

REPORT OF THE FOOD AND AGRICULTURE ORGANIZATION CONCERNING UNITED NATIONS GENERAL ASSEMBLY RESOLUTIONS A/RES/57/141 ON OCEANS AND THE LAW OF THE SEA

January 2003

In her letter of 16 November 2003 to the Assistant Director-General of the Fisheries Department of FAO, the Director, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs sought, in accordance with various paragraphs of General Assembly resolution A/RES/57/141, an input from FAO in matters relating to ocean affairs and the law of the sea. Information provided by FAO will form part of a comprehensive report to be considered by the fourth meeting of the United Nations Open-ended Informal Consultative Process which will be held at UN Headquarters in New York from 3 to 6 June 2003.

This FAO report covers primarily initiatives and activities by the Organization during the period January to December 2002.

In accordance with United Nations General Assembly resolution 57/141, this FAO report focuses on two main areas: 1) Main issues for discussion and 2) Salient fisheries issues that have arisen or continued to be of importance during 2002

1. MAIN ISSUES FOR DISCUSSION

PROTECTING VULNERABLE MARINE ECOSYSTEMS

The Reykjavik Conference on Responsible Fisheries in the Marine Ecosystem was jointly organized by the Government of Iceland and FAO with the co-sponsorship of the Government of Norway. It was held from 1 to 4 October 2001. The Conference adopted the Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem. The Declaration was attached to FAO's report in 2002.

FAO has started to follow up on the issues raised in the Reykjavik Declaration. While these actions are not specifically aimed at vulnerable ecosystems, they encompass such ecosystems and should contribute to their protection. Actions undertaken since the Reykjavik Declaration include the following.

- In accordance with a request in the Reykjavik Declaration, an Expert Consultation on Ecosystem-based Fisheries Management was held in Reykjavik, Iceland, from 16-19 September 2002 at which preliminary guidelines were developed for an ecosystem approach to fisheries (EAF), focusing on fisheries management. The preliminary guidelines will be distributed at the 25th Session of the FAO Committee on Fisheries (COFI) in February 2003. As additional experience in the actual implementation of EAF is gained by FAO Members, these guidelines will be updated and strengthened, as appropriate.
- FAO is a sponsor of Working Group 119 "Ecosystem Indicators for Fisheries Management" of the Scientific Committee for Oceanic Research, UNESCO, and the Fisheries Department is participating in the activities of the Group. The results from this Working Group should complement the work already done by FAO and may contribute to future updates of the FAO preliminary guidelines on EAF, particularly in the section dealing with indicators.
- In October 2002, a new project "The Scientific basis for ecosystem-based management in the Lesser Antilles including interactions with marine mammals and other top predators" was initiated with funding from the Government of Japan. The project is scheduled to run for five years and to facilitate, within the participating countries and sub-region, the implementation of EAF in order to ensure the maintenance of the integrity of the pelagic ecosystem, marine resources and fish production, through sustainable and responsible fisheries conduct.

2. SALIENT FISHERIES ISSUES THAT HAVE ARISEN OR CONTINUED TO BE OF IMPORTANCE DURING 2002

2.1 Illegal, unreported and unregulated (IUU) fishing

Background

Illegal, unreported and unregulated (IUU) fishing is one of the main issues facing fisheries governance. It is for this reason that it has been discussed, and continues to be addressed, in a wide range of national, regional and international fora. An International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) was adopted by the 24th Session of COFI on 2 March 2001 and endorsed by the 120th Session of the FAO Council on 23 June 2001. The IPOA-IUU has been disseminated and countries and regional fishery organizations or arrangements (RFMOs) are being urged to take steps to implement the plan.

Action by FAO

Since its adoption FAO has taken steps to support the implementation of the IPOA-IUU. As part of its on-going work, FAO is continuing to assess the linkage between subsidies, fishing capacity and IUU fishing. Furthermore, FAO is working with countries and RFMOs to strengthen regional and international Monitoring, Control and Surveillance (MCS) networks to report and disseminate information, in real time, about the operations of IUU fishers.

In keeping with its global mandate on reporting, FAO is monitoring, to an extent possible, global developments in IUU fishing and report on these developments at UN and FAO fora. At the 25th Session of COFI (February 2003) FAO will, in reporting on the implementation of the Code of Conduct, present its first progress report on achievements with the implementation of the IPOA-IUU.

During 2002, FAO published and disseminated Technical Guideline No. 9 concerning the implementation of the international plan of action to prevent, deter and eliminate illegal, unreported and unregulated fishing. This publication is intended largely to assist officials in the elaboration of national plans, as called for in the IPOA-IUU. A simple language version of the international plan of action entitled "Stopping Illegal Unreported and Unregulated Fishing" was also published and distributed widely. This publication is designed for fishing communities and fishers with a view to sensitizing them about the issues and significance of IUU fishing.

In November 2002, FAO hosted an Expert Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing. The Consultation elaborated a draft memorandum of understanding on port State measures to combat illegal, unreported and unregulated fishing, and recommended that FAO:

- Convene a Technical Consultation addressing principles and guidelines for the establishment of regional Memoranda of Understanding on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing;
- Elaborate and implement programmes of assistance to facilitate human resource development and institutional strengthening, including legal assistance, in developing countries so as to promote the full and effective implementation of port State measures to combat IUU fishing; and
- Consider the establishment of a database concerning relevant port State measures.

The report of the Consultation will be available for discussion at the 25th Session of the Committee on Fisheries (COFI) in February/March 2003 and it is envisaged that COFI will endorse the convening of a Technical Consultation, as recommended by the Consultation.

In November 2002, the Government of Spain, in technical collaboration with FAO and with the collaboration of the European Union, convened an International Conference on Illegal, Unreported and Unregulated Fishing. A range of papers were presented focussing on what was being done to address IUU fishing at the national and global levels. At the Conference, Spain presented its national plan of action to combat illegal, unreported and unregulated fishing. The Conference adopted Conclusions (Attachment 1).

In mid-2003 FAO expects to convene a meeting of countries that operate open registers or so-called flag of convenience States (FOCs). This meeting will seek to raise awareness in FOC States about the

effects their vessels, within the context of IUU fishing, are having on world fisheries. A survey background document has already been prepared for the meeting based on information provided by FOCs and RFMOs.¹

2.2 Vessel monitoring systems (VMS) and satellite surveillance

Background

Vessel monitoring systems (VMS) have seen a great increase in their use for the monitoring, control and surveillance (MCS) of fishing vessels. In 1998 it was estimated that five or six countries were monitoring the activities of around 2,000 vessels by VMS. By the end of 2002, this had increased to 70 countries monitoring 20,000 vessels. Although the increase in the number of countries adopting VMS is bound to slow down, it is expected that the number of vessels will continue to increase exponentially due to VMS being used on smaller vessels. All countries with substantial fisheries resources have now implemented VMS. Nearly all the countries that do not have VMS at the present time are developing countries. They lie between the Equator and the Tropic of Cancer and generally have relatively small fisheries resources.

An important development is the use of VMS by Regional Fisheries Management Bodies (RFMBs) in their regulatory areas. The North East Atlantic Fisheries Commission (NEAFC) and the North Atlantic Fisheries Organization (NAFO) both require all the vessels of their members to report by VMS to their flag state and to the RFMB when in the regulatory area (i.e. while within the geographical area but outside the 200 nm EEZ limits). This effectively establishes a monitoring regime on the high seas. The Indian Ocean Tuna Commission has passed a Resolution requiring its members to apply VMS to 10 percent of their vessels over 20 metres from mid 2003. The Commission for the Conservation of Antarctic Living Marine Resources (CCAMLR) and the International Commission for the Conservation of Atlantic Tunas (ICCAT) are considering similar measures.

Electronic logbooks are being introduced so that VMS is also capable of reporting catch data in addition to position data. This development introduces the possibility of real time fisheries management with measures being taken immediately. Electronic logbooks are now being used in Australia, Canada, Iceland, USA (North Pacific), and they will be introduced by the EC for vessels over 24m in 2004.

An important area of complementary development is the use of satellite surveillance to detect the presence of fishing vessels not reporting by VMS. It is already in use in Australia and the EC, Iceland, Canada and Norway have been conducting pilot studies on satellite surveillance (Synthetic Aperture Radar) with the Joint European Research Centre over the past few years. It is expected that these methods will be introduced to MCS in EC fisheries in 2004.

Action by FAO

After holding in 2002 a successful VMS Workshop in Senegal for the countries of the Sub-Regional Fisheries Commission (Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone), FAO will conduct a series of similar VMS workshops in West Africa, East Africa, Central America, Near East and Southeast Asia. FAO is also developing model legislation for VMS, which will assist countries to rapidly introduce legislation to support VMS measures.

In December 2002, FAO commissioned a study to assess the development of electronic logbooks for catch data with specific reference as to how such logs can be incorporated into VMS. This could lead to the revision of Technical Guideline No. 1.1 which addresses fishing operation: vessel monitoring systems.

In 2003, FAO is proposing to hold an Expert Consultation on VMS Data Formats and Procedures. This Consultation will have the objective, in part, of ensuring compatibility between different systems that are being developed.

¹ Swan, J. "Fishing vessels operating under open registers and the exercise of flag State responsibilities". FAO Fisheries Circular No. 980. FAO. Rome. 2002. 65p.

2.3 Fisheries subsidies

Background

The value of subsidies and their effects on the sustainability of fishery resources and on trade in fish and fish products is a matter of primary concern for the international fisheries community.

Since October 1999, FAO observers have been reporting about the Organization's work on fisheries subsidies to all relevant major international meetings. These have included the Committee of Trade and Environment of the World Trade Organization (WTO), the Committee on Fisheries of the OECD and several technical meetings organised by UNEP and non-governmental organisations.

Within this context, the 24th Session of COFI (Rome, 26 February-2 March 2001) recommended that FAO assume a lead role in the promotion of cooperation and coordination amongst relevant intergovernmental organizations of their work on subsidies in fisheries. The Committee also agreed that future FAO activities related to subsidies should build on past efforts and aim to determine the quantitative and qualitative effects of subsidies on trade in fish and fish products and sustainability of fishery resources. The Committee agreed that a second Expert Consultation be organised by FAO, followed by a government consultation.

Action by FAO

In following closely the mandate received from its Members through COFI, FAO continued to study during 2002 the subject of subsidies in fisheries and hosted in July 2002 the Second *Ad hoc* Meeting of Intergovernmental Organizations on Work Programmes Related to Subsidies in Fisheries (Rome 4-5 July 2002).² Like the first meeting held in 2000, this meeting was intended to be an occasion to exchange information regarding on-going activities, in order to create synergies and to avoid duplication of work.³

FAO continued monitoring of the economic performance of capture fisheries but expanded it to include also a review of subsidies; the results were reported in a technical paper and highlighted in the "State of the World Fisheries and Aquaculture" (SOFIA) 2002.⁴ In 2002 an introductory guide on fisheries subsidies has also been prepared aiming at facilitating a broader access to the understanding of this complex issue. It is expected that it will be published in 2003.

Additionally, in undertaking to implement the recommendation made by COFI and, to address the conclusions of the first FAO Expert Consultation on Fishery Subsidies,⁵ FAO decided to develop a Guide on Identifying, Assessing and Reporting on Subsidies in the Fisheries Sector as a first technical step. The second and subsequent step will be to assist in the development of quantitative indicators of the importance of the effects of subsidies on trade, environment and development.

A draft of this guide was submitted for review to FAO Expert Consultation on Identifying, Assessing a Reporting on Subsidies in the Fishing Industry, held at FAO Headquarters from 3 to 6 December 2002.⁶ The Consultation suggested some minor modifications and concluded that it constituted a very valuable tool. It strongly recommended that FAO support the use of the guide, which will be published in 2003.

The Expert Consultation also suggested that FAO undertake work aiming to improve the guidance given in respect of how to assess *inter alia* subsidies that: (i) have both long term and short term effects; (ii) may occur as a consequence of government inactions; and (iii) may be linked to resource pricing. Furthermore it recommended that that FAO undertake analytical work on impacts and also provided some general advice on how such work can be done.

The conclusions and recommendations of the Expert Consultation will be submitted for review to the 25th Session of COFI in February 2003.

² The following intergovernmental organizations attended: APEC, ASEAN, CARICOM, FAO, OECD, SADC, WTO and UNEP.

³ Report of the Second *Ad hoc* Meeting of Intergovernmental Organizations on Work Programmes Related to Subsidies in Fisheries (Rome, 4-5 July 2002).

⁴ The State of World Fisheries and Aquaculture (SOFIA 2002; Part Three). In press.

⁵ Expert Consultation on Economic Incentives and Responsible Fisheries (Rome, 28 November-1 December 2000) - FAO Fisheries Report No.638.

⁶ The Report of the Expert Consultation will be made available soon to member States.

2.4 Management of Fishing Capacity

The management of fishing capacity is one of the main issues facing fisheries governance. It has increasingly been addressed over the last decade in a wide range of national and international fora. An International Plan of Action for the Management of Fishing Capacity (IPOA-Capacity) was adopted by the 23rd Session of COFI in February 1999 and endorsed by the FAO Council in June 1999.

Action by FAO

Since its adoption, the IPOA has been widely disseminated and steps have been taken by numerous countries and RFMOs in view of its implementation. FAO has taken steps to develop and disseminate related documentation. Technical documentation elaborated relates to measurement and assessment aspects document as well as to policy aspects arising in the measures that can be taken to manage and eventually reduce fishing capacity. FAO has also been working with selected regional fisheries organizations to assess issues and develop policies for the management of fishing capacity.

Sustained effort will continue to monitor progress made in the implementation of the IPOA-Capacity. FAO will report for the second time on such progress at the 25th Session of COFI.

Other actions include:

- The organization in 2002 and 2003 of a series of case studies on the management of fishing capacity in Latin America;
- The organization in October 2002 of a Workshop on Monitoring, Assessment and Management of Fishing Capacity in the Adriatic Area of the Mediterranean (through the Adriamed Project in support of the General Fisheries Commission for the Mediterranean);
- The organization at FAO Headquarters, Rome in October 2002 of an Expert Consultation entitled "*Catalyzing the Transition away from Overcapacity in Marine Fisheries*".

In 2002 FAO also commenced a major initiative on the management of tuna fishing capacity. This 3-year project is being implemented in collaboration with the tuna RFMOs.

2.5 Management of shared (transboundary and straddling) fish stocks

The effective conservation and management of shared fish stocks presents an ongoing challenge for States and regional fishery management organizations or arrangements in their efforts to secure long-term sustainable solutions for these stocks. With the goal of enhancing the modalities and mechanisms for the management of shared fish stocks and, as a means of better understanding the problems involved, the Government of Norway in cooperation with FAO convened the Norway-FAO Expert Consultation on the Management of Shared Fish Stocks in Bergen, Norway from 7 to 10 October 2002.⁷

The focus of the Expert Consultation was on those fish stocks crossing the EEZ boundary of one coastal State into the EEZ(s) of one or more other coastal States (1982 UN Convention on the Law of the Sea (1982 Convention), Article 63, paragraph 1), referred to in the 1995 FAO Code of Conduct for Responsible Fisheries as transboundary stocks, and straddling fish stocks (1982 Convention Article 63, paragraph 2).

The Expert Consultation directed itself to the practical problems to be faced in the management of these resources within the 1982 Convention, the 1995 UN Fish Stocks Agreement, the 1995 FAO Code of Conduct for Responsible Fisheries and other relevant international instruments. Cooperation in the management of these resources is to be seen as an essential pre-requisite for effective resource management, but not as a guarantee of effective management.

The Expert Consultation drew several important conclusions including, inter alia, the following:

- the need for cooperative management arrangements to be resilient enough to be able to absorb unpredictable shocks stemming from natural variability, climate change or other unpredictable ecological or economic disruptions;

⁷ FAO. Report of the Norway-FAO Expert Consultation on the Management of Shared Fish Stocks. Bergen, Norway, 7-10 October 2002. FAO Fisheries Report. No. 695. Rome, FAO. 2002. 34p. The report will be published in the five FAO official languages.

- that the sharing of the benefits from the fisheries should not be restricted to allocations of TACs, or the equivalent, to national fleets; and
- that consideration should also be given to the use of what the Expert Consultation referred to as “negotiation facilitators”, or “side payments”, such as quota trades, or mutual access arrangements. These would allow broadening the scope for bargaining over allocations, assist in achieving compromises when there are differences in the management goals of cooperating States/entities, and enhance the flexibility and resilience of the cooperative arrangements over time.

With respect to cooperative management of straddling fish stocks, the Expert Consultation noted two critical issues:

1. the issue of new members or participants in regional fisheries management organizations or arrangements; and
2. the issue of what in fact constitutes a “real” interest of a State in a straddling stock fishery. The Expert Consultation reviewed approaches currently being taken to address the issue of new members or participants.

Finally, the Expert Consultation emphasized the fact that problems of implementation and enforcement are far more complex for shared fisheries, than those encountered with non-shared fisheries.

2.6 Mitigation of adverse environmental impact of tropical shrimp trawling and the reduction of discards during fishing operations

A global project⁸ to reduce the environmental impact from tropical shrimp trawling, focussing on 12 countries over the period of 2002 to 2007, was jointly approved by GEF and UNEP, for execution by FAO in 2002.

An inaugural meeting of 12 national coordinators for the project was hosted by Mexico in September 2002 and contractual arrangements for the implementation of specific activities by national institutions in each participating country are in the negotiation process. These arrangements address:

- detailed observations on the actual current operations, catches, by-catches and discards by the commercial shrimp trawler fleets;
- field experimentation with various types of by-catch reduction devices (BRDs) so as to adapt them to local conditions; and
- the conduct of comparative fishing trials using commercial vessels of traditional shrimp trawls without BRDs, versus the new trawls fitted with BRDs.

These basic activities will be complemented by more general considerations of the economics of commercial fishing with the new gear, before recommending the obligatory use of the improved gear, and more rigorous measures for sustainable management of shrimp fisheries, including more effective MCS measures.

Initial, short-term activities have been undertaken in Mexico. The inaugural meeting and cruises to demonstrate a prototype of new shrimp gear being developed by the national fisheries institute have been held. A training course, in cooperation with SEAFDEC, was held in Indonesia in 2002.

Two workshops, one for the Indian Ocean and the Western Pacific region and the other for the Atlantic and Eastern Pacific Oceans, are under preparation and will be held in 2003. The expected outcome of these workshops will be the estimation of discard figures from selected fisheries, and proposals for improved utilisation of by-catch and measures to avoid discards.

⁸ FAO symbol EP/GLO/201/GEF.

CONCLUSIONS OF THE SANTIAGO DE COMPOSTELA INTERNATIONAL CONFERENCE ON ILLEGAL, UNREPORTED AND UNREGULATED FISHING

The Santiago de Compostela International Conference on Illegal, Unreported and Unregulated fishing was held on 25 and 26 November 2002, attended by 43 States, Regional Economic Integration Organisations, International Organisations and Non-governmental Organisations. It was organised by the Spanish Government, with the cooperation of the European Union and the participation and technical assistance of the Food and Agriculture Organisation (FAO).

The Santiago de Compostela International Conference was arranged in order to give political impetus to and follow up the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing ("IUU fishing"), adopted by the FAO Council on 23 June 2001, and its general aim to help to bring about sustainable fisheries by eradicating IUU fishing.

In papers and discussions, participants at the International Conference put forward their own initiatives and views as to how best to stamp out IUU fishing, at national, regional and global level. Realising the serious consequences of IUU fishing, the Conference adopted the following conclusions:

CONCLUSIONS

1. IUU fishing is harmful to fishery conservation and management and to the marine ecosystem. IUU fishing inflicts damage on a fishing industry operating under legal rules aimed at sustainable exploitation which aims at striking a balance between food security and protection of the marine environment. IUU fishing also serves to distort competition by jeopardising the economic survival of those who fish in accordance with the law and in compliance with the relevant conservation and management measures.

Often, IUU fishing has a very adverse impact on maritime safety, as it operates in an unregulated manner, with on-board crews lacking minimum safeguards as to working conditions and safety of human life at sea.

These harmful effects come against the background of a growing trend towards globalisation of fishing activities. Expanding market demand for fisheries products, at a time of decreased available resources and increasingly stringent regulation of marine species, has been accompanied by wide spread IUU fishing, in particular by vessels flying flags of convenience.

2. In keeping with the FAO's International Plan of Action, The Santiago de Compostela International Conference established that IUU fishing takes advantage of a number of factors:
 - The lack of political willingness, insufficient cooperative efforts and the exploitation of the legal vacuums;
 - Lack of effective flag State control of fishing vessels, in particular those flying flags of convenience;
 - Unequal commitment by all States or capacity to enforce or implement existing measures;
 - The problem faced by some States, especially developing countries, in finding sufficient human and financial resources to tackle IUU fishing effectively, for which purpose specific forms of technical and financial assistance are needed, in addition to improved market conditions;
 - Lack of agreed, effective, compatible and stringent port States measures;
 - The difficulty faced by RFMOs in applying conservation and management measures to vessels from Non-Contracting Parties, especially fishing vessels registered under flags that do not cooperate with RFMOs, in particular flags of convenience; as well as lack of compliance by Members of the RFMOs;
 - Lack of compliance with RFMOs and conservation and management measures by Contracting Parties;
 - Inadequate degree of cooperation among RFMOs, considering their limited competence;

Efforts to combat IUU fishing complement other initiatives to achieve sustainable fisheries particularly those related to the management of fishing capacity.

3. The Santiago de Compostela International Conference on illegal, unreported and unregulated fishing urged the international community to give further consideration to the following measures.
 - Strengthening RFMOs, which provide the main multilateral forum for the international campaign against IUU fishing, bringing together governments, scientists, fishing industry representatives and non-governmental organisations with an interest in effective management of fisheries resources;
 - Compilation by RFMOs of regional registers of licensed vessels and lists of flag countries and territories engaged in or supporting IUU fishing (positive/negative listing measures), which could inter alia make possible the identification of flags of convenience;
 - Adoption of countermeasures, to prevent and eliminate IUU fishing, which are fair, transparent and non-discriminatory, in accordance with international law, against countries and territories engaged in or supporting IUU fishing;
 - Use of catch and statistical documentation schemes, preferably in a harmonised manner, for all species, as necessary;
 - Action against businesses and individuals engaged in or supporting IUU fishing, in order to ensure that nationals within each State's jurisdiction do not engage in or support IUU fishing;
 - Use of port State and market State measures to prevent IUU caught fish from entering the markets, including bans on importation, landing and transshipment;
 - Development of minimum guidelines for port State responsibilities;
4. The International Conference of Santiago de Compostela on Illegal, Unreported and Unregulated fishing recommends these conclusions to be duly considered and developed at a national, regional and international level by States, RFMOs, FAO and any international relevant organisation and in particular the International Maritime Organisation (IMO).