

UNFSA REVIEW HIGHLIGHTS: THURSDAY, 25 MAY 2006

On Thursday, 25 May 2006, the Review Conference of the UN Fish Stocks Agreement (UNFSA or the Agreement) reviewed and assessed implementation of the Agreement's provisions regarding developing States and non-parties. The drafting committee met in the morning, afternoon and evening to discuss: conservation and management; international cooperation and non-members; and monitoring, control and surveillance (MCS), and compliance and enforcement.

PLENARY

Drafting Committee Chair Fernando Curcio (Spain) reported that the committee finalized draft text on conservation and management of fish stocks with two remaining bracketed sections, and continued consideration of draft text on mechanisms for international cooperation and non-members.

PALAU and SIERRA LEONE announced their intention to join UNFSA.

DEVELOPING STATES AND NON-PARTIES: Conference President David Balton (US) underscored the role of assistance to developing States in helping fulfill UNFSA commitments and encouraging further ratification and adherence by non-parties. He invited further discussion on impediments to ratification, and views on possible future reviews of the Agreement.

Recognition of special requirements, provisions of assistance, and capacity-building: FIJI called for specialist training and human resource development for developing States, including through partnerships with countries possessing fishing expertise. INDIA advocated bilateral cooperation and the exchange of best practices among regional fisheries management organizations (RFMOs). SRI LANKA said developing States benefit more from regional rather than national programmes to combat IUU fishing and collect data. MAURITIUS said small island developing States (SIDS) should have equitable access to fishing resources while their fisheries develop, and SIDS' financial constraints should be taken into account when formulating member States' financial contributions to RFMOs.

Supported by SENEGAL and NIGERIA, GUINEA drew attention to the need for assistance with production and distribution mechanisms, capacity, human resources and reliable data, and called for increased contributions to the Assistance Fund and concrete proposals for the establishment of new RFMOs.

The EUROPEAN COMMISSION said that rather than increasing financial assistance, the international community should assist developing countries in formulating policies to make rational use of such assistance. CANADA called on development

assistance agencies to develop coherent approaches to international fisheries issues, bearing in mind the specific policy, science, management and enforcement needs and priorities of developing States. CHINA and NORWAY noted the link between assistance to developing countries and increasing adherence to the Agreement. The US encouraged greater use of the Assistance Fund.

Supported by KENYA and NIGERIA, Papua New Guinea, on behalf of the PACIFIC ISLANDS FORUM, called for assistance in meeting importing countries' quality control requirements and ensuring developing countries' access to markets for fish products. INDONESIA called for capacity building for developing countries to: participate in monitoring, control and surveillance; train observers; and implement port State controls. AUSTRALIA highlighted non-financial assistance, including partnerships to share expertise and technical knowledge. BRAZIL and MEXICO called for assistance for developing countries to access high seas stocks. KENYA stressed the need to consider all forms of assistance as a package, without attributing preference unless so requested by beneficiary countries.

The INTERNATIONAL COALITION IN SUPPORT OF FISHWORKERS called for preferential access to fish stocks for artisanal and small-scale fishers. The INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNA called for funding for developing countries' data collection activities. GREENPEACE called for international cooperation for capacity building and the establishment of a transparent database of vessel quotas and landing information, and suggested that participation in RFMOs not be based on past fishing history. The WORLD WIDE FUND FOR NATURE (WWF) underscored the importance of committing governments to allocation rules for new entrants to RFMOs, with IUCN - THE WORLD CONSERVATION UNION also urging that scientific advice be respected. The INTER-AMERICAN TROPICAL TUNA COMMISSION underscored the role of regional bodies in awareness raising and capacity building.

Increased adherence to the Agreement: To overcome barriers to ratification, CHILE, supported by the DOMINICAN REPUBLIC and others, called for clarification or reaffirmation of legal concepts related to: consistency with the UN Convention on the Law of the Sea (UNCLOS); respect for sovereign rights of coastal States; compatibility; port State sovereignty; and boarding and inspection. MEXICO stressed the need to affirm the primacy of coastal States' measures, with regard to the compatibility of conservation and management measures in exclusive economic zones and the high seas.

Several delegates pointed to UNFSA Articles 21 (Subregional and regional cooperation in enforcement) and 22 (Basic procedures for boarding and inspection) as an obstacle to broader

adherence to the Agreement. CUBA, supported by ECUADOR and COLOMBIA, urged the adoption of general recommendations for the implementation of UNFSA provisions on boarding and inspection, to address non-party concerns. CUBA proposed basing such guidelines on the provisions on cooperation and procedures for boarding in the 2005 Protocol to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of the International Maritime Organization.

The REPUBLIC OF KOREA cautioned against the unlawful exercise of inspection and boarding, and, with INDONESIA, called for safeguards for the human rights of crews during inspection and boarding. He favored alternative mechanisms such as observer programmes, vessel registers, lists of vessels and trade documentation. CHINA expressed concern about the possibility of using force for the enforcement of the Agreement, suggested developing transparent and reasonable guiding principles on this matter, and, supported by INDONESIA, recommended including compensation mechanisms. INDONESIA called for boarding and inspection to be conducted only with the authorization of the flag State. MEXICO called for developing a technical annex to UNFSA on procedures for inspection and boarding, including a compensation mechanism for damage and economic losses caused by boarding contrary to international law, and favored alternative means for monitoring and surveillance such as independent onboard observers.

AUSTRALIA and the US said that UNFSA already achieves a careful balance of rights, duties and obligations that must all be implemented with integrity. The US called for RFMO members to develop mutually acceptable provisions on boarding and inspection.

FUTURE MEETINGS: Austria, for the EUROPEAN UNION, supported periodic five-year reviews of the Agreement. NEW ZEALAND underlined the need for UN bodies to report to a review conference, and, with SENEGAL and the US, called for a four-year review cycle. ICELAND proposed to hold consultations every second year, with every third consultation being held in a more formal setting. WWF supported the framework proposed by Iceland, but suggested that, in the interim, informal meetings be held annually. GREENPEACE preferred convening annual informal meetings and a review conference every four years.

NORWAY opined that formal conferences divert resources away from actual implementation, preferring that biennial informal States parties meetings conduct a review every six to eight years. INDONESIA said it is premature to consider a further review conference.

GUATEMALA called for regional periodic review conferences. PALAU advocated an annual review of RFMO coverage and effectiveness. MEXICO proposed ongoing informal consultations to examine obstacles to broader adherence to the Agreement. NIGERIA and others called for regular meetings between RFMOs to facilitate information exchange and the identification, compilation and dissemination of best practices.

In closing the session, President Balton underscored general agreement on the need to increase assistance to developing countries, as well as divergent interpretations of UNFSA provisions on general principles, the precautionary approach, the compatibility of conservation and management measures, enforcement, and inspection and boarding. He further noted the majority's desire to keep the Agreement under review, with different proposals as to possible formats.

DRAFTING COMMITTEE

CONSERVATION AND MANAGEMENT: In the morning, the drafting committee discussed a newly revised draft text on conservation and management. Delegates debated whether to refer to "livelihoods" in the context of the sustainable use of fish stocks as a food source. The committee decided to forward the text

to plenary, with brackets remaining on, *inter alia*: compatibility of measures adopted on the high seas with those in place within national jurisdictions; enhancing efforts to reinforce the duty of States fishing on the high seas and coastal States to cooperate; time-bound commitments on reducing overcapacity; and "idle" and "unattended" gear and "ghost fishing."

INTERNATIONAL COOPERATION AND NON-MEMBERS: In the morning and afternoon, the drafting committee continued consideration of a revised draft text on international cooperation and non-members. Debate focused on RFMO performance reviews, including questions of transparency, objective performance criteria, best practice examples, and a possible model RFMO. On RFMO performance review, some insisted that only RFMO members should determine the methodology for each review. Others were adamant that an independent element in the review would be necessary to ensure transparency and rigor.

On the model RFMO, some cautioned against agreeing to move towards the standards of a model, before it has even been developed. Supporters of the proposal highlighted that the model RFMO would apply principles already agreed upon in instruments such as UNFSA, UNCLOS and FAO instruments.

MONITORING, CONTROL AND SURVEILLANCE, AND COMPLIANCE AND ENFORCEMENT: In the evening, delegates began addressing a draft text on monitoring, control and surveillance, and compliance and enforcement. On review and assessment, discussions centered on language on effective flag State control, improvements in MCS and compliance, international cooperation mechanisms, and investigations and sanctions for violations. Delegates discussed a list of MCS measures and the need for a comprehensive MCS scheme for RFMOs to provide an appropriate framework for compliance. Delegates also debated proposed language on the need for a more coordinated approach among States and RFMOs for preventing the landing and transshipment of illegally caught fish. Delegates addressed proposed means of strengthening the Agreement's implementation with regard to MCS and compliance and enforcement, and discussions continued into the night.

IN THE CORRIDORS

Many intertwined issues remained on the table on the penultimate day of negotiations, as attention focused on reaching universal membership of the Agreement. According to parties, efforts to entice potential new members should be based on incentives such as increased assistance to developing countries. To non-parties, addressing the "obstacles" to joining the Agreement, most notably the controversial provisions on boarding and inspection, seems more urgent. Calls for more detailed procedures and cooperative alternatives have been, according to some observers, increasingly evident, as theoreticians of the "stick rather than the carrot" approach start foreshadowing tougher enforcement measures to crack down on IUU fishing.

Non-parties also remained concerned about the work being conducted by the drafting committee and informally by smaller groups of delegations. A few participants privately worried that the perception of unequal footing by non-parties will lead to a revisited debate on procedure on the final day, although many think that the issue has already been effectively dealt with. Overall, however, the emerging willingness to keep the Agreement under review in the future may bear the seeds of an ongoing dialogue and will hopefully lead to creative solutions for the global conservation and management of fish stocks.

ENB SUMMARY AND ANALYSIS: The *Earth Negotiations Bulletin* summary and analysis of the Review Conference of the UN Fish Stocks Agreement will be available on Monday, 29 June 2006 online at: <http://www.iisd.ca/oceans/sfsrc/>.