

**Conference on the Governance of High Seas Fisheries and the UN Fish  
Agreement – Moving from Words to Action**  
St. John's, Newfoundland and Labrador, Canada  
May 1-5, 2005

**SUMMARY REPORT: THE WAY FORWARD**

Participants from 49 States and Regional Economic Integration Organizations, fishing entities, fisheries management organizations, industry, civil society and academic communities attended the *Conference on the Governance of High Seas Fisheries and the UN Fish Agreement*, hosted by Canada in St. John's from May 1–5, 2005 and co-chaired by Ambassador Hasjim Djalal of Indonesia and Dr. Arthur May of Canada.

The Rt. Hon. Paul Martin, Prime Minister of Canada, opened the deliberations. Participants also heard from the Honourable Geoff Regan, Canada's Minister of Fisheries and Oceans, the Hon. John Efford, Canada's Minister of Natural Resources, the Honourable Danny Williams, Premier of Newfoundland and Labrador, and the Hon. Trevor Taylor, Newfoundland and Labrador's Minister of Fisheries.

The Conference held five simultaneous workshops (not all participants took part in every workshop) that focused on the following five core themes:

- Ecosystem-based considerations in fisheries management, chaired by Denzil Miller
- Compliance and enforcement, chaired by Gudmundur Eiriksson
- Decision-making in Regional Fisheries Management Organizations and Arrangements (RFMO/As), chaired by Don McRae
- Balancing fishing capacity and fishing aspirations, chaired by Transform Aqorau
- New areas and gaps, chaired by Carlos Dominguez Diaz

Based on these themes, and taking into account, *inter alia*, the commitments set out in the Ministerial Declaration, participants in each workshop expressed a range of views on possible, practical ways by which States and RFMO/As might move forward to strengthen the implementation of measures to promote sustainable fisheries. Based on the reports of the Chairs of the workshops, the Co-Chairs of the Conference prepared a summary of key points of discussion in the workshops. Their summary is set out below.

**WORKSHOP 1  
ECOSYSTEM-BASED CONSIDERATIONS**

1) The relevant components of an Ecosystem Approach to Fisheries (EAF) are

- identified in spatial and temporal terms;
- needs driven;
- inclusive of indirect and direct effects of fishing;
- scientifically based;
- operationally stated;
- inclusive of all interested/affected parties; and
- based on best practice.

The attached Annex sets out the background and general principles affecting EAF implementation.

## 2) The elements of EAF include

- conventional fisheries measures;
- gear technology management;
- general ecosystem conservation;
- ecosystem impacts management;
- science;
- institutional transparency; and
- institutional and individual accountability.

This list may not be complete or fully inclusive, since there may be case-by-case differences for specific fisheries, areas or ecosystems. In addition, every category possesses associated actions ("tools"). Every tool may not be applicable to every case. Categories of such measures are identified with the associated "tools" in the Annex.

## 3) Building on current best practice, key actions to move EAF implementation forward are to

- operationalize cautious approaches to new and developing fisheries;
- review and ensure that the principles addressing the need for EAF outlined in the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFA) are carried forward into the mandates of RFMO/As where appropriate;
- give necessary priority in developing EAF to account for essential human and scientific capacity as well as infrastructure needs, particularly in respect of the developing State needs;
- coordinate EAF through information exchange and coherent action, including effective RFMO/As networking and inter-regional cooperation;
- maximize cooperation between all EAF stakeholders, particularly in relation to ensuring informed decision-making on relevant matters;
- continue to promote appropriate science to facilitate objective development of EAF strategies; and
- base proactive and precautionary EAF implementation on the best scientific advice available.

By nature, EAF implementation will be a step-by-step process. It will require modification as understanding and knowledge increase of the systems and fisheries involved. The above items are considered crucial in the context of improving holistic ocean governance, subject to the principles set out in UNFA, articles 5 and 6.

## **WORKSHOP 2 COMPLIANCE AND ENFORCEMENT**

1. The existing voluntary monitoring, control and surveillance (MCS) Network should be strengthened, while ensuring flexibility and capacity to provide training and technical support to fisheries enforcement agencies in developing States.
2. A global information system on high seas fishing vessels should be established, on the model of existing vessel information systems, to provide transparent and unbiased information regarding, *inter alia*, ownership and control of high seas fishing vessels.
3. States should encourage collaboration within RFMO/As, or regionally, to rationalize and improve the efficiency of compliance and enforcement measures, including exchange of information among relevant parties.
4. States should prepare guidelines on flag State performance in relation to high seas fishing vessels. These guidelines would constitute a statement of best

practice, which would allow the evaluation of the extent to which flag States fulfil their responsibilities under international law.

5. States should adopt measures in respect of their nationals that make it a violation to engage in illegal, unreported and unregulated (IUU) fishing and related activities.
6. States should encourage RFMO/As to collect information from their members on the system of national sanctions relating to IUU fishing, allowing assessment of their adequacy and severity to effectively secure compliance, deter further violations and deprive offenders of the benefits accruing from their illegal activities.
7. The needs of developing States in combating IUU fishing should be recognized, including enhancing access to information and analytical capability, technical and financial assistance, improving legislative frameworks, ensuring capacity to take legal action against offenders, and facilitating participation in decision-making bodies.

### **WORKSHOP 3**

#### **DECISION-MAKING BY REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS**

##### 1) Ensuring RFMO/As rely on best scientific information available

- RFMO/As should consider ways in which scientific advice can best be utilized by decision-makers, for example, by ensuring that scientific advice includes a range of options from which decision-makers can choose, and should consider whether decisions based on scientific advice can be reviewed through dispute settlement.
- States should provide assistance to developing States to ensure better catch data collection and to enable them to assess and use scientific information and to participate in scientific commissions. Exchange of scientific information should flow from developed to developing States and vice versa.

##### 2) Compatibility between conservation and management measures established for the high seas and those established for areas under national jurisdiction

- States should view "compatibility" as encompassing compatibility between coastal State conservation and management measures and RFMO/A conservation and management measures, as well as compatibility between coastal state conservation and management measures and those to be established for high seas areas where no RFMO/As exist.
- RFMO/As should look to various models for dealing with compatibility issues, including the use of dispute settlement procedures or weighted voting.
- In resolving compatibility issues, RFMO/As should favour the more stringent conservation measure.

##### 3) Allocation issues

- RFMO/As should consider developing criteria for making allocation decisions.
- RFMO/As should consider the Northeast Atlantic Fisheries Commission (NEAFC) dispute settlement provisions as one possible model for dealing with disputes arising out of allocation decisions.

##### 4) Decision-making procedures

- RFMO/As should seek to reach decisions by consensus and thus reduce the need for the invocation of objection procedures.
- Objection procedures should be used in a responsible and proper way so that they do not constitute a threat to conservation. RFMO/As should develop

criteria for the use of objections, which could include requiring explanations for objections to be given, requiring that the alternative conservation and management measures to be used by the objecting State be identified, and providing for dispute settlement.

- When reviewing dispute settlement in the context of the use of objection procedures, RFMO/As should consider a range of options including the intervention of the chair, conciliation and mediation as well as third-party settlement. The impact on developing States of the cost of dispute settlement has to be taken into account.
- States should ensure the transparency of the decision-making processes of RFMO/As.
- Developed States should act to enhance developing State participation in the decision-making processes of RFMO/As through contributions to the UNFA Part VII Developing State Fund.

#### 5) Strengthening dispute settlement

- RFMO/As should review their decision-making processes, including dispute settlement mechanisms, and consider models such as those adopted by NEAFC and the Western Central Pacific Fisheries Commission (WCPFC), and mechanisms for the adoption of provisional measures. RFMO/As could also use the dispute settlement provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and UNFA.

### **WORKSHOP 4**

#### **FISHING CAPACITY AND FISHING ASPIRATIONS**

1) States, including through RFMO/As and other joint venture arrangements, should move immediately to establish capacity management plans that include *inter alia*:

- periodic assessment of fishing capacity;
- decision-making processes that ensure balance between available resources and ecosystem productivity;
- rules for the transfer of capacity between RFMO/As and between areas globally;
- rules for government support to fishing fleets within RFMO/As;
- recognition of the difference between excess capacity and overcapacity; and
- recognition of the fishing aspirations of developing States to participate in high seas fishing.

2) In recognition of the linkages between fishing subsidies and overcapacity the work in this area by the Food and Agriculture Organization of the United Nations (FAO), the World Trade Organization (WTO) and the Organization for Economic Cooperation and Development (OECD) in order to define red light and green light subsidies was noted, and States should closely monitor developments in this area.

3) The workshop identified the following tool kit that can be used to implement the commitments made in the Ministerial Declaration:

- capacity management should be an element of any future review of the performance of RFMO/As;
- the FAO should develop guidelines for capacity management to assist RFMO/As, and convene a workshop on capacity management; and
- the WTO members should urgently complete negotiations on new disciplines for fisheries subsidies that contribute to overcapacity consistent with the commitments made in the Johannesburg Plan of Implementation agreed at the 2002 World Summit on Sustainable Development (WSSD).

4) States, including through RFMO/As:

- should develop criteria to delineate the links between subsidies that contribute to sustainable fisheries and those that lead to overcapacity;
- should develop guidelines and mechanisms on new entrants to fisheries, which should include consideration of the aspirations of developing States for participating in the fishery;
- be empowered to license vessels fishing on the high seas as a means of controlling capacity, ensure that sustainable levels of fishing effort are not exceeded, and require that such vessels provide catch data to their respective RFMO/As;
- should develop fishery management and/or fishery capacity adjustment mechanisms that include incentives for sustainable fishing methods and technologies that reduce habitat and environmental damage;
- reduce and control total fishing capacity and offset construction of new vessels with removal from the fishery of the equivalent amount of capacity. They should make every effort to reduce overcapacity;
- the FAO should undertake a series of technical consultations with RFMO/As to look at capacity assessments and strategies; and
- where capacity is transferred to developing States, guidelines should be developed by RFMO/As for the transfer of genuine capacity that take into consideration the sustainability of resources in waters under national jurisdiction and on the high seas.

**WORKSHOP 5**  
**NEW AREAS AND GAPS**

1) Participants shared the view that States should apply the fundamental management principles of UNFA to fish stocks found exclusively in the high seas (i.e., discrete high seas stocks). Such application can be confirmed formally at the 2006 UNFA Review Conference. Based on the outcome of the Conference, States should consider developing a legal instrument based on this commitment.

2) Marine biodiversity, sensitive ecosystems and deep sea species:

- States should develop scientific criteria to define the geographic scope and the grounds to establish areas where habitats need special protection, with full respect for legal regimes applicable to those areas and their habitats and the applicable rules of international law.
- With regard to deep sea fisheries and fisheries in sensitive marine ecosystems, both RFMO/As and flag States should adopt provisional measures, on a case by case basis, along the lines described in article 6 (6) of UNFA for new and exploratory fisheries. At a minimum, provisional measures should cover the need to collect information on the fishery and interim fisheries management and conservation measures.
- RFMO/As should implement existing commitments to protect the marine environment adopted in international instruments, such as FAO IPOAs on sharks and seabirds, United Nations General Assembly resolution 59/25, FAO Technical guidelines on sea turtle bycatch and the requests by FAO Committee on Fisheries (COFI) in 2005 to collect and share data on deep sea fisheries and its impacts.

3) Creation of new RFMO/As and strengthening of existing RFMO/As:

- States should review and, where necessary, upgrade the legal mandate of RFMO/As to ensure that they can:
  - adopt management measures that are binding upon their members, in accordance with the appropriate decision-making process;

- collect the information they need to adopt management decisions and, in general, to fulfil their tasks; and
  - incorporate considerations of an ecosystem approach and habitat protection in their fisheries management decisions.
- States should seek to fill current geographic gaps and gaps in the functional scope of existing RFMO/As, either through the creation of new RFMO/As or extending the mandates of existing RFMO/As to significant un-regulated areas or fish stocks.

4) Port state obligations, port state measures and trade measures:

- States should act as responsible port States by, inter alia, applying the FAO Port State Model Scheme. They should promote its application internationally; in particular, RFMO/As should be encouraged to examine the Model Scheme with a view to its application by their members, or on a regional basis, without excluding the possibility of adopting an international legally binding instrument at a later stage.
- States should promote the establishment of “positive lists” of vessels within RFMO/As to be used by port States and importing States when determining whether certain fish products have been caught in accordance with the measures adopted by the relevant RFMO/A. To further improve this mechanism, better coordination among RFMO/As is required.
- States should enhance and harmonize catch documentation systems for key species. They should also improve traceability of fish and fish products, enable importing States to discriminate between fish harvested in accordance with RFMO/A rules and fish harvested in IUU fishing, and to provide for refusal of landing or imports of the latter.

5) Genuine link between flag state and fishing vessels: Flag State responsibilities:

- There is a need to improve the legal definition of “genuine link” as a necessary condition for a State to grant its flag to fishing vessels. The basic content of the genuine link is reflected in the international instruments dealing with the duties of the flag State (the existence of a genuine link implies the ability to fulfil flag State obligations).
- The “genuine link” issue should be included in the agenda of the 2006 UNFA Review Conference and in the United Nations Informal Consultation Process (ICP), with a view to reaching a decision at the United Nations General Assembly on the process and the fora to be used to further elaborate the legal definition of genuine link.

6) Gaps in capacity in developing States:

- Participants stressed the importance of the role of developing States in ensuring effective conservation, management and enforcement on the high seas. Use should be made of bilateral assistance programs, RFMO/A assistance programs, the UNFA Part VII Developing State Fund, the FAO Fish Code, World Bank Pro-Fish and the Global Environment Facility (GEF).
- States should de-link bilateral assistance programs in fisheries from agreements on access to fisheries resources.
- In donor States, Fisheries Administrations should improve their links with national aid agencies and take advantage of the opportunities their programs offer to provide technical and financial assistance for capacity-building in developing States.
- States should be encouraged to participate in future events in this field, such as the Kuala Lumpur meeting on MCS in developing States and the Policy Coherence Workshop organized by the OECD.

## Follow-up Initiatives

In conjunction with the above observations, many states identified opportunities for follow-up and action on the work of the Conference. In particular, it was noted that:

- The Faroe Islands will host the annual meeting of North Atlantic Fisheries Ministers on May 30–31, 2005.
- Morocco will be hosting the *Conférence Ministerielle sur la Coopération Halénétique entre les États Africains Riverains de l'océan Atlantique* (COMHAFAT/ATLAFCO) on July 11–15, 2005 in Rabat.
- To promote responsible tuna fisheries and reduce by-catch in the long line fishery, Japan will convene the International Tuna Fishers Conference on Responsible Fisheries and the Third International Fishers Forum on July 25–29, 2005 in Yokohama Japan.
- Iceland will host a meeting of Ministers of Fisheries on September 8, 2005, in connection with the Icelandic Fisheries Exposition.
- Canada will host a meeting of experts early in 2006 to develop regional guidelines for States to use in establishing sanctions for non-compliance by their vessels.
- Australia will host a conference entitled *Sharing the Fish—Allocation Issues in Fisheries Management*, February 27–March 2, 2006, in Fremantle, Western Australia;
- Australia, New Zealand and Chile are working towards the development of an RFMO for the Southern Pacific RFMO with the first meeting scheduled for February 2006 in Wellington.
- The Center for Oceans Law and Policy, University of Virginia School of Law, the Marine Institute of Ireland and the Law of the Sea Institute of Iceland will host a Conference on Marine Scientific Research in Dublin, Ireland, May 24–26, 2006.
- India will be hosting a meeting of the COFI Sub-Committee on Aquaculture in Goa in September 2006.
- Japan will convene a joint meeting in early 2007 of tuna management RFMOs to promote their coordination and cooperation