

UN FISH STOCKS AGREEMENT REVIEW CONFERENCE: 22-26 MAY 2006

The Review Conference of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea (UNCLOS) relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA or the Agreement) convenes from 22-26 May 2006, at UN headquarters in New York.

The UNFSA Review Conference was called for by UNFSA Article 36 and General Assembly resolution 59/25 of 17 November 2004, with the mandate, four years following the entry into force of the Agreement, to assess the adequacy of the Agreement's provisions for securing the conservation and management of straddling and highly migratory fish stocks and, if necessary, to propose means of strengthening the substance and methods of implementation of its provisions to better address any continuing problems in the conservation and management of the two types of stocks.

The Review Conference will consider: the extent to which the UNFSA provisions have been incorporated into national laws and regulations, as well as into the charters and/or measures of regional fisheries management organizations (RFMOs); the extent to which these provisions are actually being implemented in practice; and the extent to which States and RFMOs are taking action to remedy instances of failure to apply these provisions in practice. Elements for reviewing and assessing the adequacy of the UNFSA provisions concern:

- conservation and management of stocks, including: the adoption of measures; over-fishing and capacity management; effects of fishing on the marine environment; fisheries not regulated by RFMOs; and data collection and sharing;
- mechanisms for international cooperation, and non-members, including integrity of RFMO regimes, fishing activity by non-members, functioning of RFMOs, and participatory rights;
- monitoring, control and surveillance (MCS), and compliance and enforcement, including implementation of flag State duties, investigation and penalization for violations, and international cooperation; and
- developing States and non-parties, including recognition of special requirements, provision of assistance and capacity building; and increasing adherence to UNFSA.

The Conference is expected to produce a record of deliberations, prepared by the Chair with the assistance of the Secretariat, and a final report that reflects negotiated outcomes.

A BRIEF HISTORY OF THE UN FISH STOCKS AGREEMENT

The UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, called for by Agenda 21, the programme of action adopted at the 1992 UN Conference on Environment and Development, was convened by the UN General Assembly to solve problems related to the harvesting of these stocks on the high seas. Six substantive sessions were held from 1993 to 1995, resulting in the adoption of UNFSA in August 1995. UNFSA entered into force on 11 December 2001, and currently has 57 parties. It aims to ensure the long-term conservation and sustainable use of straddling and highly migratory fish stocks, and includes general principles for the conservation and management of straddling and highly migratory fish stocks and provisions on, *inter alia*: application of the precautionary approach; compatibility of conservation and management measures; cooperation for conservation and management; RFMOs; collection and provision of information and cooperation in scientific research; non-members of RFMOs; duties of and compliance and enforcement by flag States; international, subregional and regional cooperation in enforcement; procedures for boarding and inspection; measures taken by port States; special requirements and forms of cooperation with developing countries; and dispute settlement.

The Agreement establishes a set of rights and obligations for States to conserve and manage the two types of fish stocks as well as associated and dependent species, and to protect the marine environment. An associated Assistance Fund was established by the UN General Assembly in 2003 to assist developing country parties in UNFSA implementation.

Following General Assembly resolution 56/13, informal consultations of States parties (ICSP) have been held every year since 2002 to consider the regional, subregional and global implementation of the Agreement and prepare for the Review Conference.

ICSP-1: At its first meeting (30-31 July 2002, New York), the ICSP discussed the review of UNFSA implementation by parties and through RFMOs, implementation of Part VII (Requirements of Developing States) including the establishment of a programme of assistance for developing countries, changes in requested information and status of the report for parties and non-parties, and the future of the General Assembly resolutions on fisheries-related issues, among other things. ICSP-1 agreed upon a series of recommendations on the implementation of Part VII.

ICSP-2: At its second meeting (23-25 July 2003, New York), the ICSP focused on the impact of UNFSA implementation on related or proposed instruments throughout the UN system, establishment of the Assistance Fund under Part VII and preparations of its draft terms of reference, facilitation of the involvement of international financial institutions in UNFSA implementation, and consideration of Part II (Conservation and Management of Fish Stocks).

ICSP-3: At its third meeting (8-9 July 2004, New York), the ICSP discussed new developments in UNFSA implementation by parties, including: the strengthening of flag State duties; implementation at the regional level, including the establishment of new RFMOs; updates on States' initiatives at the global level; review of implementation of Part VII provisions, including contributions to the Assistance Fund; and preparatory work for the Review Conference.

ICSP-4: At its fourth meeting (31 May-3 June 2005, New York), the ICSP focused on the institutional, procedural and substantive issues related to the preparation for the Review Conference, also based on the Chair's background papers on possible criteria for assessing UNFSA's effectiveness and possible initiatives for strengthening the substance and methods of implementation of the Agreement's provisions. Participants discussed a timeline and programme of work for the preparation of the Review Conference, a draft agenda for the preparatory meeting and a set of recommendations to the General Assembly related to the preparatory work and the convening of the Review Conference and its preparatory meeting.

ICSP-5: At its fifth meeting (20-24 March 2006, New York), ICSP served as a preparatory meeting for the Review Conference. In a preliminary exchange of views on the UN Secretary-General's report (A/CONF.210/2006/1), participants stressed the need for: broader membership of the Agreement, in particular increased membership of key fishing States; priority action on the degradation of vulnerable marine ecosystems; the creation of new RFMOs; and the strengthening of cooperation and coordination between and among RFMOs. Non-parties expressed concern over enforcement activities in the high seas and possible abuse of the rights of flag States, while observers urged action on reporting on high seas fisheries related to discrete stocks and on prohibiting in the interim the use of destructive fishing practices on the high seas. Participants discussed recommendations for consideration by the Review Conference, in particular on draft rules of procedure on voting, composition of the bureau and of the drafting committee, the Conference outputs, and possible future action such as future review conferences and formalized meetings of parties. Discussions focused on the modalities of the participation of non-parties in the Conference and the extent to which they would be able to participate in the decision-making process. As a contact group on this matter could not reach an agreement, the Chair, Amb. David Balton (US), presented a proposal for the relevant draft rules of procedure according to which the Conference may proceed to a vote on matters of substance with parties having one vote and non-parties having the possibility to request inclusion of their views in the record of the meeting. The proposal was opposed by some non-parties but was approved by general agreement among parties. The Consultation outcomes include a provisional agenda and organization of work for the Review Conference, provisional rules of procedure, and elements for assessing the adequacy and effectiveness of the Agreement.

RECENT RELATED MEETINGS

2005 OCEAN POLICY SUMMIT: The 2005 Ocean Policy Summit (11-13 October 2005, Lisbon, Portugal) took as its theme, "Integrated Ocean Policy: National and Regional Experiences, Prospects and Emerging Practices." Participants discussed various aspects of national and regional experiences, prospects and emerging practices in integrated ocean policy.

UNGA-60: In resolution 60/31 of 2005 on sustainable fisheries, the General Assembly emphasized the obligations of flag States to ensure compliance with the Agreement's conservation and management provisions, called upon States to become parties to the Agreement, and called upon parties to fully implement the precautionary approach and to harmonize their national legislation with the Agreement as matters of priority. The General Assembly further requested the Secretary-General to invite non-parties to participate fully in ICSP-5 on an equal footing with parties, except without voting rights, and reaffirmed that every effort will be made to adopt recommendations on the basis of consensus.

THIRD GLOBAL OCEANS CONFERENCE: At the third Global Conference on Oceans, Coasts and Islands (24-27 January 2006, Paris, France), participants exchanged views on issues including improving high seas governance, fishing and high seas biodiversity, and the role of ocean and coastal management in reducing poverty.

MARINE BIODIVERSITY WORKING GROUP: The *Ad Hoc* Open-ended Informal Working Group of the General Assembly to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (13-17 February 2006, New York) discussed, among other things, the impact of fishing practices on marine biodiversity. The Co-Chairs' report highlighted that illegal, unregulated and unreported (IUU) fishing is a major obstacle to the conservation and sustainable use of marine biodiversity, and that an integrated approach to address flag States' responsibilities, port State measures, compliance and enforcement is essential.

REPORT OF THE HIGH SEAS TASK FORCE: The High Seas Task Force was created in 2003 by the Fisheries Ministries from Australia, Canada, Chile, Namibia, New Zealand and the UK and the directors-general of international conservation organizations to take the lead in actively promoting some practical solutions to IUU fishing. The report of the Task Force, entitled "Closing the Net," was released in March 2006 and includes an implementation plan with proposals on: an international monitoring control and surveillance network; a global information system on high seas fishing vessels; participation in UNFSA and the FAO Compliance Agreement; improving high seas governance; adopting and promoting guidelines on flag State performance; supporting greater use of port State control and import measures; filling critical gaps in scientific knowledge and assessment; addressing the needs of developing countries; and promoting better use of technological solutions.

CBD COP-8: At its eighth meeting, the Conference of the Parties (COP) to the Convention on Biological Diversity (CBD) discussed, among other things, marine protected areas beyond national jurisdiction and urged action to: implement paragraphs 66-69 of UN General Assembly resolution 59/25, which refer to destructive fishing practices; and cooperate fully in the UNGA-61 review of action taken in response to those paragraphs, taking into account the UNFSA precautionary approach provisions, the FAO Code of Conduct for Responsible Fisheries, and developments under the CBD.