

**Report of the**

**FAO/CECAF WORKSHOP ON PORT STATE MEASURES TO COMBAT  
ILLEGAL, UNREPORTED AND UNREGULATED FISHING FOR THE  
WEST AFRICAN SUBREGION**

**Accra, Ghana, 9–12 June 2009**



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## PREPARATION OF THIS DOCUMENT

This is the final version of the report of the FAO/CECAF [Food and Agriculture Organization of the United Nations/Fishery Committee for the Eastern Central Atlantic] Workshop on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing for the West African Subregion that was held in Accra, Ghana, from 9 to 12 June 2009.

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Report of the FAO/CECAF Workshop on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing for the West African Subregion. Accra, Ghana, 9–12 June 2009.

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### ABSTRACT

This document contains the report of the FAO/CECAF Workshop on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing for the West African Subregion, which was held in Accra, Ghana, from 9 to 12 June 2009. The objective of the Workshop was to develop national capacity and promote bilateral, subregional and regional coordination so that countries would be better placed to strengthen and harmonize port State measures and, as a result, implement the relevant tools of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, the 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing and the 2009 Chairperson's draft Agreement on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing, when it enters into force. At the conclusion of the workshop a brainstorming session was held with the goal of looking ahead to identify aims and targets for bilateral, subregional and regional cooperation and harmonization of port State measures; identify some measures and mechanisms that could be used to implement harmonized port State measures on a bilateral, subregional and regional basis and to identify the scope for implementation of the draft Agreement by countries in the West African subregion. Funding and support for the workshop were provided by the FAO Regular Programme and by the Governments of Norway and Sweden through the FishCode Programme.

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## OPENING OF THE WORKSHOP

1. The FAO/CECAF [Food and Agriculture Organization of the United Nations/Fishery Committee for the Eastern Central Atlantic] Workshop on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing for the West African Subregion, was held at the FAO Subregional Office for West Africa, Accra, Ghana, from 9 to 12 June 2009.
2. The Workshop was attended by 27 participants from 13 West African countries and one participant from a regional fisheries management organization or arrangement (RFMO/A). A list of participants and FAO staff and consultants who attended the Workshop is attached as Appendix B.
3. Mr Alhaji Jallow, Senior Fisheries Officer, FAO Subregional Office for West Africa, Accra, Ghana, CECAF Secretary and Workshop Coordinator, called the meeting to order. He introduced the Honourable Nii Amasah Namoale, Deputy Minister of Food and Agriculture, Accra, Ghana, and Ms Maria Helena Semedo, Subregional Coordinator for West Africa and Officer-in-charge, FAO Regional Office for Africa, Accra, Ghana.
4. Ms Semedo welcomed participants to the workshop and underscored the deleterious effects of illegal, unreported and unregulated (IUU) fishing. She referred to the benefits of port State measures in efforts to combat IUU fishing, noting that FAO had initiated a global series of regional workshops to enhance national capacity and promote regional cooperation. Her statement is in Appendix D.
5. The Honourable Deputy Minister made a statement in which he stressed the importance of port State measures in order to ensure that fisheries were used in a sustainable manner. His statement is in Appendix E.
6. The Agenda for the Workshop is attached as Appendix A and the list of documents is attached as Appendix C.

## BACKGROUND AND INTERNATIONAL FRAMEWORK FOR PORT STATE MEASURES

7. The Workshop viewed in the English and French languages a multimedia presentation prepared by FAO on port State measures. It highlighted, *inter alia*, the status of world fish stocks, the need for port State measures, aspects of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU), the 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing (Model Scheme), the development of a binding instrument on port State measures and the need to block IUU-caught fish from entering international fish trade.
8. Dr David J. Doullman, Senior Fishery Liaison Officer, FAO, Rome, Italy, made a presentation entitled "International framework for port State measures to combat IUU fishing: towards more stringent and binding measures". Its purpose was to provide an overview of the international framework for port State measures for fishing vessels, showing how these measures had evolved primarily to support improved goals of long-term sustainability and enhanced fisheries governance. The presentation outlined why port State measures had assumed an increasingly important role, concurrent with international concern about IUU fishing, and explained FAO's plans to strengthen port State measures through the development of a legally-binding instrument.
9. In reviewing the evolution of port State measures, Dr Doullman discussed briefly the relevant provisions of the 1982 United Nations Convention on the Law of the Sea, Agenda 21 adopted by the 1992 United Nations Conference on Environment and Development, the 1993 FAO Compliance Agreement, the 1995 UN Fish Stocks Agreement and the relevant matters considered by the 2006 Review Conference of the Fish Stocks Agreement, the 1995 FAO Code of Conduct for Responsible Fisheries, the IPOA-IUU, the 2002 World Summit on Sustainable Development (WSSD) outcomes,

the Model Scheme, the fisheries resolutions of the United Nations General Assembly (UNGA) and decisions of the FAO Committee on Fisheries (COFI).

10. The presentation also highlighted FAO's role in capacity building to assist developing members address IUU fishing. Dr Doulman pointed out that WSSD, UNGA and COFI underscored the central role of capacity building to enable countries meet their obligations under international law. He added that FAO had an ongoing capacity building initiative and that seven regional workshops focusing on the implementation of port State measures had been organized.

11. In his conclusion, Dr Doulman noted that IUU fishing remained a serious impediment to sustainability in fisheries and that ongoing and strong political commitment was required to underpin measures that would restrict or prevent financial flows to IUU fishers. Since the main incentive to engage in IUU fishing is profit-driven, the use of market-related and port State measures probably offered the best opportunities to achieve this goal.

12. Ms Judith Swan, FAO Consultant, Rome, Italy, made a presentation entitled "Port State measures, linkages with other international initiatives, fisheries compliance tools and relevant FAO initiatives". She explained the basic framework of port State measures, noting that they are cost-effective and can be integrated into a coordinated system of port controls, as well as health, security and safety controls. However, there were many challenges, such as "ports of convenience", transshipment at sea and weak flag State control.

13. The focal role played by port State measures in relation to other key compliance tools was emphasized. The components and successful results of port controls developed by the International Maritime Organization (IMO) was described and opportunities for collaboration with controls for fishing vessels was noted, mindful that "vessels" subject to port State measures would include support vessels such as carrier ships.

14. A range of compliance tools had been developed by RFMO/As, and port State measures played a vital role in bolstering their effectiveness. For example, port entry and use could be denied to vessels on a RFMO/A IUU vessel list, and dockside checks could verify information provided by vessel monitoring systems (VMS) and catch certification. The governance role of RFMO/As in strengthening and harmonizing port State measures was underlined, noting the increasing number of RFMO/As and the expansion of their initiatives to address IUU fishing through port State measures.

15. The responsibility of flag States to effectively control their fishing vessels had not been successfully discharged by many States but an important role of flag States was emerging in the context of port State measures, both before use of port and after inspection. For example, flag States should confirm that their vessels cooperate with port States and request port States to inspect their vessels where IUU fishing activities were suspected. After inspection, flag States must investigate fully and report on actions it took against such vessels. Recognizing the need for many flag States to fulfil their role under international law, COFI in 2007 called for an Expert Consultation to develop criteria for assessing the performance of flag States and examine possible actions against vessels flying the flags of States not meeting such criteria. In 2009, COFI agreed that this should be followed by a Technical Consultation. These meetings will be held prior to the next session of COFI and it is expected that the role of flag States in promoting and ensuring effective port State measures will be examined.

16. Documentation and information collection and exchange that formed part of port State measures had a significant impact; it was sometimes easier to prove false documentation than to prove IUU fishing activities. Ms Swan noted the emerging trend where access to ports in a number of countries would depend on certification by the flag State that the fish to be offloaded was caught legally. Another potential documentation requirement under review at FAO included development of a Global Record of Fishing Vessels, which could improve traceability and transparency, and a global FAO overview of VMS was being compiled.

17. Finally, Ms Swan described the FAO initiative for human capacity development and institutional strengthening, through coordinating regional workshops on port State measures so that countries would be better placed to strengthen and harmonize port State measures. Ultimately they would contribute to the development of national standards, relevant RFMO/A requirements and a binding international instrument on port State measures.

18. In discussion, the issue of the types of vessels that fell within the scope of the Chairperson's draft Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (draft Agreement) was raised, and specifically whether research vessels were covered. It was explained that the draft Agreement provided a definition for "vessels" and that research vessels were not mentioned specifically. However, if a research vessel carried out IUU fishing activities separately from the terms of research, it could fall within the terms of port State measures.

19. The economic loss to a port State caused by denying a vessel access to port was addressed and the possibility of compensation to the port State raised, especially considering the value of past calls to African countries. It was noted that the issue had been raised elsewhere but there had not been much progress in defining the right to compensation or enforcement of such a right. Instead the focus was on preventing the owner from profiting and requiring market measures for importing fish with the aim of prohibiting trade in IUU-caught product.

20. Concern was expressed about the large number of artisanal vessels that fished in waters of adjoining West African States and it was explained that these vessels were covered in the draft Agreement as a result of an initiative of the African Group. The text excepted foreign artisanal vessels from its scope where they were carrying out subsistence fishing provided that the flag State and port State cooperated to ensure that the vessels did not engage in and/or support IUU fishing. The need for this provision to be consistent with international law was underlined.

21. The problem caused by transshipment at sea, resulting in "laundering" of IUU-caught fish, was raised. It was explained that the net was closing on such operations through mechanisms such as requiring a flag State to confirm that fish was caught legally before a market country would allow its importation. There had also been significant progress made by RFMO/As in controlling such transshipment.

## **BILATERAL, SUBREGIONAL AND REGIONAL APPROACHES TO IUU FISHING AND PORT STATE MEASURES**

22. Mr Terje Lobach, FAO Consultant, Bergen, Norway, made a presentation entitled "Port State measures: some examples of regional and bilateral approaches". He provided an overview of action taken by RFMO/As concerning the implementation of port State measures. He focused both on general port State measures including notification requirements, inspections and actions by port States, and on other monitoring, control and surveillance (MCS) tools, which contained port State obligations. With respect to the latter tools, he explained the linkages to port State measures of various schemes of vessel listing, trade- and market-related measures as well as the regulation of transshipment.

23. Mr Lobach then went through actions taken by various RFMO/As such as the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the International Commission for the Conservation of Atlantic Tunas (ICCAT), the North East Atlantic Fisheries Commission (NEAFC) and the Southeast Atlantic Fisheries Organization (SEAFO). All these organizations had introduced systems of listing of IUU vessels, requiring, among other things, port States to take specific action against such vessels. Action agreed to by the various organizations varied. Some of them denied access while others allowed such vessels to port followed by a thorough inspection. Some organizations also had established so-called "positive lists", implying that port State action would be taken against vessels not included on those lists. Furthermore, Mr Lobach mentioned that many RFMO/As had introduced specific schemes concerning transshipment with SEAFO being the most

radical by banning all at-sea transshipment. For other RFMO/As, special requirements applied in ports. His presentation also indicated that many RFMO/As had agreed to trade- and market-related measures, containing special obligations for port States. In addition, CCAMLR had introduced a catch documentation scheme that required action by port States.

24. Mr Lobach gave details of the NEAFC scheme which to a great extent, built on the FAO Model Scheme. NEAFC had gone further by putting clear responsibilities on the flag State before a vessel was allowed to unload its catch or cargo. In this context he described the main problems of IUU fishing in the NEAFC area, which due to the new port State scheme and other MCS tools seemed to have been reduced considerably. Finally, he related the Polstar story concerning the reefer vessel that received redfish from six vessels on the NEAFC IUU vessel list, and consequently was regarded itself as an IUU vessel. It was therefore denied access to all ports of NEAFC parties. The vessel attempted to land its cargo in several non-member ports but these countries cooperated with NEAFC by refusing to receive the redfish. After a journey of almost three months the vessel managed to land the fish in China, Hong Kong Special Administrative Region. Mr Lobach concluded by saying that this story demonstrated that cooperation between port States was crucial to combat IUU fishing.

25. Dr Doulman made a presentation entitled “IUU fishing in the West African subregion”. He commenced by providing background information on IUU fishing noting that it was a global problem found in all capture fisheries irrespective of their location. It impacted adversely efforts to sustainably manage fisheries targeting species that were high valued with a high market demand. The exclusive economic zones (EEZs) of developing countries were particularly susceptible to IUU fishing as were more isolated high seas areas.

26. With respect to the main IUU fishing problems and their solutions in the West African subregion, Dr Doulman pointed out that he had drawn on the outcomes of the 2005 FAO Regional Workshop on the Elaboration of National Plans of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing – West African Subregion.<sup>1</sup> The Workshop ranked IUU fishing problems by country in order to develop a regional ranking. He stressed that rankings were not official but that they provided a good perspective on IUU fishing problems and solutions for the subregion. The problems discussed included inadequate MCS, fishing unauthorized species and undersized species, use of prohibited gears and fishing methods, encroachment by foreign fishing vessels in the zone of national jurisdiction, unauthorized fishing in closed areas and seasons, inadequate legislation for IUU fishing and MCS and unreporting and misreporting of catches. For each of these problems the proposed solutions were also reviewed. It was noted that there was a convergence of solutions for some of the problems.

27. In conclusion, Dr Doulman noted that IUU fishing was not diminishing and that IUU fishers were going to greater lengths to hide their operations as it became more difficult to operate. He stressed that IUU fishers had good operational intelligence, were highly motivated, innovative, dynamic and mobile. They relied heavily for their operations on support from States issuing “flags of convenience” and States operating “ports of non-compliance”. Because IUU fishing was financially motivated, Dr Doulman stated that port State measures could be an effective tool in blocking the entry of IUU-caught fish into national and international markets, thereby removing the financial incentive for fishers to engage in IUU fishing.

28. A third presentation entitled “Current profile of IUU fishing activities and issues relating to port control in the subregion” was made by Mr Jallow. He noted that in the West African subregion IUU fishing was spreading rapidly and there was sometimes a reluctance by countries to take action against vessels involved in such fishing and their flag States because of possible diplomatic repercussions. However, he added that States should strive to pursue policies of responsible fisheries

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<sup>1</sup> FAO. 2006. Report of the FAO Regional Workshop on the Elaboration of National Plans of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing – West African Subregion. FAO Fisheries Report No. 792. FAO. Rome. 80p.



even in the face of such repercussions. He added that sovereign States should not bend to pressure from more powerful fishing States, especially when IUU fishing activities were involved. The need to limit or prevent political interference when measures against IUU fishing vessels were being contemplated or taken should be promoted in the subregion.

29. Mr Jallow pointed out that with the prevailing situation in the subregion, it was very important for countries to coordinate subregional action against IUU fishing. Cooperation and collaboration were means of eliminating weak links as countries sought to initiate measures against IUU fishing. There was an urgent need for all countries in the West African subregion to give priority to combating IUU fishing if success was to be achieved. There was no room for complacency and the use of flags of non-compliance, a major source of IUU fishing, should be eradicated.

30. Mr Jallow stressed that capacity and financial problems experienced by some West African countries were some of the constraints impacting on the implementation of international instruments such as the Code of Conduct and the IPOA-IUU.

31. At the 2005 West African Regional Workshop referred to above, a significant concern was the implementation of appropriate MCS tools, particularly given the widespread nature of IUU fishing in all areas and types of fisheries in the subregion. A need for advice was expressed in relation to tools for setting appropriate penalties, installation of MCS, alternatives to VMS systems and information exchange. In this regard, emphasis was put on prioritization, strategies and assistance for capacity building, options for information exchange and some potential components of penalties that could be included in the law for deterrence and punitive purposes, especially for serious IUU fishing and related offences.

32. Mr Jallow stressed that IUU fishing by artisanal and industrial fishers was common in the subregion. Common types of IUU fishing included operating without an authorization to fish, incursion into prohibited areas, the use of destructive fishing methods and the use of banned gear and mesh sizes. The overall impact of these activities led to dwindling resources, strong competition among vessels on the fishing grounds, conflict between industrial and artisanal fishers and the disappearance of some species.

33. As an example of subregional cooperation, Mr Jallow referred to the Subregional Fisheries Commission (SRFC) based in Dakar, Senegal. It had a successful subregional MCS programme with its headquarters, the Surveillance Operations and Coordination Unit (SOCU), in Banjul, The Gambia. SRFC members were involved in joint MCS operations, including aerial surveillance supported by marine operations. Although the initiative had been supported for four years by Luxembourg Development and will soon be supported further by the European Community for an additional four years, SRFC members also had contributed assets to support the joint operations. Importantly, the SRFC had promoted the development of a national vessel registers and a subregional register of fishing vessels. These registers had provided a good basis for the exchange of information between members. The SRFC was moving to implement VMS among its members as a means of complementing conventional MCS measures such as the use of patrol boats, coastal radar and surveillance aircraft, and was seeking to harmonize national legislation as a means of enhanced MCS cooperation. To be effective, these initiatives would require strong political will, which was not present in all countries.

34. Mr Jallow pointed out that IUU fishing in the subregion required countries to share MCS assets as a means of promoting more effective cooperation. For MCS programmes, the exchange of information between countries was essential. Participatory approaches to MCS could be useful and fishers should be encouraged to contribute to MCS efforts by reporting incidences of IUU fishing. He also proposed a list of actions to be undertaken by States in the subregion relating to measures to combat IUU fishing. This list is in Appendix F.

35. Mr Germain Dasyilva, Fisheries Officer, FAO Subregional Office for Africa, Accra, Ghana, advised the meeting that in the struggle against IUU fishing political interference could have also a positive impact. In fact, the adoption of the declaration entitled “Nouakchott Declaration on IUU fishing” by the SRFC Ministerial Conference demonstrated the willingness of countries to become involved in the fight against IUU fishing. This political will was also manifested through the creation of a specialized programme, the SOCU. The existence of this programme could be considered among the best proof of countries in their struggle against IUU fishing in organizing combined air and sea surveillance operations in order to identify and combat IUU fishing activities in the EEZs of SRFC Members. In addition the establishment at national level of registers and the preparation of a subregional register demonstrated the need to combat IUU fishing on the part of Members.

36. The political will of SRFC Members led them to sign, in 1993, a Convention concerning the identification of access and exploitation conditions for fisheries resources in their coastal waters. This Convention is actually in the process of being revised. Another Convention in relation to subregional cooperation concerning the right “hot pursuit” was also signed to enable the extradition of IUU fishing vessels.

37. A further initiative was the elaboration of a TCP project submitted to FAO concerning VMS that will be implemented in the near future. This TCP will raise awareness among countries about the potential of VMS as a complimentary tool to other fisheries MCS activities and will allow the development of a subregional strategy for VMS cooperation.

38. In discussion following the presentations, it was pointed out that the draft Agreement was being developed through an inclusive process at FAO. All FAO Members, RFMO/As and a good selection of international non-government organizations were invited to participate in the process. In this way the interest of all States were represented in the negotiation process.

39. On the issue of transshipment the participant from Sierra Leone advised the workshop that there were three designated transshipment zones in its port and that high seas transshipment was banned. Fishing vessels that were licensed could transshipped in port and were required to pay transshipment fees. Receiving vessels were not licensed though they were required to pay transshipment fees for fish received from licensed fishing vessels.

40. The workshop was advised that there were problems in the West African subregion where fishing vessels carried two valid licences from two countries. The issue of bunkering vessels (i.e. supplying fuel to vessels at sea) could be problematic and was flagged as a problem in the subregion. The workshop agreed that the review of national legislation was essential to ensure that it reflected changes in international law such as those that would be reflected in the draft Agreement. The need to strengthen national human and institutional capacity for countries in the subregion was stressed so that they would be in a position to meet the obligations of the draft Agreement.

41. Mr Séraphin Dedi Nadjé, Secretary General of the Fishery Committee of the West Central Gulf of Guinea (FCWC), Accra, Ghana, acknowledged with satisfaction the FAO initiative to organize the workshop on port State measures and the struggle against IUU fishing that would benefit FCWC Members. He recognized that port State measures to combat IUU fishing had not yet been initiated in FCWC area although other initiatives by Member countries had been taken including:

- In Ghana a new fisheries plan had been adopted that gave priority to the struggle against IUU fishing;
- In Benin, a national plan of action to combat IUU fishing (NPOA-IUU) had been elaborated but not implemented;
- In Côte d’Ivoire, a programme of sustainable management of fisheries resources had been put in place including a committee of agencies from the national administration that would guide action against IUU fishing. The committee had organized a national training

workshop on IUU fishing, regular MCS patrols and the banning of unsustainable fishing practices.

42. At the regional level, a permanent working group on IUU fishing had been established and a regional action plan against IUU fishing including port State measures was under preparation.

#### **ISSUES AND FRAMEWORK OF THE 2005 MODEL SCHEME ON PORT STATE MEASURES AND THE 2009 CHAIRPERSON'S DRAFT AGREEMENT ON PORT STATE MEASURES**

43. Mr Lobach made a presentation entitled "An overview: key issues in the development of the 2005 Model Scheme on Port State Measures and the 2009 Chairperson's draft Agreement". He examined the global instruments and initiatives addressing IUU fishing in general, including their references to regional approaches. He focused specifically on port State measures and linkages to other MCS tools. In this regard Mr Lobach outlined the development of Model Scheme, leading up to its adoption at COFI in 2005. He highlighted the various elements of the Model Scheme, including its objective and scope, which vessels should be targeted by port authorities, the details of the prior notification requirements as well as possible reactions based on such notifications. He mentioned the standards concerning inspections in port, including formal requirements, the execution of an inspection and how to react if involvement in IUU fishing was detected during an inspection. He emphasized the importance of the annexes to the Model Scheme and their importance for capacity building.

44. With respect to linkages to other MCS tools, Mr Lobach addressed, in particular, the role of the flag State, transshipment, vessel lists and trade- and market-related measures. He informed the workshop about events leading to the development by RFMO/As of IUU vessel lists. They were an important tool for curbing IUU fishing and involved currently more than 100 countries. He examined thoroughly the role of the flag States, including legally-binding obligations derived from international instruments. He illustrated how the obligatory use of VMS had been implemented as an important tool for flag States to monitor their vessels and new avenues to strengthen the role of flag States in the fight against IUU fishing. Furthermore, he explained how global calls to address transshipment and the use of trade- and market-related measures had been responded to at the regional level.

45. In conclusion Mr Lobach provided an overview of the initiatives that had led to the ongoing negotiations for the elaboration of a binding agreement on port State measures, including the rationale for such an Agreement.

46. Ms Swan made a presentation concerning the 2009 Chairperson's draft Agreement.<sup>2</sup> She introduced the process and approach in the development of the instrument, and explained that although great strides had been made to reach agreement on many provisions at the FAO Technical Consultation to draft an Agreement on Port State Measures to Combat IUU Fishing, there were still some key issues that were not yet resolved. However, many countries appeared to be willing to work intersessionally to move forward towards agreement.

47. Ms Swan explained the framework of the Chairperson's draft text, and addressed provisions in detail. Issues under General Provisions were highlighted, noting the importance of defining the terms and those where agreement had not been finalized, particularly "illegal, unreported and unregulated fishing". Other provisions highlighted were the application of the Agreement and the encouragement to integrate port State measures at the national level, both of which remain to be agreed.

48. The step-by-step process established in the Chairperson's draft text for the port State to allow or deny the use of its ports was explained. Requirements included the designation of a port, advance

<sup>2</sup> Chairperson's Draft Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of 18 May 2009.

requests and information to be supplied by a vessel, authorization by a port State and situations where entry must be prohibited.

49. Ms Swan reviewed provisions in the text relating to the use of ports. She explained the wide range of purposes for which use could be denied.

50. Ms Swan described the comprehensive process for inspections and follow-up actions. It included setting levels and priorities for inspection, conducting inspections, inspection reports, transmittal of the inspection results, electronic exchange of information, training for inspectors and port State actions following inspection. The wide array of duties and standards for conducting inspections and reporting was emphasized.

51. It was pointed out that the increased emphasis on the role of the flag State, both before port entry and after inspection, reflected the will of the international community to enhance the duty of flag State responsibility.

52. The Article relating to the requirements of developing States was elaborated, noting its breadth and supportive approach. The different views of delegations at the Technical Consultation in relation to dispute settlement were described, as reflected in the Chairperson's draft text.

53. The final provisions of the Chairperson's draft text were reviewed and the considerations surrounding the unresolved issue of whether the Agreement should be concluded within or outside the FAO Constitution were explained. It was noted that FAO required a long process for any proposed amendments and that the FAO governing bodies would need to have input to any amendment process. It was acknowledged, in this context, that FAO Members not party to the Agreement could vote on amendments to the Agreement. An important matter was a provision requiring the convening of a Conference of the Parties to the Agreement on a regular basis would need to be included in the draft text. In this respect, FAO was unlikely to have funds to support this, or any other activity under the Agreement, a situation not anticipated to change in the future. Finally, an Agreement concluded outside of FAO would not be limited to FAO Members.

54. In conclusion Ms Swan reviewed some of the key outstanding issues to be considered at the third resumed session of the Technical Consultation in August 2009.

55. In discussion, the problem of complicity or unprofessional behaviour in national administrations was noted in two respects. Firstly, as a potential blockage in implementing measures to prevent vessels from entering port where there were clear grounds for believing IUU fishing had taken place, and secondly as a means of avoiding port State measures altogether where a foreign vessel was permitted under national law to fly the flag of the coastal State for fishing in its waters.

56. In the latter case, the level of sanctions for illegal fishing would also be relatively low. It was pointed out that the core problem was the discharge of flag State responsibility and port State measures were developed to address this. The FAO Expert and Technical Consultations on Flag State Performance, mentioned above, were expected to develop other means of promoting the implementation of strengthened flag State responsibilities. It was also noted that, in one case, an African coastal State had amended its laws so as not to allow a foreign vessel to fish in its waters under its flag to prevent the abuses in question.

57. The role of coastal States, flag States and port States in combating IUU fishing was clarified in response to questions from participants.

58. The issue of assistance for developing countries was raised, noting that two major costs were training and the purchase and maintenance of equipment. However, the cost-effectiveness of port State measures was emphasized and it was explained that the costs of implementation should not be high. Training guidelines had already been agreed and expensive equipment was not essential. An important

activity would be the revision of national legislation to allow the full implementation of the port State measures. In considering the level and type of assistance, the different levels of development among countries was acknowledged. In one case, a national forum would be organized as a first step for awareness raising on the need for enhanced port State measures.

59. The need for different agencies in the national administrations to communicate effectively on issues relating to port State measures was addressed. For example, communication and consultations were needed among the various authorities that registered vessels, issued licenses and certified that fish was caught legally.

## **NATIONAL COORDINATION AND IMPLEMENTATION OF PORT STATE MEASURES: PILOT PROJECTS AND CURRENT STRENGTHS AND CONSTRAINTS**

### **Pilot projects**

60. Ms Swan made an introductory presentation entitled “FAO national workshops on port State measures”. It reviewed the Mauritania and Senegal workshops on port States measures that were conducted in June and July 2008. The presentation addressed the organization of the workshops, the task that were undertaken, the processes followed and the outcomes.

61. Ms Swan advised the workshop that the national workshops had been supported by the World Bank West Africa Regional Fisheries Project (WARFP). The objective of the workshops was to develop national capacity and promote regional coordination on port State measures, address emerging international standards at a relatively early time and identify national measures that could be funded by WARFP. She noted that the tasks of the workshops were to identify institutional, legal, administrative issues and priority actions. At the institutional level the role of relevant institutions for implementing the instruments and the means of communication and knowledge sharing among institutions were considered. The legal and administrative issues focused on gaps and means of redressing problem areas and raising awareness about the instruments among stakeholders. The priority actions concerned the implementation of the relevant instruments.

62. Ms Swan outlined the process for the implementation of the pilot projects involved the recruitment of two national consultants (MCS and legal) from the subregion and the preparation of background scoping reports prior to the workshops. She added that the reports included a review and assessment of existing frameworks and an identification of changes required, the identification of constraints to the implementation of the instruments and the means for overcoming them and a workplan for building national capacity and implementing the instruments.

63. With respect to the outcomes of the pilot projects, Ms Swan explained that the workshops identified priority, legal and MCS activities and other constraints at the national level, identified areas for further consideration including key provisions in the draft Agreement, agreed on an indicative workplan and budget and developed a framework for a manual to implement port State measures. Ms Swan also pointed out that the workshops identified common needs including law reform, training, an operational manual, integration of port State measures with other areas and mechanisms for strengthening subregional cooperation.

64. Mr Pathé Demba Ba, FAO Consultant, Nouakchott, Mauritania, advised the meeting that the FAO/SRFC on IUU fishing in Nouadhibou, Mauritania, had enabled participants representing the relevant institutions to understand the importance of port State measures in the struggle against IUU fishing. The participants summarized the human and material means available and the capacity of the inspection personnel and MCS programmes. A number of recommendations were made to enable Mauritania to be ready to implement port State measures. The recommendations concerned legislation, training, MCS equipment and information requirements, adequate budget, sufficient means for personnel involved with the implementation of port State measures and regional and international cooperation.

65. Mr Ba noted that the workshops concluded that Mauritania would be in conformity with port State measures after it revised its legislation and improved training of MCS personnel.

66. Following the presentation, the issue was raised concerning the relationship between civilian and military personnel in the Mauritanian Délégation à la surveillance des pêches et au contrôle en mer (DSPCM). Mr Ba responded that there were no problems of cooperation between civilian and military personnel because they were all officials of the State of Mauritania.

67. The question was also posed as to why there was a dedicated MCS dock? It was pointed that a dedicated dock was necessary for DSPCM vessels, *inter alia*, for security reasons and confidentiality of operations.

68. Mr Ba was asked what had been the impact of MCS in Mauritania. He responded that IUU fishing had been eradicated completely since 2001. In addition sanction for IUU fishing had increased significantly from MRO 300 000 000 to more than MRO 1 400 000 000 between 1997 and 2007.

69. The question was posed as to what was the status of MCS officers in Mauritania. Mr Ba responded that MCS officers were senior officers from the National Marine who were designated by decree by the Council of Ministers.

70. Mrs Marième Diagne Talla, FAO Consultant, Dakar, Senegal, summarized the results of the Dakar, Senegal, workshops that were held in June and July 2008 on the Model Scheme to combat IUU fishing. She advised the workshop that Senegal had a sufficiently robust institutional, administrative and legal framework to implement port State measures. However she noted that some amendment of a legal nature would be required together with complementary training for MCS officers.

71. Mrs Diagne Talla pointed out that the report of the workshops listed a number of constraints for Senegal and communication difficulties at the subregional level. The report also included actions that might be undertaken to strengthen port State responsibilities in the context of combating IUU fishing. The improvement of the legal framework was also recommended as well as training for MCS officers. She noted that following the two Dakar workshops some actions had been taken.

72. In discussion following the presentation, it was noted that many of the problems raised in the context of Senegal were similar to those of other countries in the subregion. It was suggested in the workshop that national legislation should be revised to enable enhanced implementation of port State measures in West African countries.

73. In his commentary on the two presentations, Mr Jallow observed that the workshops in Mauritania and Senegal demonstrated that the countries had the means to ensure reasonable MCS capabilities that were required for the implementation of effective port State measures. He pointed out that both countries should consider addressing the following issues:

- improved integration and cohesion at the national level that would create an effective partnership among the concerned agencies;
- revised national legislation to incorporate port State measures requirements, indemnity for delays, loss of revenue and the role of military and civilian personnel;
- enhanced training for inspectors and other personnel required to implement port State measures;
- harmonized legal texts among countries to deter IUU fishing in the subregion;
- formulation of a procedures manual; and
- action to involve all relevant national agencies in the formulation of NPOAs–IUU.

74. Mr Kuemlangan thanked the consultants for their comprehensive and informative presentations. He acknowledged the findings and recommendations and agreed with Mr Jallow that the situation and problems described in Mauritania and Senegal were similar for many countries in the

subregion. The similarities of these problems underscored the need to continue with concerted national and subregional MCS and other efforts against IUU fishing.

75. In his commentary on the report of the findings and follow-up action of the Mauritania workshop, Mr Kuemlangan noted with interest the finding that Mauritania was relatively well supplied in terms of MCS resources and capacity but that it was acknowledged also that problems remained in combating IUU fishing. The recommendation to ensure cooperation and cohesion among relevant national agencies was therefore pertinent. He noted that there seemed to be a lack of coordination between external partners like FAO when providing technical assistance (e.g. review of the fisheries legal framework). He expressed regret that the results of the Mauritania workshop were not integrated into the ongoing FAO legal review process and asked national authorities to ensure that external partners were informed about ongoing technical assistance projects so that they could complement each other for the benefit of the recipient country. With respect to actions to be carried out at the subregional level, Mr Kuemlangan urged countries to learn from other subregions such as the Pacific Islands region because it had dealt with issues such as harmonized measures and legislative frameworks including harmonized penalties that had equal and adequate deterrent effect.

76. In commenting on the presentation on the results and follow-up of the Senegal workshop, Mr Kuemlangan agreed with the findings and recommendations that were similar to those of the Mauritania workshop. He clarified some misunderstanding about international law and the right of port States to deny access. He stated that denial of access to port was a right of port States and that the only exception to this right to deny access was *force majeure* and distress. This principle was reflected in the draft Agreement currently under negotiation.

77. Mr Kuemlangan also noted that there was a problem with the lack of coordination and cohesion among relevant national agencies to implement port State measures. He encouraged that this problem be addressed in Senegal. He stressed again the need for cooperation at the subregional level and repeated the need for the West African subregion to examine how other regions in the world had dealt with similar issues and to learn from their experience.

### **Current strengths and constraints**

78. Prior to the workshop a questionnaire was distributed to all participants seeking information concerning the current status of IUU fishing and the implementation of port State measures in their respective countries. Participants were requested to complete the questionnaire and submit it to the Secretariat in advance of the workshop. The questionnaire is in Appendix G.

79. At the workshop participants were invited to present the information they had provided in their questionnaires. This exercise enabled the workshop to have a snapshot of the nature of IUU fishing problems being encountered across the subregion and the status of the implementation of port State measures.

80. Mr Jallow commented on the participants' presentations noting that generally countries had few problems with inspections at port. He observed that improvement had been made in some cases where countries had designated dedicated fishery ports. However, he added that countries would need to improve their efforts on a number of fronts to implement port State measures fully and effectively, highlighting the following areas:

- improved institutional coordination to reduce conflicts especially between agencies responsible for revenue generation and resource management;
- reviewed legal framework to facilitate harmonization of legislation at the subregional level;
- enhanced capacity building for inspectors and others associated with the implementation of port State measures;

- strengthened exchange of information and networking to provide national vessel register requirements for a subregional database;
- improved infrastructure and specialized equipment to enable countries to deal effectively and quickly with violations; and
- enhanced efforts to sensitize national stakeholders about the importance of port State measures and its role in combating IUU fishing.

81. Following the presentations by participants of their responses to the questionnaires on national strengths and constraints in implementing port State measures, Mr Lobach commented on the trends in the responses, summarizing the situation in the West African subregion. With respect to the major IUU fishing problems the following problems were identified in the presentation:

- poaching (i.e. fishing without a licence or an authorization);
- unauthorized transshipment;
- fishing in closed areas or wrong zones;
- use of illegal fishing gear, and
- catching juvenile fish.

He observed that in entire subregion only 18 ports were used by foreign fishing vessels, with a total number of port calls of between 1 000 and 1 200 per year. In Mr Lobach's opinion this limited number of ports would be a considerable advantage for establishing harmonized port State measures for the subregion. He noted that all States had advance notification requirements and inspection procedures in place. However, most States did not have priorities for selecting vessels to be inspected or for denying the use of ports based on prior notifications.

82. Mr Lobach pointed out that although many States had taken action against vessels following an inspection disclosing IUU fishing, he queried whether the sanctions imposed were sufficient to deter IUU fishing. In relation to the issue of the availability of human capacity to implement port State measures, he observed that all participants considered capacity levels to be inadequate. This situation suggested that capacity building needed to be addressed through training, staff recruitment, collaboration between agencies and the provision of monitoring tools.

83. Furthermore Mr Lobach noted that all States were parties to some regional cooperation mechanisms but expressed concern that only seven countries were members of ICCAT, despite the fact that tuna and tunalike species managed by ICCAT occurred in the waters of the 13 coastal States whose participants were attending the workshop.

84. With respect to constraints in implementing port State measures, Mr Lobach identified the following issues:

- lack of logistics and equipment;
- lack of qualified staff;
- poor harmonization and cooperation among national agencies; and
- inappropriate legal framework.

In order to overcome these constraints, participants suggested that measures were necessary to ensure political will, capacity building through training and improved logistics, additional and adequate funding, strengthening internal cooperation and revision of legislation.

85. In conclusion, Mr Lobach noted that participants proposed that key areas for future subregional cooperation could include a harmonized penalty system, MCS harmonization, cooperation in VMS implementation, establishment of a subregional/regional fishing vessel register, subregional training programmes, establishment of in-country focal points and regular meetings for the exchange of information and experience.



## LEGAL AND REGIONAL PERSPECTIVES ON PORT STATE MEASURES

86. Mr Blaise Kuemlangan, Legal Officer of the FAO Legal Office, Rome, Italy, gave a presentation on the key elements of law that were required to implement port State measures to combat IUU fishing. He contextualized his presentation by stating that international instruments such as the Model Scheme and other fisheries instruments needed national enabling legislation for implementation. He highlighted that certain port State measures could already be implemented under current fisheries legislation. For example, inspections in port, designation of inspectors and inspection procedures could have been elaborated already under existing fisheries legislation. However, these would need to be complemented so that the full range of port State measures could be implemented. To this end, the national fisheries legal framework should be reviewed and revised to ensure, *inter alia*, that it established the:

- scope or designation of vessels and areas subject to port State measures and exceptions;
- extraterritorial application of the law where appropriate;
- requirement for notification and request for entry into port;
- empowerment of inspectors and other fisheries officers to take the full range of port State measures;
- denial of port services in addition to denial of landing or transshipment in port;
- prescription of form and content of inspection reports and transmission of such reports after inspection;
- confidentiality of certain information; and
- punishment of, or penalties against, IUU fishers.

Other innovations such as the legal requirements modelled on the provisions of the US Lacey Act that prohibited the importation of fish that had been caught in contravention of another State's legislation might be considered also. In the review of legislation to implement port State measures, the Model Scheme, the draft Agreement after it is adopted and other related international fisheries instruments should be taken into account.

87. In discussion, it was pointed out the closure of ports to IUU-caught product could affect the supply of fish to a country and, as a result, food security. This issue could make it difficult at the political level to secure the necessary support for the implementation of port State measures and the adoption of legislation to underpin them. In this regard it was noted that two options could be considered. The first of these was the continued promotion of IUU fishing to support today's food supply and, at the same time, run the risk that fish stocks would be further depleted and completely overfished. Alternatively, there was the possibility to secure food security now and for future generations by addressing sustainability issues including IUU fishing that also implied the implementation of effective port State measures.

88. As a matter of clarification, it was further noted that port State measures set out in the draft Agreement applied only to foreign vessels and not to national vessels and their catches. For vessels from neighboring States an opportunity was provided in the draft Agreement for such States to agree on a system of port State measures that recognized the particular circumstances of neighboring countries.

89. The workshop agreed that in order to implement the draft Agreement once it was in force, there was a clear need to review and revise legislation. Furthermore, it was apparent that many countries in the subregion lacked the human capacity and other resources to undertake such a review. Some participants enquired whether FAO could provide assistance with this work. In response, it was advised that FAO could assist providing that resources were available. Avenues such as the TCP Programme and other trust funds administered through FishCode could possibly be used providing that a documented request was received from a country.