

## SUMMARY OF THE EIGHTH ROUND OF INFORMAL CONSULTATIONS OF STATES PARTIES TO THE UN FISH STOCKS AGREEMENT: 16-19 MARCH 2009

The eighth round of Informal Consultations of States Parties (ICSP) to 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) met from 16-19 March 2009 at UN headquarters in New York.

Attended by approximately 200 participants and convened pursuant to UN General Assembly (UNGA) resolution 63/112 of 5 December 2008, the meeting's substantive theme, "Continuing Dialogue," focused on promoting wider participation in the Agreement. During the session, participants also undertook initial preparations for the resumption of the Review Conference in 2010. Participants prepared a timeline and programme of work for consideration by the sixty-fourth session of the UNGA. The outcome of the Continuing Dialogue was a summary report prepared by the Dialogue's Moderator, which captures the debates on the subtopics on promotion of wider participation in the Agreement, capacity building, compatibility of conservation and management measures, enforcement and port state measures and the relationship between the UNFSA and UNCLOS and other international instruments. Both outcomes will be appended to the Chair's Summary for submission to the sixty-fourth session of the UNGA.

Many participants described the Consultations, which registered an increase in the attendance of non-parties to the Agreement, as "frank," "productive," and a sincere attempt to engage with each other on impediments to ratification or accession. While many participants acknowledged that the Consultations may only register marginal shifts in non-party ratification, they appreciated the insight that a lack of awareness and domestic constraints impede increased participation rather than only resistance to the UNFSA itself.

## A BRIEF HISTORY OF THE UNFSA

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 address 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 the UNFSA in August 1995. The UNFSA entered into force on 11 December 2001, and currently has 75 parties. The UNFSA aims to ensure the long-term conservation and sustainable use of straddling and highly migratory fish stocks, and includes general principles for their conservation and management and provisions on, *inter alia*: application of the precautionary approach; compatibility of conservation and management measures; cooperation for conservation and management; Regional Fisheries Management Organizations (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;

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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, and associated and dependent species, and to protect the marine environment.

An associated Assistance Fund under Part VII of the Agreement (the Assistance Fund) was established by the UNGA in 2003 to assist developing states parties in UNFSA implementation. Following UNGA resolution 56/13, Informal Consultations of States Parties (ICSP) have been held at UN headquarters in New York every year since 2002 to consider the regional, subregional and global implementation of the Agreement.

**ICSP 1:** At its first meeting (30-31 July 2002), the ICSP discussed, among other issues, 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 UNGA resolutions on fisheries-related issues. ICSP 1 agreed on a series of recommendations on the implementation of Part VII.

**ICSP 2:** At its second meeting (23-25 July 2003), 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 on Conservation and Management of Fish Stocks.

**ICSP 3:** At its third meeting (8-9 July 2004), 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), the ICSP focused on the institutional, procedural and substantive issues related to the preparation for the Review Conference. This was based on the Chair's background papers on possible criteria for assessing the UNFSA's effectiveness and possible initiatives for strengthening the substance and 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 UNGA 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), the ICSP served as a preparatory meeting for the Review Conference. In a preliminary exchange of views on the broader ratification of and accession to the Agreement, priority action on the degradation of vulnerable marine ecosystems, the creation of new RFMOs and enhanced cooperation and coordination between and among RFMOs were discussed. Participants also 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, modalities for the participation of non-parties in the Conference and the extent to which they would be able to participate in the decision-making process, the Conference outputs, and possible future actions such as future Review Conferences and formalized meetings of parties. ICSP 5 outcomes included 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.

**UNFSA REVIEW CONFERENCE:** The Review Conference of the Agreement was held from 22-26 May 2006, at UN headquarters in New York. Called for by UNFSA Article 36 and UNGA resolution 59/25 of 17 November 2004, the Review Conference was mandated to assess the adequacy of the Agreement's provisions for securing the conservation and management of straddling fish stocks 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 recommended, *inter alia*: a commitment to integrate ecosystem considerations in fisheries management; the urgent reduction of the world's fishing capacity to levels commensurate with the sustainability of fish stocks; urgent strengthening of RFMOs' mandates to implement modern approaches to fisheries; urgent RFMO performance reviews; a commitment to develop a legally-binding instrument on minimum standards for port state measures and a comprehensive global register of fishing vessels; expanded assistance to developing countries; and a Continuing Dialogue to address concerns raised by non-parties.

**ICSP 6:** The sixth round of the ICSP (23-24 April 2007) convened under UNGA resolution 61/105 of 8 December 2006. Participants reviewed national, regional and international activities undertaken to implement the Agreement. Substantial discussion was dedicated to the proposed criteria to review the performance of RFMOs and the control, monitoring and surveillance of Illegal, Unreported and Unregulated (IUU) fishing. On the follow-up to the Review Conference, the UN Food and Agriculture Organization (FAO) reported on the activities of the Assistance Fund and participants considered and agreed on two tentative dates, 2010 and 2012, for the resumed Review Conference. A side event that was convened in the margins of the Informal Consultations to consider the criteria for RFMO performance review made progress in drafting the review criteria and agreed to forward these criteria to tuna RFMOs for further consideration and two other RFMOs for information.

**ICSP 7:** This round took place from 11-12 March 2008, pursuant to UNGA resolution 62/177 of 18 December 2007. Participants reviewed progress towards the implementation of the Agreement, including outcomes of its 2006 Review Conference and considered the date and venue of the resumed Review Conference and the next round of Informal Consultations, and its recommendations to the sixty-third session of the UNGA. The consultations registered continued progress in the implementation of the UNFSA, especially at the national,

subregional and regional levels, and increased compliance with UNFSA by non-parties. The two key achievements from this round of consultations were the in-depth engagement on obstacles to wider participation in the UNFSA by non-parties and developing countries, and agreement on the date and venue of the resumed Review Conference, and the modalities for its preparatory process.

### REPORT OF THE MEETING

Václav Mikulka, Director of the UN Division for Ocean Affairs and the Law of the Sea (UNDOALOS), opened the eighth round of Informal Consultations of States Parties on Monday morning, 16 March 2009. He reported that the number of parties to the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea (UNCLOS, or the Convention) relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA, or the Agreement) had increased to 75, and encouraged developing countries to use the Part VII Assistance Fund to participate in fisheries-related meetings and for capacity building.

Ambassador David Balton, United States, was elected Chair of the consultations. In his opening remarks, Chair Balton congratulated Palau, Oman, Hungary, Slovakia, Mozambique, Panama and Tuvalu as new parties to the Agreement. He underscored that the consultations would focus on the Continuing Dialogue to promote further ratification of and accession to the Agreement and on the resumption of the Review Conference scheduled for 2010. He welcomed the achievements of the past year, including completion of several RFMOs' performance reviews and initiatives in combating Illegal, Unreported and Unregulated (IUU) fishing, and FAO initiatives on port state measures and on establishing a global record of fishing vessels. Chair Balton introduced the provisional agenda (ICSP8/UNFSA/INF.1), which was adopted without amendments.

### CONTINUING DIALOGUE

Delegates convened in informal consultations throughout the remainder of Monday and all day Tuesday to consider the theme of Continuing Dialogue that centered on: promotion of a wider participation in the Agreement; the relationship between the Agreement and the Convention, as well as other relevant international instruments; capacity building; compatibility of conservation and management measures; and cooperation in enforcement and port state measures. Joji Morishita, Counsellor, Fisheries Agency Government of Japan, was appointed Moderator of the Continuing Dialogue.

In his opening remarks Morishita said the results of the deliberations would be presented Wednesday morning, and the outcome would be a Chair's Summary without attribution.

**PROMOTING WIDER PARTICIPATION IN THE AGREEMENT:** Discussion on promoting wider participation in the Agreement took place on Monday morning. Morishita summarized the goals of the Informal Consultations. Panelist Erik Molenaar, Netherlands Institute for the Law of the Sea, discussed the history of UNFSA, its objectives, current participation, and benefits for non-state parties to join. Morishita

described UNFSA as a norm-setting instrument and offered Japan as an example of a state that eventually joined the Agreement to be consistent with its membership in RFMOs.

Drawing attention to debates in other forums on oceans and fisheries governance, Canada emphasized the need for UNFSA fishing states to demonstrate that they can manage fisheries resources effectively to avoid regulation of fishing governance through other international environmental agreements, such as the Convention on International Trade in Endangered Species. New Zealand questioned the relationship between UNFSA implementation and recent RFMO developments. Panelist Molenaar responded that reforms in RFMOs have been driven not by the UNFSA, but by collapsing fish stocks and wider environmental concerns of bycatch and benthic communities. The World Bank highlighted the challenge for developing countries to ratify the UNFSA without a strong advocate in fisheries agencies or government. Brazil noted that almost half of the parties to the UNFSA are developing nations and stressed that a lack of capacity hampers greater participation. She emphasized that landlocked states have an interest in high seas governance. Morishita urged recent developing country signatories to share their experiences.

The European Community (EC) stressed the need to determine why developing countries have not acceded to the Agreement, and ensure they have access to marine resources. He noted the high administrative costs of implementing the UNFSA apply to developed countries as well and highlighted a contradiction where countries ratify RFMO Agreements but not the UNFSA.

The Natural Resources Defense Council (NRDC) and Deep Sea Conservation Coalition: drew attention to the increasing importance for fishing and flag states to demonstrate good international standards for fisheries management; noted the adoption of UNFSA provisions in RFMO agreements; and emphasized the need for implementation. The Inter-American Tropical Tuna Commission (IATTC) highlighted that the Convention for Cooperation in the Protection and Sustainable Development of the Marine and Coastal Environment of the Northeast Pacific (Antigua Convention) did not include UNFSA elements on enforcement and suggested not overstating capacity constraints, noting that, where there is interest, developing countries participate actively in RFMOs.

Norway expressed satisfaction with the UNFSA, commending its high participation in comparison with other similar agreements. He encouraged non-party states to raise their concerns. The US expressed interest in improving communication to promote wider participation, especially among several key fishing and coastal states, to achieve a global fishery that is both sustainable and based on cooperation.

**RELATIONSHIP BETWEEN THE AGREEMENT AND THE CONVENTION AS WELL AS OTHER RELEVANT INTERNATIONAL INSTRUMENTS:** This discussion took place Monday morning and afternoon. Panelist Ambassador Satya Nandan, Chair of the Western and Central Pacific Fisheries Commission (WCPFC), provided an overview of the history of UNFSA. He stressed the purpose of the UNFSA is to implement the provisions of UNCLOS and to ensure that no area of the high seas is unregulated. He highlighted several



articles in the UNFSA, calling for facilitation of coordinated management regimes across borders, implementation of the precautionary approach and ecosystem-based management, and assurance of effective enforcement.

The US argued that the costs of joining the UNFSA are limited. Senegal encouraged improving communication of the content of the Agreement to raise broader awareness, and promoting discussion of the financial benefits of joining the Agreement.

Chair Balton added that dispute settlement under the UNFSA is available to states parties only. Saint Lucia said beyond concerns about capacity building, non-parties should assess the wider costs and benefits of participation, including the costs of managing their exclusive economic zones (EEZs), participating in both the RFMOs and UNFSA, and domestic priorities. Japan emphasized the importance of information sharing, noting that it became a party to UNFSA upon realizing that the Agreement concerns other fisheries beyond those of the high seas, and to address issues such as IUU fishing.

Canada emphasized paying attention to the changing context that may require states to demonstrate an ability to fish responsibly. Trinidad and Tobago suggested using Articles 63 on straddling stocks and 64 on highly migratory species of UNCLOS to help developing states organize and prioritize RFMOs, including the Caribbean Regional Fisheries Mechanism. The EC praised UNFSA both for its balanced treatment of diverse states with access to different fisheries resources and its ability to ensure a consistent and peaceful settlement of disputes.

**CAPACITY BUILDING:** The discussion on capacity building took place on Monday afternoon, and was concluded Tuesday morning. Introducing the subject, Fábio Hazin, Director, Fisheries and Aquaculture Department, Universidade Federal Rural de Pernambuco, Brazil, presented on opportunities for capacity building in developing countries. He stressed that capacity building should be process-based across multiple scales from increasing individual capacity to national governance reforms. He highlighted the importance of increasing developing countries' fisheries harvest capacity but urged reconciling this with the overcapacity of the existing international fleet. He called for a focus on small-scale fisheries and participatory approaches to capacity building. Hazin also suggested increased regulation hurts the access of small-scale "fishworkers" and said UNFSA Part VII funding has not been used to meet all its objectives.

Terje Lobach, Legal Adviser, Directorate of Fisheries, Norway, presented on "Capacity Building: Assistance at Bilateral Level." He highlighted: the needs identified by the 2006 Review Conference; resources provided by the donors; the activities supported by these donors; and the transfer of its Ecosystem Assessment Fisheries – Nansen Programme to FAO. Noting that research, regulation and monitoring, compliance and surveillance are addressed largely through bilateral cooperation, he proposed hiring a vessel to support on-the-job training and a platform for inspectors to enforce regulation multilaterally.

Panelist David Douman, FAO, reported on FAO initiatives to encourage human resource development to promote capacity building and strengthen long-term and sustainable management of fisheries. To accomplish this goal, the FAO is engaged in training, professional development and education programmes.

He said adequate funding is an ongoing challenge that generally depends on extra-budgetary sources. Douman said capacity building can be slow and incremental but with patience and political commitment, human resource development may have significant benefits in the long term.

Moderator Morishita suggested dividing the discussion on increasing the number of parties to UNFSA into: increasing capacity for parties to implement the agreement; securing funding; and establishing structures to support implementation of the Agreement. He highlighted the need to continue clarifying procedures for contributing to and accessing the Part VII Assistance Fund. Saint Lucia stressed the need for stronger arguments to convince developing countries to join the UNFSA. He suggested that human capacity is not limited in many developing countries, but financial resources to hire experts are limited. He called for increased contributions to the Part VII Assistance Fund from developed and developing countries and said building local capacity for money management skills is as important as technical skills for small-scale fishers.

Norway distinguished between countries that are non-parties due to obstacles encountered in their attempt to ratify or accede to the Agreement and those unaware of the benefits, and recommended a national implementation approach in some cases, but stressed information sharing and targeted initiatives. The EC: said much remains to be done on capacity building; emphasized the need for the efficient use of resources; expressed disappointment that a majority of the developing countries did not respond to the questionnaire used during preparations for the 2006 Review Conference; and welcomed the use of its bilateral agreements on fisheries.

Moderator Morishita suggested inviting fisheries managers and those with relevant knowledge to attend future meetings. The International Union for Conservation of Nature (IUCN) highlighted the importance of sharing data about fish stocks and fishing vessels, encouraged enforcement by states, and said that many fisheries remain depleted and fragile. The Netherlands emphasized the need for a more transparent dissemination of market information relating to fisheries and capacity building. Canada suggested the report on sources of available assistance for developing countries (ICSP8/UNFSA/INF.4) become "an evergreen document" and that a more useful priority listing and set of narratives be prepared by the next review meeting. Canada recommended broader partnering efforts and a strategic pooling of projects to leverage resources and move beyond local perspectives.

Mozambique highlighted the need for information and transparency on access to funds to coordinate regional initiatives. Mexico cautioned that many developing countries cannot meet the financial obligations of acceding to the UNFSA, and called for clarification on the financial incentives for countries to join. He asked about direct support for development of national fisheries fleets.

Responding to Mexico, FAO highlighted the spike in the use of the Part VII Assistance Fund since 2008, underlined its heavy use by one region, and said the balance is currently US\$420,000. Moderator Morishita said the Part VII Assistance Fund is used only for capacity building to support compliance with the Agreement but not to develop country capacity to

fish, emphasizing that the latter is supported through bilateral assistance. Argentina disagreed with the underlying assumption of the moral imperative to become a party to UNFSA, noting Article 25 on cooperation with developing countries, and emphasizing that fishing is an economic activity as well.

The US considered how to assist countries seeking to join the UNFSA with both the ratification process and implementation of the Agreement. She supported coordinating non-traditional funding sources with the needs of developing states. Ghana stressed the need for delegations to develop strategies to affect appropriate individuals in national government to encourage accession. He suggested the UNDOALOS Secretariat promote UNFSA more actively. Namibia stressed the economic incentive behind developing countries' participation in RFMOs, emphasized the link between compliance and technological constraints associated with aging vessels, and inquired about the follow-up from questionnaire responses.

New Zealand supported retaining a focus on Article 25 on forms of cooperation with developing states and highlighted the usefulness of targeted programmes addressing specific needs. He outlined benefits of ratifying the Agreement, including greater pressure on IUU fishing, greater acceptance of the precautionary approach, management of capacity, and reduced overfishing.

Marshall Islands highlighted the importance of fisheries to meet development aspirations of small island developing states (SIDS) and the need for regionally coordinated strategies, citing the Mauritius Strategy for the Further Implementation of the Barbados Programme of Action for the Sustainable Development of SIDS.

Senegal reiterated the increased awareness of the advantages and obligations of the Agreement for developing countries, stressing the role of regional organizations. Noting the inability of many developing countries to implement the UNFSA, she called both for countries to express their needs and for greater international facilitation.

To improve understanding of fisheries, Spain described and offered the services of its oceanographic research vessels. Brazil emphasized that the effective implementation of the Part VII Assistance Fund could provide an incentive for ratification to developing countries. Venezuela recalled the various instruments to achieve sustainable fisheries and said developing countries have a right to fish on the high seas. China characterized the interpretation of the UNFSA's current policy arrangement as "first come, first gain," stressing the need to balance conservation with equitable utilization of global fisheries resources, especially for the least developed countries and SIDS.

Egypt called for joint action to address "marine desertification" and for transparency by articulating the risks of joining the UNFSA as well. He also highlighted the costs of marine pollution. The Pacific Islands Forum Fisheries Agency said it looked forward to the implementation of all UNFSA provisions by the Part VII Assistance Fund. Trinidad and Tobago advocated a bilateral approach in areas where RFMOs are slow to respond, and called for the proactive implementation of UNFSA Articles 24 (special requirements of developing states) and 25 (forms of cooperation). Highlighting its members'

political and historical concerns for joining the UNFSA, the FAO Permanent Commission for the South Pacific (CPPS) cautioned against a generalization of reasons for not ratifying the UNFSA.

**COMPATIBILITY OF CONSERVATION AND MANAGEMENT MEASURES:** Delegates began and concluded discussion on this subject on Tuesday morning. Introducing the subject, Moderator Morishita said the subject was based on Article 7 of the UNFSA on compatibility of conservation and management measures, which is a major concern for potential parties. Chair Balton said these presentations provide examples of how two RFMOs, one dealing with straddling stocks and the other with highly migratory fish stocks, have achieved compatibility.

Johanne Fischer, Executive Secretary, Northwest Atlantic Fisheries Organization (NAFO) described: the history of NAFO; the evolution of its procedures to strive for consensus and to improve dispute resolution and objections procedures; the role of its scientific councils; and cooperation with states and regional organizations through co-management and data sharing. Driss Meski, International Commission for the Conservation of Atlantic Tunas (ICCAT), outlined perceived challenges in the compatibility of measures between high seas and EEZ management for straddling fish stocks, noting both the obligations and leeway under Article 7. He highlighted that states are not obligated to undermine their national management prerogatives, but nothing restricts them from adopting stricter conservation measures in their EEZs. He said there are no defined mechanisms to ensure compatibility between ICCAT and domestic laws. He also said, in practice, there have been few conflicts, and that many obligations for monitoring, control and surveillance have been based on other agreements and a spirit of cooperation.

Chile highlighted capacity building, domestic legal issues, and lack of access to financial resources as barriers to accession to the Agreement. He emphasized compatibility as a priority for both straddling and highly migratory fish stocks management to strengthen complementary coastal state and regional jurisdiction. Beyond vessel inspections and coordination with vessel owners, Chile said it seeks to modify national legislation to strengthen conservation measures and sanctions.

The IATTC noted different approaches to addressing compatibility reflected in the WCPFC and IATTC. He suggested that compatibility has greater significance for straddling stocks than for highly migratory species and that conservation measures should be taken across the full range of stocks. Japan said membership in the WCPFC is a way to manage the balance between its rights and obligations as both a fishing and coastal state. The EC noted the need for compatible measures for both the highly migratory and straddling fish stocks does not translate into taking identical measures and said compatibility is best implemented at the regional and not global level.

Argentina underlined the duty to cooperate to achieve conservation regionally and asked Fischer to elaborate on who was included in the NAFO IUU blacklist and how the list is applied. Fischer pointed to specific web resources in her response, elaborated on the blacklist, and underscored

the blacklist's effectiveness. The US emphasized the value of implementing compatibility provisions and translating Article 7 into region-specific action to enhance its effectiveness.

Mexico called for Article 7 to be readdressed as a practical reference for compatibility measures. He suggested that compatibility of national measures with the UNFSA is based on RFMO leadership, and highlighted the importance of objection procedures. Panelists Fischer and Meski outlined NAFO and ICCAT's objection procedures, stressing the importance of justifying objections. Canada concurred with the US, Japan and the EC that Article 7 was negotiated to balance the interests of coastal and high-seas fishing states and that Article 3 on application addresses the sovereignty concerns of coastal states. Ecuador said implementing its RFMO standards, despite domestic constraints to ratify the UNFSA, demonstrates its political will to adopt management measures and suggested compatibility could be resolved under Article 5 on general principles. He objected to the suggestion of a moral obligation to join the UNFSA. Australia said the Commission for the Conservation of Antarctic Marine Living Resources showed that opting out of conservation measures in areas under national jurisdiction undermines conservation measures. New Zealand said Article 7 balances interests and clarifies the ambiguity in UNCLOS Articles 63 and 64.

Responding to Kenya's inquiry, the UNDOALOS Secretariat highlighted the support provided for capacity building in 2008 and Moderator Morishita drew attention to the FAO report on the Part VII Assistance Fund presented Monday afternoon. Mexico encouraged integrating scientific information into discussions on conservation and compatibility. The US supported expanding the use of the Assistance Fund and agreed with Mexico on the need to adhere to sound science. Fischer emphasized that the NAFO IUU blacklist contains sanctions for controlling member vessels. NRDC underscored the importance of adhering to scientific advice and of compatibility issues more generally.

**COOPERATION IN ENFORCEMENT AND PORT STATE MEASURES:** Introducing the subject on cooperation in enforcement and port state measures on Tuesday afternoon, Ambassador Satya Nandan, WCPFC, highlighted the importance of cooperation among both member and non-member states for enforcement and port state measures. He described the WCPFC's: successes in data collection and coordination; scientifically-based harvest limits on bigeye tuna; high seas boarding and inspection procedures and implementation; regional observer programme; vessel monitoring system; listing of IUU vessels; prohibition of large-scale driftnets; and port state measures. He cited future goals of reducing bycatch, implementing ecosystem-based management, developing a scientific observer programme, and increasing support for SIDS. Moderator Morishita highlighted the need for guiding principles for management cooperation between RFMOs. He stressed the legal and operational challenges of Article 21 on subregional and regional cooperation in enforcement and Article 22 on basic procedures for boarding and inspection.

Kjartan Hoydal, North East Atlantic Fisheries Commission (NEAFC), presented the results of NEAFC's enforcement over the last four years and the report of the Regional Fishery Body Secretariats Network. On enforcement, Hoydal discussed the

approach used to blacklist and monitor party and non-party vessels operating in the region. He concluded that effective enforcement is strongly dependent on the role played by the flag state. Hoydal reported that the Network could play an important role in information dissemination and experience sharing.

Fiji chronicled its history of involvement in fisheries management. He noted its ability to enforce on the high seas is constrained by few "surface platforms" and resources. The IATTC described stationing international observers on purse-seine vessels to ensure compliance without needing to board and inspect vessels. Chair Balton answered several questions posed by IATTC and stated that: parties to the Agreement do have the right to board and inspect each other's vessels where a regional agreement exists, or based on alternative mechanisms adopted by RFMOs. He said boarding and inspection procedures vary. The US pointed to the WCPFC Convention as an example of the implementation of the high-seas boarding procedures of Articles 21 and 22 in a fair, transparent and non-discriminatory fashion.

ICCAT described cooperation between the five tuna RFMOs and provided examples of its success based on IUU listing measures. Thailand asked for examples of procedures to develop port state measures to combat IUU fishing. Chair Balton said UNFSA does not provide strong guidance on port state measures, but the FAO model scheme may be a useful framework. Moderator Morishita also suggested that some port states have domestic legislation that could provide guidance. Panelist Hoydal noted the need for control from both port and flag states. Mozambique stressed the potential for regional coordination and cooperation of IUU monitoring in EEZs and inquired about the availability of funding.

The EC argued that fears of on-sea-boarding and inspection are unfounded, citing the provisions that provide a state with the ability to reassert its jurisdiction and to trigger prosecution. Highlighting Article 21 and stressing the role of RFMOs in implementing the UNFSA, he explained that UNFSA provisions should apply in the absence of RFMO enforcement provisions. China observed that UNFSA provisions have failed to deter abuse, *inter alia*, of the use of force by inspectors, and called for a consideration of this subject at the next Informal Consultations. Japan said UNFSA provides adequate safeguards and abuse cannot be solved by changing UNFSA provisions. In response to Chile, NEAFC and ICCAT described the measures taken to deal with trans-shipments.

The US complimented the regional examples of boarding and inspection that had been provided, and encouraged other such contributions. She reiterated the need for FAO to examine trans-shipment and in response to Mozambique's questions said: the enforcement tools of WCPFC may have application elsewhere; and increasing joint patrols likely fit into the terms of Part VII. Canada affirmed that boarding and inspection are effective deterrents, especially when relevant parties cooperate. Mexico disagreed, and called for the implementation of more effective and flexible mechanisms, such as onboard observers, satellite monitoring and IUU lists, undertaken on a case-by-case basis. He acknowledged that boarding and inspection procedures have impeded accession by some countries and requested further information on boardings by states engaged in such procedures.



Norway highlighted the safeguards in boarding procedures and encouraged communication between non-party states and countries that have been boarded. He stressed the resumed Review Conference should not discuss amending Articles 21 and 22. Nandan recalled that Articles 21 and 22 were negotiated carefully to ensure compliance and to place responsibilities on the flag state. Canada stressed the Agreement was negotiated as a package. She described monitoring and enforcement success in the Northwest Atlantic region and offered to provide more detailed information before the Review Conference.

Concluding the Continuing Dialogue segment, Moderator Morishita stated that while deliberations were not exhaustive, they were frank and productive and would be continued in the future.

**SUMMARY OF THE CONTINUING DIALOGUE:** On Wednesday morning in plenary, Chair Balton invited Moderator Morishita to present his report on the Continuing Dialogue.

Moderator Morishita summarized the two-day discussion. He highlighted the consistency between UNFSA and UNCLOS, and the need for tangible benefits for developing states, including the development of fisheries capacity. He noted a mismatch between developing countries' needs and the willingness of donor countries, particularly due to a lack of information on available funds and application procedures. He discussed capacity building as both the actions that increase UNFSA accession and those that facilitate UNFSA implementation. On compatibility, he said implementation is generally coordinated through RFMOs. On enforcement and port state measures, he highlighted that areas of contention remain and suggested countries continue to share experiences. Chair Balton reiterated that this summary would be attached to the Chair's Summary report.

#### **INITIAL PREPARATORY WORK FOR THE RESUMPTION OF THE REVIEW CONFERENCE**

On Wednesday and Thursday, delegates considered preparations for the 2010 resumed Review Conference. They also considered the agenda for the ninth session of the Informal Consultations planned for 2010. Following an initial general exchange of the substantive issues for consideration at the two meetings and initial considerations of the institutional and procedural matters for the Review Conference, the morning plenary was adjourned to make way for an informal open-ended working group. Chair Balton also chaired this group, which elaborated and prepared a draft text for consideration in plenary on Thursday.

**SUBSTANTIVE ISSUES:** Chair Balton introduced the plenary discussion on the substance of the resumed Review Conference by asking whether there is interest in amending the Agreement and, if there is a need, for an approach that is comprehensive or focused on a subset of issues. Canada encouraged discussion on the ecosystem approach and warned that treatment of IUU fishing not exclude other equally important issues like "legalized overfishing." Norway suggested a focus on performance and fishing discards, as per Article 5 (general principles). Iceland disagreed, encouraging specific issues to arise naturally and not be determined in advance. The US suggested focusing on implementation and, more specifically: conservation and management; enforcement and compliance; and accountability of international institutions such as RFMOs.

Nauru, on behalf of the Pacific Islands Forum members represented in New York, and supported by New Zealand and Australia, proposed focusing on progress in the implementation of the Agreement in light of the poor state of fish stocks. New Zealand also proposed following a three-step process: a review of the 2006 outcomes; a focus on key issues, including the US proposals and the international accountability of states and RFMOs; and follow-up action on the issues.

Canada, Chile, the EC and Namibia stated they were not in favor of amending the UNFSA, with Chile underlining the link between UNFSA and ongoing negotiations within the South and North Pacific regions. The EC and Namibia proposed basing the resumed Review Conference on the outcomes and implementation of the 2006 Review Conference recommendations. In addition, the EC proposed requesting FAO to undertake substantive preparatory work and that the key issues include management and conservation measures and the proposals by the US. Namibia emphasized the issues of compatibility measures and the use of scientific data by RFMOs. Canada supported the US proposals on substantive issues and also suggested that a diagnostic report providing a way forward be prepared either as part of the Secretary-General's report to the UNGA or as an independent report.

The Republic of Korea supported examining specific issues as opposed to undertaking a comprehensive approach from the 2006 Review Conference, and stressed focusing on fisheries as an additional global crisis to those of food, biofuels and finance. IATTC suggested examining RFMO mechanisms for cooperation with UNFSA, as well as RFMO access to UNFSA funding for activities such as workshops.

NRDC supported New Zealand on the issue of international accountability of states and RFMOs and highlighted the need for assessment of flag state performance. NRDC also stressed consideration of resilience to climate change under Article 6 on application of the precautionary approach. Brazil said the Agreement is balanced, but implementation is not. She called for, and Mexico supported, capacity building through development of high seas fisheries, rather than strictly developing capacity in monitoring and enforcement. Fiji concurred with Mexico, and suggested that developing state assistance has been used selectively. IUCN suggested reviewing RFMO performance. He stressed, and NRDC supported, the importance of stock status assessment. IUCN also called for consideration of discrete high seas stocks. Australia suggested a focus on implementation and port state measures. The World Bank called for an assessment of implementation of the UNFSA into domestic laws.

Iceland and Mexico cautioned against singling out specific issues for focused discussion. Ecuador suggested exploring new areas under the Assistance Fund and supported an ecosystem approach. Chile cautioned against considering amendments to UNFSA while non-parties are contemplating accession. Mexico recognized Article 36 on the Review Conference, which provides guidance for revision of the Agreement and stressed the opportunity to address new issues, such as the correspondence between scientific advice and measures taken. Argentina underscored the importance of discussion on the needs of developing countries to, *inter alia*, improve their capacity and expand their fishing fleets.

Chair Balton summarized the substantive discussion on the resumed Review Conference. He said most parties view it as a means of reviewing the adequacy of provisions and strengthening implementation, rather than making amendments. He described consensus for a comprehensive approach that might consider several issues more specifically: assistance for developing countries; conservation and management; compliance and enforcement; and institutional accountability. He noted comments that the Secretary-General's report would be useful if it contained both status updates on key stocks and actual analysis, diagnosis and recommendations.

**PROCEDURAL ISSUES:** Initial discussion on procedural issues was based on three questions posed by Chair Balton on whether: the resumed Review Conference should follow the procedures of the 2006 Review Conference; consideration should begin immediately on the preparatory timeline, programme of work and agenda for the resumed Review Conference; and the preparation should begin on a recommendation to the sixty-fourth session of the UN General Assembly to convert the 2010 Informal Consultations into a preparatory session for the resumed Review Conference. Japan, Norway, New Zealand and the US supported these proposals.

Canada, Iceland and the EC preferred to dedicate some time to substantive issues during the 2010 Informal Consultations as well. Norway said it preferred a focus on preparations for the resumed Review Conference at the Informal Consultations. The US proposed the preparation of items that could be used for a General Assembly resolution. Japan inquired about, and Brazil and New Zealand supported, retaining use of a questionnaire to solicit feedback on progress in implementation in preparation for the resumed Review Conference. New Zealand cautioned that any agenda should be considered provisional. Mexico cautioned against wasting time in procedural discussions during the resumed Review Conference. Chair Balton stressed that during the 2006 Review Conference, procedures operated on a consensus basis within a spirit of cooperation.

Summarizing the discussions, Chair Balton noted that: the provisional rules do not need to be revisited; there was an interest in developing a programme of work and provisional agenda before the 2010 Informal Consultations; as well as a willingness to make a recommendation to the UNGA. He said the focus of the 2010 Informal Consultations would be on preparation for the resumed Review Conference and that the creation of a questionnaire may focus on uptake of recommendations from the 2006 Review Conference. He then suspended plenary and delegates met in the afternoon as an informal open-ended working group to prepare for the resumed Review Conference.

**INFORMAL OPEN-ENDED WORKING GROUP:** On Wednesday afternoon, Chair Balton convened the drafting group and began discussion of the elements to be included in the Secretary-General's report and recommendations to be incorporated into the UNGA resolution on Sustainable Fisheries. Consensus was achieved on inclusion of the following:

- an overview of the status and trends of the stocks;
- a review and analysis of the implementation of the recommendations from the 2006 Review Conference;

- capacity building needs of developing countries as they relate to implementation of the Agreement; and
- a description of RFMO performance reviews.

Delegates debated whether to include information on discrete high seas fish stocks, which was settled by recalling an earlier consensus from the 2006 Review Conference on recommending conservation and management measures for these stocks.

It was also agreed that an RFMO questionnaire would be developed well before the preparation of the Secretary-General's report. Tentative dates were agreed for the 2010 Informal Consultations as 15-19 March 2010 and for the resumed Review Conference as 24-28 May 2010. Following a brief discussion, participants agreed with Chair Balton's proposal that the Informal Consultations would comprise a two-day meeting that would primarily focus on the final preparations for the resumed Review Conference. Remaining time would be devoted to informal exchange on the status and trends of fish stocks, which would be included in the next Secretary-General's report for these meetings.

Discussion on the provisional agenda of the resumed Review Conference led to agreement that most of the agenda items from the 2006 Review Conference will remain relevant for discussion. Chair Balton suggested that the provisional rules of procedure remain available for adoption at the resumed Review Conference, if necessary. Some debate over substantive issues for the provisional agenda followed, including whether a more in-depth treatment of the status and trends of the fish stocks will be possible. Agreement was reached surrounding the organization of the programme of work, including incorporation of a consideration of key areas for further action. Chair Balton agreed to prepare and distribute drafts of a timeline and an organization of work on Thursday morning.

**PROPOSED TIMELINE AND PROGRAMME OF WORK:** In plenary on Thursday morning, Chair Balton presented the draft proposed timeline and programme of work prepared by the informal open-ended working group. The proposal is organized around four timeframes: March 2009 (ICSP 8); March 2009 - February 2010; March 2010 - April 2010; and May 2010. He said the paper sets forth the different time frames for activities that are proposed to occur between "now and the resumed Review Conference, which is tentatively set for May 2010," and then suspended the plenary briefly to allow delegates to read the draft. Chair Balton then invited a section-by-section discussion of the following proposed work timeframes.

**March 2009 (ICSP 8):** Concerning this timeframe, Chair Balton said the activities listed concerned the work being undertaken by the current Informal Consultations. Noting that the Informal Consultations have no mandate to give guidance to the FAO, the plenary accepted Brazil's proposal to amend the text to that used in UNGA resolution 63/112 providing guidance to UNDOALOS to prepare the Secretary-General's comprehensive report "in cooperation with the FAO...."

Discussion focused on Argentina's emphasis that because the information under request was on "implementation," which has legal connotations, and because different types of questionnaires were sent to parties and non-parties in 2005 preceding the Review Conference, the questionnaire proposed for circulation by UNDOALOS in preparation for the resumed Review



Conference should go to parties only. Venezuela concurred. The EC, Norway, Iceland and others supported Canada's suggestion that the questionnaire be sent to both parties and non-parties. Canada argued that the aim was to solicit feedback on recommendations that were adopted by consensus by both parties and non-parties at the 2006 Review Conference. Noting that a similar concern was raised and resolved by the UNGA in 2008, Norway said it could accept Argentina's proposal, but that this would "certainly influence" Norway's approach and willingness to modify recommendations at the next Conference.

Japan, supported by Venezuela, suggested a separate targeted questionnaire for non-parties. New Zealand underscored the importance of allowing opportunities for non-states parties to contribute to the resumed Review Conference. Argentina and China supported the resumed Review Conference as an opportunity to achieve consensus of both parties and non-parties. Chile, supported by the EC, Iceland, Japan, US, Mexico, Argentina and Colombia, proposed sending the questionnaire to both parties and non-parties, highlighting that the response is voluntary. Canada suggested that the term "voluntary" be retained in the proposed timeline, but not on the questionnaire itself as governments might not prioritize it.

The US, supported by Argentina, China, Colombia, Mexico, New Zealand and Trinidad and Tobago, suggested developing a single questionnaire with lighter language on implementation questions to which parties and non-parties would be able to respond. She proposed, and plenary accepted, that UNDOALOS be requested to develop and circulate a "voluntary" questionnaire "regarding the recommendations of the 2006 Review Conference." Iceland called for RFMOs to receive the questionnaire as well.

Commenting on the limited scope of the Secretary-General's report to discuss fish stocks only, Namibia argued that the report should consider the status of human activities other than fishing and fish stocks to reflect the ecosystem approach.

Responding to Japan's inquiry about the timeline of the questionnaire, Chair Balton said UNDOALOS would draft and circulate it by 1 April 2009, with 31 August 2009 as the deadline for responses.

Chair Balton noted the broad agreement among delegates regarding the activities for this timeframe, and noted Colombia's point that although participation in the questionnaire should be binding for members it has implications for all states concerned so the "wording should be flexible." He summarized the discussion by highlighting: the binding status of the Agreement; that parties and non-parties participate and respect the recommendations of the Review Conference; the wording surrounding the questionnaire would be revised as orally amended; and UNDOALOS will draft a questionnaire for circulation.

Plenary accepted the amendments as orally revised.

**March 2010-April 2010:** This timeline deals with the agenda of the ninth round of Informal Consultations. Plenary accepted Norway's proposal that the recommendation to the UNGA should state that the round be held "for two days between 15 to 19 March 2010."

Discussion of the proposed activities centered on Iceland's suggestion to specify the scope of discussion that will take place on the Secretary-General's "comprehensive" report to provide clarity that the Informal Consultations would not provide substantive focus. Canada proposed specifying that discussion would be limited to the status and trends in fish stocks of different species. Argentina and Venezuela preferred not focusing on specific species, particularly discrete fish stocks, but rather proposed keeping wording ambiguous. New Zealand proposed and it was generally accepted to refer to "fish stocks addressed in the Secretary-General's comprehensive report." With regard to the topics to be considered in the Informal Consultations, Argentina also amended text from New Zealand and Iceland to state "without prejudice to the legal scope of application of the Agreement."

**May 2010:** Chair Balton proposed amending the text to state that the resumed Review Conference is to be held "tentatively" from 24-28 May. The proposal was adopted without objection.

**Final Text:** The proposed timeline and programme of work for the resumed Review Conference that will be amended as orally revised in plenary requests UNDOALOS and FAO to provide guidance to the Secretary-General's report on the following:

- an overview of the status of straddling fish stocks, highly migratory fish stocks and discrete high seas fish stocks;
- a review of implementation of the 2006 Review Conference recommendations;
- information on developing states' capacity-building needs; and
- a performance review of RFMOs.

The proposal also:

- calls for a questionnaire relating to recommendations of the 2006 Review Conference to be circulated by UNDOALOS as soon as possible;
- requests the Secretary-General to convene Informal Consultations to UNFSA in 2010 to prepare for the resumed Review Conference and that the Secretary-General's comprehensive report take into account guidance from the eighth round of the Informal Consultations;
- requests that an advanced version of the comprehensive report be available in January 2010 from UNDOALOS; and
- requests UNDOALOS to prepare and circulate the draft provisional agenda and organization of work for the resumed Review Conference and ninth round of Informal Consultations 60 days before the Informal Consultations.

With regard to the ninth round of the Informal Consultations, it suggests that the 2010 Informal Consultations:

- take place from 15-19 March 2010;
- agree on a provisional agenda and organization of work for the resumed Review Conference; and
- consider the Secretary-General's report and consult on the bureau composition.

With regard to the resumed Review Conference, the proposal suggests that the Conference take place from 24-28 May 2010.

#### **OTHER MATTERS**

Turning to Agenda Items 7, on consideration of the next round of Informal Consultations of the state parties to the agreement, and 8, on the recommendations to the sixty-fourth session of the

General Assembly, Chair Balton observed that the items were considered in the recently concluded deliberations on the initial preparatory work for the resumed Review Conference.

Vanuatu, on behalf of the Pacific Islands Forum members: reaffirmed the 2007 Vava'u Declaration on "Pacific Resources: Our Fish, Our Future" in an effort to acknowledge SIDS seeking the sustainable development of their fisheries; highlighted the threats of climate change, ocean acidification, and the poor state of numerous fish stocks; expressed the need to balance the aspirations of SIDS and other fishing nations with respect to RFMOs; supported the negotiation of a new South Pacific RFMO by the end of 2009; warned of continuing IUU fishing incursions in the Western and Central Pacific Ocean; and emphasized the importance of capacity-building measures, especially as they relate to SIDS.

Papua New Guinea, on behalf of signatories to the Nauru Agreement (1982), brought recent deliberations of this body to the attention of plenary, highlighting the decision by Nauru Agreement member states to limit fishing at certain times of the year. Papua New Guinea applauded the efforts of Nauru Agreement members to reach agreement and assist the work of RFMOs.

#### **CLOSING PLENARY**

Chair Balton called the closing plenary to order on Thursday and urged delegates to send their responses to the UNDOALOS/FAO questionnaire soliciting information on sustainable fisheries, pursuant to UNGA resolution 61/105, by the deadline of 30 April 2009. He said the inputs would facilitate preparation of the Secretary-General's report for submission to the sixty-fourth session of the UN General Assembly. He announced that a revised list of participants (ICSP8/UNFSA/INF.5) had been circulated.

In closing, Chair Balton thanked participants for the constructive discussions, including the valuable contributions of the panelists and Moderator Morishita. He gavelled the meeting to a close at 12:25 pm.

### **A BRIEF ANALYSIS OF THE INFORMAL CONSULTATIONS**

With the precipitous decline of populations of straddling and highly migratory fish stocks, there is an increased interest for fishing and coastal states to adopt the 1995 Agreement for the Implementation of the Provisions of the 1982 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). It is within this context that the eighth round of Informal Consultations of State Parties (ICSP 8) to the UNFSA convened at UN headquarters in New York.

The Informal Consultations of State Parties (ICSP) process was established by General Assembly resolution 56/13 in 2001 with the objective of, *inter alia*, considering regional, subregional and global implementation of UNFSA, providing recommendations to the General Assembly on the scope and content of the Secretary-General's report on the Agreement, and

preparing for the Review Conference of the Agreement. The first meeting of the ICSP was held in 2002 and it has met annually since.

This year's ICSP focused on promoting wider participation in the Agreement and provided two days of informative panel discussions addressing some of the impediments for non-parties to join the UNFSA, including capacity-building issues, compatibility of conservation and management measures adopted within and beyond areas of national jurisdiction, and cooperation over enforcement measures. This was followed by two days of plenary discussions on preparations for ICSP 9 and the resumption in 2010 of the Review Conference, which was suspended in 2006.

This brief analysis assesses the key obstacles hindering wider participation in the Agreement as expressed during ICSP 8, and reviews the roadmap to the resumed Review Conference in 2010.

#### **"SCHOOLING IN" WIDER PARTICIPATION**

The Continuing Dialogue began with a panel on capacity building and benefits of joining the Agreement. Discussion focused on financial benefits from the Part VII Assistance Fund of the Agreement, which is administered by the UN Division for Ocean Affairs and the Law of the Sea and the Food and Agriculture Organization of the UN. This Fund, based on voluntary contributions, can be used for a wide variety of objectives relating to, *inter alia*, stock monitoring, surveillance and enforcement and transfer of technology. Nevertheless, some participants were perplexed that the Part VII Fund has been used mainly to finance travel costs related to participation in international meetings. This narrow use of the Fund is due to, *inter alia*, lack of awareness on how to access the Fund and its limited size. Wider benefits of joining the Agreement were acknowledged, but not elaborated on extensively because of their case-by-case nature. Despite the recognition of these funding and capacity-building issues during ICSP 8, solutions remain to be addressed.

Some developing countries advocated the use of UNFSA mechanisms, and Part VII funds specifically, to develop their fishing fleets. This was met with quiet reservations from some developed countries, whose statements tried to balance their concerns about overfishing with the right to develop fisheries fleets, based on UNCLOS approach to an equitable utilization of marine resources. Regardless, it is not clear that Part VII funds would be adequate to contribute to the development of national fleets.

On ecological sustainability and overcapacity of the existing fishing fleet, some participants also highlighted the link between the pervasive use of fisheries subsidies and fisheries depletion. Overcapacity will eventually need to be addressed to ensure the Agreement fulfils its ecological goals. Proposals to evaluate other human impacts on fish stocks were deemed overambitious for specific discussion on the 2010 resumed Review Conference Agenda due to time limits that would constrain an in-depth focus on previously agreed issues. This suggests that in the short-term, focus will remain on implementing management measures, rather than dealing with the efficacy of management at addressing ecological sustainability and overcapacity.

The second topic of the ICSP 8 Continuing Dialogue concerned compatibility of conservation and management measures between areas within and beyond national jurisdiction. Some non-parties to the Agreement interpreted Article 7 of the Agreement on compatibility as a threat to their sovereignty rights over marine resources in their Exclusive Economic Zones. However, this Article builds on UNCLOS provisions on cooperation for the adoption of conservation and management measures for straddling and highly migratory fish stocks while safeguarding the sovereign rights of coastal states. Panel discussions on the topic failed to persuade non-parties to endorse the Agreement on this issue despite acknowledging that the dispute settlement provisions in both UNFSA and UNCLOS guarantees coastal states' rights. On this issue, states generally did not have explicit objections to the UNFSA, but rather to the framework under which the UNFSA falls. As such, this is likely to remain an issue to which some states' non-accession will be anchored for years to come.

The third contentious topic of the Continuing Dialogue concerned boarding and inspection procedures on the high seas. While some delegates expressed concern over potential use of force, others were of the opinion that alternative mechanisms, such as observer programmes, can be more effective in promoting compliance with the Agreement. Boarding remained a slippery issue, notwithstanding the useful description and clarification provided by the panelists on the conditions for boarding and inspection, the availability of alternative mechanisms within Regional Fisheries Management Organizations (RFMOs) and provisions for liability from excessive or unlawful actions. However, in theory, the issue should not be a long-term hindrance to UNFSA accession for states party to RFMOs that already have boarding procedures. States whose vessels had been boarded and inspected shared their experiences and encouraged others by casting out these lines of communication. As dialogue on this issue progressed, one state committed to quantifying benefits of boarding procedures through reductions of infractions for the 2010 resumed Review Conference. While no measurable movement by states occurred during ICSP 8, it is possible that increased practical experience with peaceful boardings under RFMOs and continued open communication will diffuse this issue.

#### **THE HAUL FOR THE RESUMED REVIEW CONFERENCE**

UNFSA provided for a single Review Conference four years after its entry into force in December 2001 to assess the effectiveness of the Agreement. The Review Conference was held in 2006 and recommendations were made to improve conservation and management measures of straddling and highly migratory fish stocks and other unregulated stocks, such as discrete high seas stocks, which are non-migratory and occur strictly in the high seas. The 2006 Review Conference was suspended to facilitate continued assessment of the effectiveness of the Agreement, and is set to resume in May 2010. The resumed Review Conference will focus on, *inter alia*, the evaluation of the status and trends of fish stocks; the assessment of the implementation of recommendations of the 2006 Review Conference, and other possible points of focus to be defined at ICSP 9 where participants agreed to focus on preparations for the

resumed Review Conference, while also considering the status and trends of fish stocks, as requested by UN General Assembly resolution 63/112.

Conflicting views emerged on whether assessment of the status of discrete high seas stocks should be included in the Secretary-General's report and preparations for the resumed Review Conference. UNFSA's mandate applies only to straddling and highly migratory fish stocks. However, under the Agreement parties are called to adopt, when appropriate, conservation and management measures for species belonging to the same ecosystem or those associated with or dependent upon the target stocks. This may be pertinent to some discrete stocks. Moreover, as noted by some delegates, the 2006 Review Conference adopted recommendations on conservation and management of discrete high seas stocks in addition to straddling and highly migratory fish stocks. Participants eventually reached consensus on including such an assessment in the report and on the language of the proposed timeline and programme of work. They clarified that ICSP 9 will consider the overview of the status and trends of the fish stocks addressed in the comprehensive report prepared by the Secretary-General in cooperation with FAO, "without prejudice to the scope of application of the Agreement."

#### **SAILING ONWARD**

At the end of the ICSP 8, participants reached consensus on all further actions regarding the proposed timeline and programme of work for the resumed Review Conference. Despite progress in increasing dialogue between parties and non-parties, increasing participation in the Agreement remains a complex issue that is context-specific for each state, even within regional blocs.

On the key contentious issues, the wider benefits of accession for developing states were not fully elaborated on at ICSP 8 due to the unique nature of each state and the overemphasis on Part VII Fund benefits. And while increased information and a national leader or ministry with political weight may be able to push accession, meaningful involvement in the UNFSA will require the increased funds and regional coordination called for by some developing country parties. On the issue of compatibility of conservation and management measures in areas within and beyond national jurisdiction, RFMOs provide a positive example on how conflicts can be addressed regionally. As for agreement on the perennially charged issue of boarding, it may simply be a matter of patience as states gain comfort as the procedure is applied frequently without conflict. There are additional impediments for wider participation, for example, some non-parties to UNCLOS believe that the relationship between the Convention and UNFSA is too strong to allow accession to the Agreement. This suggests that some issues cannot be resolved in this forum alone.

It remains to be seen whether ICSP 8 was successful in convincing non-parties to join the Agreement. In the opinion of some disappointed delegates, the meeting should have focused on ways to overcome the impediments raised by non-parties. On the other hand, some felt that progress was made and cited the gradual accession of new parties – seven in 2008 – to the Agreement. However, the meeting's real achievement was its promotion of an unprecedented dialogue between parties and non-parties. The timid interventions of non-parties during



ICSP 7 were reshaped in ICSP 8 and led to frank discussions on barriers to the accession or ratification of the Agreement by non-parties. Non-parties used three distinct arguments to support their position against ratification: a lack of awareness or access to benefits, domestic matters, and conflicts with specific UNSFA provisions.

As for expectations surrounding next year's resumed Review Conference, some considered that discussion on too many issues could undermine the development of solutions. An agreement on a timeline and programme of work for the resumed Review Conference was perceived as a positive outcome for ICSP 8. A successful Conference will depend on the scope of topics under discussion and the creative abilities of the ICSP 9 and Conference delegates to address the long-standing impediments to sustainable management and conservation of straddling stocks. Even so, there was acknowledgement that until delegates are willing to address the central issue of overcapacity, genuine sustainable management of high seas fisheries will remain elusive.

## UPCOMING MEETINGS

### **33RD SESSION OF THE GENERAL FISHERIES COMMISSION FOR THE MEDITERRANEAN AND 3RD SESSION OF THE COMMITTEE ON COMPLIANCE:**

These meetings will take place from 23-27 March 2009, in Tunis, Tunisia. For more information, contact: Mr. Abdellah Srour, Deputy Executive Secretary, GFCM; tel: +39-06-570-56595; fax: +39-06-570-56500; e-mail: [abdellah.srour@fao.org](mailto:abdellah.srour@fao.org); internet: <http://www.gfcm.org/fishery/nems/38088/en>

**INDIAN OCEAN TUNA COMMISSION – 13TH SESSION:** This meeting will take place from 30 March - 3 April 2009, in Bali, Indonesia. For more information, contact: Alejandro Anganuzzi, IOTC Secretariat; tel: +248-225-494; fax: +248-224-364; e-mail: [secretariat@iotc.org](mailto:secretariat@iotc.org); internet: <http://www.iotc.org>

**COUNCIL OF SOUTHEAST ASIAN FISHERIES DEVELOPMENT CENTER – 41ST MEETING:** This meeting will take place from 7-10 April 2009, in Fukuoka, Japan. For more information, contact: Ms. Saowanee Wanothayarnchai; tel: +66-2940-6326; fax: +66-2940-6336; e-mail: [saowanee@seafdec.org](mailto:saowanee@seafdec.org); internet: <http://www.seafdec.org>

**ROUND TABLE ON ECOLABELLING AND CERTIFICATION IN THE FISHERIES SECTOR:** This meeting will take place from 22-23 April 2009, in The Hague, the Netherlands. It is co-organized by the Government of the Netherlands, FAO and OECD. For more information, contact: Emily Andrews-Chouicha, Fisheries Policy Division, OECD; tel: +33-1-4524-9560; fax: +33-1-4430-6121; e-mail: [emily.andrews-chouicha@oecd.org](mailto:emily.andrews-chouicha@oecd.org); internet: <http://www.oecd.org/fisheries>

**WORLD OCEAN CONFERENCE:** This conference will take place from 11-15 May 2009, in Manado, Indonesia. This conference is organized by the Government of Indonesia, Global Forum on Oceans, Coasts and Islands, and other partners and will focus high-level attention on issues of ecosystem-based integrated oceans management in the context of climate change. For more information, contact: WOC'09 Secretariat; tel: +62-431-861-152; fax: +62-431-861-394; e-mail: [info@woc2009.org](mailto:info@woc2009.org); internet: <http://www.woc2009.org>

**FAO REGIONAL COMMISSION FOR FISHERIES – FIFTH SESSION:** This meeting will take place from 12-14 May 2009, in Dubai, UAE. For more information, contact: Piero Mannini, Senior Fisheries Officer, FAO Regional Office for the Near East; tel: +20-2-3316000; fax: +20-2-3495981 e-mail: [FAO-RNE@fao.org](mailto:FAO-RNE@fao.org); internet: <http://www.fao.org/fishery/rfb/recofi/en>

**SEVENTH INTERNATIONAL CONSULTATION ON THE ESTABLISHMENT OF THE SOUTH PACIFIC RFMO:** This meeting on the establishment of the South Pacific Regional Fisheries Management Organization will take place from 18-22 May 2009, in Lima, Peru. For more information, contact: Robin Allen, Executive Secretary; tel: +64-4-499-9889; fax: +64-4-473-9579; e-mail: [interim.secretariat@southpacificrfmo.org](mailto:interim.secretariat@southpacificrfmo.org); internet: <http://www.southpacificrfmo.org/>

**INTERNATIONAL MARINE CONSERVATION CONGRESS:** This meeting will take place from 20-24 May 2009, in Washington, DC, US. The International Marine Conservation Congress will encompass the Second International Marine Protected Areas Congress. For more information, contact: Conference Chair John Cigliano; tel: +1-610-606-4666, ext. 3702; e-mail: [john.cigliano@cedarcrest.edu](mailto:john.cigliano@cedarcrest.edu) or [IMCC2009@conbio.org](mailto:IMCC2009@conbio.org); internet: <http://www2.cedarcrest.edu/imcc/index.html>

**NORTH ATLANTIC SALMON CONSERVATION ORGANIZATION – 26TH ANNUAL MEETING:** This meeting will take place from 2-5 June 2009, in Molde, Norway. For more information, contact: NASCO Secretariat; tel: +44-131-228-2551; fax: +44-131-228-4384; e-mail: [hq@nasco.int](mailto:hq@nasco.int); internet: <http://www.nasco.int>

**INTER-AMERICAN TROPICAL TUNA COMMISSION AND AGREEMENT ON THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM ANNUAL MEETING:** This meeting will take place from 4-12 June 2009, in La Jolla, California, US. For more information, contact: Brian Hallman, Assistant Director; tel: +1-858-546-7100; fax: +1-858-546-7133; e-mail: [bhallman@iatcc.org](mailto:bhallman@iatcc.org); internet: <http://www.iatcc.org>

**10TH MEETING OF THE UN OPEN-ENDED INFORMAL CONSULTATIVE PROCESS ON OCEANS AND THE LAW OF THE SEA:** This meeting will take place from 17-19 June 2009, at UN headquarters in New York. The meeting will focus on the implementation of the outcomes of the Consultative Process, including a review of its achievements and shortcomings in its first nine meetings. For more information, contact: UNDOALOS; tel: +1-212-963-3969; fax: +1-212-963-5847; e-mail: [doalos@un.org](mailto:doalos@un.org); internet: <http://www.un.org/Depts/los/>

**61ST INTERNATIONAL WHALING COMMISSION MEETING:** This meeting will take place from 22-26 June 2009, in Madeira, Portugal. Its Scientific Committee will meet from 31 May - 12 June 2009, and other associated meetings will be held from 13-21 June 2009. For more information, contact: IWC Secretariat; tel: +44-1223-233-971; fax: +44-1223-232-876; e-mail: [secretariat@iwcoffice.org](mailto:secretariat@iwcoffice.org); internet: <http://www.iwcoffice.org/meetings/meeting2009.htm>

**SECOND JOINT MEETING OF THE TUNA RFMOs:** This meeting will take place from 29 June - 3 July 2009, in San Sebastian, Spain. For more information, contact: Roberto Cesari,

Directorate-General for Fisheries and Maritime Affairs, European Commission; tel: +32-2-299-42-76; fax: +32-2-295-57-00; e-mail: roberto.cesari@ec.europa.eu; internet: <http://www.tuna-org.org/>

**WESTERN AND CENTRAL PACIFIC REGIONAL FISHERY MANAGEMENT COUNCIL - 145TH MEETING:**

This meeting will take place from 22-25 July 2009, in Kona, Hawaii. For more information, contact: Mark Mitsuyasu, Fisheries Programme Officer; tel: +1-808-522-8220; fax: +1-808-522-8226; e-mail: [Mark.Mitsuyasu@noaa.gov](mailto:Mark.Mitsuyasu@noaa.gov); internet: <http://www.wpcouncil.org/>

**NORTHWEST ATLANTIC FISHERIES**

**ORGANIZATION ANNUAL MEETING:** This meeting will take place from 21-25 September 2009, in Bergen, Norway. For more information, contact: Barbara Marshall; tel: +1-902-468-5590; fax: +1-902 468-5538; e-mail: [bmarshall@nafo.int](mailto:bmarshall@nafo.int); internet: <http://www.nafo.int>

**ASIA PACIFIC FISHERIES COMMISSION**

**EXECUTIVE COMMITTEE – 72ND SESSION:** This executive committee meeting is scheduled to take place from 23-25 September 2009, in Seoul, Republic of Korea. For more information, contact: Simon Funge-Smith, Secretary APFIC; tel: +66-2697-4149, fax: +66-2697-4445; e-mail: [simon.fungesmith@fao.org](mailto:simon.fungesmith@fao.org); internet: <http://www.apfic.org>

**SOUTH EAST ATLANTIC FISHERIES**

**ORGANISATION – SIXTH ANNUAL MEETING:** This meeting will take place from 5-8 October 2009, in Windhoek, Namibia, and will be preceded by a meeting of the Scientific Committee. For more information, contact: Ben van Zyl, Executive Secretary; tel: +264-64-220387; fax: +264-64-220389; e-mail: [info@seafo.org](mailto:info@seafo.org); internet: <http://www.seafo.org>

**COMMISSION FOR THE CONSERVATION OF**

**SOUTHERN BLUEFIN TUNA – 16TH MEETING:** This meeting will take place from 20-23 October 2009, in Jeju Island, Korea. For more information, contact: Robert Kennedy, CCSBT Executive Secretary; tel: +61-2-6282-8396; fax: +61-2-6282-8407; e-mail: [rkennedy@ccsbt.org](mailto:rkennedy@ccsbt.org); internet: <http://www.ccsbt.org>

**NORTH EAST ATLANTIC FISHERIES COMMISSION**

**ANNUAL MEETING:** This meeting will take place from 9-13 November 2009, in London, UK. For more information, contact: NEAFC Secretariat; tel: +44-207-631-0016; fax: +44-207-636-9225; e-mail: [info@neafc.org](mailto:info@neafc.org); internet: <http://www.neafc.org/neafcmeeting/722>

**INTERNATIONAL COMMISSION FOR THE**

**CONSERVATION OF ATLANTIC TUNA – 21ST MEETING:** This meeting will take place from 16-22 November 2009, in Recife, Brazil. The meeting will be preceded by a working group on sport and recreational fisheries and a compliance committee meeting. For more information, contact: ICCAT Secretariat; tel: +34-914-165-600; fax: +34-914-152-612; e-mail: [info@iccat.int](mailto:info@iccat.int); internet: <http://www.iccat.int/>

**EAST ASIAN SEAS CONGRESS 2009:** This Congress will take place from 23-27 November 2009, in Manila, Philippines. This Congress will be organized around the theme, “Partnerships at Work: Local Implementation and Good Practices.” For more information, contact: EAS Congress Secretariat; tel: +63-2-929-2992; fax: +63-2-926-9712; e-mail: [congress@pemsea.org](mailto:congress@pemsea.org); internet: <http://www.pemsea.org/eascongress/>

**WESTERN AND CENTRAL PACIFIC FISHERIES**

**COMMISSION - 6TH SESSION:** This meeting is provisionally scheduled for 7-11 December 2009, in Papeete, Tahiti. For more information, contact: WCPFC Secretariat; tel: +691-320-1992; fax: +691-320-1108; e-mail: [wcpfc@mail.fm](mailto:wcpfc@mail.fm); internet: <http://www.wcpfc.int>

**NINTH ROUND OF INFORMAL CONSULTATIONS**

**FOR STATES PARTIES TO UNFSA:** This meeting is tentatively scheduled, pending UNGA approval, for 15-29 March 2010. The Informal Consultations are expected to prepare for the resumed Review Conference. For more information, contact: UNDOALOS; tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: [doalos@un.org](mailto:doalos@un.org); internet: <http://www.un.org/Depts/los/>

**UNFSA REVIEW CONFERENCE:** The UNFSA Review Conference is expected to resume on 24-28 May 2010 at UN headquarters in New York. The dates will be determined by the 64th UN General Assembly in December 2009. For more information, contact: UNDOALOS; tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: [doalos@un.org](mailto:doalos@un.org); internet: <http://www.un.org/Depts/los/>

**GLOSSARY**

EEZ	Exclusive Economic Zone
FAO	Food and Agriculture Organization of the United Nations
IATTC	Inter-American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICSP	Informal Consultations of States Parties
IUCN	International Union for Conservation of Nature
IUU	Illegal, unreported and unregulated fishing
MCS	Monitoring, compliance and surveillance
NAFO	Northwest Atlantic Fisheries Organization
NEAFC	North East Atlantic Fisheries Commission
NRDC	Natural Resources Defense Council
RFMO	Regional Fisheries Management Organization
SIDS	Small island developing states
UNCLOS	UN Convention on the Law of the Sea
UNDOALOS	UN Division for Ocean Affairs and the Law of the Sea
UNFSA	UN Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks
UNGA	United Nations General Assembly
WCPFC	Western and Central Pacific Fisheries Commission