

Compilation of the recommendations adopted at the Review Conference in 2006 and the resumed Review Conference in 2010

Prepared by the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, as an annex to a voluntary questionnaire for States and regional fisheries management organizations and arrangements for the report of the Secretary-General to the resumed Review Conference on the United Nations Fish Stocks Agreement¹

¹ This document was prepared on the basis of the Outcome of the Review Conference, New York, 26 May 2006 (A/CONF.210/2006/15, annex) and the Outcome of the resumed Review Conference, New York, 28 May 2010 (A/CONF.210/2010/7, annex).

I. Conservation and management of stocks

2006 recommendations (A/CONF.210/2006/15, annex)

18. As a result of the review and assessment, the Review Conference recommended that States individually and collectively through regional fisheries management organizations:

(a) Strengthen their commitment to adopt and fully implement conservation and management measures for straddling fish stocks and highly migratory fish stocks, including stocks that are currently unregulated, in accordance with the best available scientific information on the status of such stocks and the provisions of the Agreement with respect to the precautionary approach;

(b) Take measures to improve cooperation between flag States whose vessels fish on the high seas and coastal States so as to ensure the achievement of compatibility of measures for the high seas and for those areas under national jurisdiction with respect to straddling fish stocks and highly migratory fish stocks in accordance with article 7 of the Agreement;

(c) Where needed, establish new regional fisheries management organizations or arrangements for the conservation and management of straddling fish stocks, highly migratory fish stocks and high-seas discrete stocks and agree on interim measures until such arrangements are established;

(d) Enhance understanding of ecosystem approaches and commit themselves to incorporating ecosystem considerations in fisheries management, including actions to conserve associated and dependent species and to protect habitats of specific concern, taking into account existing FAO guidelines, and request FAO to continue its work on the subject, as appropriate;

(e) Develop management tools, including closed areas, marine protected areas and marine reserves and criteria for their implementation, to effectively conserve and manage straddling fish stocks, highly migratory fish stocks and high-seas discrete stocks and protect habitats, marine biodiversity and vulnerable marine ecosystems, on a case-by-case basis in accordance with the best available scientific information, the precautionary approach and international law;

(f) Commit themselves to urgently reducing the capacity of the world's fishing fleets to levels commensurate with the sustainability of fish stocks, through the establishment of target levels and plans or other appropriate mechanisms for ongoing capacity assessment, while avoiding the transfer of fishing capacity to other fisheries or areas, in a manner that undermines the sustainability of fish stocks, including, inter alia, those areas where fish stocks are overexploited or in a depleted condition, and recognizing in this context the legitimate rights of developing States to develop their fisheries for straddling fish stocks and highly migratory fish stocks consistent with article 25 of the Agreement, article 5 of the Code of Conduct, and paragraph 10 of the International Plan of Action for the Management of Fishing Capacity;

(g) Eliminate subsidies that contribute to illegal, unregulated and unreported fishing, overfishing and overcapacity, while completing the efforts undertaken through the World Trade Organization in accordance with the Doha Declaration to clarify and improve its disciplines on fisheries subsidies;

(h) Enhance efforts to address and mitigate the incidence and impacts of all kinds of lost or abandoned gear (so-called ghost fishing), establish mechanisms for the regular retrieval of derelict gear and adopt mechanisms to monitor and reduce discards;

(i) Provide required catch and effort data, and fishery-related information, in a complete, accurate and timely way and to develop, where they do not exist, processes to strengthen data collection and reporting by members of regional fisheries management organizations, including through regular audits of member compliance with such obligations, and when such obligations are not met, require the member concerned to rectify the problem, including through the preparation of plans of action with timelines;

(j) Cooperate with FAO in the implementation and further development of the Fisheries Resources Monitoring System initiative;

(k) Commit themselves to submitting, on a priority basis, information on deep-sea fish catches, as requested by the twenty-sixth session of the FAO Committee on Fisheries, and contribute to the work of FAO to collect and collate information concerning past and present deep-water fishing activities and to undertake an inventory of deep-water stocks and an assessment of the effects of fishing on deep-water fish populations and their ecosystems.

19. The Review Conference recommended that FAO should (a) establish arrangements for the collection and dissemination of data in accordance with article 7 of annex I to the Agreement, where none exist; and (b) revise its global fisheries statistics database to provide information for the stocks to which the Agreement applies and for high-seas discrete stocks on the basis of where the catch was taken.

20. The Review Conference recommended that States that are FAO members provide the organization with appropriate means to advance the above requests and objectives.

2010 recommendations (A/CONF.210/2010/7, annex)

6. [T]he resumed Review Conference recommended that States and regional economic integration organizations, individually and collectively through regional fisheries management organizations and arrangements:

I. Conservation and management of stocks

(a) Commit themselves on an urgent basis to improving, through effective conservation and management measures, the status of straddling fish stocks and highly migratory fish stocks that are overexploited or depleted;

(b) Strengthen efforts to improve cooperation between flag States whose vessels fish on the high seas and coastal States so as to ensure compatibility of measures for the high seas and for areas under national

jurisdiction with respect to straddling fish stocks and highly migratory fish stocks in accordance with article 7 of the Agreement and relevant provisions of the Convention;

(c) Comply fully with their obligations as members or cooperating non-members of regional fisheries management organizations and arrangements to submit timely, complete and accurate fisheries data; create incentives to promote compliance with those obligations; and take steps to address persistent failure to fulfil those obligations;

(d) Further to the recommendation in paragraph 19 of the outcome of the Review Conference in 2006 (A/CONF.210/2006/15, annex), provide the requested information to the Food and Agriculture Organization of the United Nations (FAO);

(e) Reaffirm the commitment to urgently reduce the capacity of the world's fishing fleets to levels commensurate with the sustainability of fish stocks, through the establishment of target levels and plans or other appropriate mechanisms for ongoing capacity assessment, while avoiding the transfer of fishing capacity to other fisheries or areas in a manner that undermines the sustainability of fish stocks, including, inter alia, those areas where fish stocks are overexploited or in a depleted condition, recognizing in this context the legitimate rights of developing States to develop their fisheries for straddling fish stocks and highly migratory fish stocks consistent with article 25 of the Agreement, article 5 of the FAO Code of Conduct for Responsible Fisheries and paragraph 10 of the International Plan of Action for the Management of Fishing Capacity of FAO;

(f) Strengthen implementation of an ecosystem approach through promoting and conducting scientific research in support of fisheries management, applying appropriate risk assessment tools and conducting stock assessments to conserve and manage associated and dependent species and their habitats, and adopting management measures for currently unregulated directed fisheries or for those species that are caught as by-catch and then commercially traded;

(g) Strengthen the conservation and management of sharks by:

(i) establishing and implementing species-specific data collection requirements for shark species caught in directed shark fisheries or as by-catch in other fisheries;

(ii) conducting biological assessments and developing associated conservation and management measures for such sharks; and

(iii) strengthening, on the basis of the best scientific information available, enforcement of existing prohibitions on shark finning by requiring that sharks be landed with their fins naturally attached or through different means that are equally effective and enforceable;

(h) Establish long-term conservation and management measures for deep-sea fisheries in accordance with the International Guidelines for the Management of Deep-sea Fisheries in the High Seas of FAO;

(i) Apply the guidelines in annex II of the Agreement and determine, on the basis of the best scientific information available, reference points for specific stocks and provisional reference points when information for a fishery is poor or absent in accordance with the precautionary approach and

actions to be taken if they are exceeded; and develop and implement fishery management strategies that have a high probability of ensuring that agreed stock-specific reference points are not breached;

(j) Where a stock is identified as being overfished or depleted, establish rebuilding and recovery strategies, with time frames and probabilities of recovery, guided by scientific assessments and with periodic evaluation of progress;

(k) Strengthen interaction between fisheries managers and scientists to ensure that conservation and management measures are based on the best available scientific evidence and meet the management objectives set by the regional fisheries management organization or arrangement, including through:

(i) considering the use of the Kobe II strategy matrix (see www.tuna-org.org, report of the second joint meeting) for setting management measures in regional fisheries management organizations and arrangements; and

(ii) regular scientific review of the effectiveness of conservation and management measures adopted by regional fisheries management organizations and arrangements;

(l) Encourage participation in the FAO process to develop international guidelines on by-catch management and reduction of discards, including the technical consultation to be convened by FAO in December 2010 on this issue;

(m) Strengthen the commitment to eliminate subsidies that contribute to illegal, unreported and unregulated fishing, overfishing and overcapacity, while completing the efforts undertaken through the World Trade Organization in accordance with the Doha Declaration on Financing for Development and the 2005 Hong Kong Ministerial Declaration to clarify and improve its disciplines on fisheries subsidies, taking into account the importance of the fisheries sector to developing countries;

(n) Strengthen efforts to study and address environmental factors affecting marine ecosystems, including adverse impacts of climate change and ocean acidification, and, where possible, consider such impacts in establishing conservation and management measures for straddling fish stocks and highly migratory fish stocks;

(o) Give effect to article 5 (d) of the Agreement to assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;

II. Mechanisms for international cooperation and non-members

2006 recommendations (A/CONF.210/2006/15, annex)

32. As a result of the review and assessment, the Review Conference agreed to recommend that States individually and collectively through regional fisheries management organizations:

- (a) Continue on an urgent basis to strengthen the mandates of, and measures adopted by, regional fisheries management organizations to implement modern approaches to fisheries management as reflected in the Agreement and other relevant international instruments, including relying on the best scientific information available and application of the precautionary approach, and incorporating an ecosystem approach into fisheries management;
- (b) Strengthen and enhance cooperation among existing and developing regional organizations, including increased communication and further coordination of measures, and, following the example of regional organizations that regulate highly migratory fish stocks and the regional tuna meeting that will be hosted by Japan in 2007, agree to hold consultations of States members of regional fisheries management organizations that regulate straddling fish stocks to exchange views on key issues;
- (c) Address participatory rights through, inter alia, the development of transparent criteria for allocating fishing opportunities, taking due account, inter alia, of the status of the relevant stocks and the interests of all those with a real interest in the fishery;
- (d) Recalling that only those States which are members of regional fisheries management organizations, or which agree to apply the conservation and management measures established by them, shall have access to the fishery resources to which those measures apply, establish mechanisms to promote the participation of non-members fishing in the area of competence of a regional organization to either join the organization or agree to apply the conservation and management measures established by it;
- (e) Commit themselves to providing incentives, where needed, to encourage non-members to join the regional fisheries management organizations, including sharing technology and expertise, assistance in the development of appropriate frameworks, and enhancement of enforcement capabilities. Non-members shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks;
- (f) Ensure that post opt-out behaviour is constrained by rules to prevent opting-out parties from undermining conservation, clear processes for dispute resolution, and a description of alternative measures that will be implemented in the interim;
- (g) Improve the transparency of regional fisheries management organizations, both in terms of decision-making that incorporates the precautionary approach and the best scientific information available and by providing reasonable participation for intergovernmental and non-governmental organizations through the organizations' rules and procedures;

(h) Cooperate to examine and clarify the role of the “genuine link” in relation to the duty of flag States to exercise effective control over fishing vessels flying their flag;

(i) Take concrete measures to enhance the ability of developing States to develop their fisheries for straddling fish stocks and highly migratory fish stocks, including facilitating access to such fisheries, consistent with article 25 of the Agreement;

(j) Urge those regional fisheries management organizations of which they are members to undergo performance reviews on an urgent basis, whether initiated by the organizations themselves or with external partners; encourage the inclusion of some element of independent evaluation in such reviews; and ensure that the results are made publicly available. The reviews should use transparent criteria based on the Agreement and other relevant instruments, including best practices of regional fisheries management organizations;

(k) Cooperate to develop best practice guidelines for regional fisheries management organizations and apply, to the extent possible, those guidelines to organizations in which they participate.

2010 recommendations (A/CONF.210/2010/7, annex)

6. [T]he resumed Review Conference recommended that States and regional economic integration organizations, individually and collectively through regional fisheries management organizations and arrangements:

[...]

II. Mechanisms for international cooperation and non-members

(a) Modernize the mandates of regional fisheries management organizations and arrangements, where this has not yet occurred, to reflect explicit provisions for the use of modern approaches to fisheries conservation and management set forth in the Agreement and other relevant international instruments, including with respect to the aspirations of developing States, particularly the least developed among them and small island developing States;

(b) Promote the early entry into force of revised agreements for regional fisheries management organizations and arrangements and recently concluded treaties establishing new organizations and arrangements;

(c) Conclude negotiations among all interested States to establish new regional fisheries management organizations and arrangements as soon as possible, and seek to avoid any geographic gaps between their convention areas and the convention areas of existing organizations and arrangements covering similar fisheries;

(d) Undertake performance reviews that include some element of independent evaluation not later than 2012 for those regional fisheries management organizations and arrangements for which such reviews have not yet been undertaken; undertake such reviews on a regular basis, for example every five years; and ensure that information about actions taken to

implement the recommendations from performance reviews is made publicly available;

(e) Encourage regional fisheries management organizations and arrangements of which they are members to strengthen cooperation through the establishment of joint working groups or other mechanisms to facilitate the development of harmonized or consistent measures across regional fisheries management organizations and arrangements, particularly with regard to mitigating and managing the by-catch of non-target and associated and dependent species, implementing an ecosystem approach and promoting effective and consistent implementation of monitoring control and surveillance tools;

(f) Invite regional fisheries management organizations with competence to manage straddling fish stocks to consider holding joint meetings to exchange views on key issues and to share best practices where appropriate;

(g) Ensure implementation of interim measures adopted by the participants in negotiations to develop new regional fisheries management organizations and arrangements that are not yet in force, including those relating to the South Pacific and North Pacific regions; provide to the appropriate interim bodies complete and accurate fisheries data so as to facilitate the effective implementation of those interim measures; and provide for a periodic review of such measures in the light of the status of the resource based on updated scientific advice;

(h) Where appropriate, strengthen efforts to agree on participatory rights of members, new members and cooperating non-members of regional fisheries management organizations and arrangements, giving due regard to the aspirations of developing States, particularly the least developed among them and small island developing States, and the status of the stocks;

III. Monitoring, control and surveillance and compliance and enforcement

2006 recommendations (A/CONF.210/2006/15, annex)

43. As a result of the review and assessment, the Review Conference recommended that States individually and collectively through regional fisheries management organizations:

- (a) Strengthen effective control over vessels flying their flag and ensure that such vessels comply with, and do not undermine, conservation and management measures adopted by regional fisheries management organizations;
- (b) Adopt, strengthen and implement compliance and enforcement schemes in all regional fisheries management organizations; enhance or develop mechanisms to coordinate monitoring, control and surveillance measures, including those directed at non-members, between regional fisheries management organizations and with relevant market States; and ensure the fullest possible exchange of monitoring, control and surveillance information related to illegal, unregulated and unreported fishing activities. Global information exchange efforts should be enhanced;
- (c) Adopt stringent measures to regulate trans-shipment, in particular at-sea trans-shipment; and in parallel, encourage and support FAO in studying the current practices of trans-shipment as it relates to fishing operations for straddling fish stocks and highly migratory fish stocks and produce a set of guidelines for this purpose;
- (d) Adopt all necessary port State measures, consistent with article 23 of the Agreement, particularly those envisioned in the 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing, and promote minimum standards at the regional level; and in parallel, initiate, as soon as possible, a process within FAO to develop, as appropriate, a legally binding instrument on minimum standards for port State measures, building on the FAO Model Scheme and the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing;
- (e) Join and actively participate in the International Monitoring, Control and Surveillance Network for Fisheries-related Activities, where they have not already done so, and support the enhancement of the Network;
- (f) Strengthen fisheries access agreements to include assistance for monitoring, control and surveillance and compliance and enforcement within the areas under the national jurisdiction of the coastal State providing fisheries access;
- (g) Develop appropriate processes to assess flag States' performance with respect to implementing the obligations regarding fishing vessels flying their flag set out in the Agreement and other relevant international instruments; and consider the use of multilaterally agreed trade measures, consistent with the rules established by the World Trade Organization, to promote implementation of those obligations by flag States;
- (h) Develop regional guidelines for fisheries sanctions to be applied by flag States so that flag States may evaluate their systems of sanctions to

ensure that they are effective in securing compliance and deterring violations;

(i) Take necessary measures, consistent with international law, to ensure that only fish that have been taken in accordance with applicable conservation and management measures reach their markets, and take steps consistent with national and international law to require those involved in fish trade to cooperate fully to this end; at the same time, recognize the importance of market access, in accordance with provisions 11.2.4, 11.2.5 and 11.2.6 of the Code of Conduct for Responsible Fisheries, for fishery products and fish caught in a manner that is in conformity with the applicable conservation and management measures;

(j) Strengthen, consistent with national law, domestic mechanisms to deter nationals and beneficial owners from engaging in illegal, unregulated and unreported fishing activities and facilitate mutual assistance to ensure that such actions can be investigated and proper sanctions imposed;

(k) Promote universal acceptance of the FAO Compliance Agreement;

(l) Cooperate with FAO to develop a comprehensive global register of fishing vessels, including refrigerated transport and supply vessels, that incorporates all available information on beneficial ownership, subject to confidentiality requirements in accordance with national law;

(m) Develop measures to prohibit supply and refuelling vessels flying their flag from engaging in operations with vessels listed as engaging in illegal, unregulated or unreported fishing;

(n) Ensure that all vessels fishing on the high seas carry vessel monitoring systems as soon as practicable;

(o) Recognize that the development within regional fisheries management organizations of alternative mechanisms for compliance and enforcement in accordance with article 21, paragraph 15, of the Agreement, including other elements of a comprehensive monitoring, control and surveillance regime that effectively ensures compliance with the conservation and management measures adopted by the regional fisheries management organization, could facilitate accession to the Agreement by some States.

2010 recommendations (A/CONF.210/2010/7, annex)

6. [T]he resumed Review Conference recommended that States and regional economic integration organizations, individually and collectively through regional fisheries management organizations and arrangements:

[...]

III. Monitoring, control and surveillance and compliance and enforcement

(a) Annually assess compliance by members with measures of regional fisheries management organizations and arrangements and, where appropriate, cooperation by non-members with those measures; create incentives to promote compliance and cooperation with those measures; and take steps to address persistent non-compliance and non-cooperation;

- (b) Encourage States to consider becoming party to the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing with a view to its early entry into force; and adopt port State measures consistent with that agreement through regional fisheries management organizations and arrangements if they have not already done so;
- (c) Prevent illegally harvested fish or fish products from entering into commerce through the greater use and better coordination of catch documentation schemes and other market-related measures, strengthen law enforcement cooperation and facilitate the commerce in fish or fish products caught in a sustainable manner;
- (d) Fully implement their responsibilities as flag States and develop through FAO, including at a technical consultation to be convened no later than 2011, a set of criteria for assessing the performance of flag States in carrying out those responsibilities, as well as steps to address persistent failure to carry out those responsibilities;
- (e) Control fishing activities of their nationals, to the extent possible, that undermine the effectiveness of conservation and management measures adopted in accordance with international law and take measures and cooperate to ensure compliance by their nationals and, where relevant, share information on steps taken in this regard with other States and regional fisheries management organizations and arrangements;
- (f) Expedite efforts through FAO, in cooperation with the International Maritime Organization (IMO), to create a unique vessel identifier system as part of a comprehensive global record of fishing vessels that includes refrigerated transport and supply vessels;
- (g) Strengthen measures of regional fisheries management organizations and arrangements to monitor and regulate trans-shipment activity, particularly by considering stronger rules relating to trans-shipment at sea and the landing of fish and fish products that have been trans-shipped at sea; and strengthen the monitoring of high-seas fishing vessels by increasing the coverage of independent on-board observers and through other equally effective means;
- (h) Consider joining the International Monitoring, Control and Surveillance Network and share information and practices that would strengthen enforcement of fisheries conservation and management measures and consider providing funding for the Network;

IV. Developing States and non-parties

2006 recommendations (A/CONF.210/2006/15, annex)

55. As a result of the review and assessment, the Review Conference agreed to recommend that States:

- (a) Urgently contribute, where they have not yet done so, to the Part VII fund or to other mechanisms to assist developing States in the conservation and management of straddling fish stocks and highly migratory fish stocks. Such assistance should be targeted to such areas as (i) stock assessment and scientific research; (ii) data collection and reporting; (iii) monitoring, control, and surveillance; (iv) port State control; (v) compliance with market and trade-related measures and meeting market access requirements, including with respect to health and quality standards; (vi) development of fisheries for straddling fish stocks and highly migratory fish stocks; (vii) human resource development; and (viii) the sharing of information, including vessel information;
- (b) Enhance the participation of developing States in regional fisheries management organizations, including through facilitating access to fisheries for straddling fish stocks and highly migratory fish stocks, in accordance with article 25, paragraph 1(b), of the Agreement, taking into account the need to ensure that such access benefits the States concerned and their nationals;
- (c) Cooperate with and assist developing States in designing and strengthening their domestic regulatory fisheries policies and those of regional fisheries management organizations in their regions;
- (d) Promote coherence in the provision of such assistance and cooperation, both by individual Governments and through international mechanisms;
- (e) Urge all States with an interest in fisheries for straddling fish stocks and highly migratory fish stocks that have not yet done so to become parties to the Agreement as soon as possible and disseminate information about the Agreement, including its objective and the rights and duties it provides;
- (f) Exchange ideas on ways to promote further ratification and accession to the Agreement through a continuing dialogue to address concerns raised by some non-parties regarding, in particular, articles 4, 7, 21, 22, and 23 of the Agreement.

56. The Review Conference agreed to recommend that FAO and the Division for Ocean Affairs and the Law of the Sea should (a) further publicize the availability of assistance through the Part VII fund; and (b) solicit views from developing States parties regarding the application and award procedures of the Part VII fund, and consider changes where necessary to improve the process.

57. The Review Conference agreed to recommend that States collectively through regional fisheries management organizations establish a link to the Part VII fund homepage on their organization's website.

2010 recommendations (A/CONF.210/2010/7, annex)

6. [T]he resumed Review Conference recommended that States and regional economic integration organizations, individually and collectively through regional fisheries management organizations and arrangements:

[...]

IV. Developing States and non-parties

(a) Build the capacity of developing States, including the least developed among them and small island developing States, to participate in high-seas fisheries, including for straddling fish stocks and highly migratory fish stocks, to receive greater benefits from sustainable fisheries for such stocks, to develop their own fisheries and to improve their market access;

(b) Provide assistance to build the capacity of developing States, in particular the least developed among them and small island developing States, to implement the Agreement, particularly in the areas of science, data collection and reporting, monitoring, control and surveillance, port and flag State control and fisheries conservation and management, facilitating access to and development of sustainable fisheries for straddling fish stocks and highly migratory fish stocks;

(c) Observe the need, when establishing conservation and management measures for straddling fish stocks and highly migratory stocks, to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous peoples in developing States, particularly small island developing States;

(d) Urge the mainstreaming of efforts undertaken in the context of the Agreement to assist developing States, in particular the least developed and small island developing States, with other relevant international development strategies with a view to enhancing international coordination to enable them to develop their national capacity to exploit fishery resources, consistent with the duty to ensure the conservation and management of those resources;

(e) Encourage the identification of strategies that further assist developing States, in particular the least developed and small island developing States, in realizing a greater share of the benefits from the catch of straddling fish stocks and highly migratory fish stocks and in strengthening regional efforts to sustainably conserve and manage such stocks;

(f) Ensure that the compilation of sources of funding available to developing States is kept readily available and up to date so as to make such forms of assistance more accessible for developing States;

(g) Contribute to the Assistance Fund established under Part VII of the Agreement and to other mechanisms to assist developing States in the conservation and management of straddling fish stocks and highly migratory fish stocks and the implementation of the Agreement in its entirety;

(h) Establish mechanisms to assist developing States in regional fisheries management organizations and arrangements that do not already

have such mechanisms and ensure that those mechanisms support the implementation of the Agreement in its entirety; and

(i) Call upon all States that are involved or may become involved in fisheries for straddling fish stocks and highly migratory fish stocks that have not yet done so to become parties to the Agreement.