellowfin catch of vessels [WCPFC Conservation and Management Measure 2006-01, para. 2]; - implementation of the IPOA-Seabirds and the status of its national plan of action on the matter [WCPFC Conservation and Management Measure 2006-02, paras. 1 and 2]; - all available information on interactions with seabirds, including bycatches and details of species [WCPFC Conservation and Management Measure 2006-02, para. 11]; - the number of vessels that have fished for swordfish in the area south of 20 degrees south no later than 90 days after the end of the year [WCPFC Conservation and Management Measure 2006-03, para. 4]; - the catch levels of their fishing vessels that have taken striped marlin as a bycatch as well as the number and catch levels of vessels |

| Benchmark measures | International and Regional Instrument Reference |
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| | <p>fishing for striped marlin in the Convention area south of 15 degrees south [WCPFC Conservation and Management Measure 2006-04, para. 4];</p> <ul style="list-style-type: none"> - implementation of the IPOA-Sharks and the status of its national plan of action on the matter [WCPFC Conservation and Management Measure 2006-05, paras. 2 and 3]; - annual catches and catch and fishing effort statistics for sharks by gear type, including available historical data [WCPFC Conservation and Management Measure 2006-05, para. 4]; <p>Reporting of port state activities</p> <ul style="list-style-type: none"> • boarding and inspections carried out by its authorised inspection vessels [WCPFC Conservation and Management Measure 2006-08, para. 40]; • actions taken in response to boarding and inspections of their fishing vessels that resulted in observation of alleged violations, including any proceedings instituted and sanctions applied [WCPFC Conservation and Management Measure 2006-08, para. 41]; <p>Reporting of IUU activities</p> <p>A CCM is required to:</p> <ul style="list-style-type: none"> • Immediately report fishing vessels which have been engaged in IUU fishing to the flag State, coastal State, or regional fisheries management organisation concerned [FAO Compliance Agreement, Art. V(2); IPOA-IUU, para. 59]. • Remit collected information from port inspection to the flag State and where appropriate to FAO and relevant regional fisheries management organisations. [IPOA-IUU, para. 58; DAPSM]. • Promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other relevant international organizations of its decision when a Party has denied the use of its port [DAPSM, Article 11.3]. • Transmit to the Executive Director a list of vessels presumed to be carrying out IUU activities in the Convention Area during the current and previous years, accompanied by the supporting evidence concerning the presumption of this IUU activity [WCPFC Conservation and Management Measure 2006-09, para. 4]. • Submit to the Executive Director any additional information which might be relevant for the establishment of the IUU Vessel List [WCPFC Conservation and Management Measure 2006-09, para. 10]. |

ANNEX 4: INFORMATION REQUIRED FOR THE FISHING RECORD

- (a) Name of fishing vessel, registration number, previous names (if known), and port of registry;*
 - (b) Name and address of owner;*
 - (c) Name and nationality of master;*
 - (d) Previous flag (if any);*
 - (e) International Radio Call Sign;*
 - (f) Vessel communication types and numbers (INMARSAT A, B and C numbers and satellite telephone number);*
 - (g) Colour photograph of vessel;*
 - (h) Where and when built;*
 - (i) Type of vessel;*
 - (j) Normal crew complement;*
 - (k) Type of fishing method or methods;*
 - (l) Length;*
 - (m) Moulded depth;*
 - (n) Beam;*
 - (o) Gross register tonnage;*
 - (p) Power of main engine or engines;*
 - (q) The nature of the authorization to fish granted by [country];*
 - (r) Carrying capacity, including freezer type, capacity and number and fish hold capacity.*
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- (a) Name of fishing vessel, registration number, previous names (if known), and port of registry;*
 - (b) Name and address of owner;*
 - (c) Name and nationality of master;*
 - (d) Previous flag (if any);*
 - (e) International Radio Call Sign;*
 - (f) Vessel communication types and numbers (INMARSAT A, B and C numbers and satellite telephone number);*
 - (g) Colour photograph of vessel;*
 - (h) Where and when built;*
 - (i) Type of vessel;*
 - (j) Normal crew complement;*
 - (k) Type of fishing method or methods;*
 - (l) Length;*
 - (m) Moulded depth;*
 - (n) Beam;*
 - (o) Gross register tonnage;*
 - (p) Power of main engine or engines;*
 - (q) The nature of the authorization to fish granted by [country] ;*
 - (r) Carrying capacity, including freezer type, capacity and number and fish hold capacity.*

ANNEX 5: REVIEW OF COUNTRY LEGISLATION AGAINST BENCHMARK MEASURES FOR RESPONSIBLE FISHING

Note that in the following tables, a vacant cell indicates that the country has no legislation specific to this benchmark measure.

REVIEW OF COUNTRY LEGISLATION AGAINST RESPONSIBLE FISHING BENCHMARKS – AUSTRALIA

1. ECOSYSTEM APPROACH TO FISHERIES MANAGEMENT - AUSTRALIA

| Benchmarks | Relevant Country Legislation |
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| <p>Include objectives in legislation relating to ecosystem approach to fisheries management.</p> <p>Adopt measures for the management of migratory species and straddling stocks.</p> <p>Adopt measures to control fishing capacity.</p> | <p>The Fisheries Management Act 1991 (Cth) embodies some of the basic international principles of fisheries management such as sustainable fisheries, ecosystem based management, and precautionary approach.</p> <p>Australia has implemented a range of measures to achieve ecologically sustainable fisheries, based on two requirements of the EPBC Act. The first requirement is that all Commonwealth managed fisheries undergo strategic environmental impact assessment before new management arrangements are brought into effect. The second requirement is that all fisheries based on export of marine species undergo assessment to determine the extent to which management arrangements will ensure the fishery is managed in an ecologically sustainable way.</p> <p>Ecological risk assessments are undertaken for all key ecosystem components. Such assessments include the requirement to assess impacts of fishing on all ecosystem components, including target, bycatch, and protected species, habitats, and communities.</p> <p>The first principle that shall be met under the EPBC Act assessment is that a fishery must be conducted in a manner that does not lead to overfishing, or for those stocks that are overfished, the fishery must be conducted such that there is a high degree of probability that stocks will recover. This principle is supported by two objectives, namely:</p> <ul style="list-style-type: none"> - The fishery shall be conducted at catch levels that maintain ecologically viable stock levels at an agreed point or range, with acceptable levels of probability. - Where the fish stock(s) are below a defined reference point, the fishery will be managed to promote recovery to ecologically viable stock levels within nominated timeframes. |
| <p>Adopt management measures that take into account the interdependence of fish stocks and effects of fishing on species associated with or dependent on harvested species.</p> <p>Adopt measures to minimise waste and bycatch.</p> <p>Adopt measures to eliminate destructive fishing practices.</p> <p>Adopt measures to protect endangered and threatened species; and sensitive and significant habitat (including protected species and closed areas).</p> | <p>The second principle that shall be met under the EPBC Act assessment is that fishing operations should be managed to minimise their impact on the structure, productivity, function and biological diversity of the ecosystem. This principle is supported by three objectives:</p> <ul style="list-style-type: none"> - The fishery is conducted in a manner that does not threaten bycatch species. - The fishery is conducted in a manner that avoids mortality of, or injuries to, endangered, threatened or protected species and avoids or minimises impacts on threatened ecological communities. - The fishery is conducted in a manner that minimises the impact of fishing operations on the ecosystem in general. <p>The EPBC Act has also established accreditation benchmarks for the environmental assessment of fisheries. Such assessment includes:</p> <ul style="list-style-type: none"> - the description of the fishery; - the environment likely to be affected by the fishery; - proposed management arrangements for the fishery; |

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| | <ul style="list-style-type: none">- environmental assessment of the fishery;- management measures and safeguards to ensure ecological sustainability; and- information sources. |
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2. DATA COLLECTION, MONITORING AND RESEARCH - AUSTRALIA

| Benchmarks (requirements of State) | Relevant Country Legislation |
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| Collect data in sufficient detail to facilitate effective stock assessment. | <p>Fisheries agencies in each of the States, Northern Territory and the Commonwealth collect information from commercial fishers in the form of logbooks or catch returns. Basic information usually includes some measure of the amount of fishing effort, the species composition of the catch and where the fishing took place.</p> <p>AFMA may require holders of fishing concessions to keep and maintain logbooks containing information in respect of their activities in that fishery. The content of the logbook and of any return of information from such logbook may extend to information in relation to:</p> <ul style="list-style-type: none"> - the taking of fish under that fishing concession and the sale or disposal of such fish; or - the carrying, landing, transshipping or transporting of fish taken under that fishing concession; or - the receipt or processing of fish taken under that fishing concession and the sale or disposal of fish so received or processed; or - the course, or position at regular intervals, inside or outside the outer limits of the AFZ, of boats to which the fishing concession relates; or - any other matter relevant to the fishing concession in that fishery that is specified in the determination [Fisheries Management Act 1991, Sec. 42]. |
| Collect data on non-target species such as bycatch species and dependent species. | Fisheries data and the associated information collected by relevant authorities in Australia include detailed observations of fishing activities, both fish catch and environmental attributes, and summarised statistics produced by scientific and social analysis. |
| Verify data through appropriate systems. | <p>Data verification systems and independent stock surveys and research are common practices although the requirement for this is not mandated in legislation. AFMA states that its principles of data collection include:</p> <ul style="list-style-type: none"> - Collection, verification, management and analysis of data are an integral part of fisheries management; - Data collection, verification and management and analysis programs should be developed and implemented for all Commonwealth fisheries; - All data collection and verification programs must be developed or approved to ensure appropriate data standards are used and a high level of confidence, quality, and consistency in the information collected; - The collection and verification of data are contestable services which can be undertaken either by AFMA or an AFMA approved supplier to ensure cost effective service delivery. |
| Promote research on fisheries as well as on associated ecosystems, particularly on the study of the profiles of all target and non-target stocks, impacts of new types of gears on fisheries and ecosystems, relationships among populations in the ecosystem and effects of ecosystem changes resulting from fishing pressure, pollution or habitat alteration. | Considerable research has been undertaken within Australia, aimed at advancing the application of ecosystem based fisheries management approaches, and aimed at addressing specific environmental management issues of gear design, bycatch management, stock management, habitat impacts etc. The Fisheries Research and Development Corporation ESD Sub Program in particular has funded and supported much of this research. |

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| <p>Advance the scientific basis for incorporating ecosystem considerations, building on existing and future available scientific knowledge.</p> | |
| <p>Compile fishery-related and other supporting scientific data, including VMS and observer data, in an agreed format and provide such data to relevant subregional or regional organisations and/or States (subject to confidentiality requirements in accordance with national law).</p> <p>Collect and exchange information on suspected IUU fishing, if possible on a real-time basis, in collaboration with FAO, RFMOs and other relevant arrangements, and by actively participating in the International MCS Network.</p> | <p>Fish Stock Agreement which set the standards for data collection and exchange is ratified by Australia and scheduled within the primary commonwealth fisheries legislation.</p> |

3. MANAGEMENT PLANS - AUSTRALIA

| Benchmarks (requirements of State) | Relevant Country Legislation |
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| <p>Develop and implement fisheries management plans which encourage responsible fisheries and sustainable use of marine ecosystems.</p> | <p>AFMA is required to determine plans of management for all fisheries [Fisheries Management Act 1991, Sec. 17(1)]. However, if AFMA is of the view that a plan of management is not warranted for a particular fishery, it may make a determination accordingly [Fisheries Management Act 1991, Sec. 17(1A)].</p> <p>A plan of management for a fishery may:</p> <ul style="list-style-type: none"> - determine the method or methods by which the fishing capacity of the fishery or a part of the fishery is to be measured, which may be or include, but are not limited to, a method based on a particular area, a particular species or type or a particular quantity of fish, a particular kind, size or quantity of fishing equipment, a particular number of boats, a particular period of fishing, or any combination of the above; - determine, or provide for AFMA to determine, the fishing capacity, measured by that method or those methods, permitted for the fishery or a part of the fishery in respect of a particular period or periods; - provide for the management of the fishery by means of a system of statutory fishing rights, and other fishing concessions; - contain a description of the fishery by reference to area, fish species, fishing methods to be employed or any other matter; - subject to section 28, formulate procedures to be followed for selecting persons to whom fishing concessions are to be granted including, in the case of fishing rights: <ul style="list-style-type: none"> (i) the holding of an auction; or (ii) the calling of tenders; - specify the kind and quantity of equipment that may be used in the fishery; - specify the circumstances in which a statutory fishing right may authorise fishing by or from a foreign boat; - impose obligations on the holders of fishing concessions; - prohibit or regulate recreational fishing in the fishery; and - prohibit or regulate fishing for scientific research purposes in the fishery [Fisheries Management Act 1991, Sec. 17(6)]. <p>A plan of management for a fishery must also contain measures directed at reducing to a minimum the incidental catch of fish not taken under and in accordance with that plan and the incidental catch of other species [Fisheries Management Act 1991, Sec. 17(6D)].</p> <p>A plan of management for a fishery must: (a) if the plan makes provision in relation to the management of the fishery by means of a system of statutory fishing rights—provide for registration of persons who are to be eligible for the grant of fishing rights and specify the conditions relevant to such registration; and (b) contain a statement of any right of review that a person has in relation to such registration or the grant, or refusal to make a grant, of a fishing concession [Fisheries Management Act 1991, Sec. 17(7)].</p> |

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| | Australia has adopted a number of management plans, including the Coral Reef Fin Fish Management Plan 2003, East Coast Trawl Management Plan 1999, spanner Crab Management Plan 1999, and Freshwater Management Plan 1999. |
| Develop and implement international NPOAs. | Australia has adopted an AUS NPOA-IUU, Australia Shark-plan, and an assessment report that will be used to formulate an NPOA-Seabirds. |

4. VESSEL REGISTRATION AND MARKING - AUSTRALIA

| Benchmarks (requirements of State) | Relevant Country Legislation |
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| <p>Establish vessel registration systems which establish a genuine link between the State and the ship.</p> | <p>Australian legislation has an established registration system for ships, which includes fishing vessels, and a licensing system which takes into account statutory fishing rights, terms and conditions of fishing concessions, and other requirements for the licensing of national and foreign vessels.</p> <p>Under the <i>Shipping Registration Act 1981</i>, fishing vessels are exempt from compulsory registration [Shipping Registration Act 1981, Sec. 13].</p> <p>If a fishing vessel applies for registration and meet relevant conditions such as tonnage measurement and vessel marking requirements, it will be registered [Shipping Registration Act 1981, Sec. 14].</p> <p>A ship shall not be registered unless and until a certificate relating to the tonnage measurement of the ship is issued [Shipping Registration Act 1981, Sec. 16].</p> |
| <p>Avoid flagging vessels with a history of non-compliance.</p> | <p>A ship may not be registered if it is still registered under the law of a foreign country [Shipping Registration Act 1981, Sec. 17(1)].</p> <p>An application for registration with respect to foreign ships must be accompanied by evidence establishing that the ship is no longer registered under the law of that country or that steps have been taken, or proposed to be taken to close the registration of the ship under the law of that country on or before the registration of the ship [Shipping Registration Act 1981, Sec. 17(2)].</p> <p>Ships under demise charter (or a charter involving a charterer having whole possession and control of the ship) to Australian-based operators may be registered by Australia [Shipping Registration Act 1981, Sec. 14(d)].</p> |
| <p>Issue Certificates of Registry stating that the ship has the right to fly its flag.</p> | <p>Upon the registration of a ship the Registrar shall grant a registration certificate in respect of the ship, in the prescribed form, containing the particulars entered in the Register relating to the ship and such other matters as are prescribed [Division 2, Shipping Registration Act 1981].</p> |
| <p>Develop specific requirements for new and imported vessels.</p> | |
| <p>Maintain records of fishing vessels entitled to fly their flags and authorised to be used for fishing beyond the EEZ.</p> <p>Include in the vessel registry the following information: name of fishing vessel, registration number, previous names (if known/if any) and port of registry; previous flag (if any); International Radio Call Sign (if any); Name and</p> | <p>Australian legislation requires the maintenance of a fishing permit register and high seas register.</p> <p>The following information must be recorded in the particulars required to be entered into the Register of all registered ships:</p> <ul style="list-style-type: none"> Name of the vessel, unique vessel identification number (which, if the vessel has been previously registered, must be the previous number), and home port; |

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| <p>address of owner or owners; where and when built; type of vessel; length; gross register tonnage; moulded depth; beam; power of main engine or engines; type of fishing method or methods; name and address of operator (or manager) or operators managers; Name, street address, mailing address and nationality of the natural or legal persons responsible for managing the operations of the vessel; name, street address, mailing address and nationality of natural or legal person with beneficial ownership of the vessel; name and ownership history of the vessel, and where this is known, the history of compliance by that vessel, in accordance with national laws, with conservation and management measures or provisions adopted at a national, regional or global level.</p> | <ul style="list-style-type: none"> • If previously registered in Australia or elsewhere, the previous registered name/s, previous home port/s, previous identification number/s, and previous place/s of registration (or previous flags); • Radio call sign (if any), names, addresses, nationalities of all persons (natural or corporate) to whom the vessel belongs and the extent of each person's interest in the vessel; • Type, length and year of completion of vessel; • If previously unregistered in Australia, the builder's name, the place of construction, and the builder's identification for (of name of) the vessel; • The name and address of the vessels' registered agent (one of the vessel's operators, charterers or managers) • The vessel's moulded depth amidships, maximum breadth and other dimensions; • The vessel's gross and net or register tonnages; and the vessel's power (brake, indicated or shaft power, if applicable); • Proper marking of the vessel, as prescribed in the regulations, including its name, identification number and home port; • Details of any transfer of the whole or any partial ownership of the vessel; • In the case of foreign vessels under demise charter to Australian-based operators, a copy of the charterparty and other details generally consistent with the details required for the registration of Australian-owned vessels, including the names, addresses, and nationalities of the charterers and the extent of each charterer's interest in the chartered vessel; • Where appropriate, information as to in what respects the vessel's present description differs from any previously registered description of the vessel; • The vessel's speed and method of propulsion and number of decks, masts, bulkheads; • Details of all mortgages (and other caveats) over the vessel, including the names, addresses and nationalities of all mortgages and details of the discharge of any mortgage; and • Evidence of title to the vessel, such as a bill of sale, if it was previously registered by another country [Shipping Registration Act 1981, Shipping Registration Regulations, AUS NPOA-IUU, para. 78]. |
| <p>Establish regulations on the marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognisable vessel and gear marking systems.</p> | <p>A ship cannot be registered until it has been marked in accordance with the regulations in place [Shipping Registration Act 1981, Sec. 26(1)].</p> |

5. AUTHORISATION TO FISH BY THE FLAG STATE AND EFFECTIVE CONTROL OVER NATIONALS - AUSTRALIA

| Benchmarks (requirements of State) | Relevant Legislation |
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| <p>Establish a licensing system and associated regulations to prohibit fishing on the high seas, in the waters of another state or waters of an RFMO, by vessels which are not duly licensed or authorised to fish, or fishing otherwise than in accordance with the terms and conditions of the license.</p> | <p>AFMA may grant a person a fishing permit authorising the use by that person, or by a person acting on that person's behalf, of an Australian boat for fishing in a specified area of the AFZ or a specified fishery subject to the conditions of the permit [Fisheries Management Act 1991 (Cth), Sec. 32].</p> <p>AFMA may grant a person a scientific permit in respect of a specified boat (including a foreign boat) authorising the use by that person, or by a person acting on that person's behalf, for scientific research purposes in a specified area of the AFZ or a specified fishery subject to the conditions of the permit [Fisheries Management Act 1991 (Cth), Sec. 33].</p> <p>AFMA may grant to a person a fish receiver permit authorising the person to receive fish from a person engaged in commercial fishing in a specified fishery subject to the conditions of the permit [Fisheries Management Act 1991 (Cth), Sec. 91].</p> <p>AFMA is required to keep a Register of Statutory Fishing Rights [Fisheries Management Act 1991, Sec. 44].</p> <p>AFMA must register each fishing right that it, or a Joint Authority managing a fishery that is (or part of which is) managed in accordance with the law of the Commonwealth, grants by entering in the Register the following particulars:</p> <ul style="list-style-type: none"> - the name of the person to whom the fishing right is granted; - a description of the fishing right; - the period (if any) for which the fishing right is granted; - the managed fishery in relation to which the fishing right is granted; - the conditions of the fishing right; and - such other particulars (if any) as are prescribed [Fisheries Management Act 1991, Sec. 45]. <p>The Register should also make notation of the suspension and cancellation of fishing rights [Fisheries Management Act 1991, Sec. 50].</p> <p>AFMA is required to establish and maintain a Register relating to fishing permits called the Fishing Permits Register [Fisheries Management Act 1991, Sec. 57G(1)].</p> <p>AFMA must register each fishing permit that it grants under section 32 by entering in the Fishing Permits Register:</p> <ul style="list-style-type: none"> - the name of the person to whom the permit is granted; and - the area of the AFZ, or the fishery, that is specified in the permit; and - the period for which the permit remains in force; and |

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| | <ul style="list-style-type: none"> - if the permit is granted in respect of a nominated boat or if, after the grant of the permit, a boat is nominated—the name and distinguishing symbols for the nominated boat; and - such other particulars (if any) as are prescribed [Fisheries Management Act 1991, Sec. 57H]. <p>The suspension, cancellation or cessation of a fishing concession, as well as the reasons for them should be included in the Fishing Permits Register [Fisheries Management Act 1991, Sec. 57H(3)].</p> <p>AFMA is required to establish and maintain a separate register called the High Seas Register, containing particulars of all Australian-flagged boats that are authorised from time to time to engage in fishing activities on the high seas [Fisheries Management Act 1991, Sec. 57A(1)].</p> <p>AFMA must include in the Register:</p> <ul style="list-style-type: none"> - the identifying particulars of each Australian flagged boat that is authorised by a fishing concession to be used for fishing activities on the high seas; and - the name and address of the owner or owners of the boat; and - the nature of the fishing concession, how it covers fishing activities on the high seas and the period for which it is granted. - the identifying particulars of an Australian flagged boat such as <ul style="list-style-type: none"> (a) its name and any previous name or names (if known to AFMA); (b) its registration number; (c) its port of registry; (d) any previous flag under which it has sailed; (e) its international radio call sign (if any); (f) the place where, and the period when, it was built; (g) its type; (h) its length; (i) such other particulars (if any) as are prescribed [Fisheries Management Act 1991, Sec. 57B] <p>The suspension, cancellation or cessation of a fishing concession, as well as the reasons for them should be included in the High Seas Register [Fisheries Management Act 1991, Sec. 57B(4)].</p> |
| <p>Take into account the history of violations by fishing vessels and operators when considering applications for authorisation to fish by fishing vessels flying its flag</p> | <p>(1) Subject to subsection (5), AFMA must not grant a fishing concession authorising the use for fishing activities on the high seas of an Australian -flagged boat that was previously registered in a foreign country and authorised by that country for such fishing activities if:</p> <ul style="list-style-type: none"> (a) AFMA believes, on reasonable grounds, that the boat is a boat to which subsection (2) or (3) applies; and (b) subsection (4) does not apply. <p>(2) This subsection applies to an Australian -flagged boat that was previously registered in a foreign country that is a party to the Compliance Agreement if:</p> |

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| | <p>(a) that foreign country has, because the owner or operator of that boat has undermined international conservation and management measures, suspended the authority to use that boat on the high seas for a period and that period has not expired; or</p> <p>(b) that foreign country has, because the owner or operator of that boat has undermined international conservation and management measures, cancelled the authority to use that boat on the high seas and a period of 3 years has not elapsed since that cancellation.</p> <p>(3) This subsection applies to an Australian-flagged boat that was previously registered in a foreign country that is not a party to the Compliance Agreement if, on the basis of information available to it, AFMA is satisfied that:</p> <p>(a) the foreign country has, because the owner or operator of that boat has undermined international conservation and management measures, suspended the authority to use that boat on the high seas for a period and that period has not expired; or</p> <p>(b) the foreign country has, because the owner or operator of that boat has undermined international conservation and management measures, cancelled the authority for use of that boat on the high seas and a period of 3 years has not elapsed since that cancellation.</p> <p>(4) If the person seeking the grant of a fishing concession authorising the use of a boat to which subsection (2) or (3) applies for fishing activities on the high seas satisfies AFMA that the owner or operator of the boat at the time the authority to use it was suspended or cancelled has no present legal, beneficial or financial interest in, or control of, the boat, AFMA may grant such a fishing concession authorising the use of the boat despite the application of subsection (2) or (3).</p> <p>(5) Despite subsection (1), AFMA may grant a fishing concession authorising the use of an Australian-flagged boat to which subsection (2) or (3) applies for fishing activities on the high seas if, having regard to the circumstances in which a foreign country's authorisation for the use of that boat for fishing activities on the high seas was suspended or cancelled, AFMA is satisfied that the grant of that fishing concession will not be likely to undermine international conservation and management measures.</p> <p>(6) Nothing in this section implies that AFMA may not take other matters into consideration when deciding whether or not to grant a fishing concession authorising the use of an Australian-flagged boat for fishing activities on the high seas.</p> <p>[Fisheries Management Act, Section 16B]</p> |
| <p>Authorise the use of vessels flying its flag for fishing in the high seas, in waters of another state, or waters of an RFMO, only where it is able to exercise effectively its responsibilities in respect of such vessels under the LOSC, the UN Fish Stocks Agreement, and the WCPF Convention, including ensuring that fishing vessels comply with the provisions of such instruments and making it an</p> | <p>It is a condition of a fishing concession or scientific permit authorising the use of an Australian-flagged boat outside the AFZ that the master of the boat facilitate boarding of the boat and cooperate with the inspection of the boat by officials of a foreign country acting in accordance with the UN Fish Stocks Agreement [Fisheries Management Act 1991, Sec. 43].</p> <p>A person commits an offence if:</p> |

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| <p>offence under national legislation to contravene international conservation and management measures and enforce such measures irrespective of where violations occur.</p> | <p>(a) the person uses a boat for fishing; and (b) the person contravenes an international fisheries management measure in relation to the fishing; and (c) the boat is on the high seas; and (d) the boat is a foreign boat.</p> <p>The above does not apply if the act that contravenes the international fisheries management measure is fishing that is authorised by an authorisation (however described) issued under the law of the country of nationality of the boat. [Fisheries Management Act 1991, Section 105E and Section 105EA]</p> <p>It is an offence to be an Australian national acting in contravention of an international fisheries management measures on a foreign boat in foreign waters [Fisheries Management Act 1991, Section 105F and Section 105FA]</p> <p>It is an offence for a person to use a foreign fishing boat on the high seas where the law of the country of nationality of the boat requires the fishing to be authorised (however described); and the fishing is not so authorised [Fisheries Management Act 1991, Section 105H and Section 105I].</p> |
| <p>Require vessels fishing on the high seas, in the waters of another state or waters of an RFMO to carry the license on board at all times and to produce it on demand for inspection by a duly authorised person.</p> | |
| <p>Create powers to include appropriate terms and conditions on fishing licence (data collection, VMS, Observers).</p> | <p>Licence conditions may include:</p> <ul style="list-style-type: none"> - the fish that may be taken; - the quantity of the fish that may be taken; - the rate at which fish may be taken; - the methods or equipment that may be used to take fish; or - the methods or equipment that may be used to process or carry the fish [Fisheries Management Act 1991 (Cth), Sec. 32(7)]. |
| <p>Investigate and take any action necessary when other States report that they have clear grounds to believe that proper jurisdiction and control with respect to a ship has not been exercised by a flag State.</p> | |
| <p>Effectively regulate transshipment in order to combat IUU fishing activities and to prevent laundering of illegal catches, including (a) ensure that vessels involved in transshipment at sea have a prior authorisation to tranship and report to the national fisheries administration or designated institution the details of such transshipment, details of the vessels, and the port of landing of the transhipped catch (b) ensure that at-sea transshipment and processing of</p> | <p>103 Foreign boats not to land fish in Australia</p> <p>A person is guilty of an offence if:</p> <p>(a) the person is the master of a foreign boat; and (b) the person intentionally lands or tranships (or causes to be landed or transhipped) fish from the boat at a place; and</p> |

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| <p>fish and fish products in coastal State waters are authorised or conducted in conformity with appropriate management regulations (c) establish regulations on transshipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined.</p> | <p>(c) the place is in Australia or an external Territory and the person is reckless as to that fact.</p> <p>The above does not apply if:</p> <p>(a) the fish were landed or transhipped in accordance with:</p> <ul style="list-style-type: none"> (i) the terms of a foreign fishing licence; or (ii) an entry under paragraph 21(2)(b) of the Torres Strait Fisheries Act 1984; or (iii) the terms of an approval given by the Minister; or <p>(b) the person has a reasonable excuse for causing the fish to be landed or transhipped.</p> <p>The Minister may give a person written approval of the landing or transshipment of fish. The approval may be expressed to be subject to conditions.</p> <p>The conditions to which an approval may be expressed to be subject include:</p> <p>(a) a condition that the person (the approved person) to whom the approval relates notify a specified person of the landing or transshipment; and</p> <p>(b) a condition that the approved person give a specified person a return of the species and quantity of fish landed or transhipped; and</p> <p>(c) a condition that the landing or transshipment occur under the supervision of a specified person.</p> <p>An offence against this section is an indictable offence but may be heard and determined, with the consent of the prosecutor and the defendant, by a court of summary jurisdiction.</p> <p>If an offence is dealt with by a court of summary jurisdiction, the penalty that the court may impose is a fine not exceeding 250 penalty units.</p> <p>An offence under subsection (1) is an offence of strict liability.</p> |
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6. COASTAL STATE AUTHORISATION TO FISH - AUSTRALIA

| Benchmarks (requirements of State) | Relevant Legislation |
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| <p>Formulate laws and regulations pertaining to the licensing of foreign fishing vessels and fishers and equipment in their EEZs.</p> | <p>AFMA may grant a person a foreign fishing license authorising the use of a specified foreign boat by that person, or a person acting on that person’s behalf, for commercial fishing in a specified area of the AFZ or a specified fishery subject to the conditions of the permit [Fisheries Management Act 1991 (Cth), Sec. 34].</p> <p>If: (a) AFMA has granted a foreign fishing licence under this section in respect of a particular fishery; and (b) that fishery is a fishery to which subsection 41A(1) applies; and (c) AFMA subsequently, under section 41A, gives a direction in respect of that fishery to the effect that fishing is not to be engaged in in any part of the fishery, or in a particular area of the fishery, during a period or periods specified in the direction; it is a condition of the licence that the holder of the licence comply with the terms of the direction.</p> <p>AFMA may, at any time, subject to such conditions (if any) as are specified in the endorsement, endorse a licence so as to extend it to authorise the boat to be brought into a specified port in Australia or in an external Territory at such time as is, or at such times as are, specified in the endorsement.</p> <p>AFMA may, by written notice given to the holder of a licence in respect of which an endorsement under subsection (7) is in force, revoke the endorsement.</p> <p>AFMA may, by written notice given to the holder of a licence, whether or not at the request of the holder, vary or revoke a condition of the licence (not being a condition mentioned in subsection (4) or (6A)) or specify a condition or further condition to which the licence is to be subject.</p> <p>A licence ceases to be in force if the holder of the licence surrenders the licence by written notice given to AFMA.</p> <p>A licence is to be in the approved form.</p> <p>AFMA may grant to a person a foreign master fishing license authorising the person to be in charge of a foreign boat that is being used for commercial fishing in a specified area of the AFZ or a specified fishery subject to the conditions of the license [Fisheries Management Act 1991, Sec. 40].</p> |
| <p>Ensure that a license is issued only if the vessel concerned is entered on a record of vessels.</p> | |
| <p>Avoid licensing a vessel to fish in its waters if that particular vessel has a history of IUU fishing.</p> | <p>An application made for the grant of a foreign fishing licence must provide AFMA with such information as it reasonably requires for a proper consideration of the application.</p> |

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| | <p>In considering whether to grant a foreign fishing licence, AFMA must give effect to any obligation undertaken by the Commonwealth contained in an agreement entered into by the Commonwealth that is relevant in the particular case.</p> <p>[Fisheries Management Act, Section 34].</p> |
| <p>Condition licences with:</p> <ul style="list-style-type: none"> - Species to be caught and catch quotas - Seasons and areas of fishing, the types, sizes, and amount of gear, and the type and size of fishing vessel - Information required from fishing vessels - Requirement to participate in observers programs - Requirements to install VMS - Details of permitted landing of catch | <p>A foreign fishing licence is granted subject to the following conditions:</p> <ul style="list-style-type: none"> (a) if the licence authorises commercial fishing in a specified managed fishery—the holder of the licence must comply with any obligations imposed by, or imposed by AFMA under, the relevant plan of management on the holder of such a licence; (b) if the licence authorises commercial fishing in a specified managed fishery—the licence will cease to have effect in relation to the fishery if the plan of management for the fishery is revoked under subsection 20(3); (c) the licence may be cancelled under section 39; (d) no compensation is payable because the licence is cancelled. <p>A licence granted under this section:</p> <ul style="list-style-type: none"> (a) is subject to the condition that, while the boat to which the licence relates is in the AFZ, the person in charge of the boat is the holder of a foreign master fishing licence; and (b) is subject to such other conditions as are specified in the licence; and (c) comes into force on the day specified for the purpose in the licence or, if no day is so specified, on the day on which it is granted; and (d) subject to this Act, remains in force until the day specified for the purpose in the licence, being a day not later than <ul style="list-style-type: none"> (a) 12 months after the day on which it came into force. <p>Without limiting the operation of subsection (5), the conditions that may be specified in a licence include conditions relating to any matter that may be included in a fishing permit granted under section 32.</p> <p>[Fisheries Management Act, Section 34].</p> |

7. MONITORING ENFORCEMENT AND SURVEILLANCE - AUSTRALIA

| Benchmarks (requirements of State) | Relevant Country Legislation |
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| Establish national fisheries MCS measures. | <p>The fisheries regulations of Australia also have comprehensive provisions with respect to fisheries surveillance and enforcement, which include taking enforcement actions against fishing vessels without nationality and fishing vessels on the high seas which have conducted illegal fishing activities in the Australian Fishing Zone, consistent with international law.</p> <p>AFMA is required to appoint an officer for the purpose of conducting surveillance and enforcement according to the Fisheries Management Act 1991.</p> |
| Develop and implement a VMS in accordance with regional, subregional and global programmes, and require that flagged vessels and vessels of flagged by other States that fish in its EEZ, carry VMS equipment on board. | <p>VMS is required in most major fisheries, including all vessels licensed in the South Tasman Rise (orange roughy), western deepwater trawl, eastern tuna and billfish, northern prawn, Bass Strait central zone scallop and south east non-trawl fisheries. In addition, any foreign fishing vessel seeking to fish in Australian waters must carry and operate AFMA-approved VMS related equipment [AUS NPOA-IUU, para. 44].</p> |
| Adopt and implement a program of observers on board vessels. | <p>The Australian Fisheries Management Act 1991 (Cth) provides that regulations may provide for the placement of persons as observers on board foreign fishing boats that will be, or are, operating outside the AFZ only if the placement is authorised under a regional arrangement, or a bilateral or multilateral treaty to which Australia is a party [Fisheries Management Act 1991 (Cth), Sec. 8A(1) and (2)].</p> <p>There is at present a requirement for 100% observer coverage in Australia's HIMI fishery and several other fisheries operate observer schemes on a limited coverage [AUS NPOA-IUU, para. 44].</p> |
| Regulate for permitting observers of other States or representing an RFMO, to carry out functions agreed under subregional or regional observer programs. | <p>The operator and each member of the crew of the vessel shall allow and assist any person identified as an observer by the Pacific Island parties to:</p> <ul style="list-style-type: none"> (a) board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Pacific Island parties to the Government of the United States; (b) have full access to and the use of facilities and equipment on board the vessel which the observer may determine is necessary to carry out his or her duties; have full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish; remove samples; have full access to the vessel's records, including its log and documentation for the purpose of inspection and copying; and gather any other information relating to fisheries in the Licensing Area; without interfering unduly with the lawful operation of the vessel; (c) disembark at the point and time notified by the Pacific Island parties to the Government of the United States; and (d) carry out his or her duties safely; <p>and no operator or crew member of the vessel shall assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with an observer in the performance of his or her duties.</p> |

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| | [Annex 1 to Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America] |
| <p>Encourage harmonisation of national MCS frameworks among neighbouring countries, including joint enforcement operations with other national enforcement agencies.</p> <p>Provide financial and technical assistance to developing countries in the implementation of MCS capabilities, including VMS, with the support of FAO and relevant international financial institutions and mechanisms.</p> | No legislative basis. |
| <p>Formulate and apply fair, consistent and transparent sanctions with sufficient severity to effectively prevent IUU fishing and further deprive offenders from accruing benefits from such activities.</p> <p>Withdraw, suspend, or cancel an authorisation to fish of a vessel if it has been established that the vessel has undermined international conservation and management measures.</p> | <p>Penalties for fisheries offences include the application of fines and cancellation or suspension of fishing concessions, forfeiture of boat, net, trap or equipment, fish on board, and/or the proceeds of the sale of any fish, and imprisonment depending on the offence [Fisheries Management Act 1991 (Cth), Part 6 Divisions 4, 5 and 6].</p> <p>An Australian-flagged boat involved in contravening regional management measures must not be allowed to fish in on the high seas for straddling and highly migratory fish stocks during the period when the following events occur: the person pays the fine, a penalty has been imposed on the person for failure to pay the fine, the court orders the forfeiture of the boat, and the conviction of the person for the offence for which the person was order to pay the fine was quashed [Fisheries Management Act 1991 (Cth), Sec. 16A(2)]. Involvement in the following offences limit the authorisation of the use of the boat:</p> <ul style="list-style-type: none"> - fishing in contravention of a provision relating to the conservation of fish stocks on the high seas - failing to maintain accurate records of catch - failing to provide an accurate return of fish taken, carried, transhipped or processed - taking, carrying, transhipping or processing more fish than authorised by the concession, permit or order; - changing or hiding the markings of the boat [Fisheries Management Act 1991, Sec. 16(3)]. <p>An Australian-flagged boat that was previously registered in a foreign country that is party to the FAO Compliance Agreement must not be given fishing concessions if AFMA has reasonable grounds to believe that:</p> <ul style="list-style-type: none"> - the foreign country has, because the owner or operator of that boat has undermined international conservation and management measures, suspended the authority to use that boat on the high seas for a period which has not yet expired; - the foreign country has cancelled the authority to use that boat on the high seas and a period of 3 years has not elapsed since that cancellation [Fisheries Management Act 1991, Sec. 16B(1), (2), and (3)]. - Only when AFMA is satisfied that the owner or operator of the boat at the time the authority was suspended or cancelled has no present legal, beneficial or financial interest in or control of the boat, |

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| | <p>or that the grant of that fishing concession will not be likely to undermine international conservation and management measures [Fisheries Management Act 1991, Sec. 16B(4) and (5)].</p> <p>The Fisheries Management Act 1991 (Cth) provides for the suspension of fishing concessions if there is reasonable grounds to believe that there has been a contravention of a condition of the concession and if the holder of a concession made a statement or furnished information that was false or misleading [Fisheries Management Act 1991, Sec. 38(1)]. A fishing concession may be cancelled if the holder of the concession is convicted of an offence against the Fisheries Management Act 1991 or any other law of the Commonwealth relating to fishing or against a law of New Zealand, Papua New Zealand, or a State or Territory relating to fishing [Fisheries Management Act 1991, Sec. 39].</p> <p>The penalty for illegal fishing by foreign vessels larger than 25 metres in length was increased from \$550,000 to \$825,000 [AUS NPOA-IUU, para. 40].</p> <p>A seized property may be released subject to certain conditions, including the payment of security such as payment of fines, value of the property forfeited, and pursuit costs [Fisheries Management Act 1991 (Cth), Sec. 88].</p> <p>An FSA boat being investigated for high seas offences may be released if the appropriate Authority has requested Australia or AFMA to release the boat to the authority [Fisheries Management Act 1991 (Cth), Sec. 88A].</p> |
| <p>Ensure that a vessel which has been involved in the commission of a serious violation of conservation and management measures for straddling and highly migratory fish stocks does not engage in fishing operations on the high seas of until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with.</p> | <p>AFMA must not authorise the use of an Australian-flagged boat for fishing on the high seas for a conserved fish stock during the period specified in subsection (2), if:</p> <p>(a) a court has convicted a person of an offence described in subsection (3) involving the use of the boat; and</p> <p>(b) the court has ordered the person to pay a fine for the offence (whether or not the person has also been sentenced to imprisonment for the offence); and</p> <p>(c) the court has not ordered the forfeiture of the boat.</p> <p>(2) Period for which AFMA must not authorise use of boat: The period starts when the person is ordered to pay the fine and ends when one of the following events occurs:</p> <p>(a) the person pays the fine;</p> <p>(b) a penalty is imposed on the person for failure to pay the fine;</p> <p>(c) the court orders the forfeiture of the boat (for the offence or another offence);</p> <p>(d) the conviction of the person for the offence for which the person was ordered to pay the fine is quashed. [Fisheries Management Act, Section 16A].</p> |
| <p>A coastal state is required to:</p> <ul style="list-style-type: none"> • Establish and implement national and internationally-agreed boarding and inspection regime consistent with international law. | <p>An officer is given the power to:</p> <ul style="list-style-type: none"> - for the purposes of boarding a boat that is at a place where the officer may board it <ul style="list-style-type: none"> i. require the master to stop the boat at such a place to allow the officer to board it; and |

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| <p>An Inspecting State is required to:</p> <ul style="list-style-type: none"> • Board and inspect fishing vessels through duly authorised inspectors. • Inspect the vessel, its licence, gear, equipment, records, fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures. • Communicate without delay the results of that investigation to the flag State where the flag State authorises the inspecting State to investigate an alleged violation. <p>A flag State is required to:</p> <ul style="list-style-type: none"> • Respond to the notification of the investigating State within 3 working days of its receipt. • Take the necessary enforcement action with respect to the vessel. • Authorise the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel. • Ensure that vessel masters accept and facilitate prompt and safe boarding and disembarkment by the inspectors, and cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures. • Ensure that its vessel masters do not interfere with the inspectors in the performance of their duties; allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection; ensure that vessel masters provide reasonable facilities to the inspectors. • Suspend the vessel's authorisation to fish and order the vessel to return immediately to port if the master does not comply with direction. Advise the inspecting State of the action it has taken when the master has refused to cooperate with the inspector. • Allow the relevant authorities of a coastal State to board and inspect its vessel on the high seas if there are reasonable grounds for believing that the vessel has been engaged in unauthorised fishing of straddling and highly migratory fish stocks within an area under the jurisdiction of a coastal State. <p>A port state is required to:</p> <ul style="list-style-type: none"> • Carry out the inspection of documents, fishing gear and catch on board fishing vessels when a fishing vessel is in its ports or offshore terminals • Collect information during inspection of fishing vessels at port such as the flag State of the vessel and identification details; name, nationality, and qualifications of the master and the fishing master; fishing gear; catch on | <ul style="list-style-type: none"> ii. use any reasonable means consistent with international law to stop the boat (including firing at or into the boat after firing a warning shot, and using a device to prevent or impede use of the system for propelling the boat), if the master does not stop the boat as required and the boat is not an Australian flagged boat; - board a boat in the AFZ or in Australia or an external Territory or a boat that the officer has reasonable grounds to believe has been used, is being used, or is intended to be used, for fishing in the AFZ and may: <ul style="list-style-type: none"> i. search the boat for fish, for equipment that has been used, is being used, is intended to be used or is capable of being used for fishing or for any document or record relating to the fishing operations of the boat; and ii. break open any hold, compartment, container or other receptacle on the boat that the officer has reasonable grounds to believe contains anything that may afford evidence as to the commission of an offence against this Act; - search without warrant: <ul style="list-style-type: none"> i. a person on a boat that the officer reasonably suspects is a foreign boat used in an offence or a foreign boat used as the support boat in an offence; ii. the person's clothing to find out whether there is hidden on the person or in the clothing; iii. a weapon; or iv. a thing capable of being used to inflict bodily injury on another person; or v. a thing that may afford evidence as to the commission of an offence - board a boat in relation to which a fishing concession is in force for the purpose of ascertaining whether a condition of the fishing concession or a provision of a temporary order is being, or has been, complied with and, may search the boat and break open any hold, compartment, container or other receptacle on the boat; - where the officer has reasonable grounds to believe that there is on any land or in any premises anything that may afford evidence as to the commission of an offence against the Fisheries Management Act 1991 (Cth), with the consent of the owner or occupier of the land or premises or under a warrant, enter the land or premises; search the land or premises and break open and search any cupboard, drawer, chest, trunk, box, package or other receptacle, in which the officer has reasonable grounds to believe that there is any such thing; and examine and take possession of, or secure against interference, any such thing that the officer has reasonable grounds to believe may afford evidence as to the commission of an offence against the Act; - where the officer has reasonable grounds to believe that there is in any vehicle or aircraft anything that may afford evidence as to the commission of a fisheries offence, stop and detain the vehicle or detain the aircraft; enter and search the vehicle or aircraft; break open and search any compartment, container or other receptacle in which the officer has reasonable grounds to believe there is any such thing; and examine and take possession of, or secure against interference, any such thing that the officer has reasonable grounds to believe may afford evidence as to the commission of an offence; - examine any equipment found in any place, being equipment that the officer has reasonable grounds to believe has been used, is being used, or is intended to be used, for fishing in the AFZ; |
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| <p>board, including origin, species, form, and quantity; total landed and transhipped catch; and other information required by relevant regional fisheries management organisations or other international agreements.</p> <ul style="list-style-type: none"> • In case of appropriate management arrangement with the flag State of the vessel, invite that State to participate in the inspection. • Inspect the number of vessels in its ports required to reach an annual level of inspection sufficient to achieve the objective of this Agreement. Seek to agree on the minimum levels for inspection of vessels through, as appropriate, regional fisheries management organisations, FAO or otherwise. • In determining which vessels to inspect, give priority to: (1) vessels that have been denied entry or use of a port in accordance with this Agreement; (2) requests from other relevant Parties, States or regional fisheries management organizations that particular vessels be inspected, particularly where such requests are supported by evidence of IUU fishing or fishing related activities in support of such fishing by the vessel in question; and (3) other vessels for which there are clear grounds for suspecting that they have engaged in IUU fishing or fishing related activities in support of such fishing. | <ul style="list-style-type: none"> - seize, detain, remove or secure: <ul style="list-style-type: none"> i. any fish that the officer has reasonable grounds to believe has been taken, processed, carried or landed in contravention of the Fisheries Management Act 1991 (Cth); ii. any boat, net, trap or other equipment that the officer has reasonable grounds to believe has been used, is being used or is intended to be used in contravention of the Act; or iii. any document or other thing that the officer has reasonable grounds to believe may afford evidence as to the commission of an offence against the Act; - seize all or any of the following that are forfeited to the Commonwealth: a boat; a net, trap or other equipment; and fish; - enter on land or premises specified in a fish receiver permit for the purpose of finding out whether a condition of the permit is being, or has been, complied with or whether a person is contravening or has contravened a provision of the Fisheries Management Act 1991 (Cth); - with the consent of the holder of a fish receiver permit or under a warrant, seize any thing found during the course of a search that the officer believes, on reasonable grounds, may provide evidence of a contravention of the Act; - without warrant, arrest a person whom the officer has reasonable grounds to believe has committed an offence against this Act; - if the officer has reasonable grounds to believe that a boat has been used, is being used or is intended to be used in contravention of the Act, require the master of the boat: <ul style="list-style-type: none"> i. if the boat is at a place in Australia or a Territory—to remain in control of the boat at that place; or ii. if the boat is not at a place in Australia or a Territory—to bring the boat to such a place, or to a place at sea, specified by the officer and to remain in control of the boat at that place; iii. until an officer permits the master to depart from that place; - require the master of a boat to take the boat to another place in Australia or in a Territory, or to a place at sea, specified by the officer and to remain in control of the boat at that place until an officer permits the master to depart from that place; - bring a boat that the officer has reasonable grounds to believe has been used, is being used or is intended to be used in contravention of the Fisheries Management Act 1991 (Cth) to a place in Australia or in a Territory (whether or not the boat has previously been brought to another place or other places) and may remain in control of that boat pending the taking and determination of proceedings in respect of that contravention; - require the master of a boat to produce any fishing concession or Treaty licence, or evidence of the grant of any such concession or licence, for or in respect of the boat; - take copies of, or extracts from, a fishing concession, Treaty licence or any other document; - require the master of a boat in relation to which a fishing concession is in force under this Act or a Treaty boat in respect of which a Treaty licence is in force to give information concerning the boat and its crew and any person on board the boat; - require the master of a boat to cause to be lifted from the sea any equipment that the officer has reasonable grounds to believe is being, or has been, used by a person on board the boat in |
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| | <p>contravention of the Act;</p> <ul style="list-style-type: none"> - require a person who is on board a boat in relation to which a fishing concession under the Act is in force, or a Treaty boat in respect of which a Treaty licence is in force, or who is engaged in fishing in the AFZ, or whom he or she reasonably suspects of having committed an offence against the Act, to state the person's name and address; - require a person found on any land or premises entered or in any vehicle or aircraft detained or searched: <ul style="list-style-type: none"> i. to state the person's name and address; or ii. (ii) to produce any documents in the person's possession or under the person's control relating to any fish found on the land or in the premises, vehicle or aircraft; or iii. (iii) to give information concerning any such fish; and - sell or otherwise dispose of any fish seized by him or her under this Act [Fisheries Management Act 1991 (Cth), Sec. 84(1)]. <p>If an officer takes any action, the officer must, within 7 days after the action is taken, give written notice of the grounds for the taking of the action to the person believed by the officer: to have taken, processed, carried or landed the fish, as the case may be; to be the owner of the boat; or to have used, to be using or to be intending to use the net, trap or other equipment, as the case may be [Fisheries Management Act 1991 (Cth), Sec. 84(1A)].</p> <p>An officer may exercise, with respect to boats (including foreign boats) and persons (including foreign nationals) at a place at sea outside the AFZ but not within the territorial sea of another country, a power conferred on the officer if: (a) one or more officers (whether or not including the officer exercising the power) have pursued the person or boat from a place within the AFZ to such place; and (b) the pursuit was not terminated or interrupted at any time before the officer concerned arrived at such a place with a view to exercising that power [Fisheries Management Act 1991 (Cth), Sec. 87(1)].</p> <p>Officers may also apply their surveillance and enforcement powers in cases of FSA boat on high seas after illegally fishing in AFZ, FSA boat illegally fishing on the high seas, FSA boat in Australian waters, and FSA boat in a foreign country or waters, Australian-flagged boat beyond AFZ, and boat on high seas without nationality [Fisheries Management Act 1991 (Cth), Sec. 87A and 87B].</p> <p>The following procedure is followed with respect to exercising powers on FSA boat:</p> <ul style="list-style-type: none"> - Show documents to the master of the vessel; - Give notice to flag state for boat; - Leave quickly after finding no evidence; - Give report of exercise of powers; and - Report to note master's statements [Fisheries Management Act 1991 (Cth), Sec. 87F]. <p>An officer must not exercise force unless it is necessary to do so to ensure the safety of an officer; or to</p> |
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| | overcome obstruction of an officer in the exercise of that officer's powers. The force use must not be more than is reasonably required [Fisheries Management Act 1991 (Cth), Sec. 87J]. |
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8. PORT STATE MEASURES - AUSTRALIA

| Benchmarks (requirements of State) | Relevant Country Legislation |
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| <p>Strengthen its measures in ports for fishing vessels, consistent with international law, in order to prevent, deter, and eliminate IUU fishing.</p> <p>Ensure that measures are applied to vessels in a fair, transparent, and non-discriminatory manner.</p> | <p>AFMA may, upon application made in the approved form, if it appears to AFMA to be appropriate to do so for the purpose of monitoring movements of foreign fishing boats, grant to a person a port permit authorising the person, or a person acting on that person's behalf to bring a specified foreign fishing boat in respect of which a foreign fishing licence is not in force:</p> <ul style="list-style-type: none"> - from a point outside the AFZ to a specified port in Australia or in an external Territory; and - from that port to a point outside the AFZ [Fisheries Management Act 1991, Sec. 94]. <p>A Collector of Customs must not grant a Certificate of Clearance in respect of a ship about to depart from an Australian port to a place outside Australia until the master of the ship has declared to the Collector the nationality of the ship [Shipping Registration Act 1981, Sec. 31].</p> |
| <p>Publicise ports to which foreign-flagged vessels may be permitted admission and ensure that such ports have the capacity to conduct inspections.</p> | <p>In general, Australia restricts port access by and the landing of catch from foreign fishing vessels.</p> |
| <p>Require fishing vessels and vessels involved in fishing-related activities seeking permission to enter its ports to provide reasonable advance notice of their entry into port, a copy of their authorization to fish, details of their fishing trip and quantities of fish on board, with due regard to confidentiality requirements, in order to ascertain whether the vessels have engaged in or supported IUU fishing.</p> | <p>The current requirements are for fishing vessels to seek prior permission to enter any Australian port (except in cases of force majeure or distress) and to obtain separate Ministerial level approval to be exempt from a general prohibition on landing catch. Applicants for foreign fishing vessel port access or catch landing are required to give reasonable notice and provide other information [AUS NPOA-IUU, para. 93].</p> |
| <p>Adopt regulations empowering the relevant national authorities to prohibit landing and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas; and/or when a party 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.</p> | <p>A person is not permitted to bring into an Australian port, a foreign fishing vessel unless in accordance with a (a) a foreign fishing licence or a port permit; or (b) the provisions of a prescribed agreement between the Commonwealth and another country; or (c) the direction of an officer exercising powers under section 84 or a person exercising powers under another law of the Commonwealth or a law of a State or Territory [Fisheries Management Act 1991, Section 102].</p> |
| <p>Deny the use of its ports for landing, transshipping, packaging and processing of fish and for other port services, inter alia, refuelling and resupplying, maintenance and drydocking, to a vessel which is in port but has been determined to have engaged in IUU fishing.</p> | <p>The master of a foreign boat cannot land or tranship fish in an Australian port without the permission of the Minister [Fisheries Management Act 1991, Section 103].</p> |

9. CATCH CERIFICATION - AUSTRALIA

| Benchmarks (requirements of State) | Relevant Country Legislation |
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| <p>Develop and implement a system of catch certification which requires that a certificate accompany exported wild caught seafood product.</p> <p>Ensure that the certificate contains (1) Basic information such as the name of the fishing vessel, home port and registration number, call sign, licence number, Inmarsat number and IMO number (if issued); (2) Information on the product (the type of species, catch areas and dates, estimated live weight and verified weight landed, as well as the applicable conservation and management measures and any transshipment at sea); (3) Information and declaration on export and import of the fisheries product (including the vessel name and flag, flight number, airway bill number, truck nationality and registration number, other transport documents and container number).</p> <p>Provide a process and the power for a relevant competent authority to validate each catch certificate attesting to the veracity of the details of such certificate.</p> <p>Provide assistance in terms of verification of details of a catch certificate, within the stipulated 15 day timeframe, when required by a competent authority of the EC Member State.</p> <p>Develop and implement a system of verifiable certification for seafood products which are imported from a third country, processed in the State and re-exported to an EU Member Country.</p> | <p>Australia has established a system of catch certification and validation, through the federal Department of Agriculture, Fisheries and Forestry (DAFF) and implement by the Australian Fisheries Management Authority and the other State and Territory based fisheries regulators.</p> <p>The Australian Government is currently negotiating with the EC to implement a system whereby a catch certificate will be issued automatically by the Australian Quarantine and Inspection Service through its EXDOC system, at the same time as the EU Health Export Certification is issued.</p> |

10. TRACKING PROCEEDS OF ILLEGAL FISHING - AUSTRALIA

| Benchmarks (requirements of State) | Relevant Country Legislation |
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| <p>Develop and implement the legislative, surveillance and forensic capacity to track the proceeds of criminal activity related to illegal fishing in conjunction with those of anti-money laundering and financial investigation units.</p> <p>Develop cooperation between fisheries administrations and those units responsible for anti-money laundering and financial intelligence units.</p> | <p>Money laundering in Australia is criminalised under the revised Division 400 of the Criminal Code Act 1995, which creates a range of penalties for offences depending on the level of knowledge (wilful and intent, recklessness, negligence) and the value of the property involved. Predicate offences are all indictable offences as set out under the Act's proceeds of crime definition section 400.1. Under Commonwealth law, an indictable offence is one whose penalty is a minimum of 12 months imprisonment. The definitions of proceeds of crime and property set out under section 400.1 are expansive, extending to money or other property of "every description", whether located in Australia or overseas, that has been realised directly or indirectly from the commission of an indictable offence.</p> <p>The Anti Money Laundering and Counter-Terrorism Financing (AML/CTF) Act covers 'designated services' such as the financial, gambling and bullion sectors. The AML/CTF Act imposes a number of obligations on businesses when they provide these designated services, such as customer due diligence (identification, verification of identity and ongoing monitoring of transactions); reporting (suspicious matters, threshold transactions and international funds transfer instructions); and record keeping. This legislation implements a risk-based approach to regulation whereby businesses will determine the way in which they meet their obligations based on their assessment of the risk of whether providing a designated service to a customer may facilitate money laundering or terrorism financing. Under the AML/CTF Act, the Australian Transaction Reports and Analysis Centre (AUSTRAC) serves as Australia's financial intelligence unit. AUSTRAC has also expanded its role as the national AML/CTF regulator with supervisory, monitoring and enforcement functions over a diverse range of business sectors.</p> |

11. REPORTING REQUIREMENTS - AUSTRALIA

| Benchmarks (requirements of State) | Relevant Country Legislation |
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| <p>Make readily available information included in their records of fishing vessels to relevant regional fisheries management organisations and the FAO.</p> | <p>Australia provides data to CCSBT, CCAMLR, and IOTC. Australia also contributes scientific input, including fisheries data, to the Standing Committee on Tuna and Billfish (SCTB) which is convened under the Secretariat of the Pacific Community.</p> <p>The types of fisheries data provided by Australia to RFMOs include:</p> <ul style="list-style-type: none"> - commercial fish catch and fishing effort data recorded by statistical regions; - data on discards of fish species and interactions with wildlife; - recreational catch of fish species; - scientific monitoring data on size distribution, movement and migration, biological characteristics; and - vessel identification and licensing records. |
| <p>Submit, for inclusion in the High Seas Vessel Authorisation Record, data on vessels entitled to fly its flag that are authorised to be used for fishing on the high seas.</p> <p>Report to the FAO and relevant RFMO any modifications, additions, deletions to the information included in the record of fishing vessels; any exemption granted to fishing vessels of less than 24 metres in length; all relevant information regarding any activities of fishing vessels flying its flag that undermine the effectiveness of international conservation and management measures (subject to the confidentiality measures adopted by States in their national legislation); evidence supporting a claim of a Party that a fishing vessel not entitled to fly its flag has engaged in an activity that undermines the effectiveness of international conservation and management measures; information pertaining to the grant of authorisation to a fishing vessel that has previously undermined the effectiveness of international conservation and management measures.</p> | <p>AFMA must:</p> <p>(a) on the establishment of the High Seas Register--notify the FAO of its contents; and</p> <p>(b) whenever there is:</p> <p>(i) an addition to, or a change in the particulars on, the Register; or</p> <p>(ii) a record placed on the Register as required under subsection 57B(4) or (6); or</p> <p>(iii) a rectification of the Register as required under subsection 57B(5);</p> <p>notify the FAO of that addition, change, record or rectification and of the reason for it.</p> <p>If the reason for suspending or cancelling a fishing concession authorising the use of an Australian-flagged boat for fishing activities on the high seas is that AFMA is satisfied that the boat has been used in any activities that undermine international conservation and management measures--the notification to the FAO must specify particulars of the activities giving rise to AFMA's action.</p> <p>If AFMA grants a fishing concession authorising the use of an Australian-flagged boat to fish on the high seas in the circumstances set out in subsection 16B(5), AFMA must notify the FAO:</p> <p>(a) of the fact that the concession has been granted, despite the prior suspension or cancellation of an authority granted by a foreign country; and</p> <p>(b) of all data known to AFMA that is relevant to the identification of the boat and of its current owners and operators; and</p> <p>(c) of all matters relevant to AFMA's decision to grant the concession.</p> <p>If AFMA believes, on reasonable grounds, that a boat flying the flag of a foreign country has been used in any activities that undermine international conservation and management measures:</p> <p>(a) AFMA must notify the foreign country of its belief and provide the foreign country with the evidence that supports its belief; and</p> <p>(b) AFMA may notify the FAO of its belief and give it a summary of the supporting evidence.</p> |

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| | [Fisheries Management Act 1991, Section 57C]. |
| <p>Provide annually statistical, biological and other data and information in accordance with Annex I of the UN Fish Stocks Agreement, and in addition, other data and information as the required by an RFMO.</p> <p>Provide information concerning its fishing activities in the RFMO areas, including fishing areas and fishing vessels in order to facilitate the compilation of reliable catch and effort statistics.</p> <p>Provide information on boarding and inspections carried out by its authorised inspection vessels and actions taken in response to boarding and inspections of their fishing vessels that resulted in observation of alleged violations.</p> <p>Immediately report fishing vessels which have been engaged in IUU fishing to the flag State, coastal State, or regional fisheries management organisation concerned.</p> <p>Remit collected information from port inspection to the flag State and where appropriate to FAO and relevant regional fisheries management organisations.</p> <p>Promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other relevant international organizations of its decision when a Party has denied the use of its port.</p> | <p>Australia provides data to CCSBT, CCAMLR, and IOTC. Australia also contributes scientific input, including fisheries data, to the Standing Committee on Tuna and Billfish (SCTB) which is convened under the Secretariat of the Pacific Community.</p> <p>The types of fisheries data provided by Australia to RFMOs include:</p> <ul style="list-style-type: none"> - commercial fish catch and fishing effort data recorded by statistical regions; - data on discards of fish species and interactions with wildlife; - recreational catch of fish species; - scientific monitoring data on size distribution, movement and migration, biological characteristics; and - vessel identification and licensing records. |