

**Eighth round of Informal Consultations of States Parties to 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**

**(New York, 16–19 March 2009)**

**Report**

**SUMMARY**

The present document contains the report of the eighth round of Informal Consultations of States Parties to 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 (the Agreement), which was held in New York, 16-19 March 2009.

As provided in paragraph 33 of General Assembly resolution 63/112 of 5 December 2008, the eighth round of Informal Consultations considered promoting a wider participation in the Agreement through a continuing dialogue, in particular with developing States, and initial preparatory work for the resumption of the Review Conference.

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## **I. Introduction**

1. Pursuant to paragraph 33 of General Assembly resolution 63/112 of 5 December 2008, an eighth round of Informal Consultations of States Parties to 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 (the Agreement), was held at United Nations Headquarters, in New York, from 16 to 19 March 2009.
2. The Secretary-General convened the Informal Consultations in order to consider, inter alia, promoting a wider participation in the Agreement through a continuing dialogue, in particular with developing States, and initial preparatory work for the resumption of the Review Conference, and to make any appropriate recommendations to the General Assembly.

## **II. Organization of work**

### **A. Opening of the eighth round of Informal Consultations**

3. The Director of the Division for Ocean Affairs and the Law of the Sea, Mr. Václav Mikulka, opened the eighth round of Informal Consultations of States Parties to the Agreement.

### **B. Election of the Chairperson**

4. The meeting elected Ambassador David Balton, Deputy Assistant Secretary for Oceans and Fisheries in the Bureau of Oceans, Environment and Science, United States Department of State as Chairperson.

### **C. Attendance**

5. Representatives of the following parties attended the eighth round of Informal Consultations: Australia, Austria, Belgium, Brazil, Canada, Costa Rica, Czech Republic, Denmark, Estonia, European Community, Fiji, Finland, France, Germany, Greece, Iceland, India, Iran (Islamic Republic of), Japan, Kenya, Lithuania, Maldives, Marshall Islands, Micronesia (Federated States of), Monaco, Mozambique, Namibia, Nauru, Netherlands, New Zealand, Norway, Papua New Guinea, Poland, Portugal, Republic of Korea, Russian Federation, Saint Lucia, Senegal, Seychelles, Slovenia, South Africa, Spain, Sweden, Trinidad and Tobago, Tuvalu, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay.
6. Observers from the following States, United Nations specialized agencies, programmes and bodies, as well as intergovernmental and non-governmental organizations attended the eighth round of Informal Consultations:

- (a) States non-parties: Angola, Argentina, Bosnia and Herzegovina, Cape Verde, Chile, China, Colombia, Croatia, Cuba, Djibouti, Ecuador, Egypt, Ghana, Guatemala,

Guyana, Indonesia, Iraq, Jamaica, Kuwait, Lesotho, Madagascar, Malaysia, Mauritania, Mexico, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Singapore, Thailand, Turkey, Venezuela (Bolivarian Republic of) and Viet Nam;

(b) United Nations offices, specialized agencies and related organizations: United Nations Department of Economic and Social Affairs (DESA), Food and Agriculture Organization of the United Nations (FAO), World Bank, and World Trade Organization (WTO);

(c) Subregional and regional fisheries management organizations and arrangements (RFMO/As): Inter-American Tropical Tuna Commission (IATTC), International Commission for the Conservation of Atlantic Tunas (ICCAT), North East Atlantic Fisheries Commission (NEAFC), Northwest Atlantic Fisheries Organization (NAFO), Pacific Islands Forum Fisheries Agency (FFA), Permanent Commission for the South Pacific (CPPS) and the Western and Central Pacific Fisheries Commission (WCPFC);

(d) Other intergovernmental organizations: Asian African Legal Consultative Organization (AALCO) and the International Union for Conservation of Nature and Natural Resources (IUCN); and

(e) Non-governmental organizations: Advisory Committee on Protection of the Sea (ACOPS), Marine Stewardship Council (MSC) and the Natural Resources Defense Council (NRDC).

#### **D. Opening statement of the Chairperson**

7. In his opening statement, the Chairperson highlighted previous significant accomplishments of the Informal Consultations, including the establishment of the Part VII Assistance Fund, the approval of revisions to the Terms of Reference of the Part VII Assistance Fund, and preparations for the Review Conference held in May 2006, which produced an ambitious set of recommendations. He also congratulated the seven new States Parties to the Agreement since the seventh round of Informal Consultations held in 2008 (Palau, Oman, Hungary, Slovakia, Mozambique, Panama and Tuvalu), which brought the total number of parties to 75, including the European Community (EC).

8. In addition, the Chairperson highlighted examples of recent developments and initiatives relating to the Agreement, including efforts by RFMO/As to undertake performance reviews, the adoption by RFMO/As of new or stronger measures to combat illegal, unreported and unregulated (IUU) fishing, the negotiations under the auspices of FAO to create a legally-binding instrument on port State measures to prevent, deter and eliminate IUU fishing, the work of FAO to establish a global record of fishing vessels and to develop criteria to assess the performance of flag States, and the organization by the European Union of the second meeting of the five tuna RFMOs to be held in San Sebastian, Spain, in June 2009.

## **E. Adoption of the meeting documents**

9. The Informal Consultations considered the provisional agenda of the meeting, and adopted it as proposed (see Annex I). The Informal Consultations also adopted, as proposed, the draft programme of work and the revised draft organization of work of the continuing dialogue to promote a wider participation in the Agreement.

## **III. Continuing dialogue, in particular with developing States, to promote a wider participation in the Agreement**

10. The Informal Consultations appointed Mr. Joji Morishita, Counsellor, Resources Management Department, Fisheries Agency, Japan, as Moderator of the continuing dialogue to promote a wider participation in the Agreement. The plenary session of the Informal Consultations was suspended until the conclusion of the continuing dialogue on Tuesday, 17 March 2009.

11. The Continuing Dialogue was structured into the following five segments, with each segment entailing a panel presentation and a general discussion among participants: (1) Promoting a wider participation in the Agreement; (2) Relationship between the Agreement and the United Nations Convention on the Law of the Sea (UNCLOS), as well as other international instruments; (3) Capacity-building; (4) Compatibility of conservation and management measures; and (5) Cooperation in enforcement and port State measures. In order to facilitate the discussions in the third segment, a compilation prepared by the Secretariat was circulated (ICSP8/UNFSA/INF.4), which contained a list of sources of financial assistance and other available vehicles for assistance that could be accessed by developing States to increase their capacity in the conservation and management of fishery resources, and information on the needs of developing States with regard to capacity-building and assistance in the conservation and management of straddling fish stocks and highly migratory fish stocks.

12. The Moderator provided a brief oral summary of the continuing dialogue at the resumed plenary session and stated that the continuing dialogue had initiated an important process to increase participation in the Agreement, which will continue in other forums. The Moderator reported that participants had engaged in fruitful discussions and had developed a deeper understanding of the various perspectives that affect promoting a wider participation in the Agreement (see Annex II, Summary).

## **IV. Initial preparatory work for the resumption of the Review Conference**

### **A. Issues to be considered in assessing the effectiveness of the Agreement**

13. The Chairperson recalled that the Review Conference would resume in 2010 and noted that this year's Informal Consultations would provide an initial opportunity for delegations to consider substantive and procedural aspects of the resumed Review

Conference. The ninth round of Informal Consultations in 2010 would serve as the preparatory meeting for the resumed Review Conference.

**(i) Substantive issues**

14. The Chairperson reminded delegations that the initial session of the Review Conference in 2006 had taken a comprehensive approach and had reviewed the Agreement by dividing issues into four clusters (conservation and management of stocks; mechanisms for international cooperation and non-members; monitoring, control and surveillance and compliance and enforcement; and developing States and non-parties). The Chairperson requested delegations to consider the scope of the review to be undertaken at the resumed Review Conference, and whether there was still general agreement that the Agreement should not be amended.

15. Many delegations supported taking a similarly comprehensive approach in assessing the effectiveness of the Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks through reviewing the implementation of the recommendations of the initial session of the Review Conference and building upon those recommendations. Several delegations indicated that the resumed Review Conference could review implementation of the 2006 recommendations but then also consider several specific issues that would benefit from more focused discussions, such as: (i) issues relating to developing States (e.g. consideration of current forms and types of assistance, improving implementation of Part VII of the Agreement, increasing fishing opportunities for developing States, and expanding the scope of the assistance available through the Part VII Assistance Fund); (ii) issues relating to conservation and management measures (e.g. status and sustainability of fish stocks, making use of the best scientific evidence available, broader use of the precautionary approach and ecosystems approaches, compatibility of measures, and addressing discards, overcapacity and subsidies); (iii) compliance and enforcement issues (e.g. flag State performance, port State measures, market State issues, IUU fishing, and capacity-building); and (iv) institutional issues (e.g. performance reviews of RFMO/As, and improving functioning and accountability of RFMO/As).

16. It was noted that deciding on a small set of specific issues may not be achievable, given the various interests. On the other hand, consideration of a large number of specific issues would essentially be akin to taking the comprehensive approach used at the initial session of the Review Conference. In addition, particular issues could emerge naturally during the discussion. In light of this, some delegations were hesitant to agree on a set of specific issues in advance of the resumed Review Conference.

17. Delegations also considered the nature of the report of the Secretary-General to be submitted to the resumed Review Conference and emphasized the need for updated information on the status of relevant fish stocks in order to facilitate the review. It was considered important for the report to contain updated information from FAO according to the best available scientific data. There was also an exchange of views regarding the scope of the report and whether it should consider stocks that fell within the scope of the Agreement, or stocks that were also the subject of recommendations of the initial session

of the 2006 Review Conference. Some delegates emphasized the need for information on other activities that affected fish stocks and on the distribution of stocks based on habitat and benthic topography. It was also suggested that a more analytical and diagnostic approach should be taken to the updated comprehensive report and that it would be important to provide information on the specific needs of developing States concerning the implementation of the Agreement.

18. Most delegations expressed the view that the resumed Review Conference should focus on implementation of the Agreement and not on possible amendments to the Agreement. It was noted that the resumed Review Conference did not have a mandate to amend the Agreement. Satisfaction was expressed over the balance achieved in the Agreement, and it was noted that procedures for amendment of the Agreement could be invoked at any time by States Parties. It was emphasized that discussion on amendments to the Agreement could also delay ongoing negotiations to establish new regional fisheries organizations and arrangements based on the Agreement. Some other delegations noted that the mandate of the Review Conference left open the possibility of considering revisions to the Agreement and indicated that this possibility should remain open in view of the need to increase participation in the Agreement.

#### **(ii) Institutional and procedural issues**

19. The Chairperson recommended that the general approach to procedure taken during the initial session of the Review Conference in 2006 should continue at the resumed Review Conference in 2010. It was recalled that the rules of procedure had remained provisional during the initial session of the Review Conference with the understanding that the meeting would only proceed to the formal adoption of the rules of procedure if necessary. The Chairperson requested delegates to consider the timeline and programme of work and provisional agenda for the resumed Review Conference, as well as recommendations to the General Assembly concerning the next round of Informal Consultations.

20. Many delegations emphasized that the resumed Review Conference was a resumption of the initial session of the Review Conference and it was not necessary to revisit procedural issues that had been resolved, in particular, the provisional rules of procedure. Concern was expressed regarding how the resumed Review Conference would operate with regard to the standing of participants, in accordance with article 36 of the Agreement. It was noted that the initial session of the Review Conference had proceeded on a consensus basis with participation on an equal footing and the hope was expressed that the resumed Review Conference would continue to work on this basis.

21. There was widespread agreement that the ninth round of Informal Consultations of States Parties to the Agreement (ICSP-9) should focus primarily on preparations for the resumed Review Conference. Some delegations suggested that ICSP-9 could also address other issues of importance, such as serving as a forum for an initial discussion on the status of stocks. Other delegations indicated that the meeting should remain focused and limited in duration.

22. Regarding the updated comprehensive report of the Secretary-General to the resumed Review Conference, delegations indicated that it would be useful for the Division to prepare and distribute a questionnaire to all States to facilitate the preparation of the report. It was noted that while completing the questionnaire was not mandatory, it was highly desired so the report could be as comprehensive as possible. It was also suggested that the Division could prepare the draft provisional agenda and draft organization of work for the resumed Review Conference. The Division was also requested to determine whether the tentative dates for ICSP-9 and the resumed Review Conference conflicted with any other significant fisheries meetings.

23. Delegations agreed to meet in an open and informal drafting group to prepare a timeline and programme of work for the resumption of the Review Conference, which was presented to the plenary on Thursday, 19 March, and agreed to with some modifications (see Annex III).

## **V. Consideration of the next round of Informal Consultations of States Parties to the Agreement**

24. Delegations agreed that the ninth round of Informal Consultations of States Parties to the Agreement would be held in 2010 for two days and would focus primarily on preparations for the resumed Review Conference in 2010.

## **VI. Consideration of recommendations to be conveyed by States Parties to the sixty-fourth session of the General Assembly**

25. The eighth round of the Informal Consultations of States Parties to the United Nations Fish Stocks Agreement agreed to recommend to the General Assembly the following courses of action, in accordance with the agreed timeline and programme of work:

(i) to request the Secretary-General to convene a ninth round of Informal Consultations of States Parties to the Agreement for a duration of two days to serve primarily as a preparatory meeting for the resumed Review Conference; and

(ii) to request the Secretary-General, in preparing, in cooperation with FAO, the updated comprehensive report referred to in paragraph 32 of General Assembly resolution 63/112, to take into account the specific guidance proposed by the eighth round of Informal Consultations of States Parties to the Agreement, and to request that an advance unedited version of the report be made available, in accordance with past practice, on the Division's website.

## **VII. Other matters**

26. Statements were made by Vanuatu, on behalf of the Pacific Island Forum members, and by Papua New Guinea, on behalf of the member States to the 1982 Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Concern (the



Nauru Agreement). Vanuatu recalled the role of the Forum as a comprehensive framework for fisheries management in the region and reaffirmed the Vava'u Declaration on Pacific Fisheries Resources: Our Fish, Our Future. Papua New Guinea highlighted recent developments in the management of transboundary fisheries in the Pacific Islands region.

### **VIII. Closing of the eighth round of Informal Consultations of States Parties to the Agreement**

27. The Chairperson closed the meeting with a request for States and RFMOs to provide responses by the end of April 2009 to the questionnaire circulated by the Division concerning action taken to give effect to paragraphs 83 to 90 of General Assembly resolution 61/105, so that such information could be taken into account in the preparation of the report of the Secretary-General for the sixty-fourth session of the General Assembly.

## ANNEX I



### **Eighth round of Informal Consultations of States Parties to 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 (the Agreement)**

#### **Agenda**

**16-19 March 2009  
United Nations, New York**

1. Opening of the eighth round of Informal Consultations by the Representative of the Secretary-General.
2. Election of the Chairperson.
3. Adoption of the agenda.
4. Organization of work.
5. Continuing dialogue, in particular with developing States, to promote a wider participation in the Agreement.
6. Initial preparatory work for the resumption of the Review Conference:
  - a. Issues to be considered in assessing the effectiveness of the Agreement.
    - (i) Substantive issues;
    - (ii) Institutional and procedural issues.
7. Consideration of the next round of Informal Consultations of the States Parties to the Agreement.
8. Consideration of recommendation(s) to be conveyed by States Parties to the sixty-fourth session of the General Assembly.
9. Other matters.

## ANNEX II

### **Summary of the Moderator of the continuing dialogue to promote a wider participation in the Agreement**

1. The continuing dialogue provided delegates with an opportunity for a frank discussion on how to increase participation in the Agreement. It was structured in five segments, each introduced by a presentation of an expert followed by an open discussion amongst participants.

#### **Segments one (Promoting a wider participation in the Agreement) and two (Relationship between the Agreement and the Convention, as well as other relevant international instruments)**

2. Dr. Erik Molenaar (Netherlands Institute for the Law of the Sea), made a presentation featuring information on the background and purpose of the Agreement, an analysis of the current participation in the Agreement, and consideration of the benefits to States in becoming a party to the Agreement.

3. Participants highlighted the importance of the Agreement as a norm-setting instrument in international fisheries law and environmental law, noting its influence on the review of the mandates of existing RFMO/As, the ongoing negotiations for the establishment of new regional fisheries organizations and arrangements, and the performance review processes of a number of RFMO/As. General support was expressed for the Agreement and the balance it achieved between the interests of States. Its provisions, in particular articles 5 and 6, were considered of key importance for establishing general principles for the conservation and management of fisheries resources. It was noted that the implementation of General Assembly resolution 61/105 could provide an important test case for assessing the implementation of articles 5 and 6 of the Agreement.

4. Some delegates noted that participation in the Agreement was growing at a promising rate, with 17 States becoming parties since the first session of the Review Conference in 2006. Increased participation of developing coastal States in the Agreement was welcomed. However, the view was expressed that greater participation should be sought, including amongst developing coastal States, in order to reach universality. It was noted that wider participation in the Agreement would further the ability of the international community to manage and conserve fisheries resources in a sustainable manner.

5. A number of participants called for greater awareness-raising and information-sharing regarding the importance of, and the benefits of participation in, the Agreement. Such benefits included global acceptance of the norms and principles in the Agreement and the Convention and the creation of a consistent approach to conservation and management, facilitating participation in RFMO/As, increasing fishing opportunities for States within RFMO/As, access to the dispute resolution mechanisms contained in the Agreement, and

access to capacity-building assistance, both from the Assistance Fund established under Part VII of the Agreement and bilateral sources. Some participants noted that participation in the Agreement could demonstrate that a State was a “responsible fishing State”, whether as a coastal, flag, port or market State. The view was expressed that the international fishing community had to demonstrate, by a wider participation in the Agreement, that it could adequately manage fisheries, or alternative non-fishery mechanisms would be contemplated.

6. It was noted that, besides lack of capacity, there were various reasons why States had not become parties to the Agreement, including political and legal reasons. Efforts had to be made to explain the practical benefits of participation in the Agreement to national legislatures, including by a cost-benefit analysis. In this context, weaknesses in the fisheries administration in some developing States were highlighted.

7. Some participants noted that other instruments were relevant to sustainable fisheries and some States non-parties emphasized that regional structures were flexible and achieved the aim of conservation and sustainable use of fisheries resources.

8. Ambassador Satya N. Nandan (Fiji) made a presentation on the relationship between the Agreement and the Convention, which explained how the provisions of the Convention regarding the conservation and management of marine living resources were implemented and further developed in the Agreement. It was noted that participation in the Agreement would assist States in implementing the provisions of the Convention.

### **Segment three (Capacity-building)**

9. Mr. Fábio Hazin (Director of the Federal Rural University of Pernambuco State, Department of Fisheries and Aquaculture, Brazil), identified needs of developing States for assistance in the conservation and management of straddling fish stocks and highly migratory fish stocks; Mr. Terje Lobach (Senior Advisor, Directorate of Fisheries, Norway), addressed bilateral assistance to developing States, with particular reference to the experience of Norway; and Mr. David Doulman (Senior Fishery Liaison Officer, International Institutions and Liaison Service, Fisheries and Aquaculture Economics and Policy Division, FAO), focused on the activities of FAO concerning human resource development to support fisheries management and implementation of international instruments.

10. During the discussions, participants highlighted that increasing the capacity of developing States in respect of fisheries management was an important aspect of promoting a wider participation in the Agreement. One participant suggested that there was a need to approach those States non-parties who would benefit from becoming a party to the Agreement by having their capacity-building needs addressed.

11. One participant observed that some States were not familiar with the Agreement or the Part VII Assistance Fund, and there was a need for a strategy to raise awareness. It was noted that regional organizations could play a role in this regard, and some

participants stated that the benefits of participation in the Agreement needed to be better identified and communicated.

12. A number of participants emphasized that there must be real and practical advantages for developing States to participate in the Agreement, particularly through exploitation of fishery resources in areas under national jurisdiction and on the high seas. In this context, capacity-building to enhance fishing fleets and the need for developing States to participate on an equal footing in high seas fisheries regulated by RFMO/As were emphasized. It was noted that capacity-building should support the aspirations of developing States and respect sovereign rights, while recognize the need to ensure sustainable development, particularly in view of current levels of fishing effort. One participant emphasized the benefit of the provision in the Agreement regarding participatory rights for new members and participants in RFMO/As, although it was noted that implementation could be improved.

13. Participants also drew attention to the need for further progress in the implementation of Part VII of the Agreement by developed States. It was noted that developing States Parties could be persistent actors in lobbying for assistance under Part VII. Many participants noted the need to develop a strategy for matching the capacity-building needs of developing States with sources of assistance. Participants welcomed the compilation prepared by the Secretariat on sources of available assistance for developing States and the needs of developing States for capacity-building and assistance. One participant proposed that it should be kept up-to-date by the Secretariat.

14. The view was expressed that further information was required regarding the sources of assistance that might be accessed by developing States. It was noted that assistance was demand-based and that the cost-benefit analysis of providing assistance was important. It was also suggested that donors should be proactive and raise awareness on the assistance available to developing States. Some participants considered that there was a need to consider new approaches to delivering assistance, for example, through regional approaches, access to non-traditional sources of funding, and pooling of funds. One participant offered to provide assistance by making research vessels and scientists available.

15. There was also a need for better information regarding the specific needs of developing States. One delegation proposed that it would be helpful to obtain this information, including priorities for capacity-building, in advance of the resumed Review Conference. Another participant suggested that the issue of capacity-building needs could be considered by the FAO Committee on Fisheries.

16. Some participants noted that transfer of technology was an essential form of cooperation with developing States. One participant stated that, with regard to implementation of the Agreement, developing States required more assistance in the regulation of fishing effort. Other identified needs included resources to hire qualified staff, funds to establish a regional monitoring, control and surveillance network, training

for staff to carry out stock assessments and research, and financial management training for small-scale fishers.

17. Participants welcomed the increasing use of the Part VII Assistance Fund to fund capacity-building projects as well as participation of developing States in meetings. It was noted that the Terms of Reference allowed RFMO/As to apply for assistance on behalf of developing States Parties. One participant called for more information to be made available on how to access the Fund and on the assistance provided by the Fund.

18. The representative of FAO advised that the balance of the Assistance Fund was approximately US\$425,000, but it would be significantly reduced once anticipated requests for assistance were funded in 2009. It was noted that the applications for assistance were received mostly from one region. One participant called for more contributions to the Assistance Fund.

#### **Segment four (Compatibility of conservation and management measures)**

19. Dr. Johanne Fischer (Executive Secretary of the Northwest Atlantic Fisheries Organization), made a presentation on the experience of NAFO in addressing the compatibility of measures for straddling fish stocks, and also provided information on the IUU vessel list established by NAFO, including the procedures for inclusion of a vessel in the list and the related consequences. Mr. Driss Meski (Executive Secretary of the International Commission for the Conservation of Atlantic Tunas), discussed compatibility from the perspective of a RFMO responsible for the management of highly migratory fish stocks. The panellists also provided information regarding the objection procedure in respect of conservation and management measures in each RFMO.

20. Participants observed that compatibility was an important cornerstone of the Agreement and was based on the duty of cooperation. It was noted that article 7 represents a careful balance of interests and does not alter the balance struck by UNCLOS. It only requires coastal States and States fishing on the high seas to mutually take into account the measures they have adopted, respectively, and does not require those measures to be identical. Some participants noted that article 7 contained “constructive ambiguity” and that there were different interpretations of the article.

21. One participant noted the general agreement that compatibility of conservation and management measures established for the high seas and adopted for areas under national jurisdiction was necessary, but emphasized that the real issue was how to achieve compatibility, either through RFMO/As or direct cooperation. The view was expressed that article 7 was an attempt to put forward some rules to achieve compatibility, but that different approaches were needed for different stocks.

22. In terms of application, some participants stated that it was important to focus on the application of article 7 at a regional level, in particular through RFMOs. One participant noted that compatibility clauses were included in the conventions of most RFMOs, and on this basis, members of RFMOs that were not States Parties to the Agreement were

encouraged to consider participating in the Agreement. Another participant suggested that the application of article 7 could have more meaning in the context of straddling fish stocks, as the management of highly migratory fish stocks required conservation and management measures throughout the entire range of the stocks.

23. A number of States Parties noted their satisfaction with the application of article 7 and it was noted that article 7 did not force RFMOs to take particular measures. It was observed that, at a practical level, members of RFMOs had achieved compatibility through cooperation and RFMOs had adopted conservation and management measures that conserved resources and also respected the rights of coastal States. It was also noted that decision making systems of RFMOs, including dispute settlement mechanisms, were important in securing compatibility, while guarding the rights and interests of both coastal and fishing States. Some delegates highlighted the efforts of participants in the negotiations to establish the SPRFMO to address compatibility issues in respect of the management of the relevant stocks.

24. One participant stated that scientific evidence was an important consideration in achieving compatibility, which was recognized in article 7. In some cases, measures had been adopted by RFMOs that were not based on the best scientific evidence and could not be said to be compatible.

25. Some participants noted legal and political concerns regarding article 7. One participant expressed the view that article 7 was not clear in terms of implementation of the requirement of compatibility. For a number of States non-parties, the regional mechanisms for conservation and management of stocks were important and it was emphasized that these States participated actively in RFMOs and were responsible fishing States. Some participants emphasized that regional agreements provided the solution to compatibility issues. It was also suggested that solutions could be found in article 5 of the Agreement. The need for political will to adopt compatible measures was emphasized and it was suggested that issues relating to article 7 should be discussed during the resumed Review Conference.

#### **Segment five (Cooperation in enforcement and port State measures)**

26. Ambassador Satya N. Nandan (Chairman of the Western and Central Pacific Fisheries Commission), provided information on the experience of WCPFC with respect to high seas boarding and inspection, and Mr. Kjartan Hoydal (Secretary of the North East Atlantic Fisheries Commission) described the experience of NEAFC in the use of port State measures.

27. A number of participants highlighted the importance of the boarding and inspection provisions in articles 21 and 22 of the Agreement, which were considered to implement the duty of States to cooperate in the conservation and management of high seas fishery resources contained in UNCLOS. It was noted that implementation of these provisions in some RFMOs had contributed to a reduction in IUU fishing. The practical experiences of

some RFMOs illustrated the different ways that enforcement could be ensured, while maintaining a balance between the rights of flag States and inspecting States.

28. The importance of port State measures under article 23 of the Agreement as a compliance mechanism was highlighted, and the work of FAO on a draft legally-binding agreement on port State measures to prevent, deter and eliminate IUU fishing was welcomed. Reference was also made to the FAO model scheme on port State measures, and the importance of cooperation between flag and port States. Different experiences were shared regarding the adoption of port State measures. It was noted that the availability of resources affected the ability of developing States to enforce conservation and management measures, and that even shared enforcement, while reducing costs, involved legal and practical challenges.

29. It was noted that some States considered that the enforcement provisions of the Agreement did not respect the principle of exclusive flag State jurisdiction on the high seas. Some participants noted that these provisions contributed to the reticence of some States to participate in the Agreement, and that other methods of enforcement could be equally effective in ensuring the sustainable management of marine living resources and should be considered. The view was expressed that the efficiency and effectiveness of boarding and inspection as an enforcement tool was overstated, and that a case-by-case approach should be taken. Some participants noted that article 21(15) of the Agreement allowed for alternative enforcement regimes that were equally effective, while other participants were of the view that the provision did not allow sufficient latitude.

30. The point was made that enforcement under articles 21 and 22 of the Agreement was conducted with the consent of the flag State, provided at the time of ratification, and that the relevant provisions of the Agreement were carefully drafted to include safeguards to preserve the primary jurisdiction of flag States on the high seas. It was noted that the investigating State would act to investigate and take enforcement action following an alleged violation only if the flag State was unwilling or unable to fulfill its responsibilities under article 21. Such an enforcement regime was considered necessary to ensure that the provisions of the Agreement were implemented.

31. The enforcement regime utilized by IATTC, which included the use of international observers, black lists and restrictions on trans-shipment and landings, was cited as an example of an alternative mechanism under article 21(15), which was effective in reducing IUU fishing. Under such schemes, participants, who were also parties to the Agreement, could agree to suspend the application of the Agreement's boarding and inspection regime, as between each other, for example, through an RFMO resolution. It was noted that alternative mechanisms, consistent with the Agreement, could address some of the concerns expressed by some States non-parties regarding high seas boarding and inspection. It was suggested that the full range of alternative enforcement mechanisms should be explored and that alternative mechanisms should be discussed in the context of the resumed Review Conference to share experiences on implementation of the Agreement.



32. Some participants expressed concern regarding the safeguards for boarding and inspection in the Agreement and requested more information on how they were being implemented in practice. Particular concern was expressed over the possible use of force by boarding vessels, and the view was expressed that it should be strictly limited. Information was provided regarding boarding and inspection under various regional regimes and the safeguards contained in the Agreement, including requirements of necessity and proportionality on any use of force and liability for damage caused during boarding. Safeguards under regional enforcement regimes were also highlighted.

33. The view was expressed that cooperation in enforcement should also take place across different regions to maximize the effectiveness of measures, such as had occurred between NEAFC and NAFO and among the five tuna RFMOs.

## ANNEX III

### Timeline and Programme of Work

#### March 2009 (ICSP-8)

- Develop a Timeline and Programme of Work for the resumed Review Conference.
- Provide specific guidance to DOALOS regarding the content and scope of the updated comprehensive report of the Secretary-General, requested in paragraph 32 of General Assembly resolution 63/112, to be prepared in cooperation with FAO. In particular, request that the report include the following components, recognizing that coordination between DOALOS and FAO may be required to complete these tasks:
  - Overview of the status and trends of SFS and HMFS, as well as of discrete high seas stocks and non-target and associated and dependent species, provided in a common format using the best available information from, inter alia, FAO, States and RFMO/As;
  - Review and analysis of the extent to which the recommendations of the 2006 Review Conference have been implemented;
  - Compilation of specific information on the capacity-building needs of developing States in relation to implementation of the Agreement; and
  - Overview of the performance reviews of RFMOs that have taken place so far, including a description of the primary recommendations of those performance reviews.
- Request DOALOS to develop and circulate a voluntary questionnaire addressed to States and to RFMO/As regarding the recommendations of the 2006 Review Conference as soon as possible in order for responses to be submitted in a timely manner to enable the updated comprehensive report to be prepared sufficiently in advance of the next round of Informal Consultations.

#### March 2009 – February 2010

- The General Assembly, through the sustainable fisheries resolution, requests the Secretary-General to convene a ninth round of Informal Consultations of States Parties to the Agreement to serve primarily as preparation for the resumed Review Conference.
- The General Assembly, through the sustainable fisheries resolution, takes note of the report of the eighth round of Informal Consultations of States Parties to the Agreement, and requests the Secretary-General, in preparing, in cooperation with FAO, the updated comprehensive report referred to in paragraph 32 of resolution 63/112, to take into account the specific guidance proposed by the eighth round of Informal Consultations, and also requests that an advance unedited version of the

report be made available, in accordance with past practice, via the website of DOALOS.

- An advance unedited version of the updated comprehensive report will be made available in English only via the website of DOALOS in January 2010. Technical and factual corrections may be provided to DOALOS after the report is posted, in accordance with the practice of the United Nations regarding reports of the Secretary-General.
- DOALOS prepares and circulates the first draft of the provisional agenda and draft organization of work for the resumed Review Conference, taking into account the guidance provided by the eighth round of Informal Consultations, and the draft provisional agenda for the ninth round of Informal Consultations, 60 days in advance of the ninth round of Informal Consultations.

### **March 2010 – April 2010**

- Ninth round of Informal Consultations are held for two days tentatively between 15 to 19 March 2010, which:
  - Agrees on a provisional agenda and an organization of work to be recommended to the resumed Review Conference;
  - Considers the overview of the status and trends of the fish stocks addressed in the updated comprehensive report prepared by the Secretary-General in cooperation with FAO, without prejudice to the scope of application of the Agreement;
  - Consults on the composition of the bureau and any need to fill vacancies for the resumed Review Conference;
  - Considers any other matters, as appropriate.

### **May 2010**

- Resumed Review Conference is held tentatively from 24 to 28 May.