Framework Study For
Model Fisheries Legislation
in South East Asia

- REPORT ON LEGISLATION OF TIMOR LESTE -

Prepared for
Department of Agriculture, Fisheries and Forestry

Prepared by
Professor William Edeson, Professor Martin Tsamenyi, Dr Mary Ann Palma, Jo-anne McCrea:
Australian National Centre for Ocean Resources and Security (ANCORS)
University of Wollongong, Australia

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FRAMEWORK STUDY FOR MODEL FISHERIES LEGISLATION IN SOUTH EAST ASIA
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EXECUTIVE SUMMARY

The Regional Plan of Action (RPOA) to Promote Responsible Fishing Practices including Combating Illegal, Unreported and Unregulated Fishing has been adopted by the eleven participating countries of Australia, Brunei Darussalam, Cambodia, Indonesia, Malaysia, Papua New Guinea, the Philippines, Singapore, Thailand, Timor-Leste, and Vietnam. The ability of each country to give effect to the RPOA is, to a large extent, a factor of its legislative fisheries management framework.

To determine the current capacity of each country to fulfil its obligations under the RPOA, the legislation of each has been assessed against ‘benchmark measures’ under categories based on international and regional instruments and agreements relevant to responsible fisheries management:

- Ecosystem Approach to Fisheries Management
- Data Collection, Monitoring and Research
- Management Plans
- Fishing Vessel Registration
- Flag State Authorisations to Fish and Effective Control over Nationals
- Authorisations to Fish by the Coastal State
- Monitoring, Control and Surveillance
- Port State Controls
- Catch Certification and Other Trade Measure
- Tracking Proceeds of Illegal Fishing
- Reporting Requirements

The legislation of each of the eleven countries has been assessed against these benchmarks to identify the current strengths and weaknesses of each in terms of its ability to implement responsible fishing management practices. This report contains the detailed assessment specific to Timor-Leste only.

Amongst the eleven countries there were a number of strengths noted in the existing legislative arrangements:

- States with recently updated legislation have introduced the concept of ecosystem based fisheries management and/or included related objectives of sustainable management and conservation. These countries include Indonesia, Papua New Guinea, the Philippines, Timor-Leste, Vietnam and to a lesser extent Cambodia.
- Some countries have introduced the requirement for management plans including Australia, Cambodia, Malaysia, Papua New Guinea and Vietnam.
- Vessel registration systems are established in all RPOA member countries except Brunei Darussalam and Cambodia (which requires registration but provides no elaboration of requirements).
- All countries have implemented at least a basic form of general licensing of commercial fishing activities.
- The development and implementation of legislative capacity to track the proceeds of illegal fishing is a new field, although Indonesia, Australia, Vietnam, Thailand, Singapore and Papua
New Guinea have developed initial legislation and implementing systems. Such work has commenced in Timor-Leste and Cambodia; systems are in place in Malaysia and Brunei Darussalam but with limited effectiveness.

There are also a number of gaps and weaknesses identified:

- The vessel registration systems are weakened in most cases by the absence of a requirement to take into account the history of flagging, ownership and compliance of vessels with fisheries laws.
- A consistent weakness across numerous states was the absence of measures to exercise effective port state controls over fishing vessels including designation of ports and the requirement for advanced notice of entry.
- A concerning gap within the region is in laws that provide effective control of nationally flagged vessels outside the Exclusive Economic Zone (EEZ) of the flagging State. Only Australia, Cambodia, Timor-Leste and Vietnam address this requirement to any extent, with the remaining countries enforcing no requirement for its vessels to comply with international agreements or the laws of other states.
- While most states have some broad powers to undertake monitoring, control and surveillance of fishing vessels, only Australia and Papua New Guinea currently implement requirements to comply with vessel monitoring systems and observer programs. Indonesia has introduced a vessel monitoring program but is yet to establish observers on vessels.
- The reporting obligations to FAO and other international and regional organisations are not well articulated across the legislation of most countries – it is absent in Vietnam, Timor-Leste, Thailand, Singapore, Papua New Guinea, Malaysia, Indonesia, Cambodia and Brunei Darussalam. The requirement is reflected somewhat in Indonesian legislation.
- Although all countries have general licensing requirements with respect to commercial fishing there are relative strengths and weaknesses in relation to licensing of foreign fishers within a State’s Exclusive Economic Zone and the licensing of fishing on the high seas. Further, there are few examples of the requirement to take into account the history compliance, when considering applications for licences.
- In most cases, the fisheries laws do not articulate principles of data collection, compilation, collection and exchange.
- The concept of catch certification has been given a recent increase in profile by the introduction of the European Union (EU) Regulation 1005/2008. As expected, a response to the regulation (which requires the production of a catch certification with every consignment of wild caught seafood product entering EU member countries) has not been reflected within the legislation of RPOA member countries at this early point.

The gaps identified in the legislation review highlight the need for comprehensive modern legislation to support sustainable fishing practices and to provide a framework for effective cooperation among RPOA members combat IUU fishing.

With this as a foundation, draft legislative frameworks are provided to fulfil the requirements relevant to each benchmark, drawing on model legislation primarily from Australia, New Zealand, Papua New Guinea and the United States. This model legislation is provided to guide RPOA countries in adopting legislative provisions for inclusion in a modern fisheries law which will form the basis for a framework of responsible fishing management practices.

The report also highlights the various target groups needing capacity building in RPOA participating countries in order to effectively implement fisheries legislation - including the composition of such groups, capacity requirements for each target group, and in particular the types of knowledge and skills needed.
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PART A – OVERVIEW REPORT

1. INTRODUCTION

This report aims to develop a framework for model fisheries legislation to foster development and implementation of comprehensive, compatible and effective fisheries management legislation in participating countries of the Regional Plan of Action (RPOA) to Promote Responsible Fishing Practices including Combating Illegal, Unreported and Unregulated Fishing in the Region and to facilitate effective legal action against illegal, unreported and unregulated fishing (IUU) fishing and its associated interests. It is expected that developing a framework for model fisheries legislation will make a major contribution to sustainable development in the South East Asian region through improved natural resource governance and that upon implementation, the model legislation will support broader outcomes such as poverty reduction, food security, institutional strengthening, and generally better cooperation between countries in the region.

The report will achieve this objective by developing international and regional benchmark measures for promoting responsible fishing and by identifying gaps in the domestic legal framework of each RPOA participating countries - Australia, Brunei Darussalam, Cambodia, Indonesia, Malaysia, Papua New Guinea, the Philippines, Singapore, Thailand, Timor-Leste, and Vietnam.

The report comprises two parts:

Part A, this part, which contains:

- An Overview of the Regional and International Legal Framework: the sum of which creates the benchmarks for responsible fisheries management.
- Benchmark Measures for Responsible Fishing Practices: based on the collective regional and international legal framework, synthesised into discrete measures of key elements.
- Draft Legislative Model: developed to fulfil the requirements relevant to each benchmark measure, drawing on model legislation primarily from Australia, New Zealand, Papua New Guinea and the United States.
- Capacity Building Requirements: highlighting the capacity building needs of target groups in RPOA participating countries in order to effectively implement fisheries legislation.

Part A is supported by four annexes:

- Annex 1, Details of Regional and International Legal Instruments
- Annex 2, Details of European Commission Regulation 1005/2008
- Annex 3, Matrix of the Elements of Regional and International legal Instruments which Pertain to Responsible Fishing
- Annex 4, Detailed Provisions for Fishing Records

Part B contains the overview of the review of Timor-Leste domestic legislative framework against the benchmark measures and is supported by Annex 5 containing the detailed assessment.
2. REGIONAL AND INTERNATIONAL LEGAL FRAMEWORK

The regional and international legal instruments collectively form a set of obligations for countries on the development of responsible fishing practices under their own domestic legislation.

This Section provides an overview of these instruments. Section 2.1 provides a list of all relevant regional and international instruments, while Section 2.2 provides ratification and adoption status of these by each of the participating countries.

2.1 Overview of the regional and international legal framework

At the international level, there is a range of legally binding fisheries instruments which are relevant to participating countries. These include:

• Food and Agriculture Organisation (FAO) Compliance Agreement (1993)
• United Nations (UN) Fish Stocks Agreement (1995)
• FAO Port State Measures Agreement (2009)

In addition there is a range of non-legally binding international instruments including:

• FAO Code of Conduct 1995 (IPOA-IUU (2001); International Plan of Action (IPOA)-Capacity (2001); IPOA-Seabirds (2001); IPOA-Sharks (2001)
• UN Resolutions on Driftnet Fishing (1991)
• UN Resolutions on Sustainable Fisheries (2004)
• Rome Declaration on IUU Fishing (2005)
• FAO Model Scheme on Port State Measures to Combat Illegal, Unregulated and Unreported (IUU) Fishing (2009)
• FAO Guidelines (2008)

Regionally, there are a number of organisations which have established fisheries and environment related instruments which influence the country level requirements for fisheries management. These include:

• Food and Agriculture Organisation of United Nations (FAO)
• South East Asian Fisheries Development Centre (SEAFDEC)
• Association of South East Asian Nations (ASEAN)
• Asian Pacific Economic Cooperation (APEC)
• Asia Pacific Fisheries Commission (APFIC)
• Network of Aquaculture Centres in Asia and the Pacific (NACA)
• Western and Central Pacific Fisheries Commission (WCPFC)
• Indian Ocean Tuna Commission (IOTC)

Also considered relevant to the development of model responsible fishing legislation are broader environment-related instruments, trade-related agreements and maritime safety and labour-related agreements.

Of particular relevance is the newly introduced European Commission (EC) Regulation 1005/2008 ‘establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing’ (the EC IUU Regulation), which came into force on 1 January 2010. The importance of the EC market as an international seafood importer has resulted in the need for legislative reform in all countries exporting seafood to EC member countries, in order to satisfy the requirements for imports, which in summary are:
a. All consignments of fish and fish product will be prohibited from being imported into European Union Member States, unless a catch certificate accompanies them. The catch certificate must contain the harvest details of the fish (e.g. vessel and master’s name and number, fishing licence number, date and location of capture, landing weights, details of processing on board) in addition to export, import and transport details.

b. Relevant authorities of each exporting country are to validate catch certificates and, must have the power to provide such validation and attest to the veracity of the catch certificate.

c. Exporting countries are required to provide prior notification to the EC certifying their arrangements with respect to conservation and management measures which must be complied with by its fishing vessels.

d. Exporting countries will be required to verify consignments and associated catch certificates where the importing State doubts its legitimacy and will also be required to accept ‘on-the-spot audits’ of its catch certification and validation process by the EC.

An overview of each of the international and regional agreements and instruments referred to above are detailed in Annex 1. A further summary of the EC Regulation 1005/2008 is provided in Annex 2. Relevant elements of the international and regional agreements are the basis of the development of benchmark measures for responsible fishing established in Annex 3 and summarised in Section 3.

### 2.2 Ratification and adoption status of regional and international instruments

Table 1 outlines the ratification and adoption status of the regional and international instruments outlined above for each of the participating countries. Table 2 outlines the membership in regional organisations for each of the participating countries.

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Table 2: Membership in Regional Organisations (as at 20 August 2010)

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2.3 Tracking Proceeds of Illegal Fishing

2.3.1 Overview and Context

Of recent times, the tracking of proceeds of illegal fishing has become an avenue of interest in relation to sustainable fisheries management. The concept is included here as a relevant issue, and in order to canvass the participating countries in terms of their capacity to track such proceeds.

Tracking the proceeds of crime in fisheries is associated with the issue of ‘environmental crime’ and activities of transnational organised criminal groups. A number of issues are now regarded as international environmental crime, such as the illegal trade in wildlife, illegal trade in zone-depleting substances, dumping and illegal transport of hazardous waste, illegal logging and trade in timber, and more recently, IUU fishing. In Australia, criminal syndicates have been associated with IUU fishing for Patagonian toothfish. There have also been reports on the involvement of international criminal networks in the illegal trade of Australian abalone, and other high value, low volume fisheries such as shark fin, seahorse, eels, sea urchins, and trepang. In the Southeast Asian region, the illegal trade for live reef fish into China, Taiwan and Hong Kong has been associated with transnational organised groups.

The concept of IUU fishing and measures to address the problem have been established, and currently remains, within the context of international fisheries law, primarily through the adoption of the FAO IPOA-IUU. When the relationship between IUU fishing and international environmental crime was raised at the meetings of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS) and the Conference of Parties to the UN Convention Against Transnational Organised Crime in 2008, there were divergent views on the matter. It was decided that further studies are required before the link between IUU fishing and transnational crime can be established. To date, the classification of illegal fishing as an environmental crime has not been uniformly and clearly established in either domestic or international law.

However, as more cases emerge on the trade of illegally caught fish perpetrated by organised criminal syndicates and the use of fishing vessels for criminal activities such as drug trafficking and people smuggling, the connection between illegal fishing and transnational organised crime has increasingly become an important concern. It is also recognised in the Southeast Asian region that
penalties for fisheries offences, particularly for high value species subject to trade by transnational criminal groups have not been enough to deter such activities; hence the need to make these offences fall into a wider jurisdiction of punishment and connect such activities to organised crime.

In Southeast Asia and the Pacific, organised crimes are mostly linked with predicate offences involving drug, people and firearm trafficking, as well as terrorism, and not with ‘environmental offences’ such as illegal fishing. Relevant legislation of RPOA participating countries follow this trend, where activities such as terrorism, kidnap for ransom, piracy and armed robbery, drug use and trafficking, illegal gambling, corrupt practices, identity crime, computer crime, and smuggling of goods (including fuel) and people are criminalised, and the proceeds from which are tracked to prevent money laundering. The criminalisation of these illegal activities is provided in criminal codes and other relevant legislation, and measures to track the proceeds of crime are adopted under anti-money laundering and counter terrorism financing legislation. The common features of anti-money laundering legislation in Southeast Asia includes the provision for the freezing, seizure, forfeiture and recovery of ‘dirty’ money and property, international cooperation, creation of financial intelligence units, requirements on customer identification, record keeping and reporting of covered and suspicious transactions. On the contrary, fisheries violations are not considered predicate offences for money laundering and fisheries legislation in Southeast Asia does not address regulatory fraud, corruption or money laundering.

2.3.1 Regional Cooperation on the Tracking of Proceeds of Crime

An autonomous and collaborative regional organisation was established in the Asia-Pacific region to contribute to the global drive and policy development on anti-money laundering and counter-terrorism. The Asia Pacific Group (APG) on Money Laundering was formed following the awareness raising of the Financial Action Task Force (FATF) on Money Laundering. Funded by Australia, the Asian Secretariat to the FTAF was established in 1995 until the APG was officially established in 1997. All RPOA participating countries are members of the APG.

2.3.2 Issues Related to Tracking the Proceeds of Crime from Fisheries

A review of relevant legislation of RPOA participating countries raises a number of issues that prevent the tracking of proceeds of crime from fisheries. Apart from the lack of clear connection and sufficient studies linking illegal fishing (and environmental crime in general) with transnational organised crime, some of the legal impediments which may be identified are:

• The lack of legal provisions providing for fisheries violations as predicate offences to money laundering;
• Mismatch between the threshold amount for transactions and penalties for money laundering predicate offences and fisheries violations;
• The nature of some fisheries violations that may not be deemed as constituting the elements of a crime (i.e. whether an illegal fishing activity is intentional and reckless or a negligent act);
• The limitation of fisheries legislation to mostly address fisheries management concerns.
3. BENCHMARK MEASURES FOR RESPONSIBLE FISHING

The compilation of international and regional instruments relevant to the development of responsible fishing legislation can be categorised under the following headings:

- Ecosystem Approach to Fisheries Management
- Data Collection, Monitoring and Research
- Management Plans
- Fishing Vessel Registration
- Flag State Authorisations to Fish and Effective Control over Nationals
- Authorisations to fish by the Coastal State (licensing of foreign fishing vessels)
- Monitoring, Control and Surveillance
- Port State Controls
- Catch Certification and other Trade Measures
- Tracking Proceeds of Illegal Fishing
- Reporting Requirements

The full collection of relevant provisions of the instruments against each of the category headings is provided in Annex 3. As can be seen, provisions of the international and regional instruments which pertain to each of the categories are lengthy, detailed and highly prescriptive. In addition, although many relate to legislative capacity, others are more a matter of Government policy and/or administration which would be unlikely to be expressed as domestic legislation.

Given this, for each category the full list of relevant provisions has been synthesised into the major legislative based elements which are proposed as the benchmark measures for responsible fishing. The proposed benchmark measures for each category are provided below. Annex 3 provides the benchmark measures against the associated provisions of the international and regional instruments.

3.1 Ecosystem Approach to Fisheries Management

States are required to:

- Include objectives in legislation relating to ecosystem approach to fisheries management
- Adopt management measures that take into account the interdependence of fish stocks and effects of fishing on species associated with or dependent on harvested species
- Adopt measures for the management of migratory species and straddling stocks
- Adopt measures to minimise waste and bycatch
- Adopt measures to eliminate destructive fishing practices
- Adopt measures to control fishing capacity
- Adopt measures to protect endangered and threatened species; and sensitive and significant habitat (including protected species and closed areas)

3.2 Data Collection, Monitoring and Research

States are required to:

- Collect data in sufficient detail to facilitate effective stock assessment.
- Collect data on non-target species such as bycatch species and dependent species.
- Verify data through appropriate systems.
- Promote research on fisheries as well as on associated ecosystems, particularly on the study of the profiles of all target and non-target stocks, impacts of new types of gears on fisheries
and ecosystems, relationships among populations in the ecosystem and effects of ecosystem changes resulting from fishing pressure, pollution or habitat alteration.

- Advance the scientific basis for incorporating ecosystem considerations, building on existing and future available scientific knowledge.
- Compile fishery-related and other supporting scientific data, including VMS and observer data, in an agreed format and provide such data to relevant subregional or regional organisations and/or States (subject to confidentiality requirements in accordance with national law).
- Collect and exchange information on suspected IUU fishing, if possible on a real-time basis, in collaboration with FAO, Regional Fisheries Management Organisations (RFMOs) and other relevant arrangements, and by actively participating in the international monitoring, control and surveillance network.

### 3.3 Management Plans

States are required to:

- Develop and implement fisheries management plans which encourage responsible fisheries and sustainable use of marine ecosystems.
- Develop and implement international NPOAs.

### 3.4 Fishing Vessel Registration

States are required to:

- Establish vessel registration systems which establish a genuine link between the State and the ship.
- Avoid flagging vessels with a history of non-compliance.
- Issue Certificates of Registry stating that the ship has the right to fly its flag.
- Develop specific requirements for new and imported vessels.
- Maintain records of fishing vessels entitled to fly their flags and authorised to be used for fishing beyond the Exclusive Economic Zone (EEZ).
- Include in the vessel registry the following information: name of fishing vessel, registration number, previous names (if known/if any) and port of registry; previous flag (if any); International Radio Call Sign (if any); Name and address of owner or owners; where and when built; type of vessel; length; gross register tonnage; moulded depth; beam; power of main engine or engines; type of fishing method or methods; name and address of operator (or manager) or operators managers; Name, street address, mailing address and nationality of the natural or legal persons responsible for managing the operations of the vessel; name, street address, mailing address and nationality of natural or legal person with beneficial ownership of the vessel; name and ownership history of the vessel, and where this is known, the history of compliance by that vessel, in accordance with national laws, with conservation and management measures or provisions adopted at a national, regional or global level.
- Establish regulations on the marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognisable vessel and gear marking systems.

### 3.5 Flag State Authorisations to Fish and Effective Control over Nationals

States are required to:

- Establish a licensing system and associated regulations to prohibit fishing on the high seas, in the waters of another state or waters of an RFMO, by vessels which are not duly licensed or authorised to fish, or fishing otherwise than in accordance with the terms and conditions of the license.
• Take into account the history of violations by fishing vessels and operators when considering applications for authorisation to fish by fishing vessels flying its flag.
• Authorise the use of vessels flying its flag for fishing in the high seas, in waters of another state, or waters of an RFMO, only where it is able to exercise effectively its responsibilities in respect of such vessels under the LOSC, the UN Fish Stocks Agreement, and the WCPF Convention, including ensuring that fishing vessels comply with the provisions of such instruments and making it an offence under national legislation to contravene international conservation and management measures and enforce such measures irrespective of where violations occur.
• Require vessels fishing on the high seas, in the waters of another state or waters of an RFMO to carry the license on board at all times and to produce it on demand for inspection by a duly authorised person.
• Create powers to include appropriate terms and conditions on fishing licence (data collection, VMS, Observers).
• Investigate and take any action necessary when other States report that they have clear grounds to believe that proper jurisdiction and control with respect to a ship has not been exercised by a flag State.
• Effectively regulate transhipment in order to combat IUU fishing activities and to prevent laundering of illegal catches, including (a) ensure that vessels involved in transhipment at sea have a prior authorisation to tranship and report to the national fisheries administration or designated institution the details of such transhipment, details of the vessels, and the port of landing of the transhipped catch (b) ensure that at-sea transhipment and processing of fish and fish products in coastal State waters are authorised or conducted in conformity with appropriate management regulations (c) establish regulations on transhipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined.

3.6 Authorisations to Fish by the Coastal State

States are required to:
• Formulate laws and regulations pertaining to the licensing of foreign fishing vessels and fishers and equipment in their EEZs.
• Ensure that a license is issued only if the vessel concerned is entered on a record of vessels.
• Avoid licensing a vessel to fish in its waters if that particular vessel has a history of IUU fishing.
• Condition licences with:
  - Species to be caught and catch quotas
  - Seasons and areas of fishing, the types, sizes, and amount of gear, and the type and size of fishing vessel
  - Information required from fishing vessels
  - Requirement to participate in observers programs
  - Requirements to install Vessel Monitoring Systems (VMS)
  - Details of permitted landing of catch

3.7 Monitoring, Control and Surveillance

States are required to:
• Establish national fisheries Monitoring Control and Surveillance (MCS) measures.
• Develop and implement a VMS in accordance with regional, subregional and global programmes, and require that flagged vessels and vessels of flagged by other States that fish in its EEZ, carry VMS equipment on board.
• Adopt and implement a program of observers on board vessels.
• Regulate for permitting observers of other States or representing an RFMO, to carry out functions agreed under subregional or regional observer programs.
• Encourage harmonisation of national MCS frameworks among neighbouring countries, including joint enforcement operations with other national enforcement agencies.
• Provide financial and technical assistance to developing countries in the implementation of MCS capabilities, including VMS, with the support of FAO and relevant international financial institutions and mechanisms.
• Formulate and apply fair, consistent and transparent sanctions with sufficient severity to effectively prevent IUU fishing and further deprive offenders from accruing benefits from such activities.
• Withdraw, suspend, or cancel an authorisation to fish of a vessel if it has been established that the vessel has undermined international conservation and management measures.
• Ensure that a vessel which has been involved in the commission of a serious violation of conservation and management measures for straddling and highly migratory fish stocks does not engage in fishing operations on the high seas of until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with.

A coastal state is required to:
• Establish and implement national and internationally-agreed boarding and inspection regime consistent with international law.

An inspecting state is required to:
• Board and inspect fishing vessels through duly authorised inspectors.
• Inspect the vessel, its licence, gear, equipment, records, fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures.
• Communicate without delay the results of that investigation to the flag State where the flag State authorises the inspecting State to investigate an alleged violation.

A flag State is required to:
• Respond to the notification of the investigating State within 3 working days of its receipt.
• Take the necessary enforcement action with respect to the vessel.
• Authorise the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel.
• Ensure that vessel masters accept and facilitate prompt and safe boarding and disembarkment by the inspectors, and cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures.
• Ensure that its vessel masters do not interfere with the inspectors in the performance of their duties; allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection; ensure that vessel masters provide reasonable facilities to the inspectors.
• Suspend the vessel’s authorisation to fish and order the vessel to return immediately to port if the master does not comply with direction. Advise the inspecting State of the action it has taken when the master has refused to cooperate with the inspector.
• Allow the relevant authorities of a coastal State to board and inspect its vessel on the high seas if there are reasonable grounds for believing that the vessel has been engaged in unauthorised fishing of straddling and highly migratory fish stocks within an area under the jurisdiction of a coastal State.
A port state is required to:

- Carry out the inspection of documents, fishing gear and catch on board fishing vessels when a fishing vessel is in its ports or offshore terminals.
- Collect information during inspection of fishing vessels at port such as the flag State of the vessel and identification details; name, nationality, and qualifications of the master and the fishing master; fishing gear; catch on board, including origin, species, form, and quantity; total landed and transhipped catch; and other information required by relevant regional fisheries management organisations or other international agreements.
- In case of appropriate management arrangement with the flag State of the vessel, invite that State to participate in the inspection.
- Seek to agree on the minimum levels for inspection of vessels through, as appropriate, regional fisheries management organisations, FAO or otherwise.
- In determining which vessels to inspect, give priority to: (1) vessels that have been denied entry or use of a port; (2) requests from other relevant Parties, States or regional fisheries management organizations that particular vessels be inspected, particularly where such requests are supported by evidence of IUU fishing or fishing related activities in support of such fishing by the vessel in question; and (3) other vessels for which there are clear grounds for suspecting that they have engaged in IUU fishing or fishing related activities in support of such fishing.

3.8 Port State Controls

States are required to:

- Strengthen its measures in ports for fishing vessels, consistent with international law, in order to prevent, deter, and eliminate IUU fishing.
- Ensure that measures are applied to vessels in a fair, transparent, and non-discriminatory manner.
- Publicise ports to which foreign-flagged vessels may be permitted admission and ensure that such ports have the capacity to conduct inspections.
- Require fishing vessels and vessels involved in fishing-related activities seeking permission to enter its ports to provide reasonable advance notice of their entry into port, a copy of their authorization to fish, details of their fishing trip and quantities of fish on board, with due regard to confidentiality requirements, in order to ascertain whether the vessels have engaged in or supported IUU fishing.
- Adopt regulations empowering the relevant national authorities to prohibit landing and transhipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas; and/or when a party has sufficient proof that a vessel seeking entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing.
- Deny the use of its ports for landing, transhipping, packaging and processing of fish and for other port services, inter alia, refuelling and resupplying, maintenance and dry-docking, to a vessel which is in port but has been determined to have engaged in IUU fishing.

3.9 Catch Certification

States are required to:

- Develop and implement a system of catch certification which requires that a certificate accompany exported wild caught seafood product.
- Ensure that the certificate contains (1) Basic information such as the name of the fishing vessel, home port and registration number, call sign, licence number, Inmarsat number and
IMO number (if issued); (2) Information on the product (the type of species, catch areas and dates, estimated live weight and verified weight landed, as well as the applicable conservation and management measures and any transhipment at sea); (3) Information and declaration on export and import of the fisheries product (including the vessel name and flag, flight number, airway bill number, truck nationality and registration number, other transport documents and container number).

- Provide a process and the power for a relevant competent authority to validate each catch certificate attesting to the veracity of the details of such certificate.
- Provide assistance in terms of verification of details of a catch certificate, within the stipulated 15 day timeframe, when required by a competent authority of the EC Member State.
- Develop and implement a system of verifiable certification for seafood products which are imported from a third country, processed in the State and re-exported to an EU Member Country.

3.10 Tracking Proceeds of Illegal Fishing

There are no regional or international instruments which require a State to track the proceeds of illegal fishing. For the purposes of canvasses the current ability of each State to undertake such activity, the proposed benchmark measure is:

- Develop and implement the legislative, surveillance and forensic capacity to track the proceeds of criminal activity related to illegal fishing in conjunction with those of anti-money laundering and financial investigation units.
- Develop cooperation between fisheries administrations and those units responsible for anti-money laundering and financial intelligence units.

3.11 Reporting

States are required to:

- Make readily available information included in their records of fishing vessels to relevant regional fisheries management organisations and the FAO.
- Submit, for inclusion in the High Seas Vessel Authorisation Record, data on vessels entitled to fly its flag that are authorised to be used for fishing on the high seas.
- Report to the FAO and relevant RFMO any modifications, additions, deletions to the information included in the record of fishing vessels; any exemption granted to fishing vessels of less than 24 metres in length; all relevant information regarding any activities of fishing vessels flying its flag that undermine the effectiveness of international conservation and management measures (subject to the confidentiality measures adopted by States in their national legislation); evidence supporting a claim of a Party that a fishing vessel not entitled to fly its flag has engaged in an activity that undermines the effectiveness of international conservation and management measures; information pertaining to the grant of authorisation to a fishing vessel that has previously undermined the effectiveness of international conservation and management measures.
- Provide annually statistical, biological and other data and information in accordance with Annex I of the UN Fish Stocks Agreement, and in addition, other data and information as the required by an RFMO.
- Provide information concerning its fishing activities in the RFMO areas, including fishing areas and fishing vessels in order to facilitate the compilation of reliable catch and effort statistics.
• Provide information on boarding and inspections carried out by its authorised inspection vessels and actions taken in response to boarding and inspections of their fishing vessels that resulted in observation of alleged violations.

• Immediately report fishing vessels which have been engaged in IUU fishing to the flag State, coastal State, or regional fisheries management organisation concerned.

• Remit collected information from port inspection to the flag State and where appropriate to FAO and relevant regional fisheries management organisations.

• Promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other relevant international organizations of its decision when a Party has denied the use of its port.
4. DRAFT LEGISLATIVE MODELS

The purpose of this part is to provide a benchmark for countries to guide them in adopting legislative provisions for inclusion in a modern fisheries law.

In this study, it is assumed that all countries have already provided for the declaration of their maritime areas (internal waters, archipelagic waters, territorial sea, EEZ, and where applicable, a contiguous zone and continental shelf), which may of course be covered in a more generally applicable marine spaces law. It is also assumed that they will already have comprehensive laws concerning customs, shipping registration, navigation, ports, labour laws, as well as a suite of environmental laws governing biodiversity, habitat, wildlife and wetlands.

In the examples below, the general phrase “fishery waters” has been used which is intended to include the internal waters, the territorial waters and the exclusive economic zone.

Because each country will have its own practices to decide which person or class of person is the most appropriate for the purpose of conferring powers under a fisheries law, in the examples below the designation “[Minister/Director]” has been used.

It has to be stressed that each provision set out below will still need to be adapted to each country, where the constitution, existing legislation, drafting practices will need to be taken into account.

4.1 Introductory Sections of the Law

Practice varies considerably from one country to another as to how an Act commences. In some, there is a short preamble, while in the US system, there are usually “legislative findings” which give the background to the reason why a law is being enacted. In some countries, there may be an objectives clause. Although formally different, these different approaches tend to overlap.

Definitions

In common law system countries, it is a well established practice to employ definitions of certain key words used in the Law. Such definitions serve two basic purposes. In the first place, the definition will contain many important elements that are tied up in the use of the word defined. See, for example, the definition of “fish”, “fishing” and “related activities” below. Secondly, it achieves certain efficiency in that crucial elements of the term do not have to be repeated later.

Sometimes a definition might include an element that appears artificial or inaccurate. For example, in the example below, the definition of “fish” includes marine mammals. This is sometimes considered appropriate if a country has no separate marine mammal legislation, and it is considered desirable to bring marine mammals under the fisheries legislation, especially where failure to include them might result in their being no regime at all for dealing with marine mammals. While this often upsets marine biologists, it makes practical sense from a legal point of view. It also illustrates quite well that a definition only makes sense in its context: each definition needs to be assessed for its relevance to the country in question.

Other terms might also need to be defined, depending on the particular regime adopted. For example, Australia has included a definition of “ecologically sustainable development” in its Fisheries Management Act 1991. This is considered further below under objectives and principles. Whether or not it needs to be defined will depend in part on how the objectives and principles themselves are stated.
In civil law systems, definitions are used much less, though the practice is increasing. On occasion, in civil law countries, definitions are used more as descriptions than definitions in the normal sense.

Below are the more important definitions that are often employed in fisheries laws.

“Aircraft” means any craft capable of self-sustained movement through the atmosphere and includes a hovercraft;

“arrangement” means a cooperative mechanism established in accordance with international law between two or more States for the purpose, inter alia, of establishing conservation and management measures;

“Driftnet” means a gillnet or other net which is more than 2.5 kilometres in length the purpose of which is to enmesh, entrap or entangle fish;

“Driftnet fishing activities” includes fishing with the use of a driftnet and any related activities including transporting, transshipping and processing any driftnet catch, and provision of food, fuel and other supplies for vessels used or outfitted for driftnet fishing;

"Fish" means any aquatic plant or animal, whether piscine or not; and includes any mollusc, crustacean, coral, sponge, holothurian (beche-de-mer), or other echinoderm, turtle and marine mammal, and includes their eggs, spawn, spat and juvenile stages;

"Fish aggregation device" means any man-made or partly man-made floating, semi-submerged or submerged device, whether or not anchored or deployed, intended for the purpose of aggregating fish, and includes any natural floating object on which a device has been placed to facilitate its location;

"Fish processing" means the producing of any substance or article from fish by any method and includes the cutting, dismembering, cleaning, sorting, loining, freezing, canning, salting and preserving of fish;

"Fishery" or "Fisheries" means one or more stocks of fish or any fishing operation based on such stocks which can be treated as a unit for purposes of conservation and management, taking into account geographical, scientific, social, technical, recreational, economic, and other relevant characteristics;

"Fishing" means –

(a) searching for, catching, taking or harvesting fish;
(b) the attempted searching for, catching, taking or harvesting of fish;
(c) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
(d) placing, searching for or recovering any fish aggregating device or associated equipment including radio beacons;
(e) any operation at sea in support of or in preparation for any activity described in this paragraph except for operations defined as related activities in this section; or
(f) the use of an aircraft in relation to any activity described in this paragraph;

"Fishing gear" means any equipment, implement, or other thing that can be used in the act of fishing, including any fishing net, rope, line, float, trap, hook, winch, vessel, or aircraft;

"Fishing vessel" means any vessel, ship or other craft which is used for, equipped to be used for or of a type that is normally used for fishing or related activities;

“Flag State” in relation to a vessel that is a foreign vessel, means the State in which the vessel is registered and whose flag the vessel flies;
“Foreign vessel” means any vessel that is not a [name of country] vessel;

“Foreign fishing vessel” means any vessel that is not a [name of country] vessel;

“International conservation and management measures” means measures to conserve and manage one or more species of living marine resources that are adopted and applied by global, regional or subregional fisheries organizations or arrangements, consistent with the relevant rules of international law as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982, and the 1995 UN Fish Stocks Agreement;

"Master", in relation to any vessel, means the person in command or charge, or for the time being in charge, or apparently in command or in charge of the vessel, aircraft or vehicle, but does not include a pilot on board a vessel solely for the purpose of navigation;

“Mobile Transceiver Unit” or “MTU” means a device approved by the [Minister/Director] which is placed on a fishing vessel that transmits, either in conjunction with another device or devices or independently, information or data concerning the position, fishing and such other activities of the vessel as may be required;

“Net sharing” means the transfer of excess fish taken for the purpose of retaining the fish on another purse seine vessel belonging to the same fishing company where there is insufficient well space to accommodate all fish caught in the final set of a fishing trip;

"Observer" means any person authorised to act as observer pursuant to this Act and any person designated in accordance with a treaty, or an access agreement or related agreement to act as observer aboard a vessel licensed under that access agreement;

"Operator", in relation to any vessel, means the person who, by virtue of ownership, a lease, a sublease, a charter or a sub charter or otherwise, for the time being has lawful possession and control of the vessel, including the master, owner and charterer;

"Owner", in relation to a fishing vessel, means any person exercising or discharging or claiming the right or accepting the obligation to exercise or discharge any of the powers or duties of an owner whether on his own behalf or on behalf of another, and includes a person who is the owner jointly with any other person or persons and any manager, director or secretary of any body corporate or company;

“Person” means any natural person or business enterprise and includes, but is not limited to, a corporation, partnership, cooperative, association, the Government of [country] or any subdivision thereof, and any foreign government, subdivision of such government or other entity;

"Related activities” includes doing, attempting to do or preparing to do any of the following –
(a) transshipping any fish or fish products to or from any vessel;
(b) storing, processing, or transporting fish or fish products taken from the fishery waters up to the time it is first landed or from the time they are first landed in [country];
(c) or refuelling or supplying fishing vessels or performing other activities in support of fishing operations;

“Serious violation” means –
(a) fishing without a valid licence, authorisation, fishing right or permit as required under this Act;

Note: serious violation needs to be defined in the above manner to accord with the definition given to that term in the 1995 UN Fish Stocks Agreement (article 21.11, and Article 25.4WCPF Convention). “Sexual harassment” is not included in these definitions of serious violation, however, it has been included here as there has been some pressure to have it included in the context of regional fisheries management organizations. A policy decision will need to be made by each country whether or not to include it in the definition of serious violation.
(b) failing to maintain accurate records of catch and catch-related data, as required by this Act or a licence issued pursuant to this Act, or serious misreporting of catch contrary to this Act or a licence issued pursuant to this Act;
(c) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established in the fishery waters or by an applicable subregional or regional fisheries management organization or arrangement;
(d) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;
(e) using prohibited fishing gear;
(f) falsifying or concealing the markings, identity or registration of a fishing vessel;
(g) concealing, tampering with or disposing of evidence relating to an investigation or anticipated investigation;
(h) multiple violations which together constitute a serious disregard of conservation and management measures;
(i) sexual harassment; or
(j) such other violations as may be specified in this Act;

“Sustainable use” means conserving, using, enhancing, and developing marine resources to enable people to provide for their social, economic, and cultural wellbeing while –
(a) maintaining the potential of marine resources to meet the reasonably foreseeable needs of future generations; and
(b) avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment;

“Transhipment" means the transfer of any or all of the fish on board a vessel onto another vessel, either directly or by off-loading the fish from the vessel onto the shore and then immediately onto another vessel, for the purposes of transporting that fish elsewhere and does not include net sharing;

**Principles and objectives provisions**

It is useful to set out the background to clauses that state the basic objectives of fisheries conservation and management which are found (or at least something substantially similar) in many modern fisheries laws. Such clauses reflect a shift from older style legislation where the focus was primarily on setting out a licensing regime, some enforcement powers and penalties, followed by a regulation making power, but with very little, if anything, on conservation principles and objectives. Stating such objectives and principles in fisheries legislation, at least in countries with a common law system is relatively recent, and goes back, generally speaking, to the time of the completion of the LOSC.

In the LOSC, conservation standards were covered by, for the EEZ, article 61. (In the territorial sea and on the continental shelf, no conservation standards were provided for as such). Article 61 states:

**Conservation of the living resources**

1. **The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.**

2. **The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall cooperate to this end.**

3. **Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant**
environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.

4. In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.

5. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.

Substantially similar provisions were adopted for the high seas in article 119.

The heart of article 61 is the reference to maximum sustainable yield (MSY). At the time of its inclusion, it was regarded by many (though with some scientists expressing reservations about it) as a valuable step forward in setting an important global conservation standard. The reference in paragraph 4 to “the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened” was an early partial recognition of what we today would describe as the ecosystem approach to fisheries.

When the UN Fish Stocks Agreement was being negotiated, it was politically very important to avoid giving the impression that the LOSC was being amended (even though most would accept that it was in effect!) Thus, when the general principles were adopted in article 5 of UN Fish Stocks Agreement, it was considered necessary to retain the reference to MSY even though many by that stage considered that it was unsatisfactory as a conservation standard. The solution was to keep it as one of the general principles but to have it surrounded by other more modern principles, including the objective of long term sustainable use, the precautionary approach, ecosystem considerations, and the protection of marine biodiversity.

Article 5 of the UN Fish Stocks Agreement ended up as follows:

In order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate in accordance with the Convention:

(a) adopt measures to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilization;
(b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;
(c) apply the precautionary approach in accordance with article 6;
(d) 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;

(e) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;

(f) minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, (hereinafter referred to as non-target species) and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;

(g) protect biodiversity in the marine environment;

(h) take measures to prevent or eliminate overfishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;

(i) take into account the interests of artisanal and subsistence fishers;

(j) collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as set out in Annex I, as well as information from national and international research programmes;

(k) promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management; and

(l) implement and enforce conservation and management measures through effective monitoring, control and surveillance.

In effect, MSY was surrounded by other, potentially more stringent, principles and objectives. Further, in Annex II (Guidelines for the Application of Precautionary Reference Points in Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks), paragraph 2 stated:

2. Two types of precautionary reference points should be used: conservation, or limit, reference points and management, or target, reference points. Limit reference points set boundaries which are intended to constrain harvesting within safe biological limits within which the stocks can produce maximum sustainable yield. Target reference points are intended to meet management objectives.

Although worded in non mandatory language (“should”), MSY has increasingly come to be viewed as a limit rather than a target, with the above provision occasionally referred to in support of this. Further, MSY had come to be viewed in many quarters as an inadequate goal for conservation measures. There has consequently been a tendency, not well articulated, to play down the importance of MSY and place greater importance on the precautionary approach, protection of marine biodiversity, and what is now referred to as the ecosystem approach to fisheries management.

It is not necessary to trace the ups and downs here of MSY since 1982. It can be said, however, that, increasingly, despite the inclusion of MSY in the LOSC, and in the 1995 UN Fish Stocks Agreement, there has been a clear trend away from relying on MSY, and surrounding it where necessary, with more demanding principles such as the precautionary approach, the ecosystem approach to fisheries management, and the protection of marine biodiversity. Indeed, in that context, it had largely become redundant.

The draft principles and objectives set out below are drawn from the recently concluded South Pacific Regional Fisheries Management Convention (SPRFMO). Significantly, the reference to MSY
was dropped there. This is justifiable from a legal point of view because the precautionary approach and the ecosystem approach to fisheries set higher standards than MSY, thus, a coastal State is not breaching the minimum obligations set out in article 61 of the LOSC, or for that matter, the UN Fish Stocks Agreement.

**Principles and objectives—**

(1) The [Minister/Director], when performing his or her functions or exercising powers under this Act, shall -

(a) apply, in particular, the following principles;

(i) conservation and management of fishery resources shall be conducted in a transparent, accountable and inclusive manner, taking into account best international practices;

(ii) fishing shall be commensurate with the sustainable use of fishery resources taking into account the impacts on non-target and associated or dependent species and the general obligation to protect and preserve the marine environment;

(iii) overfishing and excess fishing capacity shall be prevented or eliminated;

(iv) full and accurate data on fishing, including information relating to impacts on the marine ecosystems in which fishery resources occur, shall be collected, verified, reported and shared in a timely and appropriate manner;

(v) decisions shall be based on the best scientific and technical information available;

(vi) marine ecosystems shall be protected, in particular those ecosystems which have long recovery times following disturbance;

(vii) effective compliance with conservation and management measures shall be pursued;

(viii) pollution and waste originating from fishing vessels, discards, catch by lost or abandoned gear and impacts on other species and marine ecosystems shall be minimized; and

(b) apply the precautionary approach and an ecosystem approach in accordance with paragraph 2.

2 (a) The precautionary approach as described in the Fish Stocks Agreement shall be applied widely to the conservation and management of fishery resources in order to protect those resources and to preserve the marine ecosystems in which they occur, and in particular the Minister shall:

(i) be more cautious when information is uncertain, unreliable, or inadequate;

(ii) not use the absence of adequate scientific information as a reason for postponing or failing to take conservation and management measures; and

(iii) take account of best international practices regarding the application of the precautionary approach, including Annex II of the 1995 Agreement.

(b) An ecosystem approach shall be applied widely to the conservation and management of fishery resources through an integrated approach under which decisions in relation to the management of fishery resources are considered in the context of the functioning of the wider marine ecosystems in which they occur to ensure the long-term conservation and sustainable use of those resources and in so doing, safeguard those marine ecosystems.

An alternative version is provided in the Australian Fisheries Management Act:

**Objectives**

(1) The following objectives must be pursued by the Minister in the administration of this Act and by
AFMA in the performance of its functions:

(a) implementing efficient and cost-effective fisheries management on behalf of the Commonwealth; and

(b) ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development (which include the exercise of the precautionary principle), in particular the need to have regard to the impact of fishing activities on non-target species and the long term sustainability of the marine environment; and

(c) maximising the net economic returns to the Australian community from the management of Australian fisheries; and

(d) ensuring accountability to the fishing industry and to the Australian community in AFMA’s management of fisheries resources; and

(e) achieving government targets in relation to the recovery of the costs of AFMA.

(2) In addition to the objectives mentioned in subsection (1), or in section 78 of this Act, the Minister, AFMA and Joint Authorities are to have regard to the objectives of:

(a) ensuring, through proper conservation and management measures, that the living resources of the AFZ are not endangered by over-exploitation; and

(b) achieving the optimum utilisation of the living resources of the AFZ; and

(c) ensuring that conservation and management measures in the AFZ and the high seas implement Australia’s obligations under international agreements that deal with fish stocks; and

(d) to the extent that Australia has obligations:

(1) under international law; or

(2) under the Compliance Agreement or any other international agreement;

(e) in relation to fishing activities by Australian-flagged boats on the high seas that are additional to the obligations referred to in paragraph (c)—ensuring that Australia implements those first mentioned obligations; but must ensure, as far as practicable, that measures adopted in pursuit of those objectives must not be inconsistent with the preservation, conservation and protection of all species of whales.

This provision is supplemented by section 3A:

**Principles of ecologically sustainable development**

The following principles are **principles of ecologically sustainable development**:

(1) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equity considerations;

(2) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;

(3) the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;

(4) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;

(5) improved valuation, pricing and incentive mechanisms should be promoted.

4.2 Fisheries management plans
Fisheries management plans are of fundamental importance to the effective management of fisheries. In some countries, the content of the plan is set out in the law itself. The following provision is one that is suited to countries with a common law system and a civil law system. It is important to note that this provision is subject to the general principles set out in the Act.

The provision would also permit the Minister (or whoever has been given the responsibility) to prepare either a general plan for the whole fisheries sector, or to prepare quite specific plans for particular fisheries or types of fishery. Obviously, the situation will vary quite considerably from one country to the next as to how such plans will be developed.

Consideration could also be given to specifying the status of such a plan. Is it to have the same status as a regulation? Should it be submitted to Parliament for approval, or in some countries, to a system of so called “negative disallowance”?

1. The [Minister/Director] may cause a fishery management plan or plans to be prepared in respect of each fishery or category of fisheries.

2. A fishery management plan shall –
   (a) identify the fishery to be managed;
   (b) describe the status of the fishery;
   (c) specify management measures to be applied to the fishery;
   (d) specify the process for the allocation of any fishing rights provided for in the fishery management plan;
   (e) identify the impact on non target species of fish;
   (f) identify any species of fish which need special protection;
   (g) identify any precautionary measures to be adopted;
   (h) identify how the ecosystem will be protected;
   (i) identify how marine biodiversity will be protected;
   (j) make provision in relation to any other matter necessary for sustainable use of fishery resources.

3. A fishery management plan for a fishery shall enter into force on a date specified by a notice in [the Government Gazette].

4.3 Giving effect to international obligations concerning fisheries

The following provision is designed to help countries with a common law system to give effect to obligations arising under regional fisheries bodies, in particular, the conservation and management measures adopted by regional fisheries management organizations to which the country in question is a member. This provision is especially important in a modern fisheries law because many regional fisheries management organizations are making binding conservation and management measures which need to be implemented into national legislation.

For countries with a civil law system, the same provision could also be adapted. For example, the provision below relies on the publication of the specific measures in a formal publication such as the government gazette. It is assumed that in most countries, probably all, it is legally necessary for such texts to be published in order that they can be given domestic legal effect. Failure to publish in some effective formal manner might make it difficult for legal proceedings for breaches of these measures to be instituted successfully in the domestic law of specific countries.

Giving effect to international obligations concerning fisheries
1. The [Minister] shall cause to be published in the [Government Gazette] the texts of all international conservation and management measures adopted by a regional fisheries management organization or arrangement to which [country] is a member.

2. When the [Minister] publishes a text under subsection (1), the Minister may specify that only a certain part of a conservation and management measure shall have the force of law in [country].

3. The [Minister] may, for the purpose of giving effect to regional fisheries management organization or arrangement to which [country] is a member, may undertake necessary action in order to give effect to the arrangement required under the agreement.

4. Necessary action under subsection (3) may include:
   (a) the making of regulations;
   (b) giving notice in the [Government Gazette]; or
   (c) attaching conditions to an existing licence or imposing conditions in future licences.

5. Any provision of a fisheries management plan endorsed by the [Minister] to give effect to international conservation and management measures shall have the force of law and any person who contravenes the provision commits an offence under this Act.

6. The [Minister] shall publish in the [Government Gazette] any condition that has been imposed on individual licences issued pursuant to this section.

7. The publication of a condition under subsection (6) shall be binding on all persons fishing within the fishery waters and all [country] fishing vessels.

8. Any publication required to be made under subsection (6) shall be made every 6 months after the condition is first imposed, and shall continue for not less than 2 years.

4.4 Authorisation or Licensing Regime

The Act should contain provisions concerning the authorisation of fishing (often referred to as a licensing regime). However, this can, depending on the circumstances in each country, range from a simple authorisation to a more complex statutory fishing right regime (sometimes referred to as an individual transferable quota).

In most instances, the regime will need to distinguish between authorisations for fishing vessels of the country in question and authorisations for foreign fishing vessels. Usually it is the vessel that is authorised to fish; however, in some countries it may be the individual or company that is given the licence. In some countries, it is necessary to licence both the individual or company and the vessel.

One of the basic obligations set out in the FAO Compliance Agreement and the UN Fish Stocks Agreement is the requirement that a vessel should only be licensed where the flag state is able to exercise its responsibilities under those agreements. It is important, therefore, to have a general provision along the following suggested below.
A decision will need to be made whether or not to include sport fishing within the overall authorisation regime. Depending on the decision made, this would affect the definition of fishing.

The following provision are recommended in relation to:
- Licence or authorisation required for foreign fishing vessels
- Licence or authorisation required for [country] fishing vessels
- Requirements for [country] fishing vessels outside the fishery waters
- Exercise responsibilities under Global and Regional Agreements

**Licence or authorisation required for foreign fishing vessels** -

(1) A foreign fishing vessel that is in the fishery waters shall act in accordance with international law concerning navigation and the protection and preservation of the marine environment.

(2) No foreign vessel may be used for fishing or for a related activity or other activity provided for in this Act, except in accordance with a valid licence issued pursuant to this Act or an applicable treaty or multilateral access agreement or commercial access agreement.

(3) Where any foreign vessel is used in contravention of subsection (1) or (2), the operator and master of such vessel each commits an offence, and shall be liable on conviction to a fine not exceeding...

(4) An offence against subsection (2) shall constitute a serious violation.

**Licence or authorisation required for [country] fishing vessels** –

(1) Subject to subsection (2), no vessel shall be used in the fishery waters for fishing;
   (a) related activities;
   (b) any other activity as may be provided under this Act;
   otherwise than under the authority of a valid licence, authorisation and fishing right as may be required under this Act, fishery plan or any access agreement or fisheries management agreement entered into pursuant to this Act.

(2) No fishing vessel of [country] shall be used in the fishery waters for fishing and related activities unless that vessel is licensed under this section.

(3) Subject to subsection (4), this requirement shall not apply to any fishing vessel used solely for sport, pleasure, recreational or subsistence fishing.

(4) Any person who uses a vessel for the purpose of a sporting activity carried out in the fishery waters shall be required to obtain a licence under this section where that person intends to sell any fish which he or she catches as a result of the sporting activity.

(5) Where any vessel is used in contravention of subsection (1), the operator and master of such vessel each commits an offence, and shall be liable on conviction to a fine not exceeding ....

**Requirements for [country] fishing vessels outside the fishery waters** -

(1) No person may use a [country] fishing vessel for fishing or related activities –
   (a) in the fisheries waters of a foreign country except in accordance with the laws of that country; or
   (b) in an area subject to a treaty or multilateral access agreement except in accordance with that treaty or agreement; or
   (c) on the high seas except in accordance with a licence or authorisation issued in accordance with this Act; or
(d) in an area subject to international conservation and management measures except in accordance with those measures.

(2) Where any vessel is used in contravention of subsection (1), the operator and master of such vessel each commits an offence, and shall each be liable on conviction to a fine not exceeding..

Exercise responsibilities under Global and Regional Agreements -

“The Minister/Director may not issue a permit to a vessel unless the Minister/Director is satisfied that [country] will be able to exercise effectively its responsibilities under any global or regional treaties to which it is a party with respect to that vessel.”

4.5 Statutory Fishing Rights

A decision also needs to be made whether or not to include in the Act a regime of statutory fishing rights. This raises very important policy questions which need to be decided before such a regime is introduced. A possible regime is set out below. However, such a regime is usually backed up by a complex administrative structure which needs to be tailored to the requirements of the country in question. For that reason, the provision below is intended to be indicative of the issues that will need to be addressed, and it is not intended to be a final version.

Statutory Fishing Rights. -

(1) The Minister may, by Notice published in the Government Gazette, provide for statutory fishing rights of any person or class of persons, and in doing so may make provision through the Notice on the following matters:
   (a) the method of applying for a right of access or quota share; and
   (b) the identification of criteria for determining those eligible to apply for a statutory fishing right; and
   (c) the duration of a statutory fishing right; and
   (d) the criteria for adjusting the fishing rights allocated from one period to another;
   (e) determining whether the statutory fishing right shall be inheritable, leasable, saleable, or divisible;
   (f) the number of rights or quota any person may hold at any one time; and
   (g) the method of calculation of any quota; and
   (h) the circumstances in which a statutory fishing right may lapse, be reduced, be suspended, or cancelled.

(2) The Minister shall set up a system for the registration of any statutory fishing rights granted under this section, which shall be open to inspection by members of the public.

4.6 Terms and conditions attached to a licence

For most legal systems, it is important to permit the government to attach certain conditions to a licence or authorisation. This may be in addition to the power to impose conditions by regulation. Much will depend on the practices of each legal system as to what is acceptable here. There is merit in providing for both the attachment of conditions to a licence or authorisation and to permitting conditions to be set out in regulations.

Conditions of licence or authorisation –
(1) Every licence or authorisation issued by the [Minister/Director] shall be in the prescribed form, and may be subject to—
(a) such conditions as may be prescribed; and
(b) such special conditions as may be specified under subsection (3).

(2) The [Minister/Director] may, by notice published in the government Gazette, specify conditions additional to those to which any licence or authorisation shall be subject.

(3) Subject to this Act, the [Minister/Director] may attach to any licence or authorisation such special conditions as may be required for the proper management of fisheries, including conditions relating to—
(a) the type and method of fishing or related activity authorised; and
(b) the areas within which such fishing or related activities are authorised; and
(c) the target species and amount of fish authorised to be taken, including any restriction on by-catch, or requirements relating to the protection of certain species of fish; and
(d) the times within which such fishing or related activities are authorised; and
(e) restrictions relating to the numbers, types, sizes, specifications or operation of fishing related equipment.

(4) The [Minister/Director] may from time to time, where it is expedient for the proper management of fisheries, vary any special conditions attached to any licence or authorisation.

(5) Where the [Minister/Director] varies any special conditions attached to any licence, the [Minister/Director] shall notify the licence or authorisation holder of the variation as soon as practicable.

(6) Any additional conditions made to a licence or authorisation or variations to conditions of a licence or authorisation made under this section shall not take effect until the licence holder, or in respect of a foreign fishing vessel, the licence holder or agent, has been notified in writing.

4.7 Control over nationals on foreign vessels

The IPOPA-IUU recommended that States should include in their laws provisions which make it an offence for their nationals to work on vessels which are engaged in “IUU” fishing. Although such provisions can be difficult to implement, not least because the evidentiary requirements can be challenging, the inclusion of such a provision does provide one further mechanism for deterring IUU fishing.

Below is a provision which gives effect to this recommendation.

Use of vessels of other flags by [nationals of country] on the high seas –

(1) No person, being a national of [country], or a body corporate established under the laws of [country] may use or be employed on a vessel registered in another country for fishing or related activities on the high seas except in accordance with a qualifying authorisation issued by the flag State.

(2) A qualifying authorisation may be issued—
(a) by a State that is a party to the UN Fish Stocks Agreement; or
(b) by a State that is a party to the FAO Compliance Agreement; or
(c) by a State that is a party to, or has accepted the obligations of, a global, regional, or sub-regional fisheries organization or arrangement to which the authorisation relates; or
(d) by a State that—
   (i) is a signatory to the UN Fish Stocks Agreement; and
   (ii) has legislative and administrative mechanisms to control its vessels on the high seas in accordance with that agreement.

(3) For the purpose of subsection (1) any notice given by the Minister in the [Government Gazette], specifying any State or category of States as States that may issue a qualifying authorization shall be conclusive of its contents.

(4) Any person who contravenes subsection (1) commits an offence, and shall be liable on conviction to a fine not exceeding..........

4.8 Record of fishing vessels

Quite apart from provisions regarding the registration of fishing vessels, it is now accepted that a country should maintain a record of fishing vessels which are authorised to fish either in its own waters or on the high seas or in waters under the jurisdiction of another State. It may be appropriate to exempt small scale artisanal fishing vessels or other vessels below a certain size. The obligation to maintain a record is set out in the FAO Compliance Agreement, the UN Fish Stocks Agreement as well as being promoted in the IPOA-IUU.

The following provision is intended to provide the administrative basis for operating the record. It is accompanied by Annex 4 which sets out the specific information which needs to be retained in the record.

Record of Fishing Vessels -

(1) The [Minister/Director] shall maintain a record of all fishing vessels which are licensed in accordance with this Act.

(2) Subject to subsection (3), the record under subsection (1) shall contain the information as set out in [the Annex to this Act (refer to Annex 5)].

(3) Despite subsection (2), the [Minister/Director] may require further information to be provided if such information is necessary in order comply with relevant measures adopted at any regional or subregional fisheries management organizations of which [country] is a member.

(4) The [Minister/Director] may provide to any relevant regional or subregional fisheries management organization any information on the record as the [Minister/Director] considers necessary.

(5) The information provided by the [Minister/Director] may include information relating to:
   a. additions to the record; or
   b. deletions from the record; or
   c. the withdrawal of any authorization to fish; or
   d. a vessel which is no longer entitled to fly the flag of [country].

(6) The owner or operator of any [country] fishing vessel to which this Act applies which intends to fish, or undertakes fishing in waters beyond the fishery waters of [country] shall provide to the [Minister/Director] the information required in subsection (2).
(7) The owner or operator of any [country] fishing vessel who fails to provide the information required in subsection (2) shall be guilty of an offence and liable to a fine not exceeding......

4.9 Appointment of authorized officers

A basic provision of most fisheries a law is to identify who are the persons authorized to take certain enforcement actions under the Act. This might be done by appointing a class of persons, for example, police officers, customs officers, and fisheries officers. In addition to appointing local persons, there is now a need to at least allow for the possibility of appointing authorized officers from other States.

The first provision below deals with the appointment of authorized officers, while the second provision deals with the appointment of authorized officers from other countries.

Appointment of authorized officers –

(1) The [Minister/Director] may appoint any member of staff of the Ministry to be an authorized officer for the purposes of this Act.

(2) Every officer of the Ministry who is a fisheries officer at the date of commencement of this Act is deemed to be an authorized officer for the purposes of this Act.

Appointment of authorized officers from other States –

The [Minister/Director] may, by notice published in the Government Gazette, appoint any person from any other State to be an authorized officer for the purposes of this Act.

4.10 Fisheries research

The fisheries law should provide for the regulation of marine scientific research in the EEZ, the territorial sea, the archipelagic waters, and internal waters. However, under the LOSC, Article 246, it is only in the EEZ that a coastal State has an obligation to permit other States to undertake marine scientific research in certain circumstances.

Bio-prospecting is one aspect of scientific research which is becoming a topic of increasing concern, and it would be important to ensure that it is covered in the regulation making power.

The basic fisheries legislation should contain provisions governing the authorisation of fisheries scientific research. The law should therefore set out clear procedures to be followed for those who wish to undertake such research, and to allow the government to impose certain controls on such research. These controls might be imposed directly as conditions governing the permission to undertake such research. As an alternative, regulations could be adopted which dealt with such research.

The provision set out below is intended to permit the coastal state to control fisheries scientific research by requiring an authorization to which conditions can be attached.

Marine scientific research operations related to fisheries –

(1) The Minister/Director may authorise any vessel or person to undertake marine scientific research operations related to fisheries in the fishery waters, and may, in granting any such authorisation,
exempt that vessel or person from the requirements of any fisheries management and conservation measures specified in the authorisation.

(2) The Minister/Director shall attach such conditions as may be prescribed and may attach such additional conditions as he or she thinks fit and are consistent with those which may be prescribed, to any authorisation granted under subsection (1).

(3) Each vessel or person authorised in accordance with this section shall comply with all applicable laws of [country] and any conditions of such authorisation.

(4) The Minister may suspend or revoke such authorisation if there is failure to comply with the conditions of the authorisation or the requirements of this Act.

(5) Any authorisation or exemption granted under this section shall be in writing.

(6) Any person who undertakes or assists in any marine scientific research related to fisheries in the fishery waters –
   a. without authorisation under subsection (1); or
   b. in contravention of any condition or conditions attached to the authorisation under subsection (2); or
   c. in contravention of the requirements of subsection (3),
   d. commits an offence and on conviction shall be liable to a fine not exceeding......

4.11 Prohibited Fishing Methods

In many countries, there is usually found an outright prohibition on fishing by certain methods, in particular, dynamiting and poisoning, in view of its particularly harmful environmental consequences. These are dealt with separately in their own clauses in part to emphasize the importance of persons not engaging in such activities.

To an extent also large scale driftnet fishing has attracted a similar reaction, especially in the Pacific. Two possible clauses are included here, one dealing with prohibited fishing methods, the other with driftnet fishing.

Prohibited fishing methods –

(1) Any person who –
   a. permits to be used, uses, or attempts to use any explosive, poison, or other noxious substance for the purpose of killing, stunning, disabling, or catching fish, or in any way rendering fish more easily caught; or
   b. permits to be carried, carries or has in his possession or control any explosive, poison, or other noxious substance in circumstances evidencing an intention of using the explosive, poison, other noxious substance for any of the purposes referred to in paragraph (a),

   commits an offence and shall be liable on conviction to a fine not exceeding.........

(2) Any explosive, poison, or other noxious substance found on board any fishing vessel shall be presumed, unless the contrary is proved, to be intended for the purposes referred to in subsection (1)(a).

(3) Any person who lands, sells, receives, or is found in possession of any fish taken by any means which is in contravention of subsection (1)(a), commits an offence and is liable on conviction to a fine not exceeding...

(4) In any proceedings for any offence against this section, a certificate as to the cause and manner of death or injury of any fish, signed by [Minister/Director] or by any person authorized by him or her in writing, shall, until the contrary is proved, be sufficient evidence as to the matters stated in the certificate.
(5) In any proceedings for any offence against this section, the defendant shall be given not less than 14 days notice in writing of the prosecution’s intention to adduce a certificate under subsection (4).

**Driftnet fishing activities -**

(1) No vessel shall:
   (a) be used for or assist in any driftnet fishing activities; or
   (b) possess or have on board a driftnet,

   in the fishery waters.

(2) No person shall engage or assist in any driftnet fishing activities in the fishery waters.

(3) No fishing vessel shall be used for or assist in any driftnet fishing activities.

(4) No vessel which has been used for assisting in driftnet fishing activities may enter a port in [country] except in cases of force majeure.

(5) Where any vessel is used in contravention of subsections (1) or (3), the operator and master each commits an offence, and shall be liable on conviction to a fine not exceeding......

(6) Every person who contravenes subsection (2) or (4) commits an offence and shall be liable on conviction to a fine not exceeding......

This section on driftnets should be supported by the following two definitions:

“Driftnet” means a gillnet or other net which is more than 2.5 kilometres in length the purpose of which is to enmesh, entrap or entangle fish;

“Driftnet fishing activities” includes fishing with the use of a driftnet and any related activities including transporting, transhipping and processing any driftnet catch, and provision of food, fuel and other supplies for vessels used or outfitted for driftnet fishing;

**4.12 Port Measures**

Port measures have become increasingly important in the last decade as several regional fisheries bodies have adopted in varying degrees port measures as part of their conservation and management measures. In 2009, the FAO adopted a global port measures agreement (Agreement on Port State Measures to Prevent, Deter And Eliminate Illegal, Unreported and Unregulated Fishing). This Agreement has been opened for signature. So far, 16 countries have signed the Agreement. It will enter into force 30 days after the deposit of the 25th instrument of ratification acceptance or approval.

The Port Measures Agreement sets down minimum global standards, however, it is possible that a regional fisheries body could adopt measures that are stricter than those contained in the Agreement itself. Many RFMOs already have in place port measures in their binding conservation and management measures. Thus, the provisions below are intended to reflect not only the provisions of the FAO Port measures Agreement but also the possibility that it may be necessary to provide for a wider range of measures than is covered in the global agreement.

**Port measures –**

(1) The [Minister] may make regulations/decrees concerning the following matters:
(a) the designation and publication of ports to which foreign fishing vessels may be permitted access;
(b) the designation of port inspectors;
(c) the training and qualifications of port inspectors;
(d) establishing the procedures, the contents of and the results to be obtained from an inspection regime, including the adoption of port measures adopted by a sub regional, regional or global fisheries organization, treaty or arrangement;
(e) prescribing the powers of inspectors, the mode of conducting an inspection, including the power to inspect any area of the fishing vessel, the catch (whether processed or not), taking samples, any fishing gear, equipment or other gear and document which the inspector deems necessary to verify compliance with relevant conservation and management measures;
(f) requiring the provision of such assistance or information as may be needed in order to undertake inspections;
(g) requiring, prior to allowing port access to a foreign fishing vessel, that such vessel provides such notice as may be prescribed prior to entering its port or its exclusive economic zone for the purpose of port access, including vessel identification, any authorization to fish, information on its fishing trip and vessel monitoring systems, quantities of fish on board and such other documentation or information;
(h) regulating or prohibiting the landing, transhipment, packaging or processing of fish, or refuelling or resupplying a vessel, including the prohibition of port access of a vessel which has been identified or reported as having been engaged in or supporting fishing activities in contravention with sub regional, regional or global conservation measures, or where there are reasonable grounds for presuming that a vessel has been engaged in such activity;
(i) regulating or prohibiting the port access of a vessel that has been included on the list of vessels maintained by subregional, regional or global fisheries organizations that are believed to have engaged in illegal, unregulated or unreported fishing;
(j) regulating or prohibiting the landing, transhipment, packaging or processing of fish, or refuelling or resupplying a vessel, including the prohibition of port access of a vessel which has been identified or reported as having been engaged in or supporting fishing activities in areas under national jurisdiction in contravention of the laws of a particular country, or fishing on the high seas without an authorization to do so from its flag state or where there are reasonable grounds for presuming that a vessel has been engaged in such activity;
(k) authorising the cooperation and exchange of information, including inspection results with other States and sub regional, regional or global fisheries organizations;
(l) providing for a system of appeal against decisions taken in respect of fishing vessels under this section;
(m) providing for any other measures that may be agreed to by subregional regional or global fisheries organizations, treaty or arrangement.

(2) The [Minister/Director] may prohibit from entering a port of [country] a vessel which has been sighted as being engaged in or supporting fishing in contravention of the conservation and management measures of a regional or sub regional fisheries organization and whose flag State is not a member of nor is it a cooperating non contracting Party to that sub regional or regional fisheries organization, unless it can be established that the catch on board has been taken in a manner consistent with the relevant conservation and management measures. Such a prohibition may apply to an individual vessel or to a category of vessels.
(3) The [Minister] may additionally or in the alternative provide for any of the above matters referred to in paragraph 1 of this section by Notice in the [Government Gazette].

(4) References to ports in this section include offshore terminals and other installations for landing, transhipping, refuelling or resupplying vessels.

(5) Any person who fails to comply with the provisions of this section or with any regulations or orders or notices made in accordance with its provisions commits an offence and shall be liable to a fine not exceeding...

4.13 Transhipment

The power to control transhipment is fundamental to effective fisheries management, as it is well known that unregulated transhipment often leads to or is associated with “IUU” fishing. This control over transhipment can be achieved in a number of ways. For example, it can be imposed by attaching a condition to a licence or authorisation, or it can be covered by regulation. However, in view of the importance it plays in fisheries management, it is sometimes given its own section. That is the approach adopted below.

An example is:

Transhipment –

(1) The [Minister/Director] may authorise in writing any transhipment involving any foreign vessel in the fishery waters where such activity does not constitute a condition of license for fishing, in accordance with any applicable access agreement and any requirements which may be prescribed.

(2) The [Minister/Director] shall attach such conditions as may be prescribed and may attach additional conditions as he or she thinks fit which are consistent with any condition which may be prescribed, to any authorisation granted under subsection (1).

(3) Each person authorised in accordance with this section shall comply with all applicable laws of [country] and any conditions of such authorisation.

(4) The [Minister/Director] may suspend such authorisation if there is failure to comply with the conditions of the authorisation or the requirements of this Act.

(5) Any authorisation granted under this section shall be in writing.

(6) Any person commits an offence who undertakes any transhipment activity in respect of a foreign vessel without an authorisation issued pursuant to this section, and shall be liable on conviction to a fine not exceeding.......

The definition of “transhipment” set out under definitions above will also give the above clause greater effect.

4.14 Lacey Act provisions

One method to promote compliance that has been adopted in a number of laws is the so called long arm or Lacey Act laws, derived from a legislative provision in the US. Such laws typically make it
unlawful to import fish that has been taken contrary to the laws of another country. Below is an example of such a clause.

Activities contrary to the laws of another State –

(1) No person shall, within [country] or in the fishery waters, on their own account or any other capacity;
   (a) cause or permit a person acting on his or her behalf; or
   (b) use or permit a vessel to engage in fishing or related activity;

   to take or to import, export, land, transport, sell, receive, acquire or buy any fish or fish product taken, possessed, transported or sold in violation of any law or regulation of another State or of international conservation and management measures.

(2) This section does not apply to fish taken on the high seas contrary to the law of another State where [country] does not recognise the jurisdiction of that State over those fish.

(3) Any person who contravenes subsection (2) commits an offence and upon conviction shall be liable for a fine not exceeding ……

(4) Where an international agreement with another State provides for a fine, penalty or other determination or any portion of it to be remitted to that State upon conviction or other process pursuant to subsection (2), such remittance shall be made after all cost and expenses incurred by the State have been deducted.

4.15 Enforcement and compliance provisions

Most fisheries laws, certainly those in the common law world, will have very detailed provisions regarding powers of authorized officers. It is these provisions which give the law “teeth” and are essential ultimately to its effectiveness. In civil law countries these will often be located in a basic Law or Code which will govern all the laws in that country. The following provisions are typical of those found in a common law system, though each country will have slightly different provisions to fit in with their own system. For example there may well be specific provisions of the constitution of the country in question (in particular, if there are fundamental human rights provisions in or attached to the constitution). These will need to be considered before any text can be finally adopted.

The provisions below deal with power of entry and search, power to give directions to the master of a vessel, powers of arrest, power to give directions to master, power to use reasonable force and take copies of documents, powers of seizure, general powers, powers with respect to measures of a regional fisheries management organization, requirement for certain persons to assist an authorized officer, requirements for seized property, removal of parts from seized vessels.

In addition, provisions on observers and the rights and duties of authorized officers and observers have been included here.

Powers of entry and search

(1) Subject to subsection (2), an authorized officer may -
   (a) enter and search any vessel or vehicle; or
   (b) stop and search any person; or
(c) pass across any land.

(2) An authorized officer may only exercise powers under subsection (1) where he or she believes, on reasonable grounds -
(a) that an offence is being or has been committed against this Act; or
(b) that -
   (i) any fish taken or item used or intended to be used in contravention of this Act; or
   (ii) any record or information required by or under this Act to be kept, completed, or provided; or
   (iii) any document, or item which may be taken as evidence as to the commission of an offence against this Act -
   may be concealed for the purposes of avoiding prosecution for an offence under this Act.

(3) An authorized officer may detain any person, vessel, vehicle, or conveyance of any kind, and may retain in his or her custody any parcel, package, record, document, article, gear, apparatus, device, container, fish, or thing for such period as is reasonably necessary to enable the authorized officer to carry out a search under this section.

(4) In this section:
“enter” includes to stop and board;
“search” means to examine any document, record, article, gear, apparatus, device, container or anything that is contained within the premises being searched.

Power of arrest –

(1) An authorized officer may, if he or she believes on reasonable grounds that any person is offending against this Act, or has committed an offence against this Act -
(a) order that person to stop the offending act;
(b) request the person to:
   (i) provide his or her name by which that person is commonly known; and
   (ii) the person’s family name or surname,
   (iii) the person’s date of birth,
   (iv) the person’s actual place of residence;
   (v) the person’s occupation;
   (vi) provide proof of the information provided under subparagraphs (i) to (vi) above where it is reasonable to obtain proof; and
(c) arrest, without warrant, that person.

(2) If an authorized officer arrests a person under subsection (1) the authorized officer shall cause the person to be delivered into the custody of a member of the Police as soon as practicable and the provisions of the [laws governing criminal procedures] shall apply.

(3) If the offence in respect of which the person has been arrested carries a maximum fine exceeding ....that person shall not be entitled automatically to bail.

Power to give directions to master –

(1) An authorized officer may, if he or she believes that a vessel is being or has been used in contravention of the provisions of this Act or of the conditions of any licence issued under this
Act, require the master to take the vessel, as soon as reasonably practicable, to the nearest available port in [country], or such other port as is agreed between the master and the authorized officer.

(2) If an authorized officer has given a direction under subsection (1), he or she may also give to the master or any person on board the vessel any reasonable directions in respect of any activity, method, procedure, item, gear, document, fish, property, or thing while the vessel is proceeding to port.

Power to use reasonable force and take copies of documents –

(1) An authorized officer may use such force as may be reasonably necessary to enable the exercise of his or her powers under this Act.

(2) In exercising powers under this Act, an authorized officer may -
(a) make or take copies of any record or document, and for this purpose may take possession of and remove from the place where they are kept any such record or document, for such period of time as is reasonable in the circumstances;
(b) if necessary, require a person to reproduce, or assist the authorized officer to reproduce, in a useable form, information recorded or stored in a document.

Powers of seizure –

(1) An authorized officer may seize -
(a) any vessel, vehicle or other conveyance, fishing gear, implement, appliance, material, container, goods, equipment, or thing which the authorized officer believes on reasonable grounds is being or has been or is intended to be used in the commission of an offence against this Act;
(b) any fish which the authorized officer believes on reasonable grounds are being, or have been, taken, killed, transported, bought, sold, or found in the possession of any person, in contravention of this Act, and any fish with which such fish have been intermixed;
(c) any article, record, document, or thing which the authorized officer believes on reasonable grounds is evidence of the commission of an offence against this Act;

(2) Any property seized under subsection (1) shall be delivered into the custody of the [Minister/Director].

General powers –

(1) An authorized officer may do all such acts and things and give such directives as are reasonably necessary for the purposes of exercising any of his or her powers under this Act.

(2) The powers of an authorized officer under this Act are exercisable -
(a) within [country];
(b) in the fishery waters;
(c) beyond the fishery waters;

in relation to any conduct whether or not that conduct occurred in the fishery waters.
(3) Subsection (2)(c) does not authorise an authorized officer to exercise any powers under this Act in respect of any foreign vessel or any person aboard any such vessel unless the authorized officer—
(a) believes on reasonable grounds that any person on board the vessel has committed an offence in the fishery waters; and
(b) is in hot pursuit of the vessel; and
(c) commenced that pursuit in the fishery waters.

(4) An authorized officer may exercise any powers beyond the limits of the fishery waters in respect of any foreign vessel or any person aboard any such vessel and relating to fisheries inspection, compliance or enforcement provided that the exercise of those powers is authorized by a treaty to which [country] is party, and implemented in [country] by regulation or notification in the Government Gazette, or is otherwise authorized under international law.

Powers with respect to measures of a regional fisheries management organization –

(1) Subject to subsection 2, the [Minister/Director] may authorise an officer of the Ministry to undertake fisheries inspection, compliance and enforcement measures which have been adopted by a regional fisheries management organization of which [country] is a member.

(2) The measures referred to in subsection 1(1) of this section shall be notified in the Government Gazette in accordance with section 10 of this Act.

(3) The [Minister/Director] may cause to be made guidelines with respect to the implementation of the measures which have been notified in the Government Gazette in accordance with this section.

Persons to assist authorized officer –

(1) Any authorized officer or observer exercising any of the powers conferred on him or her by this Act may do so with the aid of such assistants as he or she considers necessary for the purpose.

(2) All persons called upon to assist any authorized officer or observer in the exercise of any of the powers conferred on him or her by this Act are hereby authorized to render such assistance.

Requirements for seized property, etc. –

(1) The [Minister/Director] may, at any time until an information or charge is laid in respect of the alleged offence for which the property was seized, on application by—
(a) the person from whom the property was seized; or
(b) the owner or person entitled to the possession of the property seized; and

release the property to any such person under bond in such sum and under such sureties and conditions (if any) as the [Minister/Director] may specify.

(2) Where any person to whom property is released under subsection (1) fails to comply with the conditions of any bond or with any condition specified by the [Minister/Director]—
(a) the property may be re-seized at any time at the direction of the [Minister/Director]; and
(b) the provisions of this section shall thereupon apply to the property as if it had been seized pursuant to section 62 of this Act; and
(c) the Minister/Director may, in the case of failure to comply with the conditions of any bond, apply to the Supreme Court for an order to forfeit the bond; and
(d) where the Minister/Director so applies the Registrar shall fix a time and place for the hearing of the application, and shall, not less than 7 days before the time fixed, cause to be served on every person bound by the bond a notice of the time and place so fixed; and
(e) if on the hearing of any such application it is proved to the satisfaction of the Court that any condition of the bond has not been kept, the Court may make an order to estreat the bond to such an amount as it thinks fit to any person bound thereby on whom notice is proved to have been served in accordance with this subsection; and
(f) any penalty payable in accordance with this subsection shall be recoverable as if it were a fine.

(3) Where, in the opinion of the Minister/Director, any fish or other article seized pursuant to this Act may rot, spoil, deteriorate or otherwise perish, the Minister/Director may arrange for its sale in such manner and for such price as the Minister/Director may determine.

(4) Where the ownership of any property cannot at the time of seizure be ascertained, the property seized shall be forfeited to the Government and shall be disposed of as directed by the Minister/Director after 90 days from the date of seizure if, within that time, it has not been possible to establish the ownership of the property.

(5) A purchaser for valuable consideration of any fish, article or property sold under subsection (3) or subsection (4) shall derive good and unencumbered title in respect of that fish, article or property (as the case may be).

(6) Subject to subsection (1), all property seized pursuant to this Act and the proceeds from the sale of any such property pursuant to subsection (3), except where such property has been disposed of by the Government pursuant to subsection (4), shall be held in the custody of the Minister/Director acting on behalf of the Government until—
(a) a decision is made not to lay any information or charge in respect of the alleged offence for which the property was seized; or
(b) where such a charge or information is laid, upon the completion of proceedings in respect of the alleged offence for which the property was seized, or such sooner time as the Court may determine.

(7) Where any information or charge has been laid in respect of the alleged offence for which the property was seized pursuant to subsection (1), and that property remains in the custody of the Government, the Court may at any time, on application by—
(a) the person from whom the property was seized; or
(b) the owner or person entitled to the possession of the property seized; release the property under bond to any such person, and any such release may be subject to such sureties and conditions as the Court may specify.

(8) In determining the value of the bond or other form of security, the Court shall have regard to the aggregate amount of—
(a) the value of the property to be released;
(b) the total maximum fine provided for the offence charged or likely to be charged; and
(c) the loss, damages or costs the prosecution would be likely to recover, if a conviction were entered, and the Court may set the value at such aggregate amount.
(9) The decision whether or not to lay any information or charge in respect of an alleged offence for which any property is seized under this Act shall be made as soon as reasonably practicable after the property is seized, taken possession of, or detained.

(10) The Government shall not be liable to any person for any spoilage or deterioration in the quality of any fish seized under this Act.

(11) Subject to subsection (10), despite any other provisions of this section, where any property has been seized under this Act, then -

(a) on a decision being made not to lay an information or charge; or
(b) on the acquittal of any person charged with an offence for which the property is subject to forfeiture –

such property, or the proceeds from the sale of such property, shall forthwith be released from the custody of the Government of [country] to the person entitled thereto and in the case of proceeds of sale from property under subsection (4) the same shall be paid into the unclaimed monies account and be dealt with in accordance with the [law relating to public finance management].

(12) Despite any other provisions in this section, an authorized officer who at the time of seizure returns to the water any fish seized pursuant to this Act that he or she believes to be alive, shall not be under any civil or criminal liability to the person from whom the fish was seized in the event of a decision being made not to lay an information or charge in respect of the fish, or of the person being acquitted of the charge.

Removal of parts from seized vessels, etc. –

(1) An authorized officer may remove any part from any vessel, vehicle or aircraft held in the custody of the Government for the purpose of immobilizing that vehicle or aircraft.

(2) Any part removed under subsection (1) shall be kept safely and returned to the vessel, vehicle or aircraft upon its lawful release from custody.

(3) No person, otherwise than acting under the authority of the [Minister/Director], shall possess or arrange to obtain any part removed under subsection (1) or possess or arrange to obtain or make any replacement or substitute part for those removed under subsection (1) or shall fit or attempt to fit any part or any replacement or substitute part to a vessel, vehicle or aircraft held in the custody of the Government.

Observers –

(1) The [Minister/Director] may designate in writing persons to act as observers on vessels issued with valid licences or authorizations pursuant to this Act.

(2) Despite subsection (1), observers may be designated in accordance with any fishery plan, or treaty and shall be designated where required by any fishery plan or any agreement or where an observer or class of observers has been certified under the terms of such agreement or other bilateral or multilateral treaty to which [country] is party.
(3) Persons designated in accordance with subsection (2) who are not [country]n shall be subject to the provisions of this Act while carrying out their duties and functions and enforcing their rights.

(4) Observers shall exercise scientific, compliance, monitoring and other functions.

(5) Observers shall be permitted to board any vessel issued with a valid licence or authorization pursuant to this Act and remain on such vessel for the purpose of exercising the observers functions.

(6) The operator, master, and each member of the crew of such vessel shall allow and assist an observer to -
(a) board and remain on such vessel for the purpose of carrying out his or her duties and functions, at such time and place as the [Minister/Director] may require;
(b) have full access to and the use of facilities and equipment on board the vessel which the observer may determine is necessary to carry out his or her duties, including -
(i) full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish;
(ii) full access to the vessel’s records including its log and documentation for the purpose of records inspection and copying;
(iii) full access to fishing gear on board;
(iv) full access to navigation equipment and radios;
(v) take and remove from the vessel reasonable samples for the purposes of scientific investigation and other relevant information;
(vi) take photographs of the fishing operations, including fish, fishing gear, equipment, charts and records, and remove from the vessel such photographs or film as he or she may have taken or used on board the vessel;
(vii) send or receive messages by means of the vessel’s communications equipment; and
(viii) gather any other information relating to fisheries in the fishery waters or other areas as may be authorized by licence or authorization;
(c) carry out the observers duties safely; and
(d) disembark at such time and place as may be determined by the [Minister/Director] or in accordance with an access agreement.

(7) The operator shall provide the observer, while on board the vessel, at no expense to the Government with food, accommodation and medical facilities equivalent to officers or such reasonable standard as may be acceptable to the [Minister/Director].

(8) In addition to the requirements in subsection (7), the [Minister/Director] may require the operator to pay in full the following costs of the authorized observer -
(a) travel costs to and from the vessel;
(b) such salary as may be notified by the [Minister/Director], being the full amount of such salary; and
(c) full insurance coverage.

(9) Any operator and master of any vessel with a valid licence issued in accordance with this Act shall allow and assist any observer to have full access to any place within [country] where fish taken in the fishery waters is unloaded or transshipped, to remove samples and to gather any information relating to fisheries in the fishery waters.

Duties to authorized officers and observers –
(1) The operator, master, and each crew member of any fishing vessel, the driver of any vehicle and the pilot and crew of any aircraft shall immediately comply with every instruction or direction given by an authorized officer or observer as appropriate, and facilitate safe boarding, entry and inspection of the vessel, vehicle or aircraft and any fishing gear, equipment, records, fish and fish products.

(2) The operator, master, and each crew member of a vessel, driver of a vehicle and pilot and crew of an aircraft shall ensure the safety of an authorized officer or observer as appropriate in the performance of his duties.

(3) Any person who contravenes subsections (1) or (2), or –
(a) assaults, obstructs, resists, delays, refuses boarding to, intimidates or fails to ensure the safety of or otherwise interfere with an authorized officer or observer in the performance of his or her duties;
(b) incites or encourages any other person to assault, resist, or obstruct any authorized officer while in the execution of his powers or duties, or any person lawfully acting under the officer’s orders or in his aid;
(c) uses threatening language or behaves in a threatening or insulting manner or uses abusive language or insulting gestures towards any authorized officer or observer while in the execution of his powers or duties, or any person lawfully acting under an authorized officer’s orders or in his aid;
(d) fails to comply with the lawful requirements or any authorized officer or observer;
(e) furnishes to any authorized officer any particulars which are false or misleading in any material respect;
(f) personates or falsely represents himself to be an authorized officer, or who falsely represents himself to be a person lawfully acting under an authorized officer’s orders or in his aid;
(g) resists lawful arrest for any act prohibited by this Act;
(h) is in breach of any other duty to an authorized officer or authorized observer under this Act;
commits an offence.

(4) For the purpose of subsection (3), any person who does not allow any authorized officer, or any person acting under his or her orders or in his or her aid, or an observer to exercise any of the powers conferred on such person by this Act shall be deemed to be obstructing that officer or person.

(5) Any person who, being a master, owner, charterer, agent, or a company established under the laws of [country] which owns, partly owns or controls a fishing vessel which transports an authorized officer or observer outside the fishery waters and causes him or her to disembark outside the territory of jurisdiction of [country], commits an offence and upon conviction shall be liable, in addition to any fine, for all costs of repatriation including board and lodging while out of [country] and direct transportation to [country].

(6) Any person who commits an offence against this section shall be liable on conviction to a fine not exceeding.....

Identification of authorized officers and observers –

An authorized officer or observer when exercising any of the powers conferred on him or her by this Act shall on request produce identification to show he or she is an authorized officer or observer under this Act.
Electronic tracking devices for vessels, electronic evidence and certificate evidence

Due to the somewhat more rigid rules of evidence that are applied in countries with common law systems compared to those with a civil law type system, it is often necessary to include in the fisheries legislation, usually in the primary Law itself, specific provisions on the use of electronic instruments as evidence. This is in part due to the so called rule against “hearsay” in the common law, which rules out reliance on such information in a trial in the absence of such legislation authorising its use in criminal proceedings.

In civil law systems, these problems usually do not arise due to a very different way of treating evidence in a trial.

Mobile Transceiver Unit –

(1) The operator of each fishing vessel licensed to fish pursuant to this Act shall be required, as a condition of its licence, to install, maintain and operate a registered mobile transceiver unit (MTU) at all times while in the fishery waters or such other area as may be agreed or designated, and in accordance with -
(a) the manufacturer’s specifications and operating instructions; and
(b) such standards as may be required by any body or organization of which [country] is a member;
(c) such other requirements as may be prescribed.

(2) The operator of each vessel referred to in subsection (1) shall ensure that -
(a) no person tampers or interferes with the MTU and that the MTU is not altered, damaged, disabled or otherwise interfered with;
(b) the MTU is not moved from the required or agreed installed position or removed without the prior written permission of the [Minister/Director];
(c) the MTU is switched on and is operational at all times when the vessel is within the fishery waters or such other area as may be agreed or designated, and at such times prior to entry into such fishery waters or other area as may be prescribed;
(d) upon notification by the [Minister/Director] that the vessel’s MTU has failed to transmit, the directives of the [Minister/Director] are complied with until such time that the vessel’s MTU is functioning properly;
(e) the MTU is registered as the [Minister/Director] may direct or as may be prescribed, at the operator’s expense.

(3) The operator of each vessel referred to in subsection (1) or his or her authorised agent, upon notification by the licensing country of appropriate authority that the vessel’s MTU has failed to report, shall ensure that reports containing the vessel’s name, call sign, position (expressed in latitude and longitude to minutes of arc), and date and time for the report, are communicated to a delegated authority at intervals of 8 hours or such shorter period as specified by the delegated authority, commencing from the time of notification of the failure of the MTU. Such reports must continue until such time as the MTU is confirmed operational by the licensing country of appropriate authority.

(4) If it is not possible to make any one or more of the further position reports described in paragraph (3), or when the [Minister/Director] so directs, the master of the vessel must immediately stow the fishing gear and take the vessel directly to a port identified by the
[Minister/Director], and as soon as possible, report to the [Minister/Director] that the vessel is being, or has been, taken to port with gear stowed.

(5) Any operator, including the master, owner and charterer, who does not comply with subsections (1), (2), (3) or (4) commits an offence and shall be liable on conviction to a fine not exceeding......, and in addition the applicable licence shall be cancelled.

**Status of Information from MTUs** –

(1) All information or data obtained or ascertained by the use of an MTU shall be presumed, unless the contrary is proved, to -

(a) come from the vessel so identified;

(b) be accurately relayed or transferred;

(c) be given by the master, owner and charterer of the vessel; and

evidence may be given of information and data so obtained or ascertained whether from a printout or visual display unit.

(2) The presumption in subsection (1) shall apply whether or not the information was stored before or after any transmission or transfer.

(3) An MTU installed and operated in accordance with this Act shall be judicially recognized as notoriously accurate.

(4) The presumption set out in subsection (3) shall apply whether or not the information was stored before or after any transmission or transfer.

(5) Any person may give a certificate stating –

(a) his or her name, address and official position;

(b) he or she is competent to read the printout or visual display unit of any machine capable of obtaining or ascertaining information from an MTU;

(c) the date and time the information was obtained or ascertained from the MTU and the details thereof;

(d) the name and call sign of the vessel on which the MTU is or was located as known to him or her, or as ascertained from any official register, record or other document; and

(e) a declaration that there appeared to be no malfunction in the MTU, its transmissions, or other machines used in obtaining or ascertaining the information.

(6) Ownership of all vessel monitoring system information generated by an MTU required and operating under this Act is vested in the Government of [country].

(7) All vessel monitoring information shall be classified as confidential information, and shall be subject to such procedures as may be prescribed by regulation.

(8) Any person who divulges information from a vessel monitoring system, to any person not authorised to receive such information commits an offence and shall be liable on conviction to a fine not exceeding......

**Certificate evidence**

The [Minister/Director] or any person designated in writing by him or her may give a certificate stating that—
(a) a specified vessel was or was not on a specified date or dates a fishing vessel of [country], a locally based foreign fishing vessel or a foreign fishing vessel;
(b) a specified vessel or person was or was not on a specified date or dates the holder of any specified licence, authorisation or certificate of registration;
(c) an appended document is a true copy of the licence or certificate of registration for a specified vessel or person and that specified conditions were attached to such document;
(d) a particular location or area of water was on a specified date or dates within the fishery waters, or within a closed, limited, restricted or in any other way controlled area of the fisheries waters, or an area of the fisheries waters subject to specified conditions;
(e) an appended chart shows the boundaries on a specified date or dates of the fisheries waters, territorial sea, closed or limited areas or other maritime areas or zones delineated for any specified purpose;
(f) a particular item or piece of equipment is a fishing gear;
(g) the cause and manner of death of or injury to any fish is as stated;
(h) an appended document is a true copy of an approved charter agreement, an access agreement or fisheries management agreement;
(i) a call sign, name or number is that of or allotted under any system of naming or numbering of vessels to a particular vessel;
(j) an appended position or catch report was given in respect of a specified vessel;
(k) a specified vessel, MTU or other item fulfils or does not fulfil registration requirements under this Act, an applicable access agreement or international conservation and management measures other than that specified in paragraph (k), as declared in an appended copy of a statement signed by the administrator of such register;
(l) an appended document is a true certificate of calibration of a specified measuring device;
(m) an offence was committed against the laws of another State, as declared in an appended copy of a statement signed by competent authorities of such State;
(n) international conservation and management measures as defined in this Act are in force as declared in an appended copy of a statement signed by the [Minister/Director], or equivalent, of the international organisation or arrangement which adopted such measures;
(o) a certification as to the condition of fish given under this Act was made in accordance with this Act and was made by the person who is signatory to the certificate;
(p) a photograph is a true and accurate representation of what it is meant to represent;
(q) a photograph was taken by a specified person; or
(r) any specified return, log, record or information required to be kept or furnished under this Act or was not kept or furnished.

Certificate as to the location of a vessel

(1) Where in any proceedings under this Act the place or area in which a vessel is alleged to have been at a particular date and time or during a particular period of time is material to an offence charged, then a place or area stated in a certificate given by a authorised officer shall be prima facie evidence, unless the contrary is proved, of the place or area in which the vessel was at the date and time or during the period of time stated.
(2) A authorised officer shall, in any certificate made in subsection (1), state –
(a) his or her name, address, official position, country of appointment and provision under which he is appointed;
(b) the name and, if known, call sign of the fishing vessel concerned;
(c) the date and time or period of time the vessel was in the place or area;
(d) the place or area in which it is alleged the vessel was located;
(e) the position fixing instruments used to fix the place or area stated in (d) and their accuracy within specified limits;
(f) that he or she checked the position fixing instruments a reasonable time before and after they were used to fix the position and they appeared to be working correctly; and

(g) if a position fixing instrument which is not judicially recognised as notoriously accurate is used, that he or she checked the instrument used as soon as possible after the time concerned against an instrument that is judicially recognized as notoriously accurate.

(3) For the purposes of this section, “authorised officer” includes observers and those charged with similar responsibilities in other States.

**MTU - presumption and certificate**

(1) All information or data obtained or ascertained by the use of an MTU shall be presumed, unless the contrary is proved, to-

(a) come from the vessel so identified;
(b) be accurately relayed or transferred;
(c) be given by the operator, including the master, owner and charterer of the vessel,

and evidence may be given of information and data so obtained or ascertained whether from a printout or visual display unit.

(2) The presumption in paragraph (1) shall apply whether or not the information was stored before or after any transmission or transfer.

(3) An MTU installed and operated in accordance with this Act shall be judicially recognised as notoriously accurate.

(4) A authorised officer or other person authorised in writing by the Minister/Director], may give a certificate stating –

(a) his or her name, address and official position;
(b) he or she is competent to read the printout or visual display unit of any machine capable of obtaining or ascertaining information from an MTU;
(c) the date and time the information was obtained or ascertained from the MTU and the details thereof;
(d) the name and call sign of the vessel on which the MTU is or was located as known to him or as ascertained from any official register, record or other document; and
(e) a declaration that there appeared to be no malfunction in the MTU, its transmissions, or other machines used in obtaining or ascertaining the information.

**Photographic evidence - date and time stamped**

(1) Where a photograph is taken of any fishing or related activity and simultaneously the date and time and position from which the photograph is taken are superimposed upon the photograph then it shall be presumed unless the contrary is proved that the photograph was taken on the date, at the time and in the position so appearing.

(2) The presumption set out in subsection (1) shall arise only if –

(a) the camera taking the photograph is connected directly to the instruments which provide the date, time and position concerned; and
(b) the photograph was taken by a authorised officer or observer or under their supervision.
(3) Any authorised officer or observer who takes or supervises the taking of a photograph of the kind described in subsection (1) may give a certificate appending the photograph stating—
(a) his or her name, address, official position, country of appointment and authority under which he or she is appointed;
(b) the name and call sign, if known, of any fishing vessel appearing in the photograph;
(c) the names of the camera, watch or clock or other instruments supplying the date and time and the position fixing instrument and a declaration that he or she checked those instruments a reasonable time before and after the taking of the photograph and that they all appeared to be working correctly;
(d) the matters set out in subsection (2)(a) and (c); and
(e) the accuracy of the position fixing instrument used within specified limits.

Validity and procedures for certificate

(1) Unless the contrary is proved, a document purporting to be a certificate given under this Part shall be deemed to be such a certificate and to have been duly given.

(2) Where a certificate issued under this Part—
(a) is served upon a defendant seven or more days, but less than fourteen days, before its production in court in any proceedings under this Act; or
(b) is served fourteen or more days before its production in court in any proceedings under this Act and an objection is notified in accordance with subsection (2); the certificate shall, unless the contrary is proved, be prima facie evidence of all the facts averred in it.

(3) Any omission from or mistake made in any certificate issued under this Part shall not render it invalid unless the Court considers such omission or mistake is material to any issue in the proceedings concerned, or the defendant is unduly prejudiced thereby.

(4) Where in any proceedings a certificate made under this Part is produced to the Court, the prosecution shall not be obliged to call the maker of the certificate and the Court shall, where material, rely on the facts therein unless the contrary is proved.

Presumptions

(1) All fish found on board any fishing vessel which has been used in the commission of any offence under this Act shall be presumed to have been caught during the commission of that offence, unless the contrary is proved.

(2) Where, in any legal proceedings under this Act—
(a) the place in which an event is alleged to have taken place is in issue, the place stated in the relevant entry in the logbook or other official record of any enforcement vessel or aircraft as being the place in which the event took place shall be presumed to be the place in which the event took place; and.
(b) the production of a written copy or extract of the entry certified by an authorized officer as a true copy of the accurate extract shall be prima facie evidence of an entry in a logbook or other official record of an enforcement vessel or aircraft.

(3) Where in any legal proceedings relating to an offence under this Act—
(a) an authorised officer gives evidence of reasonable grounds to believe any fish to which the charge relates were taken in a specified area of the fisheries waters; and
b) the court considers that, having regard to that evidence the grounds are reasonable, all the fish shall be presumed to have been so taken, unless the contrary is proved.

(4) Where in any legal proceedings for an offence under this Act-
(a) an authorised officer gives evidence of reasonable grounds to believe that any fish to which the charge relates were taken by the use of driftnets; or
(b) the Court considers that, having regard to the evidence, the grounds are reasonable;

all the fish shall be presumed to have been so taken, unless the contrary is proved.

(5) Where any information is given in respect of a fishing vessel under this Act or an access agreement in relation to any fishing activity of a fishing vessel, it shall be presumed to have been given by the operator, including the master, owner and charterer of the vessel concerned, unless it is proved it was not given or authorised to be given by any of them.

(6) Any entry in writing or other mark in or on any log, chart or other document required to be maintained under this Act or used to record the activities of a fishing vessel shall be deemed to be that of the operator, including the master, owner and charterer of the vessel.

(7) Any position fixing instrument on board a vessel or aircraft used for the enforcement of this Act shall be presumed to be accurate.

4.16 Bail and bond issues

Article 73.2 of the LOSC states: “Arrested vessels and their crews shall be promptly released upon the posting of a reasonable bond or other security”

The meaning of this provision has been subject to interpretation in cases before the International Tribunal for the Law of the Sea. The most important to date is the Volga Case\(^2\). In this case, Australia sought, inter alia, to impose as a condition for the release of the vessel an obligation to carry certain VMS equipment.

The Tribunal commented generally about Article 73.2 in the following terms:

73. In interpreting the expression “bond or other security” set out in article 73, paragraph 2, of the Convention, the Tribunal considers that this expression must be seen in its context and in light of its object and purpose. The relevant context includes the provisions of the Convention concerning the prompt release of vessels and crews upon the posting of a bond or security. These provisions are: article 292; article 220, paragraph 7; and article 226, paragraph 1(b). They use the expressions “bond or other financial security” and “bonding or other appropriate financial security”. Seen in this context, the expression “bond or other security” in article 73, paragraph 2, should, in the view of the Tribunal, be interpreted as referring to a bond or security of a financial nature. The Tribunal also observes, in this context, that where the Convention envisions the imposition of conditions additional to a bond or other financial security, it expressly states so. Thus article 226, paragraph 1(c) of the Convention provides that “the release of a vessel may, whenever it would present an unreasonable threat of damage to the marine environment, be refused or made conditional upon proceeding to the nearest appropriate repair yard”. It follows from the above that the non-financial conditions cannot be considered components of a bond or other financial security for the purpose of applying article 292 of the Convention in respect of an alleged violation of article 73, paragraph 2, of the Convention. The object and purpose of article 73, paragraph 2, read in conjunction with article

292 of the Convention, is to provide the flag State with a mechanism for obtaining the prompt release of a vessel and crew arrested for alleged fisheries violations by posting a security of a financial nature whose reasonableness can be assessed in financial terms. The inclusion of additional non-financial conditions in such a security would defeat this object and purpose.

73. The Respondent has required, as part of the security for obtaining the release of the Volga and its crew, payment by the owner of one million Australian dollars. According to the Respondent, the purpose of this amount is to guarantee the carriage of a fully operational monitoring system and observance of Commission for the Conservation of Antarctic Marine Living Resources conservation measures until the conclusion of legal proceedings. The Respondent explained that this component of the bond was to ensure "that the Volga complies with Australian law and relevant treaties to which Australia is a party until the completion of the domestic legal proceedings"; that the ship does not "enter Australian territorial waters other than with permission or for the purpose of innocent passage prior to the conclusion of the forfeiture proceedings"; and further to ensure that the vessel "will not be used to commit further criminal offences".

74. The Tribunal cannot, in the framework of proceedings under article 292 of the Convention, take a position as to whether the imposition of a condition such as what the Respondent referred to as a "good behaviour bond" is a legitimate exercise of the coastal State's sovereign rights in its exclusive economic zone. The point to be determined is whether a "good behaviour bond" is a bond or security within the meaning of these terms in articles 73, paragraph 2, and 292 of the Convention.

75. The Tribunal notes that article 73, paragraph 2, of the Convention concerns a bond or a security for the release of an "arrested" vessel which is alleged to have violated the laws of the detaining State. A perusal of article 73 as a whole indicates that it envisages enforcement measures in respect of violations of the coastal State's laws and regulations alleged to have been committed. In the view of the Tribunal, a "good behaviour bond" to prevent future violations of the laws of a coastal State cannot be considered as a bond or security within the meaning of article 73, paragraph 2, of the Convention read in conjunction with article 292 of the Convention.

The following is an example from the Papua New Guinea Fisheries Act:

Division 2. - Seizure, Release, Forfeiture.

61. Seizure and Release of Vessel, Etc.

(1) For the purposes of this section -
(a) the vessel's equipment, gear, furniture, appurtenances, stores, cargo and aircraft shall be deemed to form part of the vessel; and
(b) "court" means the National Court; and
(c) "bond" does not include a performance bond.

(2) A Fishery Officer may, notwithstanding his powers of seizure set out in this Act seize any item which he has reasonable grounds to believe -
(a) has been or is being used in the commission of an offence against this Act; or
(b) has been seized or forfeited under this Act; or
(c) has been unlawfully removed from custody under this Act.

(3) A person may, within 60 days of the seizure of a vessel or other property under this section, apply to the court for the release of the vessel or property.
(4) Upon receipt of an application under Subsection (3), the court may, and in the case of a foreign vessel, shall, unless the vessel or property is required as an exhibit in court proceedings or reasonably required for any further investigation of fisheries offences, order -
(a) the payment into court of a bond, surety or other security in the total of -
(i) the fair market value of the vessel or property; and
(ii) the maximum fine or fines provided for the offences charges or likely to be charged; and
(iii) the costs likely to be recovered by the prosecution if a conviction is entered; and
(b) the release of the vessel or property, upon receipt of the bond, surety or other security referred to in Paragraph (a).

(5) In the event of an appeal from an order of forfeiture, the Court may continue any such bond, surety or other security deposited in accordance with Subsection (4) during the pendency of the appeal and any retrial or rehearing on remand or may require additional security to be deposited with the court.

(6) Exoneration of such bond, surety or other security shall be conditional upon the return of the released property to the court without any impairment of its value, or until any final proceedings under the Act have been disposed of or discontinued, and any fines, penalties or other determinations have been paid.

(7) A vessel or property seized under this Act, or where a security has been paid under Subsection (4), the security, shall be held until any proceedings under this Act have been disposed of or discontinued, and any fines, penalties or other determinations imposed have been paid.

(8) Where a bond, surety or other security has been paid under Subsection (4) and the vessel or property has been released -
(a) an order for forfeiture under this Act shall operate as an order for the forfeiture of the sum paid in respect of the value of the vessel or property; and
(b) the payment of any fine or penalty ordered upon conviction shall be made from the security; and
(c) any order for costs shall be applied against the security.

4.17 Offences

There are two basic approaches of dealing with offences. One is to specify the penalty for each provisions which needs to attract a penalty. See for example, the provisions above concerning licensing or authorization transshipment, use of driftnets, and prohibited fishing methods. Another, is to provide a maximum general penalty for all breaches of the Law, leaving it to a court to determine the appropriate level of penalty. There are advantages in setting out the specific penalties for certain breaches of the law as this allows for appropriate levels of penalty for that breach to be indicated to a court. Such an approach can be supplemented by a general penalty covering those breaches of the law for which no specific penalty is provided. This would be useful where it is difficult to predict what level of penalty would be appropriate for breaches of future conservation and management measures adopted by regional fisheries management organizations, or conditions attached to a licence.

One category of offence merits separate treatment, however. These are “serious violations, a term which has been defined above under Interpretation. It is treated separately as it is necessary to
demonstrate under the UN Fish Stocks Agreement that such violations have been dealt with effectively. The UN Fish Stocks Agreement in article 19.2 states: “Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities.” This would require that penalty levels are sufficiently high to meet this requirement. It is important, therefore to provide for an adequately severe penalty in respect of such breaches.

4.18 Administrative penalties

The judicial process has often been criticized as being unduly lengthy, and that its strict insistence of high standards of proof can lead to too few successful prosecutions for illegal fishing. In many instances, the situation has been ameliorated to a limited extent by providing that fisheries offences are triable summarily, i.e. before a magistrate and without a jury.

One solution has been the introduction of a system of administrative penalties for dealing with fisheries offences. This was specifically referred to in the IPOA-IUU as one possible approach that could be adopted. See paragraph 21 of the IPOA-IUU.

The main advantage of this approach is that it enables the court or tribunal to apply a lower standard of proof than is possible in a full criminal trial (usually accepting proof on the civil standard of balance of possibilities rather than on the criminal standard of beyond reasonable doubt), it makes possible expedited hearings, and it can also include the possibility of a negotiated settlement of the case.

This method has been adopted in the United States and in a number of the island States of the South Pacific. Despite the fact that it involves a possible diminution of their legal rights, it is often popular with fishers as it enables a speedy resolution of their case.

This approach may not work in all countries as there may be constitutional or legal reasons why such a system cannot be introduced.

In some countries, a system of “compounding” of offences is used. This is also an alternative to the use of administrative or civil penalties, but compounding usually lacks the safeguards built into the more formally structured administrative or civil penalty system.

The following example is taken from the Papua New Guinea Fisheries Act, 1998:

PART VII. - ADMINISTRATIVE PROCEEDINGS.

64. Summary administrative panel.

(1) A Summary Administrative Panel shall be established for the purpose of making determinations in Summary Administrative Proceedings in accordance with Section 65.

(2) The Board, on the recommendation of the Managing Director, shall appoint one person each from the legal profession and the fishing industry to the Summary Administrative Panel for a term of two years, provided that the consent of the Attorney-General shall be required for a Government lawyer to be appointed as a member of the Summary Administrative Panel.

(3) Each person appointed to the Summary Administrative Panel under Subsection (2) shall notify the Board of an alternate with similar qualifications who may sit on the Summary
Administrative Panel in their absence, and the Board shall confirm the appointment of the alternate for a term of two years.

(4) The Summary Administrative Panel shall seek such evidence, advice and information it considers necessary, and shall not be governed by the strict rules of evidence.

(5) The Summary Administrative Panel for each determination shall comprise the Managing Director, who shall be Chairman, and the two persons or their alternates appointed in accordance with Subsections (2) and (3).

(6) Any person serving on a Summary Administrative Panel, other than a governmental lawyer and the Managing Director, shall receive a sitting allowance at a level approved by the Managing Director.

65. Determination of proceedings.

(1) The Managing Director, after consultation and with the consent of the Public Prosecutor, may initiate Summary Administrative Proceedings against any person in violation of this Act.

(2) The decision to initiate Summary Administrative Proceedings for any violation of this Act shall be made within 48 hours of the issuance of a notice of violation by the Managing Director or his designee in consultation with the Public Prosecutor.

(3) Where the person admits in writing to the violation, the Managing Director may handle this matter under the Summary Administrative Proceedings provisions in Section 66.

(4) Where the person denies the violation, the Managing Director shall, after consultation with and the consent of the Public Prosecutor, proceed to determine the violation in Summary Administrative Proceedings, provided that if the Public Prosecutor denies consent to the administrative handling of the violation, the Managing Director shall refer the matter for prosecution.

(5) Where there is a decision to handle the matter in Summary Administrative Proceedings, the person upon whom the notice of violation is served shall be given the notice of the hearing and shall have right to appear, be heard, produce evidence and to counsel retained at his own expense.

(6) The Managing Director shall set a Summary Administrative Proceedings hearing for the violation within 48 hours of the decision to proceed administratively.

(7) The Authority shall conduct the proceedings in accordance with such procedures as may be prescribed.

66. Summary administrative proceedings.

(1) Subject to Subsection (4) the Managing Director may, where -

(a) a person who has violated any provision of this Act has, in writing, in a form approved by the Managing Director -
(i) admitted to having committed such violation; and
(ii) consented to Summary Administrative Proceedings after being fully informed about these Proceedings; and

(b) a Summary Administrative Panel has determined that such person has violated this Act, dispose of such violation by accepting on behalf of the State from such person an Administrative Penalty, the amount of which shall be determined by the Summary Administrative Panel and shall not exceed the maximum fine of penalty required under this Act for such violation, plus the fair market value of any fish caught illegally.

(2) Where Summary Administrative Proceedings have been initiated under this Act, the person who admits to having committed the offence under Subsection (1)(a), shall be deemed to have waived any right to a judicial hearing and shall -
(a) not engage in fishing or carry out any other activity in the fishery waters until the amount of the penalty has been paid in full; and
(b) be deemed to have consented to any seizure which took place in accordance with this Act in relation to the offence subject to the Summary Administrative Proceedings.

(3) The Summary Administrative Panel, in a Summary Administrative Proceeding, may direct that the strict and technical rules of evidence and procedure and the rules relating to evidence under this Act shall not apply to the proceedings before it, subject to the observation of the principles of natural justice.

(4) Summary Administrative Proceedings shall be null and void if the full amount of the penalty as determined by the Summary Administrative Panel under Subsection (1) or (2) is not paid within three days of notification of such penalty assessment to the person subject to the proceedings, and the matter shall immediately revert to a court of competent jurisdiction.

(5) On payment of the penalty in full under this section, the Managing Director may order the release of any article seized under this Act or the proceeds of sale of such article on such conditions as he may determine.

(6) Summary Administrative Proceedings for any violation shall be satisfied upon the payment of such sum of money determined by the Managing Director and notified in writing, under the signature of all parties, to the court of competent jurisdiction.

(7) The Summary Administrative Panel may order that any item used or involved in respect of the violation be seized or confiscated, but shall not impose a term of imprisonment or order the forfeiture of any item used or involved in respect of the violation in Summary Administrative Proceedings.

(8) Any decision taken or order given by the Summary Administrative Panel or Managing Director pursuant to this section is final and binding.

(9) Any person who engages in fishing or other activity proscribed by Subsection (2) while prohibited from so doing commits an offence.

(10) Any person who violates a valid order pursuant to the terms of this Part commits an offence. In the United States, there is a well established regime of civil penalties. An example is set out below.

Sec. 308. Civil penalties and permit sanctions 16 u.s.c. 1858
(a) **Assessment of penalty** - Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $100,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require. In assessing such penalty the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay. Provided, That the information is served on the Secretary at least 30 days prior to an administrative hearing.

(b) **Review of Civil Penalty** - Any person against whom a civil penalty is assessed under subsection (a) or against whom a permit sanction is imposed under subsection (g) (other than a permit suspension for nonpayment of penalty or fine) may obtain review thereof in the United States district court for the appropriate district by filing a complaint against the Secretary in such court within 30 days from the date of such order. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(c) **Action upon failure to pay assessment** - If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(d) **IN REM jurisdiction** - A fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 307 shall be liable in rem for any civil penalty assessed for such violation under section 308 and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(e) **Compromise or other action by secretary** - The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(f) **Subpoenas** - For the purposes of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or
both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(g) Permit sanctions.—

(1) In any case in which (A) a vessel has been used in the commission of an act prohibited under section 307, (B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this Act has acted in violation of section 307, (C) any amount in settlement of a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any marine resource law enforced by the Secretary has not been paid and is overdue, or (D) any payment required for observer services provided to or contracted by an owner or operator who has been issued a permit or applied for a permit under any marine resource law administered by the Secretary has not been paid and is overdue, the Secretary may—

(i) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;

(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

(iii) deny such permit; or

(iv) impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person under this Act and, with respect to foreign fishing vessels, on the approved application of the foreign nation involved and on any permit issued under that application.

(2) In imposing a sanction under this subsection, the Secretary shall take into account— (A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and (B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of the transfer.

(4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this subsection unless there has been prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.

4.19 Regulations

In order to ensure that there is the capacity to enact regulations to deal with sometimes unforeseen issues or points of detail on matters already covered in the main law, most modern fisheries laws contain extensive regulation making powers. These might extend from setting out the content of application forms for licenses to more important matters such as regulating sport fishing, or the use of Fish aggregating devices. In between, they can provide for regulations to supplement the powers already given in the Law itself.

Regulations can also be useful where there may be a need to change provisions regularly, for example, details of data collection requirements.

The provisions below are also in addition to those provisions above which have already authorised the making of regulations
Regulations –

(1) The Minister acting on the advice of Cabinet, may make such regulations as may be necessary to give effect to the provisions of this Act and for the due administration thereof.

(2) Without, limiting the generality of subsection (1), regulations made pursuant to this section may provide for all or any of the following –
(a) prescribing measures for the conservation, management, development, licensing and regulation of fisheries or any particular fishery;
(b) licensing, authorization or registration in respect of any vessel or class or category of vessels to be used for fishing, related activities or any other purpose pursuant to this Act, including the form, issuing requirements, grounds for denial, terms and conditions and fees, charges, royalties, and other forms of compensation related to such licensing, authorization or registration;
(c) licensing, authorization or registration in respect of any fisher or class of fisher, fishing gear and other equipment or devices used for fishing;
(d) the operation of, and conditions and procedures observed by any fishing vessel while in the fishery waters;
(e) the operation of, and conditions and procedures to be observed by any other vessel which may enter the fishery waters for any purpose under this Act;
(f) the catching, loading, landing, handling, transshipping, transporting, possession and disposal of fish;
(g) the import, export, distribution and marketing of fish and fish products, including live fish;
(h) the manner in which any fishing gear is to be stowed;
(i) the appointment, powers and duties of authorized officers and observers;
(j) the duties and procedures to be followed by the master and crew of any vessel in respect of authorized officers and observers;
(k) rewards to be paid to any person providing information on the operations of foreign vessels leading to a conviction of an offence against this Act;
(l) the licensing, control and use of fish aggregating devices and the rights to the aggregated fish, and prescribing times and the minimum distances from such devices any vessel may fish around such devices;
(m) regulating or prohibiting the use of self-contained underwater breathing apparatus and surface supplied air;
(n) regulating or prohibiting the use of spear guns or other similar devices;
(o) standards and measures for the safety of local fishermen and fishing vessels;
(p) regulating aquaculture and access to land leased for aquaculture and to the waters superjacent to such land;
(q) prescribing the terms and conditions of leases for aquaculture;
(r) requiring the provision of data or information related to fisheries;
(s) the control, inspection and conditions of operation of fish processing establishments;
(t) the management of spawning aggregations;
(u) the appointment, maintaining of and procedures for agents appointed to receive and respond to process pursuant to this Act;
(v) the implementation of any access or related agreement or other agreement or arrangement entered into pursuant to this Act;
(w) regulating or prohibiting, either generally or in any specified fishery –
   - the taking of coral and shells;
   - (ii) the setting of fish fences or nets;
   - the taking of aquarium fish; or
- aquaculture operations;
- the taking of any type or size of fish;

(x) prescribing measures for the protection of sea cucumber, trochus, pearl and pearl-shell, turtles, green snails, clams and lobsters;
(y) regulating or prohibiting fishing of all kinds within any lagoon or any part of any lagoon, the time or times of year during which such fishing may occur or is prohibited, and approving, restricting or prohibiting the equipment or methods which may be used in connection with such fishing;
(z) prescribing the requirements for any catch documentation or certification scheme concerning fish caught, transhipped or processed, including the authorisation of public authorities to attest the veracity of any information certified;
(aa) regulating sport fishing;
(bb) regulating bioprospecting;
(cc) regulating test or exploratory fishing;
(dd) setting out the requirements for the contents of fisheries management plans, and the procedures to be followed in their implementation;
(ee) prescribing offences against the regulations and penalties for such offences, not exceeding a fine of ……., or imprisonment not exceeding 3 years, or both, and, where the offence is a continuing one, a further fine not exceeding …….. for every day that the offence has continued;
(ff) defining the conditions or circumstances under which [country] fishing vessels may be chartered; and
(gg) prescribing any other matter, which is required or authorized to be prescribed by this Act.


This important regulation is referred to above in Section 2.2 and covered in detail in Annex 2. The most important aspect of the regulation that requires national legislative implementation is the provision of catch certification requirements for vessels flying the flag of the country in question (the details of the certification are discussed in Annex 2). Further, the flag state must be empowered to attest the veracity of the information contained in catch certificates.

In view of the fact that such certification might be changed from time to time, it is important to ensure that there is a power to make regulations to deal with this matter. Other countries, regional groupings, or RFMOs may in time impose their own certification requirements, either with respect to specific species (as CCAMLR has with Patagonian Toothfish) or more generally along the lines of the EU.

Partly for these reasons, the following provision has been included above in the regulation making power:

(z) prescribing the requirements for any catch documentation or certification scheme concerning fish caught, transhipped or processed, including the authorisation of public authorities to attest the veracity of any information certified.

The EC regulation also requires the flag state to certify that it has in place national arrangements for the implementation, control and enforcement of laws, as well as regulations and conservation measures which must be complied with by its fishing vessels. For the flag state to be able to do this, it would need to have in place a modern fisheries law which included the elements identified above, especially with respect to an effective licensing or authorisation regime, and a compliance, control and enforcement regime.
4.21 Legislative Options for Tracking the Proceeds of Crime for Fisheries

There are a number of options available to RPOA participating countries to track the proceeds of crime and bridge the gap between fisheries and anti-money laundering legislation.

(1) Provide for fisheries related offences as an indictable predicate offence for money laundering. This may require the identification of specific types or categorisation of illegal fishing activities that can be construed as transnational organised crime;

(2) For States using a threshold approach to anti-money laundering, harmonise the level of penalties imposed on fisheries violations and money laundering in order to widen the scope of predicate offences to include illegal fishing;

(3) Use other types of legislated money laundering predicate offences which may be related to fisheries, such as custom infringements (for fisheries products) or fraudulent or counterfeit transactions (such as the use of fake fishing licences);

(4) Include a provision in the fisheries legislation that would link such legislation to anti-money laundering laws.

In order to establish an effective regime for the tracking of proceeds of crime from fisheries, other aspects would also need to be considered such as:
• an investigation on the beneficial ownership of vessels and nature of fisheries businesses and operations;
• use of fisheries enforcement mechanisms to support the work of financial intelligence units;
• use of confiscated assets to develop and support programs designed to prevent or reduce organised crime in fisheries;
• intelligence gathering and sharing of information in fisheries;
• strengthened inter-agency cooperation between organisations with fisheries-related functions and those with anti-money laundering functions;
• increase in international cooperation; and
• mutual legal assistance between States.
5. BUILDING CAPACITY TO IMPLEMENT RESPONSIBLE FISHING LEGISLATION

The effective development and implementation of legislation that promotes sustainable management of fisheries resource and responsible fishing requires the adequate capacity of all relevant domestic institutions at both State and local levels of government. As discussed in earlier parts of this Report, RPOA participating countries have different levels of implementation of the benchmark measures necessary to fulfil international and regional obligations and commitments. For example Australia has more developed fisheries legislation than most RPOA participating countries, and Timor-Leste is still in the process of developing its governance structure and mechanisms for fisheries.

The RPOA participating countries also have varying fisheries management concerns and address different forms of IUU fishing. For instance, while valuable commercial fisheries abound under areas of jurisdiction in some RPOA participating countries such as Papua New Guinea, Indonesia and the Philippines, most fisheries in the region are small scale and utilised for subsistence, requiring the application of a different sets of management measures. Countries such as Thailand, Vietnam, and Malaysia are important sources of fishery products destined for international market while Singapore serves as a major transit point for these products. The IUU fishing activities in areas of national jurisdiction and in the shared waters of the South China Sea, the Sulawesi Sea, and the Arafura and Timor Seas range from illegal fishing by traditional fishing vessels to foreign fishing vessels.

This diversity in fisheries and fisheries management issues in the region, as well as the ability of each RPOA participating country to respond to such concerns signify that each RPOA participating country has different requirements to ensure that international benchmark measures for sustainable fisheries are both integrated into its domestic legal and policy framework and effectively implemented.

Recognising the limited financial resources of most RPOA participating countries to ensure effective implementation of domestic fisheries legislation, it is most appropriate to develop a strategic means for capacity building in the region. Addressing current fisheries management problems and gaps in implementation may only result in a piecemeal approach to capacity building and does not guarantee effective management. Such capacity needs to be built on a solid foundation of knowledge and understanding of international fisheries obligations, as well as practical application of relevant measures. This knowledge needs to be entrenched in every institution with fisheries related functions and in every person with fisheries responsibility, particularly policymakers, legislators, fisheries managers, enforcement officers, prosecutors and the judiciary. These functions include fishing vessel registration, safety inspection of fishing vessels, vessel and gear licensing, observer programs, boarding and inspection, port inspection, and involve fisheries and environment departments, foreign affairs, maritime and port authorities, health and customs, immigration, and enforcement authorities such as navy, coastguard, and the police.

This Part of the Report highlights the various target groups needing capacity building in RPOA participating countries, the composition of such groups, and capacity requirements for each target group, in particular the types of knowledge and skills needed in order to effectively implement fisheries legislation.

5.1 Policymakers and Legislators

Policymakers and legislators are responsible for adopting, updating and implementing fisheries policies and legislation. These decision-makers include those involved in developing policies on
resource management and the environment, and those with the power to allocate funds for fisheries management. They are the key persons who translate international and regional obligations and commitments into domestic measures, which are in turn implemented by all stakeholders. Hence it is important for policymakers and legislators not only to understand obligations under international fisheries law but also to appreciate the economic importance of fisheries to the country. The following are the capacity requirements of this target group:

- international obligations of the country in promoting responsible fisheries, including to combat IUU fishing;
- obligations under regional fisheries management organisations and other regional arrangements;
- an understanding of how important fisheries is to the economy and the need for sustainable fisheries;
- update on new international agreements and regulations that impact on the fisheries economy and would require amendment of existing controls on fisheries such as the FAO Port State Measures Agreement to Prevent, Deter, and Eliminate IUU Fishing and the EU IUU Regulation;
- how international and regional agreements can be effectively incorporated in domestic legislation;
- drafting instructions for legislation in simple, straightforward, language to assist in the preparation of more effective laws;
- overview of fisheries management principles and elements of responsible fisheries; and
- an appreciation of the relationship of organisations with fisheries related functions and the need for inter-agency cooperation.

### 5.2 Fisheries Managers

Fisheries managers, mostly from the fisheries and environment departments, are at the forefront of implementing domestic fisheries regulations. They are given the responsibility to oversee the management of specific fisheries and their interaction with associated species, and ensure that the fisheries habitats are protected through environmental regulations. This may also include those managing fishing vessel registers and records. For this target group, knowledge and understanding on the following areas are desired:

- principles of sustainable fisheries;
- objectives of fisheries management;
- the know how to operationalise fisheries management objectives, particularly through the application of input and output control and other technical measures and effective MCS;
- development of fisheries management plans;
- development of criteria and indicators in assessing the effectiveness of fisheries management plans; and
- the ability to recommend changes or modification to the fisheries management plans.

### 5.3 Enforcement Officers

The enforcement of fisheries legislation requires not only the knowledge on the benchmark measures for sustainable fisheries and responsible fisheries but also the technical ability to ensure that fisheries management objectives are achieved and regulations are complied with. These enforcement authorities include the police, navy, and civilian authorities and persons with enforcement functions such as fisheries observers and port inspectors, as well as those exercising community based enforcement. These authorities need adequate knowledge and familiarity on the following:
• the role of enforcement in the effective management of fisheries resources and in promoting responsible fishing;
• broad scope of legal framework for fisheries and enforcement jurisdiction;
• ability to distinguish enforcement rights in different maritime zones, and familiarisation with key provisions such as prompt release of vessels;
• Rights and obligations of fisheries observers, boarding and inspection authorities; and port inspectors;
• Catch certification and trade documentation requirements under relevant RFMOs and the EU and US regulations on IUU fishing;
• Principles, elements, and measures of effective MCS;
• Other enforcement mechanisms such as community based fisheries enforcement, risk based approach to enforcement, and self-compliance;
• Scope of fisheries offences and penalty scheme, as well as characteristics of IUU fishing in domestic waters and by national vessels fishing outside areas of national jurisdiction;
• The potential link between IUU fishing and criminal activities;
• How to deal with foreign fishing vessels in areas under national jurisdiction;
• Other relevant issues to fisheries such as health, sanitary, safety and security issues; and
• Cooperation with other enforcement authorities within and among RPOA participating countries.

Other practical skills are also needed in order to ensure effective implementation of fisheries regulations:
• Identification of fishing vessels, gears and fish species;
• Collection, handling, evaluation, and preservation of evidence;
• Incident report writing;
• Verification of information, as well as exchange of information with other enforcement authorities with respect for the security and confidentiality of data; and
• Court examination procedure.

Specific training may be needed for enforcement officers with specific functions such as observing at sea, boarding and inspection; and port inspectors. For this purposes, the capacity requirements need to be tailored based on the procedures of relevant RFMOs providing for observer programmes and boarding and inspection on the high seas. The requirements of the FAO Port State Measures Agreement to Combat IUU Fishing would also need to be reviewed with respect to implementing port inspections and other measures applied in ports.

5.4 Prosecutors and Judges

The effective enforcement of fisheries regulations does not stop with the arrest of fisheries offenders, but may be measured more on the successful application of sanctions of sufficient severity and prosecution of fisheries offences. Prosecutors and judges play a crucial role in achieving this objective. Some RPOA participating countries such as Indonesia are in the process of establishing fisheries courts, creating the need to strengthen judicial proceedings on fisheries cases. The following highlights the capacity needs for the region on this matter, irrespective of whether or not a special court on fisheries exists for the RPOA participating countries:
• Basic principles of sustainable fisheries;
• Jurisdiction of States in different maritime zones, including issues such as the prompt release for foreign vessels in the EEZ and jurisprudence on the matter, and the criteria for a reasonable bond;
• How to treat foreign and domestic vessels in case of breach of fisheries legislation;
• Nature of fisheries offences and the application of administrative and criminal penalties;
• Rules of evidence;
• Cooperation with enforcement officers; and
• The potential link between IUU fishing and criminal activities.

5.5 Advantages in Capacity Building for Specific Target Groups

Capacity building designed for each target group in fisheries has several advantages. One, a common understanding on the international fisheries obligations from the policymakers to the judiciary will lead to the development of a robust fisheries management system that is not dependent on changes in political climate. A more effective management system will promote sustainability in fisheries resources and will increase success in fisheries enforcement. Two, this type of capacity building will encourage knowledge to be communicated to new policymakers, manager, and enforcement officers within the same target audience and may be considered self-sustaining. Three, capacity building across relevant people in fisheries policy formulation, management and enforcement will not only strengthen cooperation among national institutions but also among RPOA participating countries. It will also promote harmonisation of domestic legislation for fisheries. Four, increase in the capacity of the government to manage fisheries resources will gain the cooperation and trust of the fishing industry, encouraging self-compliance.
PART B – COUNTRY LEGISLATION OVERVIEW AND REVIEW AGAINST BENCHMARKS

This section outlines the domestic legislative framework of Timor-Leste and assesses this against the benchmark measures established for responsible fishing based on relevant international and regional instruments.

A summary of the detailed assessment is provided in this section, in the form of strengths and weaknesses under the benchmark category headings. The complete assessment which documents the detailed legislation relevant to each benchmark measure is provided in Annex 5.

1. SUMMARY OF DOMESTIC LEGISLATIVE FRAMEWORK

Constitution of the Democratic Republic of East Timor

Constitution of the Democratic Republic of East Timor introduced on 20th of May of 2002 includes as a fundamental objective of the State to protect the environment and to preserve natural resources, and establishes the high order principles in relation to the protection of the environment of:
1. Everyone has the right to a humane, healthy, and ecologically balanced environment and the duty to protect it and improve it for the benefit of the future generations.
2. The State shall recognise the need to preserve and rationalise natural resources.
3. The State should promote actions aimed at protecting the environment and safeguarding the sustainable development of the economy.


This Decree-Law, composed of 181 articles, establishes the principles and basic legislation for the exploitation and regulation of fishing resources in national waters and high seas, as well as the principles and rules for the establishment and exercise of aquaculture activities. It applies to individual or corporate bodies, whether national or foreign. In particular, it rules on management and regulation of fisheries and aquaculture. Moreover, it provides general licensing conditions and regulates foreign fishing vessels’ permits. The granting of a fishing permit shall give rise to a fishing quota in the fishing or area defined in the permit, where the species to be caught are subject to quotas. The Decree also regulates artisanal, semi-industrial and industrial fishing vessels. The Decree pays particular attention to conservation measures, as well as sustainable exploitation of resources and protection of aquatic environment. Finally, it provides control and sanctioning measures.

Law No. 12/2004 “Fishing-Related Offences”

This law establishes offences relating to fishing and prescribes the custodial and financial penalties for the committing of these offences. Offences include the use of explosives or toxic substances when fishing, damaging aquatic resources, fishing in maritime waters without a competent licence and refusing to comply with the orders of inspection officers or fisheries monitors. The law also provides powers for the courts to confiscate catches, fishing gears, other equipment, the fishing vessel, and the proceedings to release such vessels. Finally, the Act establishes that the penalty of imprisonment shall be applicable to foreign nationals who commit who commit offences, except where there is agreement to the contrary with the country of which they are nationals.
Decree-Law No. 3 /2003 of 10 March on the Establishment of the Port Authority and on the Approval of the Bylaws Thereof

This Decree-Law establishes a systematized set of rules and principles to be followed in the structure and organisation of the maritime ports of Timor-Leste, particularly the institutional model thereof. Under the Decree Law, the Port Authority of Timor-Leste is established, and matters of its property, structure, staff, powers and financials are detailed.

2. REVIEW OF DOMESTIC LEGISLATION AGAINST BENCHMARK MEASURES

<table>
<thead>
<tr>
<th>Strengths</th>
<th>Weaknesses</th>
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<tr>
<td><strong>Ecosystem Management:</strong></td>
<td><strong>Management Plans:</strong></td>
</tr>
<tr>
<td>• Primary fisheries legislation recognises the principles of sustainable development and ecosystem based fisheries management and provides for classification of protected species, establishment of closed areas and marine reserves, the regulation of fishing gear and rehabilitation.</td>
<td>• Timor-Leste has not adopted fisheries management plans or national plans of action required under international fisheries instruments.</td>
</tr>
<tr>
<td><strong>Data Collection and Research:</strong></td>
<td><strong>Vessel Registration:</strong></td>
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<tr>
<td>• Legislation provides powers requiring licenses to submit information of catch, effort and location.</td>
<td>• The fishing vessel registration and licensing system does not consider the history compliance with fisheries laws as prerequisite for registering fishing vessels.</td>
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<tr>
<td>• Legislation requires the Minister to promote measures for marine scientific research with the objective of assessing the status of the fisheries resources, harmonising the sustainable exploitation of fisheries resources.</td>
<td><strong>Flag State Authorisation to Fish and Effective Control over Nationals:</strong></td>
</tr>
<tr>
<td>• Legislation requires the Minister to compile and share data on fisheries catches of shared stocks, illegal fishing, conservation and management measures, VMS systems and licences terms, conditions and criteria.</td>
<td>• Legislation provides for the establishment of a VMS program (and provides the Minister with the power to determine vessels on which the system shall operate), and refers to the rights of a fishing permit holder with respect to observers; however extent of implementation of these measures is unclear.</td>
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<tr>
<td><strong>Management Plans:</strong></td>
<td><strong>Coastal State Authorisations to Fish:</strong></td>
</tr>
<tr>
<td>• Timor-Leste legislation provides that the fisheries management plan is the main instrument to guide utilisation and sustainable development.</td>
<td>• As with Flag State authorisations, there is an absence of clarity around the requirements for participation in VMS and observer programs.</td>
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<tr>
<td><strong>Vessel Registration:</strong></td>
<td><strong>Authorisations to fish:</strong></td>
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<tr>
<td>• A register is required to be kept of all fishing companies and vessels operating in the national maritime waters and hydrographical basins of the country, as well as of national fishing vessels authorised to operate on the high seas.</td>
<td>• The regulations do not provide for the control and management of transhipment activities.</td>
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<tr>
<td>• Vessels are required to be marked in accordance with international benchmark measures.</td>
<td><strong>Data Collection and Research:</strong></td>
</tr>
<tr>
<td><strong>Authorisation to Fish and</strong></td>
<td>• Timor-Leste has inadequate measures on fisheries data collection and reporting requirements.</td>
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<tr>
<td>• The licensing system considers the history of compliance with fisheries laws as prerequisite for permitting a fishing vessel.</td>
<td><strong>Port State Controls:</strong></td>
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<td>• There are limited measures with respect to port State control of fishing vessels including the absence of the requirement for advance notice of</td>
</tr>
<tr>
<td>Strengths</td>
<td>Weaknesses</td>
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<tr>
<td>- Prohibition on transhipments outside of designated ports and wharfs.</td>
<td>entry and powers of denial etc (albeit, designation of ports in a component of the legislation).</td>
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<tr>
<td>- A system of licensing foreign fishers has been established and is guided by international access agreements concluded with other States or with international organisations.</td>
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<tr>
<td><strong>Effective Control over Nationals:</strong></td>
<td><strong>Monitoring, Control and Surveillance:</strong></td>
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<tr>
<td>- Legislation requires that fishing on the high seas or in waters of another State or RFMO requires a permit.</td>
<td>- The Timor-Leste fisheries laws and regulations do not provide for the implementation of vessel monitoring systems and observer programmes.</td>
</tr>
<tr>
<td>- Legislation provides for effective control over permit holders including the requirement for permit holders to act in accordance with international conservation and management measures.</td>
<td><strong>Reporting:</strong></td>
</tr>
<tr>
<td><strong>Monitoring, Control and Surveillance:</strong></td>
<td>- The reporting obligation of Timor-Leste to FAO and other international and regional organisations are not stated in its laws.</td>
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<tr>
<td>- Broad powers of boarding and inspection regimes are contained within the legislation.</td>
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ANNEXES
ANNEX 1: SUMMARY OF INTERNATIONAL AND REGIONAL INSTRUMENTS RELEVANT TO STANDARDS OF RESPONSIBLE FISHING

PART I. INTERNATIONAL INSTRUMENTS

Part I provides a summary of the key international instruments that promote the conservation and management of fisheries resources, including the prevention, deterrence, and elimination of IUU fishing.

1. LEGALLY BINDING FISHERIES INSTRUMENTS


The United Nations Law of the Sea Convention (LOSC) provides a comprehensive framework for the management of all living marine resources. Most relevant to the promotion of responsible fishing are the regimes established under the LOSC on the exclusive economic zone (EEZ) and the high seas. The regime of the EEZ recognises the sovereign rights of coastal States in conserving and managing living resources in the area, including adopting laws and regulations that apply to foreign fishing vessels conducting fishing activities in the zone. The LOSC also contains provisions on fishing on the high seas, a significant part of which involves the implementation of flag State duties, as well as the duty to cooperate among States.

1.2 FAO Compliance Agreement (1993)

The Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement) reiterates the provisions of the LOSC with respect to the need for effective control of fishing vessels on the high seas. This agreement applies to all fishing vessels over 24 metres in length and provides measures that flag States are required to implement to ensure the compliance of vessels conducting high seas fishing with international conservation and management measures. These measures include the issuance of authorisations to fish, maintenance of records of fishing vessels, and cooperation among States for the exchange of information. The principal obligation for a country accepting the Agreement will be first to exercise its responsibility over vessels flying its flag, and second to establish a record of fishing vessels and to provide the information required under the Agreement with respect to those vessels. The principal benefit to participants will come from the availability of information regarding vessels authorized to fish on the high seas, which will lead to an increased ability to identify those vessels fishing without permission.

1.3 UN Fish Stocks Agreement (1995)

The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA) aims to facilitate the implementation of the provisions of the LOSC with regard to the management and conservation of straddling and highly migratory fish stocks. The UN Fish Stocks Agreement generally applies to high seas fisheries, although some of its provisions are also applicable to the EEZ based on the principle of compatibility of conservation and management measures. In addition to the flag State duties stipulated in the FAO Compliance Agreement, the UN Fish Stocks Agreement enumerates other flag State responsibilities such as the implementation of marking of fishing vessels and gear regulations, vessel monitoring systems, observer programmes, boarding and inspection, and port State measures.
1.4 FAO Port State Measures Agreement (2009)

The Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing was approved by the FAO Conference at its Thirty-sixth Session on 22 November 2009. The Agreement aims to prevent illegally caught fish from entering international markets through ports. Under the terms of the treaty, foreign vessels will provide advance notice and request permission for port entry, countries will conduct regular inspections in accordance with universal minimum standards, offending vessels will be denied use of port or certain port services and information sharing networks will be created.

2. NON-LEGALLY BINDING FISHERIES INSTRUMENTS

Various non-binding instruments specific to fisheries have been adopted to promote sustainable fisheries. Prior to the IPOA-IUU, the FAO Code of Conduct for Responsible Fisheries, UN Resolutions on Driftnet Fishing and other international declarations have been adopted. After the IPOA-IUU has been adopted, other international policy instruments have emerged calling on States to address IUU Fishing such as the UN Resolutions on Sustainable Fisheries, the Rome Declaration on IUU Fishing, and the FAO Model Scheme on Port State Measures to Combat IUU Fishing.


The FAO Code of Conduct for Responsible Fishing provides principles and standards applicable to the conservation, management and development of all fisheries. It covers capture fisheries, processing and trade of fish and fishery products, fishing operations, aquaculture, fisheries research and the integration of fisheries into coastal area management. The Code is global in scope and although considered a voluntary instrument, it contains provisions that are reflected in binding instruments such as the LOSC, FAO Compliance Agreement, and the UN Fish Stocks Agreement.

The four international plans of action (IPOAs) are voluntary instruments elaborated within the framework of the Code of Conduct for Responsible Fisheries which apply to all States and entities and to all fishers.

2.1.1. IPOA-IUU (2001)

The International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) is the first voluntary international instrument formulated to specifically address IUU fishing. Its objective is “to prevent, deter, and eliminate IUU fishing by providing States with comprehensive, effective, and transparent measures by which to act, including through appropriate regional fisheries management organisations, established in accordance with international law.” The IPOA-IUU is considered a comprehensive “toolbox”, which has a full range of measures that can be used by flag States, port States, coastal States, and “market States” or States which engage in the international trade in fish to deal with various manifestations of IUU fishing within the jurisdiction of States and on the high seas. Measures that cut across the responsibilities of flag, coastal, port, and market States are categorised under “All State Responsibilities” such as the adoption of national plans of action to combat IUU fishing.

2.1.2. IPOA-Capacity (1999)

The International Plan of Action for the Management of Fishing Capacity (IPOA-Capacity) is a voluntary instrument that applies to all States whose fishers engage in capture fisheries. It contains urgent actions and identifies mechanisms to promote the implementation of the international plan.
of action. Some of the urgent actions include the assessment and monitoring of fishing capacity and preparation and implementation of national plans.

2.1.3. IPOA-Seabirds (1999)

The International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries (IPOA-Seabirds) is a voluntary instrument that sets out activities which implementing States are expected to carry out, including an assessment of whether a problem exists with respect to reducing the incidental catch of seabirds in longline fishery. The IPOA-Seabirds also calls on States to adopt national plans of action addressing the problem as well as procedures for national reviews and reporting requirements. It further provides a summary of appropriate mitigation measures which States may consider in the adoption of the national plans of action.

2.1.4. IPOA-Sharks (1999)

The International Plan of Action for the Conservation and Management of Sharks (IPOA-Sharks) is a voluntary instrument that applies to all States whose fishers engage in shark fisheries. It provides a set of activities which implementing States are expected to carry out, including an assessment of whether a problem exists with respect to sharks and adoption of national plans of action as well as procedures for national reviews and reporting requirements.

2.2 UN Resolutions on Driftnet Fishing (1991)

International efforts to regulate large-scale pelagic driftnet fishing started with concerns about the negative impacts of driftnet fishing on targeted and non-targeted species of fish, marine mammals, seabirds, and other living marine resources which become entangled in such driftnets. Large-scale pelagic driftnet fishing proliferated in the North Pacific, Central and South Pacific, Indo-Pacific and Indian Ocean, Atlantic and the Mediterranean in the late 1980s and early 1990s. Regional initiatives developed in the North Pacific Ocean, Caribbean, and South Pacific in response to the problem all emphasised the need for strong and concerted action by the international community to address the problem.

As a result, in 1991, the UN General Assembly adopted Resolution 46/215 which imposed a global moratorium on large-scale pelagic driftnet fishing. The Resolution specifically called on States to reduce large scale pelagic driftnet fishing effort by 50 per and to ensure that the areas of operation for driftnet fishing vessels did not expanded. The Resolution further encouraged States to take measures, individually or collectively, to prevent large-scale pelagic driftnet fisheries on the high seas and enclosed and semi-enclosed seas. The need for the full implementation of the global moratorium on large-scale pelagic high seas driftnet fishing, together with associated issues such as unauthorised fishing in zones of national jurisdiction and by-catch and discards, was reiterated in

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6 Castries Declaration, St Lucia, 20-24 November 1989.
8 UNGA 46/215, Large-scale pelagic drift-net fishing and its impact on the living marine resources of the world’s oceans and seas, 1995.
9 UNGA 46/215, para 3.
10 Ibid., para 4.
succeeding UN General Assembly resolutions. The UN General Assembly further urged all States to take greater enforcement responsibility to ensure compliance with resolution 46/215 and to impose appropriate sanctions against acts contrary to the terms of the resolution. The issue of large-scale pelagic drift-net fisheries has been included in further resolutions of the UN General Assembly on sustainable fisheries.

2.3 UN Resolutions on Sustainable Fisheries (from 2004)

Since 2004, the UN General Assembly has been adopting resolutions on sustainable fisheries which contain specific provisions on IUU fishing. These resolutions maintain that the FAO Code of Conduct, together with its associated international plans of action set out principles and global standards for responsible fishing practices. The resolutions also express concern that IUU fishing threatens to seriously deplete populations of certain fish species and significantly damage marine ecosystems to the detriment of sustainable fisheries and food security. The UN General Assembly resolutions support some of the measures adopted under the FAO Code of Conduct, the FAO Compliance Agreement, and the UN Fish Stocks Agreement, such as effective control over nationals, monitoring, control, and surveillance, including monitoring and control of transshipments on the high seas, vessel monitoring systems, record of fishing vessels, port State measures, intergovernmental cooperation, and development and implementation of national and regional plans of action. Calls have been made to the IMO to examine and clarify the role genuine link in relation to flag State duties, prevent the operation of sub-standard vessels, and eliminate subsidies that contribute to IUU fishing.

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11 A/RES/50/25, para 1; A/RES/51/36, para 1; A/RES/52/29, para 1; A/RES/53/33, para 2; A/RES/55/8, para 2; A/RES/57/142, para 5.
16 UN A/RES/58/14, Preamble; A/RES/59/25, Preamble and para. 26; A/RES/60/31, Preamble and para. 33; A/RES/61/105, Preamble and para. 33; and A/RES/62/177, Preamble and para. 33.
The UN General Assembly A/RES/60/31 adopted in 2006 calls on States and other international organisations to develop more effective measures to trace fish and fishery products to enable importing States to identify fish caught in a manner that undermines international conservation and management measures.19 It also urges States, individually and through RFMOs to adopt and implement internationally-agreed market-related measures to address IUU fishing.20 This resolution further supports the development of a comprehensive global record of fishing vessels within the FAO.21 UNGA resolutions adopted in 2007 and 2008 promote the development of a legally binding instrument on minimum standards for port State measures.22 These resolutions also encourage flag and port States to share data on landing and catch quotas.23 Furthermore, UN A/RES/62/177 supports actions of RFMOs against IUU fishing such as the development of a common list of vessels identified as having conducted IUU fishing, as well as the denial of port access to vessels appearing on such list.24

In addition to these measures, the UN A/RES 61/105 adopted in 2006 contains some ambitious goals. It contains an important new section on responsible fisheries in the marine ecosystem. The UN A/RES 61/105 sought to build upon the achievements of the Reykjavik Declaration on Responsible Fisheries in the marine ecosystem. However, its most significant component is the specific call for action to be taken with respect to bottom fisheries. In particular, paragraph 83 called upon RFMOs, with competence to regulate bottom fisheries “to adopt and implement measures in accordance with precautionary approach, ecosystem approaches and international law” by 31 December 2008.25 Further, UN A/RES 61/105 calls for the identification of vulnerable marine ecosystems and an assessment of the impacts of bottom fishing activities on such ecosystems and to the long-term sustainability of deep sea fish stocks. Paragraph 83(c) stated:

(c) In respect of areas where vulnerable marine ecosystems, including seamounts, hydrothermal vents and cold water corals, are known to occur or are likely to occur based on the best available scientific information, to close such areas to bottom fishing and ensure that such activities do not proceed unless conservation and management measures have been established to prevent significant adverse impacts on vulnerable marine ecosystems;

In addition to calling on RFMOs, the resolution in paragraph 83(d) calls on members of RFMOs to require vessels flying their flag to cease bottom fishing activities in areas where vulnerable marine ecosystems are encountered in the course of fishing operations, and to report the encounter so that appropriate measures can be adopted in respect of the relevant site. Similar requirements are also imposed on flag States whose vessels conduct bottom fisheries on the high seas where there are no RFMOs or regional fisheries management arrangement with the competence to regulate such fisheries. In this case flag States are called upon either to adopt and implement interim measures or cease to authorise the bottom fishing activities in such areas.26

2.4 Rome Declaration on IUU Fishing (2005)

The Rome Declaration on IUU Fishing, adopted in 2005, enlists the commitment of States to fully implement international fisheries instruments for the sustainable use of marine living resources. The Rome Declaration reiterates the need to implement measures adopted in the IPOA-IUU, such as the review of national legislation to ensure compliance with fisheries management measures,

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19 A/RES/60/31, para. 40.
20 A/RES/60/31, para. 46; A/RES/61/105, para. 46; A/RES/62/177, para. 55.
21 A/RES/60/31, para. 45.
22 A/RES/61/105, para. 43; A/RES/62/177, para. 51.
23 A/RES/61/105, para. 44; A/RES/62/177, para. 53.
24 A/RES/62/177, paras. 44 and 50.
25 See also A/RES/62/177, paras. 96-97.
26 A/RES/61/105, para. 86.
implementation of internationally agreed boarding and inspection regimes, and implementation of vessel marking requirements. It also calls for the adoption of new actions, such as measures to address fleet overcapacity, and exchange of VMS and observer data.

2.5 FAO Model Scheme on Port State Measures to Combat IUU Fishing (2009)

A Model Scheme on Port State Measures to Combat IUU Fishing was adopted by the FAO in 2004 which outlines principles and guidelines to be used by States as a reference for the negotiation and adoption of regional memoranda of understanding (MOUs), adoption of resolutions within RFMOs, or measures to be adopted at the national level. This Model Scheme is the first international policy document which adopted a list of activities considered as IUU fishing based on the IPOA-IUU. Paragraph 4 of the FAO Model Scheme provides that a foreign fishing vessel is believed to have engaged in, or supported IUU fishing activities, if there is reasonable evidence that the vessel has, among other things, fished without a valid authorization issued by the flag State or the relevant coastal State, fished in a closed area, fished during a closed season or without, or after attainment of a quota, engaged in directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited, used prohibited fishing gear, and falsified or concealed the markings, identity or registration of the vessel. The FAO Model Scheme also provides that IUU fishing includes multiple violations which together constitute a serious disregard of relevant conservation and management measures.

In addition, the FAO Model Scheme provides guidelines for carrying out inspections of foreign vessels in ports, a list of information that should be provided by vessels in advance to port States, expected results from port inspections, training of port inspectors, and a proposed information system among port States. The Model Scheme conforms to the measures adopted under the IPOA-IUU and all relevant rules of international law. The universal adoption of the Model Scheme would help establish common procedures for inspection and agreed measures against IUU fishing vessels.

2.6 FAO Guidelines (2008)

International guidelines relevant to sustainable fisheries and addressing IUU fishing have also been formulated under the FAO after the adoption of the IPOA-IUU. An example is the Guidelines for the Eco-labelling of Fish and Fishery Products from Marine Capture Fisheries. It provides the principles, minimum substantive requirements and criteria, and procedural and institutional aspects of eco-labelling of fish and fishery products. Three aspects of a fishery are assessed against the minimum substantive requirements and criteria for the certification and labelling. These components are the management system, the stock or stocks for which certification is being sought or “stock under consideration”, and the serious impacts of the fishery on the ecosystem. The FAO Guidelines on Eco-labelling of Fish and Fishery Products also provide procedural guidelines for setting standards for

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27 This Model Scheme is similar to the Memorandum of Understanding on Port State Measures to Combat IUU Fishing which was proposed in 2002 by Mr. Terje Lobach. At that time, it was considered impractical to adopt an MOU on Port State Measures at the global level. The substantive aspects of both documents are very similar. See FAO, Report of the Expert Consultation to Review Port State Measures to Combat Illegal, Unreported, and Unregulated Fishing, Rome, Italy, 04-06 November 2002, FAO Fisheries Report No. 692 (Rome: FAO, 2002). See also Terje Lobach, ‘Port State Control of Foreign Fishing Vessels,’ FAO Legal Papers Online No. 29 (Rome: FAO, 2002).
29 FAO, Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing (Rome: FAO, 2007).
30 FAO Model Scheme, para. 4(h). The list of activities which may be deemed IUU fishing is also being deliberated on in the drafting of a legally-binding agreement on Port State Measures to Prevent, Deter and Eliminate IUU fishing. See Chapter 3, Section 3.5.5.
33 Ibid., paras. 26-32.
sustainable fisheries, accreditation of independent certifying bodies, and certification that a fishery and the product chain of custody are in conformity with the required standard and procedures. These guidelines provide a framework for ensuring that fish and fishery products which are awarded eco-labels are obtained from well-managed marine capture fisheries.

Another example of relevant guidelines adopted after the IPOA-IUU are the International Guidelines for the Management of Deep-sea Fisheries in the High Seas.34 These guidelines were adopted in September 2008 and are directly related to UN General Assembly Resolutions on large-scale driftnet fishing and sustainable fisheries and aim to implement UN A/RES/61/105. The guidelines apply to fisheries which have the following characteristics: species with life histories that can sustain only low exploitation rates, are represented in the total catch, and/or suffer incidental mortality; there is a likelihood that the fishing gear will contact the seafloor; typically demersal and benthic fisheries; and occur in areas beyond national jurisdiction.35 In general, the Guidelines on Deep Sea Fisheries call for the establishment and implementation of national legal and institutional frameworks for the effective management of deep sea fisheries and their impacts on vulnerable marine ecosystems, particularly through flag, port, and market State measures and by exercising jurisdiction over nationals.36 The guidelines also provide for the need to strengthen the capacity of existing RFMOs with the competence to manage deep sea fisheries, as well as the need to cooperate in the establishment of new RFMOs or arrangements to regulate bottom fisheries and the impacts of fishing on vulnerable marine ecosystems where no such relevant organisation or arrangement exists.37 Furthermore, the guidelines provide that deep sea fisheries must be rigorously managed throughout all the stages of their development, including through the use of best scientific evidence available, application of the precautionary approach, development of data collection and research programmes, use of selective fishing methods, elimination of subsidies that contribute to IUU fishing and over-capacity, and implementation of effective monitoring, control and surveillance.38 The formulation of these guidelines is an attempt to address a major gap in the international legal and policy framework governing fisheries beyond the high seas.

3 ENVIRONMENT-RELATED INSTRUMENTS

a. Ramsar Convention (1971)

The Ramsar Convention provides the legal framework for the conservation and sustainable use of wetlands and their resources through local, regional and national actions and international cooperation. The Convention provides for the designation of wetlands within national territory for inclusion in the List of Wetlands of International Importance,39 as well as formulation and implementation of plans for the conservation of such wetlands.40 Part of the responsibilities of the Parties of the Ramsar Convention is the reporting of the progress of the implementation of the convention through national reports.41 The Ramsar Convention is based on the expectation of common and equitably shared transparent accountability.42 Some States have included Ramsar obligations in national law and policy.43

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35 Ibid., para. 6. Table 1 of these Guidelines provide examples of such fisheries, such as alfonsino, blueling, black scabbardfish, sablefish, armourhead, boarfish, orange roughy, deepwater shrimp, hake, redfish, roundnose grenadier, toothfish, deepwater sharks, rock lobster, and deepwater crabs found in the North Atlantic, North Pacific, Indian Ocean, South Atlantic, and South Pacific oceans.
36 Ibid., para. 5.
37 Ibid., para. 35.
38 Ibid., para. 29.
39 Ramsar Convention, as amended, Art 2(1).
40 Ramsar Convention, as amended, Art 3(1).
42 Ibid.
43 Ibid.
The Ramsar Convention has adopted a Classification of Wetland Type which includes 42 types, grouped into three categories, namely marine and coastal wetlands, inland wetlands, and human-made wetlands. The Conference of Contracting Parties has developed criteria for identifying wetlands of international importance. Group A of the Criteria includes sites containing representative, rare or unique wetland types. Group B of the Criteria includes sites of international importance for conserving biological diversity. There are several criteria for Group B wetland types, including criteria based on species and ecological communities and specific criteria based on waterbirds, fish, and other taxa. Because of the clear relationship between wetlands and biodiversity concerns, the Conference of the Contracting Parties of the Ramsar Convention agreed to develop ways and means at the national level for improving liaison between the authorities implementing the Ramsar Convention as well as focal points for related conventions and agreements such as biodiversity-related conventions.

Resolutions have been adopted by the Conference of the Parties of the Ramsar Convention recognising the importance that marine wetlands play in supporting aquatic species populations and resources. Resolution IX.4 adopted in 2005 on fisheries resources urges Ramsar Convention Contracting Parties and invites relevant organisations to use the habitat and species conservation provisions of the Ramsar Convention to support the introduction and implementation of management measures that mitigate the environmental impacts of fishing. The resolution is particularly concerned with ecologically damaging fishing gears used in many fisheries and significantly alter habitat structure and prevent the movement of species.


The Convention on International Trade in Endangered Species of Wild Fauna and Flora or CITES, aims to ensure that the international trade in specimens of wild animals and plants does not threaten their survival. CITES lists species according to the degree of the protection they need and provides for the control of the international trade of these endangered species through a system of permits and certificates. Appendix I of CITES includes species threatened with extinction, in which trade is permitted only in exceptional circumstances. Appendix II of CITES includes species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilisation incompatible with their survival. Appendix III contains species that are protected in at least one country, which has requested other CITES Parties for cooperation in controlling the trade. CITES regulates the trade of species listed under these appendices in terms of export, re-export, import, and introduction from the sea. The Conference of Parties, which is the decision-making body of the

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45 Ramsar Convention, Resolution IX.5, *Synergies with other international organisations dealing with biological diversity; including collaboration on, and harmonisation of, national reporting among biodiversity-related conventions and agreements*, Adopted at the Ninth Conference of the Contracting Parties, Kampala, Uganda, 8-15 November 2005.
47 CITES, Art II and Appendices I, II, and III.
48 CITES, Art III-V.
49 CITES, Art II(1).
50 CITES, Art II(2).
51 CITES, Art II(3).
52 Article I(e) of CITES defines “introduction from the sea” as “transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State.” CITES Conference of Parties agreed that the ‘the marine environment not under the jurisdiction of any State’ means those marine areas beyond the areas subject to the
Convention and comprises all its member States, has agreed to a set of biological and trade-related criteria to help determine whether a species should be included in the Appendices I and II. There are about 5,000 species of animals and 28,000 species of plants currently protected by CITES, including 15 species of fish listed in Appendix I and 71 species in Appendix II, as well as whales, turtles, and corals.

One of the basic issues about the implementation of CITES with respect to fisheries is its application to commercially-exploited species. CITES has primarily focused on the listing of species other than exploited aquatic fishes or invertebrates until the early 1990s. Since then, concerns have been raised about the appropriateness of the CITES listing criteria for exploited and managed fishery resources. Some of the criteria for listing species under Appendices I and II are deemed to be only applicable to a few exploited marine species. There are also cases where little is known about the sustainable catch of a particular species, and it may be difficult to ascertain if trade in such species would be detrimental to their survival. There have been concerns about possible “false alarms” (i.e. classification of species which are not at risk of extinction to a category requiring trade restrictions) and “misses” (i.e. failure to classify species at risk under categories offering them necessary protection from trade) in applying the present CITES criteria for the listing of commercially-exploited aquatic species. This may not be perceived as a critical error for purposes of conservation; however, the unnecessary prevention of trade may have severe economic consequences, particularly for harvesting developing States. This may, in turn, inadvertently promote or encourage IUU fishing.

A number of legal issues are associated with the application of CITES to commercially-exploited aquatic species. One issue is whether a CITES listing, particularly for Appendix I or Appendix II, would contravene the LOSC and related instruments by diminishing the rights and obligations to fish, including the freedom to fish on the high seas. More particularly, the concern relates to the harvesting of species in the EEZ or on the high seas which could not be subsequently introduced into the ports of a CITES Party because of the listing of such species in Appendix I. Other issues include the tedious process and high administrative cost of reversing decisions on listing of species under


54 CITES, Art XI.

55 CITES, Conference of Parties, Conf. 9.24 (Rev. CoP14), Criteria for amendment of Appendices I and II.


59 Ibid.


62 Article IV(2)(a) of CITES provides the requirement for a Scientific authority of the State of export to advise that such export will not be detrimental to the survival of that species as one of the conditions for the granting of an export permit for a species listed in Appendix II.

63 FAO Fisheries Circular No. 954, supra note 139, at 32.

64 Ibid., at 33.


66 Ibid..
Appendices I and II.\textsuperscript{67} These issues are continuously being addressed in expert consultations conducted within the FAO.\textsuperscript{68}

### 3.3 Convention on the Conservation of Migratory Species (1979)

The Convention on the Conservation of Migratory Species (CMS) requires its Parties to conserve migratory species and their habitat by taking action, either individually or in cooperation with other States.\textsuperscript{69} CMS provides for measures that may be applied by range States\textsuperscript{70} in conserving migratory species listed under Appendices I and II of the Convention. Appendix I of the Convention lists migratory species which are endangered throughout all or a significant proportion of their range, and for which States are required to strive for strict protection of such species.\textsuperscript{71} Appendix II lists migratory species with an unfavourable conservation status or which would benefit significantly from international cooperation, such as global and regional agreements that would conserve and manage individual or a group of species.\textsuperscript{72}

The Conference of Parties of CMS has recognised bycatch as a major cause of mortality of migratory species listed on Appendices I and II of the Convention, including seabirds, sharks, turtles, marine mammals and sturgeons.\textsuperscript{73} Consequently, the Conference of Parties has adopted a resolution calling on CMS Parties to implement the FAO International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries (IPOA-Seabirds) and the International Plan of Action for Conservation and Management of Sharks (IPOA-Sharks) and develop and implement national plans of action required by these international plans of action.\textsuperscript{74} The resolution urges States to implement measures adopted by regional environmental and fisheries organisations to address by-catch issues.\textsuperscript{75} Because of their similar concerns about endangered species, the Secretariats of the CMS and CITES have entered into a memorandum of understanding to ensure compatibility of measures, in respect of certain species, such as marine turtles, whale sharks, and sturgeons, complement those of CMS.\textsuperscript{76}

CMS has broad applicability to fisheries issues through its framework approach and its requirements for Parties and participating States to undertake conservation measures aimed not only at migratory species but also the habitats and species upon which they may be dependent. A number of commercially fished species could potentially be suitable for listing under the CMS although efforts to have such species listed have so far failed. The flexibility of the CMS framework has however enabled the development of and adoption of a range of issue-specific MOUs and subsidiary agreements. Of the thirteen MOUs and subsidiary agreements currently in place under the CMS

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\textsuperscript{68} Technical and experts consultation on the implementation of CITES criteria to commercially-exploited aquatic species can be traced back to the call of FAO to establish an ad hoc group to discuss the matter in 1998. This idea was further endorsed at the Twenty-third Session of COFI in 1999 and the consultation meetings began in 2000. In 2003, an Ad Hoc Expert Advisory Panel for Assessment of Proposals to CITES was established, to provide information and advice on proposals to amend CITES Appendices I and II. See Appendix E, Report of the Twenty-fifth Session of COFI, FAO, Rome, 24-28 February 2003.

\textsuperscript{68} Convention on the Conservation of Migratory Species, Art. II.

\textsuperscript{70} A Range State means any State that exercises jurisdiction over any part of the range of the migratory species, or a State, flag vessels of which are engaged outside national jurisdiction limits in taking that migratory species. See Art. I.1(h) of the Convention on Migratory Species.

\textsuperscript{71} Convention on Migratory Species, Art. III.

\textsuperscript{72} Convention on Migratory Species, Art. IV.


\textsuperscript{74} UNEP/CMS/Resolution 8.14, para. 2(a).

\textsuperscript{75} UNEP/CMS/Resolution 8.14, para. 2(c) and 4.

\textsuperscript{76} Thirteenth meeting of the Conference of the Parties, Cooperation and Synergy with the Convention on the Conservation of Migratory Species of Wild Animals (CMS), Bangkok, Conf.13.3, Thailand, 2-14 October 2004.
umbrella, six apply to marine species including marine turtles, pinnipeds, cetaceans and seabirds. There is potential for commercially fished species to also be covered by such agreements.

3.4 Convention on the Conservation of Biological Diversity (1993)

Biological diversity is defined by the Convention on Biological Diversity (CBD) as “the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems.” The primary objective of the CBD is to conserve biological diversity, including the sustainable use of its components and the fair and equitable sharing of benefits arising out of the utilisation of genetic resources. A basic principle under CBD is that States have sovereign rights to exploit their own resources pursuant to their own environmental policies, and the responsibility within its jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

CBD provides for the application of in-situ and ex-situ conservation measures such as the establishment of a system of protected areas, protection of ecosystems, rehabilitation and restoration of degraded ecosystems, and recovery of threatened species. The Convention also provides for the introduction of appropriate procedures requiring impact assessment of projects that are likely to have significant adverse effects on biological diversity. Furthermore, it outlines the obligation of Contracting Parties to provide incentives that would promote the conservation and sustainable use of components of biological diversity. However, none of the conservation obligations set out in CBD are absolute in nature. The obligations are qualified by the phrase “as far as possible and as appropriate” which weaken the obligations to conserve biological diversity to a large extent.

As part of achieving its objective, the Conference of Parties has agreed to set targets and goals, some of which are fisheries-related. The goals set out under Decision VIII/15 of the Conference of Parties include the conservation of genetic diversity of harvested species of trees, fish and wildlife and other valuable species conserved and the sustainable use and consumption of all exploited fisheries products. Some fisheries concerns are more specifically covered in the decisions adopted by the Conference of Parties on marine and coastal biological diversity, particularly with respect to the elimination of destructive fishing practices and use of selective fishing gear in order to avoid or

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78 Convention on Biodiversity, Art. 2.
79 Convention on Biodiversity, Art. 1.
80 Convention on Biodiversity, Art. 3.
81 Convention on Biodiversity, Arts. 8 and 9
83 Convention on Biodiversity, Art. 11.
85 Ibid. See Convention on Biodiversity, Arts. 5, 6(b), 7, 8, 9, 10, 11, and 14.
minimise by-catch.\textsuperscript{87} Similar to other relevant international conventions, the Secretariats of the CBD and CITES have entered into a memorandum of understanding to coordinate their programme activities and investigate opportunities whereby CITES can become a partner in the implementation of appropriate provisions of the CBD.\textsuperscript{88}

3.5 Johannesburg Plan of Implementation (2002)

At the World Summit on Sustainable Development (WSSD) in 2002, the Johannesburg Declaration on Sustainable Development and Plan of Implementation of the WSSD were adopted. The Johannesburg Declaration on Sustainable Development recognised the continuous depletion of fish stocks and loss of biodiversity as part of environmental deterioration.\textsuperscript{89} This political declaration also affirmed the commitments of States under the Rio Declaration on Environment and Development and Agenda 21.

The Johannesburg Plan of Implementation, which was adopted to build on the achievements made since UNCED, provides that sustainable fisheries and ensuring the sustainable development of the oceans require effective coordination and cooperation, including at the global and regional levels, between relevant bodies, and actions at all levels.\textsuperscript{90} To achieve sustainable fisheries, the Johannesburg Plan of Implementation encourages States to ratify or accede to and effectively implement the relevant United Nations and, where appropriate, associated regional fisheries agreements or arrangements,\textsuperscript{91} the FAO Code of Conduct, as well as relevant IPOAs and technical guidelines of the FAO.\textsuperscript{92} The Johannesburg Plan of Implementation further urges States to establish effective monitoring, reporting, enforcement and control of fishing vessels to further the IPOA-IUU\textsuperscript{93} and eliminate subsidies that contribute to IUU fishing and overcapacity.\textsuperscript{94} This plan of implementation also promotes the conservation and management of the oceans with due regard to other relevant international instruments such as the CBD and the Ramsar Convention.\textsuperscript{95}

3.6 Chapter 17 of Agenda 21 (1992)

Chapter 17 of Agenda 21 pertains to the protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources. It supports the international basis for the protection and sustainable development of the marine and coastal environment and its resources but also recognises the need for new approaches to marine and coastal area management and development which would need to be implemented at the national, subregional, regional and global levels. Chapter 17 provided recommendations on six programmes, namely the: (a) integrated management and sustainable development of coastal areas, including EEZs; (b) marine environmental protection; (c) sustainable use and conservation of marine living resources of the high seas; (d) sustainable use and conservation of marine living resources under national jurisdiction; (e) addressing critical uncertainties for the management of the marine environment and climate change; (f) strengthening


\textsuperscript{88} Convention on Biological Diversity, Cooperation and synergy with the Convention on Biological Diversity, Conf. 10.4 (Rev. 14), Adopted at the Tenth meeting of the Conference of the Parties, Harare, Zimbabwe, 9-20 June 1997.

\textsuperscript{89} World Summit on Sustainable Development, \textit{Johannesburg Declaration on Sustainable Development}, Adopted at the 17\textsuperscript{th} plenary meeting on 4 September 2002, para. 13.

\textsuperscript{90} World Summit on Sustainable Development, \textit{Johannesburg Plan of Implementation}, Adopted at the 17\textsuperscript{th} plenary meeting on 4 September 2002, para. 30

\textsuperscript{91} \textit{Johannesburg Plan of implementation}, para. 31(b).

\textsuperscript{92} \textit{Johannesburg Plan of implementation}, para. 31(c) and (d).

\textsuperscript{93} \textit{Johannesburg Plan of implementation}, para. 31(d).

\textsuperscript{94} \textit{Johannesburg Plan of implementation}, para. 31(f).

\textsuperscript{95} \textit{Johannesburg Plan of implementation}, para. 32(b) and (e).
international, including regional, cooperation and coordination; and (g) sustainable development of small islands.

4. TRADE-RELATED AGREEMENTS

The WTO has not adopted a separate agreement with specific rules on fisheries matters. Fisheries remains covered by General Agreement on Tariffs and Trade (GATT) 1994, as well as specific agreements such as the Agreements on Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Pre-shipment Inspection, Rules of Origin, Import Licensing Procedures, and Subsidies and Countervailing Measures. These agreements elaborate on the use of trade-related measures for conservation purposes subject to certain safeguards against abuse. These agreements are most relevant in addressing IUU fishing.

4.1 General Agreement on Tariffs and Trade (1994)

The relevant provisions of GATT 1994 in addressing IUU fishing are Articles III, VIII, X, XI, XIII, and XX. These provisions have a direct bearing on the adoption of measures by States covering fish and fishery products that may enter into the international trade, including those which may have been caught through IUU means. Article III on National Treatment on Internal Taxation and Regulation provides that there should be no differentiation between domestic and imported products. Article VIII on Fees and Formalities requires minimisation of complex import and export formalities and simplifying import and export documentation requirements. Article X of GATT 1994 states that no measures imposing restrictions on imports may be enforced before such measures have been officially published. Furthermore, each State is required to administer in a uniform, impartial and reasonable manner its trade laws and regulations. Article XI of GATT 1994 prohibits the application of any restriction on the importation of any product from a Contracting Party of the agreement other than duties, taxes or other charges. An exception to the general prohibition on quotas is with respect to import restrictions on any agricultural or fisheries product necessary for the enforcement of governmental measures that restrict the marketing or production of like domestic products, removal of a temporary surplus of a like domestic product, or restriction of the production of any animal product that is directly dependent on the imported commodity. This exception allows WTO Members to ensure that imports of agricultural and fisheries products do not interfere with domestic programmes designed to support or allocate agriculture and fisheries production. Article XIII also prohibits non-discriminatory quantitative restrictions.

Lastly, Article XX of GATT 1994 provides exceptions to GATT obligations. It says that nothing in GATT 1994 prevents the adoption or enforcement of measures “relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.” However, based on the chapeau of Article XX, even if a measure falls

100 GATT 1994, Art. XI.
101 GATT 1994, Art. XII(c).
within the exception of the article, such measures are not to be applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination, or be disguised as a restriction on international trade, between countries where the same conditions prevail. These provisions strengthen the relationship between trade and conservation and management of fisheries resources.

4.2 Agreement on Technical Barriers to Trade (1995)

The Agreement on Technical Barriers to Trade recognises that the problem of non-tariff barriers to trade is mainly due to the disparities between national standards, technical regulations and procedures for approval and certification, creating the need for the development of international standards.\(^\text{104}\) Consistent with the provisions of the GATT 1994, the Agreement on Technical Barriers to Trade requires WTO Members to provide equal treatment to national and imported products\(^\text{105}\) and that technical regulations adopted do not create unnecessary obstacles to international trade.\(^\text{106}\) Technical regulations cannot be made trade-restrictive except when required to fulfil legitimate objectives, such as national security requirements, the prevention of deceptive practices, protection of human health or safety, animal or plant life or health, or the environment.\(^\text{107}\) Hence, actions to address IUU fishing may be construed as a legitimate objective that would address deceptive practices and assist in protecting the environment. However, in order to ensure that no unnecessary trade restrictions are applied, the Agreement on Technical Barriers to Trade provides that if a WTO Member requires another Member is to justify a technical regulation which may have an effect on trade.\(^\text{108}\) Technical regulations shall not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner.\(^\text{109}\)

4.3 Agreement on Pre-shipment Inspection (1995)

The Agreement on Pre-shipment Inspection allows WTO Members to conduct pre-shipment inspections across all exporters affected by such programmes so long as they are carried out in a non-discriminatory manner.\(^\text{110}\) Pre-shipment inspection activities include all activities relating to the verification of the quality, the quantity, the price, including currency exchange rate and financial terms, and/or the customs classification of goods to be exported to the territory of the user Member.\(^\text{111}\) The Agreement requires pre-shipment inspections to be conducted in a transparent manner,\(^\text{112}\) ensure confidentiality of business information,\(^\text{113}\) and not to cause unnecessary delays.\(^\text{114}\) Relevant authorities either issue a Clean Report of Findings or provide a detailed written explanation specifying the reasons for non-issuance following a pre-shipment inspection.\(^\text{115}\) Such pre-shipment inspection may be used to certify that an export fish or fish product has not been caught through IUU fishing.

4.4 Agreement on Rules of Origin (1992)

\(^{105}\) WTO, Agreement on Technical Barriers to Trade, Art. 2.1.
\(^{106}\) Agreement on Technical Barriers to Trade, Art. 2.2.
\(^{107}\) Agreement on Technical Barriers to Trade, Art. 2.2.
\(^{108}\) Agreement on Technical Barriers to Trade, Art. 2.2.
\(^{109}\) Agreement on Technical Barriers to Trade, Art. 2.2.
\(^{110}\) Agreement on Technical Barriers to Trade, Art. 2.2.
\(^{111}\) WTO, Agreement on Pre-shipment Inspection, Art. 2.1.
\(^{112}\) Agreement on Pre-shipment Inspection, Art. 1.3.
\(^{113}\) Agreement on Pre-shipment Inspection, Art. 2.5.
\(^{114}\) Agreement on Pre-shipment Inspection, Art. 2.9-2.13.
\(^{115}\) Agreement on Pre-shipment Inspection, Art. 2.15.
\(^{116}\) Agreement on Pre-shipment Inspection, Art. 2.16.
Rules of origin are defined under the WTO Agreement on Rules of Origin as “those laws, regulations and administrative determinations of general application applied by any Member to determine the country of origin of goods provided such rules of origin are not related to contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of paragraph 1 of Article I of GATT 1994.” Rules of origin also apply within the context of the most-favoured-nation treatment, anti-dumping and countervailing duties, safeguard measures, origin marking requirements, any discriminatory quantitative restrictions or tariff quotas, and rules of origin used for government procurement and trade statistics. Similar to Clean Report of Findings issued under the Agreement on Pre-shipment Inspections, certificates of origin may also be used for preventing trade in IUU-caught fish.

Article 2 of the Agreement on Rules of Origin provides that rules of origin shall not themselves create restrictive, distorting or disruptive effects on international trade and must administered in a consistent, uniform, impartial and reasonable manner. For the purpose of establishing harmonised rules of origin, the country determined to be the origin of a particular good is either the country where the good has been wholly obtained or, when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out. A Committee on Rules of Origin and a Technical Committee on Rules of Origin under the Customs Cooperation Council have been established to consult on matters relating to the harmonisation and implementation of rules of origin.

4.5 Agreement on Import Licensing Procedures (1994)

Import licensing under the Agreement on Import Licensing Procedures involves the administrative procedures requiring the submission of an application or other documentation, other than that required for customs purposes, to the relevant administrative body as a prior condition for importation into the customs territory of the importing Member. The Agreement requires Members to ensure that the administrative procedures used to implement import licensing rules are in conformity with the relevant provisions of GATT 1994, including its annexes and protocols. The objective is to prevent trade distortions that may arise from an inappropriate operation of those procedures, taking into account the economic development purposes and financial and trade needs of developing country Members.

The Agreement on Import Licensing Procedures requires WTO Members to publish rules and all information concerning procedures for the submission of applications, including the eligibility of persons, firms and institutions to make such applications, the administrative body or bodies to be approached, and the lists of products subject to the licensing requirement, at least 21 days prior to

116 WTO, Agreement on Rules of Origin, Art. 1.1. Paragraph 1 of Article I of GATT 1994 provides that “(W)ith respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.”

118 GATT 1994, Art. VI.
119 GATT 1994, Art. XIX.
120 GATT 1994, Art. IX.
121 Agreement on Rules of Origin, Art. 1.2.
122 Agreement on Rules of Origin, Art. 2(c).
123 Agreement on Rules of Origin, Art. 2(d) and (e).
124 Agreement on Rules of Origin, Art. 3(b).
125 Agreement on Rules of Origin, Art. 4 and Annex I.
126 WTO, Agreement on Import Licensing Procedures, Art. 1.1.
127 Agreement on Import Licensing Procedures, Art. 1.2.
their effective date, in order to enable governments to be familiar with them.\textsuperscript{128} Any exception, derogations or changes in or from the rules concerning licensing procedures or the list of products subject to import licensing are also required to be published in the same manner and within the same time period.\textsuperscript{129}

The Agreement on Import Licensing Procedures contains provisions on automatic import licensing where approval of the application is granted in all cases.\textsuperscript{130} It also provides for non-automatic import licensing. A Member who has an interest in the trade of the product included in the non-automatic import licensing may require the information. Such information may include the administration of the restrictions, the import licences granted over a recent period, the distribution of such licences among supplying countries, and where practicable, import statistics with respect to the products subject to import licensing.\textsuperscript{131} Import licensing procedures may include requirements to ascertain whether a fishery product being imported has not been obtained from IUU-related activities.

\subsection*{4.6 Agreement on the Application of Sanitary and Phytosanitary Measures (1995)}

The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) aims to establish a multilateral framework for the development, adoption and enforcement of sanitary and phytosanitary measures in order to minimise their negative effects on trade and ensure that such measures are not applied in a manner which constitutes a disguised restriction on international trade. The SPS Agreement requires Members to ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, and should be based on scientific principles and is not maintained without sufficient scientific evidence.\textsuperscript{132} In cases where relevant scientific evidence is insufficient, a WTO Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organisation as well as from measures applied by other Members.\textsuperscript{133} The application of such measures should take into account the special needs of developing WTO members, particularly least-developed Members.\textsuperscript{134} As will be discussed in chapter 7, although the SPS Agreement is not directly relevant to addressing IUU fishing, it is a critical component of the general framework for international trade in fish and fish products.

\subsection*{4.7 Agreement on Subsidies and Countervailing Measures (1995)}

The WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement) provides a framework for addressing subsidies, although it is not specific to fisheries. Part I of the SCM Agreement applies to subsidies that are specifically provided to an enterprise or industry group while Parts II and III contain rules and procedures on prohibited subsidies and actionable subsidies. Part V establishes the substantive and procedural requirements that must be fulfilled before a Member may apply a countervailing measure against subsidised imports. Parts VI and VII establish the institutional structure and notification/surveillance modalities for implementation of the SCM Agreement. Part VIII contains special and differential treatment rules for various categories of developing country Members. Part IX contains transition rules for developed country and former centrally-planned economy Members. Parts X and XI contain dispute settlement and final provisions.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{128} Agreement on Import Licensing Procedures, Art. 1.4(a).
\item \textsuperscript{129} Agreement on Import Licensing Procedures, Art. 1.4(a).
\item \textsuperscript{130} Agreement on Import Licensing Procedures, Art. 2.1.
\item \textsuperscript{131} Agreement on Import Licensing Procedures, Art. 3.5
\item \textsuperscript{133} SPS Agreement, Art. 7(5).
\item \textsuperscript{134} SPS Agreement, Art. 10(1).
\end{itemize}
\end{footnotesize}
Article 1 of the SCM Agreement states that a subsidy is deemed to exist if a financial contribution or income or price support is provided by a government, and a benefit is conferred, and that such subsidy is specific. Article 2 defines the concept of specificity, which is deemed to exist when accesses to the subsidy is limited, explicitly or in fact, to certain enterprises. The SCM Agreement classifies specific subsidies into three: prohibited, actionable (i.e., permitted, but potentially subject to action, and non-actionable (i.e. permitted, and shielded from action). Prohibited subsidies are irrefutably presumed to distort trade. Certain kinds of subsidies within the actionable category were deemed, via rebuttable presumption, to cause serious prejudice.

The focus of the SCM Agreement is to ensure that the subsidies applied by States do not cause an injury to the domestic industry of another WTO Member and that such subsidy does not nullify nor impair any benefit accruing directly or indirectly to other WTO Members. The SCM Agreement further prohibits subsidies which create serious prejudice to the interests of other Members. Serious prejudice in this context includes effects of subsidies such as the displacement or impediment of imports or exports of a like product between WTO Members and a third country, and a significant price undercutting by the subsidised product in the same market. The WTO has acknowledged that fisheries subsidies are widespread, trade distorting, and undermine the sustainable use of fisheries resources. Within the WTO, there have been arguments that positive subsidies or subsidies that reduce excessive fishing capacity should be allowed. However, there is still debate on how certain fisheries subsidies contribute to overcapacity in the fishing fleet and affect the sustainability of fisheries resources. It is also difficult to find a WTO Member that could not be accused of applying one or more types of fisheries subsidies that may fall within the ambit of the SCM Agreement. While the SCM Agreement provides a framework to prevent industries from gaining unfair advantage over others through government subsidies, it is not yet clear how such disciplines on subsidies may be applied consistently to fisheries matters across WTO Members.

4.8 Draft WTO Rules on Fisheries Subsidies (2007)

The WTO has acknowledged that fisheries subsidies are widespread, trade distorting, and undermine the sustainable use of fisheries resources. Discussions on WTO disciplines on fisheries subsidies started in 2001 when WTO members agreed “...to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries.” However, it was only in November 2007 that a draft text was circulated by the chair of the Doha Round negotiations group on rules on fisheries subsidies. The draft text is proposed to be inserted as Annex VIII to the SCM Agreement. The proposed Annex VIII contains provisions on prohibited subsidies and non-prohibited subsidies. Examples of prohibited subsidies are those the benefits of which

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136 SCM Agreement, Art. 5.
137 SCM Agreement, Art. 6.3.
140 Ibid.
142 Beatrice Chaytor, ‘An Examination of Trade and Environmental Policy Responses to the Challenge of Fisheries Subsidies,’ supra note 219, at 280.
145 Draft Annex VIII to the SCM Agreement, Art. II(b), (c), and (d).
are conferred on any vessel engaged in IUU fishing.\textsuperscript{146} It also provides certain exemptions from prohibited subsidies, such as least developed country members.\textsuperscript{147} The proposed amendment to the SCM Agreement made reference to the FAO Code of Conduct, FAO Compliance Agreement, and UN Fish Stocks Agreement as a basis for the provisions of Annex VIII which are aimed at preventing overfishing.\textsuperscript{148} Furthermore, Article IV of the draft Annex VIII provides that no WTO Member shall cause, through the use of any subsidy, depletion of or harm to, or creation of overcapacity in respect of straddling or highly migratory fish stocks whose range extends into the EEZ of another member, or stocks in which another member has identifiable fishing interests such as quota allocations. The draft Annex VIII on fisheries subsidies may provide a sound basis for the facilitation of discussions on the matter in WTO. However, the application of fisheries-specific instruments and international regulations on subsidies to address fisheries concerns, including IUU fishing, is a complex issue that would require intensive negotiations by WTO members. There have been different positions on how to improve the application of the WTO discipline on fisheries subsidies.\textsuperscript{149} These varying positions of States, together with different national fisheries management regimes in place, are major impediments to concluding a trade-related agreement on fisheries subsidies.

5. **MARITIME SAFETY AND LABOUR-RELATED AGREEMENTS**

Fishing vessel safety has been a matter of concern for the International Maritime Organisation (IMO). However, the differences in design and operation among fishing vessels and other types of vessels prevent the former from being included in the International Convention for the Safety of Life at Sea 1974, as amended (SOLAS Convention) and the International Convention on Load Lines 1966, as amended. The IMO and FAO are currently promoting the adoption of an international mandatory safety regime for fishing vessels, in the form of the 1993 Torremolinos Protocol for the Safety of Fishing Vessels,\textsuperscript{150} the 1995 International Convention on Training, Certification and Watchkeeping for Fishing Vessels,\textsuperscript{151} as well as a number of fishing vessel safety codes and voluntary guidelines. Both of the international conventions and protocol are yet to enter into force.

In the case of protecting and promoting the rights of fishers onboard fishing vessels, the International Labour Organisation (ILO), the global body responsible for formulating and overseeing international labour standards, has adopted The Work in Fishing Convention in 2007 (C188),\textsuperscript{152} which is supplemented by the Work in Fishing Recommendation 2007 (R199).\textsuperscript{153} The new standards revised existing ILO instruments addressing conditions of workers in the fishing sector.\textsuperscript{154} Similar to the IMO Conventions directly affecting fishing vessels, the Work in Fishing Convention is yet to enter into

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\textsuperscript{146} Draft Annex VIII to the SCM Agreement, Art. I.1(h).
\textsuperscript{147} Draft Annex VIII to the SCM Agreement, Art. III.1.
\textsuperscript{148} See Draft Annex VIII to the SCM Agreement, Art. III(3), IV, and V.
\textsuperscript{152} International Labour Organisation (ILO), Convention Concerning Work in the Fishing Sector (C188), Geneva, Switzerland, adopted on 14 June 2007. Hereinafter referred to as Work in Fishing Convention.
\textsuperscript{153} ILO, Recommendation Concerning the Work in the Fishing Sector (R199), Geneva, Switzerland, adopted on 14 June 2007. Hereinafter referred to as Work in Fishing Recommendation.
\textsuperscript{154} The major ILO Conventions revised by the Work in Fishing Convention 2007 are the Minimum Age (Fishermen) Convention, 1959 (C112), the Medical Examination (Fishermen) Convention, 1959 (C113), Fishermen’s Articles of Agreement Convention, 1959 (C114), Accommodation of Crews (Fishermen) Convention, 1966 (C126). The Work in Fishing Convention 2007 did not revise the Fishermen’s Competence Certificates Convention, 1966 (C125).
force. It will enter into force after ratification by ten of ILO’s 180 Member States, which should include eight coastal States.\textsuperscript{155}

Other ILO Conventions that have provisions which apply to commercial maritime fishing include the Shipowners’ Liability (Sick and Injured Seamen) Convention, 1936 (C55), Seafarers’ Welfare Convention, 1987 (C163), Health Protection and Medical Care (Seafarers) Convention, 1987 (C164), Social Security (Seafarers) Convention (Revised), 1987 (C165), Repatriation of Seafarers Convention, (Revised), 1987 (No. 166), Labour Inspection (Seafarers) Convention, 1996 (No. 178), Recruitment and Placement of Seafarers Convention, 1996 (C179), and the Seafarers’ Hours of Work and the Manning of Ships Convention, 1996 (No. 180).

5.1 Torremolinos Convention (1977) and its Protocol (1993)

The 1977 Torremolinos Convention for the Safety of Fishing Vessels was the first international convention on the safety of fishing vessels. The 1977 Torremolinos Convention applied to fishing vessels of 24 metres in length and over, including those vessels processing their catch.\textsuperscript{156} The Torremolinos Convention contained safety and stability requirements for the construction and equipment of new, decked, and seagoing fishing vessels. This Convention was superseded by the 1993 Torremolinos Protocol which took into account the technological developments in the intervening years, particularly the large-scale distant and deep water fishing operations. The 1993 Torremolinos Protocol applies to the same types of fishing vessels and contains provisions on machinery installations and spaces, life-saving appliances and arrangements, vessel requirements, protection of the crew, and shipborne navigational equipment and arrangements.


The International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel or STCW-F was adopted in 1995 as the first attempt to make standards of safety for crews of fishing vessels mandatory. Similar to the 1993 Torremolinos Protocol, the STCW-F is short and contains technical regulations on the certification of skippers, officers, engineer officers, and radio operators.

5.3 The Work in Fishing Convention (2007)

The Work in Fishing Convention applies to all fishers and all fishing vessels engaged in commercial fishing operations.\textsuperscript{157} This Convention, together with the Work in Fishing Recommendation 2007 provide the minimum requirements for work onboard fishing vessels and conditions of service, particularly in respect of minimum age for work, requirement for medical examination, manning and hours of rest, maintenance of a crew list, repatriation of fishers, recruitment and placement of fishers, payment, and accommodation and food. Provisions on accommodation are adopted to ensure that fishing vessels are constructed in a manner that would ensure suitable living conditions for workers on board vessels. New standards have also been adopted under the Work in Fishing Convention on improved occupational health and safety, medical care at sea and ashore, protection

\textsuperscript{155} The Work in Fishing Convention, Art. 48.

\textsuperscript{156} IMO, Torremolinos International Convention for the Safety of Fishing Vessels, Torremolinos, Spain, 2 April 1977. Hereinafter referred to as Torremolinos Convention.

\textsuperscript{157} The Work in Fishing Convention, Art. 2(1). The Convention defines commercial fishing as all fishing operations, including fishing operations on rivers, lakes or canals, with the exception of subsistence fishing and recreational fishing. Article 3 of the Convention, however, also provides that if there are special problems of a substantial nature in the light of particular conditions of fisheries or of fishing vessel operations, a Member may exclude (a) fishing vessels engaged in fishing operations in rivers, lakes or canals and (b) limited categories of fishers and fishing vessels from the requirements of the Convention. Article 4 also provides for a progressive implementation of all or some of its provisions which affect some types of fishing vessels or fishing activities.
of a work agreement, and social security protection. In addition to technical standards, the Work in Fishing Convention provides for the right of ILO Members to establish a system of inspections, monitoring, complaint procedure, penalty and corrective measures to ensure compliance with the provisions of the Convention.158

5.4 Voluntary Codes and Guidelines

Apart from these international agreements, IMO has also developed a number of non-mandatory instruments, in collaboration with FAO and the International Labour Organization (ILO). These include the FAO/ILO/IMO Document for Guidance on Fishermen’s Training and Certification,159 revised Code of Safety for Fishermen and Fishing Vessels,160 and revised FAO/ILO/IMCO Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels.161

The Document for Guidance on Fishermen’s Training and Certification is a response to the call by the IMO Maritime Safety Committee to prepare guidelines and recommendation for the training and certification of personnel on board fishing vessels of 12 metres in length and over and for the prevention of fatigue of fishing vessel personnel.162 This Guidance also respects the FAO Code of Conduct, particularly Article 8 on Fishing Operations which provides for the need for States to enhance the education, skills, and professional qualification of fishers through education and training.163 The Code of Safety was formulated with the desire to coordinate facilities provided by various fishing nations to improve safety and health of fishermen and fishing vessels at sea.164 Lastly, the Voluntary Guidelines for Small Fishing Vessels was developed to provide a generally applicable code of safe practice for design, construction, and equipment of new decked fishing vessels of 12 metres in length and over but less than 24 metres in length.165

Part II. REGIONAL INSTRUMENTS

1. FAO DECLARATIONS

1.1 Rome Declaration on Illegal, Unreported, and Unregulated Fishing (2005)

This declaration was adopted by Ministers and Ministers’ Representatives on 12 March 2005 as recognition of the harmful and worldwide consequence of IUU fishing on the sustainability of both large- and small-scale fisheries. The Ministers expressed their commitments and renewed their efforts to concentrate and intensify their efforts to implement fully all the international instruments for the sustainable use of marine living resources.

1.2 Strategy for Improving Information on Status and Trends of Capture Fisheries (2003)

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158 The Work in Fishing Convention, Part VII.
164 IMO, Code of Safety for Fishermen and Fishing Vessels, at 3.
The Strategy for Improving Information on Status and Trends of Capture Fisheries is a voluntary instrument elaborated within the framework of the FAO Code of Conduct for Responsible Fisheries that applies to all states and entities. Its overall objectives are to provide a framework, strategy and plan for the improvement of knowledge and understanding of fishery status and trends as a basis for fisheries policy-making and management for the conservation and sustainable use of fishery resources within ecosystems. The required actions fall under nine major areas, with a primary emphasis on the need for capacity building in developing countries.

1.3 Reykjavik Declaration on Responsible Fisheries in Marine Ecosystem (2001)

This declaration is a result of the Reykjavik Conference on Responsible Fisheries in the Marine Ecosystem held in October 2001 in Iceland. It recognises that sustainable fisheries management should incorporate ecosystem considerations which entail taking into account the impacts of fisheries on the marine ecosystem and the impacts of the marine ecosystem on fisheries.


This declaration was a result of the Conference on Aquaculture in the third Millennium which was held in 2000. It discusses the priorities and strategies for the development of aquaculture for the next two decades in the light of the future economic, social and environmental issues and advances in aquaculture technologies. The participants to the Conference declared that the aquaculture sector should continue to be developed towards its full potential, making a net contribution to global food availability (para. 2.18) and that aquaculture policies and regulations should promote practical and economically viable farming and management practices that are environmentally responsible and socially acceptable (para. 2.20).


This declaration was adopted by the FAO Ministerial Meeting on Fisheries in March 1999. The Ministerial Meeting emphasised that the achievement of the sustainable management of both capture fisheries and aquaculture was of great importance for world food security, for the attainment of national economic and social goals and for the well-being and livelihoods of individuals and families involved in fisheries. It was concerned that many of the world’s major marine fishery resources were subject to overfishing, destructive and wasteful fishing practices and excess capacity, resulting in reduced yields and economic returns. The Ministerial Meeting was similarly concerned at the growing amount of illegal, unregulated and unreported fishing activities being carried out, including fishing vessels flying "flags of convenience". The Meeting welcomed the adoption of the International Plans of Action on sharks, seabirds, and capacity, within the framework of the FAO Code of Conduct.

1.6 Kyoto Declaration on the Contribution of Fisheries to Food Security (1995)

This declaration was adopted at the International Conference on the Sustainable Contribution of Fisheries to Food Security in December 1995. The declaration emphasised that unless appropriate action is taken, the combination, at the global level, of population increase and economic growth, in conjunction with continued overfishing, excess fishing capacity and degradation of the aquatic environment, will place enormous strains upon the fishery sector’s capability to sustain its necessary
contribution to food security. It also recognised that many developing countries face major challenges in ensuring a sustainable contribution from subsistence, artisanal and commercial fisheries to their food security. The declaration emphasised the need for international cooperation and support which will be important in ensuring capacity building, information exchange and the provision of technical and financial assistance.

1.7 Cancun Declaration on Responsible Fishing (1992)

This declaration was adopted at the International Conference on Responsible Fishing in May 1992. The participants to the conference recognised the need to improve fishing practices and fisheries management to avoid overexploitation of fisheries resources or loss of biodiversity. The declaration emphasised the vital need for fishing to continue and develop within a comprehensive and balanced system under the concept of “responsible fishing”.

2. RELEVANT SOUTHEAST ASIAN FISHERIES DEVELOPMENT CENTRE (SEAFDEC) GUIDELINES

The Southeast Asian Fisheries Development Centre SEAFDEC is an autonomous intergovernmental body established as a regional treaty organisation in 1967 to promote fisheries development in Southeast Asia. SEAFDEC aims to develop the fishery potentials in the region through training, research, and information services to improve the food supply by rational utilisation and development of the fisheries resources.

SEAFDEC has adopted regional guidelines in line with promoting responsible fisheries to implement the FAO Code of Conduct for Responsible Fisheries. These guidelines are the: Regional Guidelines for Responsible Fishing Operations in Southeast Asia; Regional Guidelines for Responsible Fisheries Management in Southeast Asia; Regional Guidelines for Co-management using Group User Rights for Small-scale Fisheries in Southeast Asia; and Regional Guidelines for Fishery Statistics for Capture Fisheries in Southeast Asia.


The objectives of the Regional Guideline is to clarify the requirements, prioritise the required action; and identify the areas which require special consideration in the regional context, contained in the FAO Code of Conduct of Responsible Fisheries. The Southeast Asian nations believe that while the FAO Code of Conduct is a comprehensive and global guiding principle to achieve sustainable fisheries, global and non discriminatory application of the global code of Conduct to the specific regions or countries may require some modification in order to be effectively implemented in specific circumstances. In the Southeast Asian Region, the three following specific regional situations must be fully considered for inclusion in the modifications and applications of the FAO Code of Conduct: cultural situation; fisheries structure; and ecosystem. The Regional Guidelines also takes into account the significant economic importance of inland fisheries in the region.

Since the Regional Guidelines for Responsible Fishing Operations was prepared based on the Article 8 Fishing Operations of the Code of Conduct for Responsible Fisheries, the original Article and paragraph numbers were retained in the Guidelines. The Regional Guidelines were prepared in line with the objectives stipulated in Chapter II. The Guidelines are a mix of the composition of 1) general comments for paragraphs from regional points of view, 2) Specific considerations for regional application; and, 3) required follow up activities, if any. The left column is the original paragraph with numbers shown for easy reference, while the modified regional guidelines are shown in the right column for consideration by the States for action (page 19).
The SEAFDEC Program on the Regionalisation of the Code of Conduct for Responsible Fisheries including Phase 1: the Regional Guidelines for Responsible Fishing Operations is principally aimed at supporting the implementation of the FAO Code of Conduct by ASEAN Countries. However, it is hoped that the countries, which share similar specific fisheries circumstances can use it as a relevant reference (page 5).

2.2 Regional Guidelines for Responsible Fisheries Management in Southeast Asia (2003)

The Regional Guidelines for Responsible Fisheries in Southeast Asia – Responsible Fisheries Management was developed through a series of regional consultations to supplement the Code of Conduct for Responsible Fisheries for the implementation by the ASEAN Member Countries at the national level. Although the Regional Guidelines has been prepared for the ASEAN Member Countries it is hoped that any countries in Asia, which share similar specific fisheries circumstances will also find it useful. The objectives of the regional guidelines are to:

- Clarify the requirements of the FAO Code of Conduct for Responsible Fisheries;
- Identify and prioritise the require actions;
- Identify the issues that require special consideration in the regional context;
- Facilitate the formulation of regional policies to enable the implementation of the FAO Code of Conduct in the member countries of the Association of Southeast Asian Nations (ASEAN); and
- Facilitate the formulation and implementation by the ASEAN Member Countries of national codes of practice for responsible fisheries management.


The Guidelines are considered as supplementary directives to the Regional Guidelines for Responsible Fisheries in Southeast Asia: Fisheries Management. They are intended to provide a regional reference or checklist for countries that are interested in implementing and improving the management of their small-scale fisheries (co-management approach) using group user rights. It should be noted that the Guidelines, in their nature, generalise issues in the broader context of regional fisheries rather than focusing on specific national situation. It is therefore suggested that the actual application of the Guidelines would require appropriate adjustment or modification, including the terminology used in the guideline so as to fit the national or local specifics on social, economic and legal situations (page A-8).

2.4 Regional Guidelines for Fishery Statistics for Capture Fisheries in Southeast Asia (2008)

The Guidelines are intended to provide a regional reference or checklist for countries in the ASEAN region that are interested in reviewing and/or improving national fishery statistical systems. It should be noted that these Guidelines generalise issues in the broader context of regional fisheries rather than focusing on specific national situation. Therefore, it is suggested that the actual application of the Guidelines would require appropriate adjustment or modification. The Guidelines consist of six sections on the following: General Principles; National Fishery Statistical Systems; Capacity Building for National Fishery Statistical System; National Inter-agency Coordination; Collaboration among ASEAN Member Countries and International/Regional Organisations; and Follow-up actions.

3. ASSOCIATION OF SOUTHEAST ASIAN NATIONS

The Association of Southeast Asian Nations (ASEAN) aims to accelerate economic growth, social progress and cultural development in the region and promote regional peace and stability through
abiding respect for justice and the rule of law in the relationship among countries in the region and adherence to the principles of the United Nations Charter. The ASEAN has adopted a number of ministerial understandings, memoranda of understanding, agreements, resolutions, and plans of action related to responsible fishing.

3.1 ASEAN Ministerial Understanding on Fisheries Cooperation (1983)

This agreement was signed to encourage ASEAN countries to take cooperative action in their national and regional development programmes. Cooperation in fisheries envisaged by the Ministerial Understanding is in the following areas: the management and conservation of fisheries resources in the EEZ, sharing and transfer of technology; aquaculture, and post-harvest technology. In the management and conservation of fisheries resources in the EEZ, the ASEAN nations are expected to exchange information and expertise relevant to fisheries development and management; coordinate action in fisheries resources research activities undertaken by national institutes in the member countries; undertake appropriate action in the evaluation and management of shared stocks and migratory species; and undertake appropriate action for the rational utilisation of fisheries resources in the EEZ.

3.2 Agreement on the Conservation of Nature and Natural Resources (1985)

This agreement requires its Parties to adopt measures, unilaterally or through concerted action, necessary to maintain essential ecological process and life support systems, preserve genetic diversity, and ensure the sustainable utilisation of harvested natural resources under their jurisdiction in accordance with scientific principles and with a view of attaining the goal of sustainable development.

3.3 Memorandum of Understanding on ASEAN Sea Turtle Conservation and Protection (1997)

The objective of this MOU is to promote the protection, conservation, replenishment and recovery of sea turtles and of the habitats based on the best scientific evidence and taking into account the environmental, socio-economic and cultural characteristics of the Parties. Parties to MOU have the obligation to consider harmonising their existing national laws and regulations and enact new laws on sea turtle conservation and protection to suit current situations.

3.4 Resolution on Sustainable Fisheries for Food Security for the ASEAN Region (2001)


This resolution was adopted as a result of a conference that recognised the importance of sustainable fisheries for food security and the livelihoods and well-being of the ASEAN people. The Ministers, in adopting this resolution emphasised the need to formulate regional guidelines to implement the FAO Code of Conduct for Responsible Fisheries, taking into account the specific social, economic, cultural, ecological and institutional contexts and diversity of ASEAN fisheries. It also recognised the need to progressively replace the open access nature of fisheries resources with limited access regimes through the introduction of rights-based fisheries which may also facilitate the management of fishing capacity and promote the use of responsible fishing gears and practices. The Resolution also emphasised the need to increase aquaculture production in a sustainable and environmentally-friendly manner, improve post-harvest technologies, and strengthening of ASEAN approaches on international trade.
3.5 Plan of Action on Sustainable Fisheries for Food Security for the ASEAN Region (2001)

This Plan of Action was adopted on 24 November 2001 at the ASEAN-SEAFDEC Conference on Sustainable Fisheries for Food Security in the New Millennium: “Fish for the People” in Bangkok, Thailand. It was adopted for the ASEAN region to be used as a guideline to develop programmes, projects and activities for the implementation of the Resolution on Sustainable Fisheries.


The Vientiane Programme was adopted to implement the vision of establishing an open, dynamic and resilient ASEAN Community by 2020. It aims to address the development issues and special needs of the less developed ASEAN member countries and sub-regional areas and strengthen ASEAN’s institutional framework to ensure that it is responsive to the challenges and needs of moving towards an ASEAN Community. The Vientiane Action Programme calls for the implementation of ASEAN-SEAFDEC’s Resolution and Plan of Action on Sustainable Fisheries, as well as the utilisation of good practices for aquaculture.

3.7 Cebu Resolution on Sustainable Development (2006)

This resolution expresses the commitment of ASEAN member countries to address global environmental issues through national and regional cooperation and active participation at international fora. These issues include the need to conserve biodiversity in the region.

3.8 Asia Pacific Economic Cooperation

The Asia Pacific Economic Cooperation (APEC) is the forum for facilitating economic growth, cooperation, trade and investment in the Asia-Pacific region. It is the only inter-governmental grouping in the world which operates on the basis of non-binding commitments. APEC has a number of working groups which include a Fisheries Working Group and a Marine Resource Conservation Working Group. These working groups are guided by the declarations and plans of action adopted by APEC, particularly the Seoul Oceans Declaration and the Bali Plan of Action.

3.9 Osaka Agenda (1995)

The Osaka Action Agenda is the template for future APEC work toward sustained economic development throughout the APEC region and aims to implement the Bogor Declaration. The Osaka Action Agenda represents the three pillars of trade and investment liberalisation, their facilitation, and economic and technical cooperation. The agenda on marine resource conservation come under the pillar of economic and technical cooperation. APEC’s common policy concepts on marine resource conservation are: (1) addressing coastal zone planning and management; (2) enhancing coordination in the implementation of relevant UNCED recommendations; and (3) reviewing and resolving marine algal toxin issues. In terms of fisheries, the common policy concepts are: (1) promoting conservation and sustainable use of fisheries resources, the sustainable development of aquaculture, as well as habitat preservation; (2) solving common fisheries resource management problems and aquaculture disease control; (3) enhancing the food safety and quality of fish and fisheries products; and (4) promoting sector specific work relating to trade and investment liberalisation and facilitation.

The Seoul Ocean Declaration (SOD) lays out domestic and regional actions to promote the conservation and management of living marine resources in the APEC region. The SOD calls on APEC economies to facilitate, through exchange of information, effective regional implementation of global fisheries instruments in achieving responsible fisheries and sustainable aquaculture. It also resolves to eliminate IUU fishing in the APEC region.

3.11 The Bali Plan of Action and Joint Ministerial Statement, Bali (2005)

The Bali Plan of Action (BPA) contains practical commitments for the rest of the decade which will guide the priorities of APEC and its working groups that deal with oceans related issues, as well as demonstrate its regional commitment to global oceans and fisheries priorities. The BPA is considered the blueprint for APEC-wide reflects APEC’s resolve to undertake tangible domestic and regional actions, as resources and capacity permit, in the areas of: (1) ensuring the sustainable management of the marine environment and its resources; (2) providing for sustainable economic benefits from the oceans; and (3) enabling sustainable development of coastal communities. The BPA has its basis on the Seoul Oceans Declaration, LOSC, UN Fish Stocks Agreement, FAO Compliance Agreement, CBD, CITES, FAO Code of Conduct for Responsible Fisheries, WSSD, Johannesburg Plan of Implementation, Millennium Declaration.


In this meeting, Ministers emphasised the importance of sustainable economic development in the fisheries and aquaculture sectors, which are of particular importance to many APEC economies. The Ministers emphasised that in order to maximise economic benefits from the oceans, efforts must be taken to facilitate and sustain trade and access to markets for fish and fishery products. Ministers also noted that illegal fishing undermines free and fair trade in fisheries products and directed the APEC Fisheries Working Group to develop programs to assess the impacts of illegal fishing activities, enforce fisheries management measures, and address overcapacity in fishing fleets and report back to Ministers on their progress.

4. ASIA PACIFIC FISHERY COMMISSION

The Asia Pacific Fishery Commission (APFIC), formerly the Indo-Pacific Fisheries Council (IPFC), is the first fishery body of the Asia-Pacific region. It was established in 1948 by FAO under Article XIV of its Constitution and is one of the longest established regional fishery bodies. APFIC’s main function is to promote the full and proper utilisation of living aquatic resources through the development and management of fishing and culture operations and through the development of related processing and marketing activities in conformity with the objectives of its members. APFIC acts as a consultative forum that works in partnership with other regional organisations and arrangements and members. It provides advice, coordinates activities, and acts as an information broker to increase knowledge of fisheries and aquaculture in the Asia Pacific region to underpin decision making.

The initial objective of APFIC was to increase the food supply for the steadily expanding populations after the Second World War. In recent years, the work of the Commission has focused more on management-oriented resources research to back up management decisions and the promotion of responsible fisheries, taking into account social, economic and environmental aspects of fisheries development. Two regional programmes originated by the Commission--the Network of Aquaculture Centres in Asia and the Pacific (NACA) and the Marketing Information and Technical Advisory Services for Fishery Products in the Asia and the Pacific Region (INFOFISH). With the support of their respective Members, those regional programmes were transformed into inter-governmental bodies.
These bodies have since expanded their work and made outstanding contributions for the benefit of the countries in the Asia-Pacific region.

4.1 Relevant Initiatives to Address IUU Fishing

Several projects and consultations and workshops have been organised by APFIC to address national and regional issues of fisheries and aquaculture development and assist member countries to implement the FAO Code of Conduct for Responsible Fisheries. These projects include the Elaboration of a National Plan of Action to Prevent, Deter, and Eliminate IUU Fishing; Addressing the Quality of Information on Inland Fisheries (AQUIIF); and Strengthening National Capabilities in Seafood Trade Policy, including Risk Assessment and Traceability. Regional workshops were also conducted under the auspices of APFIC, particularly on vessel monitoring systems (2004), IUU fishing in Southeast Asian subregion (2004), sea turtle conservation and fisheries (2004); and IUU fishing in South Asian subregion (2006).

In the 2006 Status and Potential of Fisheries and Aquaculture in Asia and the Pacific, two issues emerged: IUU fishing and food safety and trade. In the 29th Session of APFIC, IUU fishing was identified as the biggest threat to the sustainable development of fisheries and aquaculture in the Asia-Pacific region. Because a large part of the region is under the jurisdiction of States, IUU problems generally arise from either (i) nationals fishing in contempt of national and district laws and regulations or (ii) from encroachment of foreign vessels and fishers in another country’s EEZ. Hence, the 29th Session of APFIC emphasised that “(d)etering, and hopefully, eliminating IUU, therefore, is a responsibility of all APFIC Members.”

In a recent review of the capacity of APFIC Members to manage IUU fishing, it was noted that many Members did not even have the necessary legislation to deal with the problem. Many Members also have insufficient MCS capacity to deal with domestic infringements, let alone foreign encroachments. Informal access agreements, often between fishing companies and other business associates, aggravate the problem. To combat IUU, APFIC Members are called on to take actions on two things:

1. Mainstream fisheries co-management so that local communities can become more self-reliant in preventing IUU fishing in their local areas; and
2. Adopt broader bi-lateral and sub-regional cooperation among countries in deterring IUU fishing in the region, starting with the development of national plans of Action in support of the FAO International plan of Action to deter and eliminate IUU fishing.

In the 29th Session, APFIC called on its members to consider the recommendations made at the Twenty-six Session of the FAO Committee on Fisheries.

5. WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION

The objective of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean in accordance with the United Nations Convention on the Law of the Sea and the UN Fish Stocks Agreement (WCPFC Convention, art. 2). The WCPFC has adopted the following Resolutions and Conservation and Management Measures of the WCPFC as of 27 August 2007166:

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166 To clarify the legal implications of the range of decisions that the WCPFC may take, the Second Meeting of the Commission in 2005 adopted the following nomenclature for its decisions. Resolutions describe non-binding statements and recommendations addressed to members of the Commission and Cooperating non-
• Resolution 2005-02. Resolution on Reduction of Overcapacity. 16 December 2005
• Resolution 2005-03. Resolution on Non-Target Fish Species. 16 December 2005
• Conservation and Management Measure 2006-02. Conservation and Management Measure to Mitigate the Impact of Fishing For Highly Migratory Fish Stocks on Seabirds (Revised and replaced by Conservation and Management Measure 2007-04). 15 December 2006
• Conservation and Management Measure 2006-08. Western and Central Pacific Fisheries Commission Boarding and Inspection Procedures. 15 December 2006.
• Conservation and Management Measure 2006-09. Conservation Measure to Establish a List of Vessels presumed to Have Carried out Illegal, Unreported and Unregulated Fishing Activities in the Western and Central Pacific Ocean (Replaced by Conservation and Management Measure 2007-03). 11 December 2006.

members while Conservation and Management Measures describe binding decisions relating to conservation and management measures.
• Conservation and Management Measure 2007-03. Conservation and Management Measure to Establish a List of Vessels presumed to Have Carried out Illegal, Unreported and Unregulated Fishing Activities in the WCPO. 7 December 2007.
• Conservation and Management Measure 2009-06. Conservation and Management Measure on Regulation of Transhipment. 11 December 2009.
• Conservation and Management Measure 2009-09 Conservation and Management Measure for Vessels without Nationality 11 December 2009
ANNEX 2: DETAILED OVERVIEW OF THE EUROPEAN COMMISSION REGULATION 1005/2008: ESTABLISHING A COMMUNITY SYSTEM TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING

The EC Regulation 1005/2005, applies to IUU fishing and associated activities carried out within the jurisdiction of EC Member States, in addition to activities carried out by Community and non-Community vessels on the high seas or in waters under the jurisdiction of a third state.

This comprehensive Regulation provides for the establishment of:
- port state controls over third country fishing vessels;
- catch certification requirements;
- establishment of an EC IUU vessel list;
- and the establishment of a list of non-cooperating third countries.

Fishing vessels subject to the EC IUU Regulation are broadly defined to include ‘any vessel of any size used for or intended for use for the purposes of commercial exploitation of fishery resources, including support ships, fish processing vessels, and vessels engaged in transhipment and carrier vessels equipped for the transportation of fishery products, except container vessels’.

The EC IUU Regulation applies to any products which fall under Chapter 03 and Tariff headings 1604 and 1605 of the combined nomenclature established by Council Regulation (EEC) No. 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the common customs tariff, with the exception of products listed in Annex 1 of the Regulation. Appendix B paper provides a list of these products and exemptions.

Catch certification requirements

Form and Validation of the Certificate

Chapter III of the IUU Regulation starts with the premise that the importation into the EC of fishery products obtained from IUU fishing shall be prohibited. In general, the importation of fishery products into the EC is only allowed when it is accompanied by a catch certificate, completed by the master of the fishing vessel and validated by the flag state of the vessel.

To be valid, the catch certificate must contain all information specified in the template documents shown in Annex II of the IUU Regulation, including:
- Basic information such as the name of the fishing vessel, home port and registration number, call sign, licence number, Inmarsat number and IMO number (if issued);
- Information on the product (the type of species, catch areas and dates, estimated live weight and verified weight landed, as well as the applicable conservation and management measures and any transhipment at sea);
- Information and declaration on export and import of the fisheries product (including the vessel name and flag, flight number, airway bill number, truck nationality and registration number, other transport documents and container number).

The Regulation allows that catch documents and any related documents that are validated in conformity with catch documentation schemes adopted by Regional Fisheries Management Organisation (RFMO), and recognised by the EC as complying with the requirements of the IUU Regulation, will be accepted as catch certificates in respect of the products from species to which such catch documentation schemes apply.
The commission has produced a Technical Note which relates largely to the catch certificate and the processes surrounding it. Although the status and enforceability of the Technical Note are not certain, it provides far more prescription around completing the catch certification, the validation process and the undertaking of the ‘notifications’ under Article 20. The full Technical note can be viewed at:  

**Indirect Importation**

Indirect importation of fishery products (i.e. where products are transported through or processes in a third countries other than the flag state) are also subject to the validation of a catch certificate by the competent authorities. Verifiable documentation or certification is required of products constituting one single consignment which are transported in the same form to the EC from a third country other than the flag state. Similarly, verifiable certificates are required for products constituting one single consignment which have been processed in a third country other than the flag state. Where this is the case, proper documentation is required of every step of transhipment or transit, as well as the exact description of the unprocessed and processed products and their respective quantities.

The IUU Regulation gives wide powers to the competent authorities of EC Member States to implement all the controls they deem necessary for the validation of the catch certificate and other information provided. In addition to the inspection of fishing vessels at port, these control measures may consist of examining the products, verifying declaration data and the existence and authenticity of documents, examining the accounts of operators and other records, inspecting means of transport, including containers and storage places of the products, and carrying out official enquiries.

Importers are required to submit validated catch certificates to the competent authorities of the EC Member State to which the product is intended to be imported at least three working days before the estimated time of arrival into the territory of that state. However, an importer who has been granted the status of an approved economic operator has the option of merely advising the EC Member State of the arrival of the products and keeping the validated catch certificates for verification by the competent authority at a later stage when the fisheries product has entered the territory of the EC state. Article 16(3) of the IUU Regulation, provides criteria for the grant of an approved economic operator status.

A range of actions may be taken by EC Member States against third country fishing vessels that have not complied with the catch certification requirements. EC Member States are permitted to refuse importation of fisheries products without having to request additional evidence or send a request for assistance to the flag state on a number of discretionary grounds.

**Assistance of the competent authority**

The competent authority of the EC Member State may, for the purpose of verification, request the assistance of the competent authorities of the flag state or of a country other than the flag state from which fishery products have been indirectly imported.

In this case the request will state the reasons why the competent authority of the Member State has doubts as to the validity of the certificate, of the statements contained therein and/or the compliance of the products with conservation and management measures. A copy of the catch certificate and relevant documentation will be forwarded. The Regulation provides that the
procedure for verification shall be completed within 15 days of the date of verification request. Where the flag state authority cannot meet the deadline, the verifying authorities in the Member State may grant an extension which shall not exceed a further 15 days. The release of the product in question shall be suspended during the verification process with the cost of storage borne by the operator.

**Flag State Notifications and Cooperation with Third Countries**

Article 20 states that the acceptance of catch certificates validated by a given flag State for the purposes of the Regulation shall be subject to the condition that the Commission has received a notification from the Flag State concerned certifying that:

(1) it has in place national arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by its fishing vessels; and

(2) its public authorities are empowered to attest the veracity of the information contained in catch certificates and to carry out verifications of such certificates on request from the Member States.

The notification shall also include the necessary information to identify those authorities including the names, addresses and official seal prints of the public authorities situated in their territories which are empowered to:

- register fishing vessels under their flag;
- grant, suspend and withdraw fishing licences to their fishing vessels;
- attest the veracity of information provided in the catch certificates referred to in Article 13 and validate such certificates;
- implement, control and enforce laws, regulations and conservation and management measures which must be complied with by their fishing vessels;
- carry out verifications of such catch certificates to assist the competent authorities of the Member States through the administrative cooperation referred to in Article 20(4);
- communicate sample forms of their catch certificate in accordance with the specimen in Annex II; and
- update such notifications.

The notification shall also include sample forms of the catch certificate to be used by the State concerned, in accordance with the specimen in Annex II of the Regulation (Appendix C). The forms actually used during export/import transactions will have to be will have to be identical to the model communicated in the notification.

The article also provides for the EC to conduct ‘on-the-spot’ audits to verify the effective implementation of cooperative arrangements around this Regulation.

**EC IUU vessel list**

A central feature of the IUU Regulation is the creation of a Community IUU vessel list which will contain information on vessels identified by the EC and the Member States as having engaged in IUU fishing. The IUU list is to be established based on compliance with the Regulation catch data and trade information obtained from a range of sources.

The IUU vessel list will also include IUU vessels listed by RFMOs on their respective IUU lists. There are numerous actions that may be taken by EC Member States against vessels on the Community
IUU vessel list including withdrawal of fishing authorisations or special fishing permits; the confiscation of catches and, where appropriate, fishing gear; and the refusal of flag states to grant their flag to IUU fishing vessels.

EC list of non-cooperating third countries

The IUU EC Regulation also provides for the establishment of a list of non-cooperating third countries. A state may be identified as a non-cooperating third country if it fails to discharge the duties incumbent upon it under international law as a flag, port, coastal or market state and to take action to prevent, deter and eliminate IUU fishing activities. The listing of such states is based on a number of considerations and factors, including:

- examination of measures taken by the state concerned in respect of recurrent IUU fishing activities carried out or supported by vessels flying its flag or by its nationals, or by vessels operating in its waters or using its ports, or of access of fisheries products stemming from IUU fishing activities into its market;
- whether the state concerned effectively co-operates with the EC by providing a response to requests made by the European Commission to investigate, provide feedback or follow-up to IUU fishing and associated activities;
- whether the state concerned has taken effective enforcement measures in respect of the operators responsible for IUU fishing, and in particular whether sanctions of sufficient severity to deprive the offenders of the benefits accruing from these activities have been applied;
- whether the history, nature, circumstances, extent and gravity of the manifestations of IUU fishing activities have been considered;
- (for developing countries), the existing capacity of their competent authorities;
- the ratification of or accession to the states concerned to international fisheries instruments, in particular to the Law of the Sea, UN Fish Stocks Agreement and the FAO Compliance Agreement;
- the status of the state concerned as a contracting party to regional fisheries management organisations, or the state’s agreement to apply the conservation and management measures established by such organisations;
- any acts or omissions by the state concerned that may have diminished the effectiveness of applicable laws, regulations or international conservation and management measures;
- where appropriate, specific constraints of developing countries, in particular in respect to monitoring, control and surveillance of fishing activities.

The IUU Regulation requires the prohibition on the importation into the EC of fishery products caught by fishing vessels flying the flag of non-cooperating third countries, and non-acceptance of catch certificates accompanying such products. In cases where the identification of a non-cooperating state is justified by the lack of appropriate measures adopted by the state in relation to IUU fishing activities affecting a given stock or species, the prohibition of importation may only apply in respect of this stock or species.

Port control of third country fishing vessels

Chapter II of the IUU Regulation deals with inspections and control of third country fishing vessels seeking access to the ports of EC Member States. Under this chapter, landings or transhipments by third country fishing vessels shall only take place in designated ports of EC Member States and subject to specific conditions. Masters of third country fishing vessels intending to enter the ports of an EC Member State are required to notify and submit specific information to the competent authorities of the relevant EC Member State at least three working days before the estimated time of arrival at the port.
The notice of intention to enter into port is to be accompanied by a validated catch certificate if the third country fishing vessel in question carries fisheries products on board. The responsibility to verify the accuracy of the information transmitted by the third country fishing vessel in the prior notice and the catch certificate rests with the EC Member State. A third country fishing vessel may be granted authorisation to access the port if fishery products on board are accompanied by a catch certificate and after other information provided to the competent authorities of the relevant EC Member State has been verified as complete. Where the information provided by the fishing vessel is not complete or its verification is pending, an EC Member State, acting as a port state, may authorise port access or permit all or part of a landing in port, but must keep the fisheries products concerned in storage under the control of the competent authorities until the rest of the required information has been received or the verification process is completed. If the verification process is not completed within 14 days of the landing, the EC port Member State may confiscate and dispose of the fish in accordance with its national laws. Storage costs are required to be borne by the operators of the vessel.

Masters of third country fishing vessels intending to use the ports or transhipment facilities of an EC Member State are also required to submit a declaration indicating the quantity of fishery products by species to be landed or transhipped, in addition to the date and place of each catch. EC port Member States are required to retain such declarations for a minimum period of three years and notify the European commission on a quarterly basis of quantities landed or transhipped by third country fishing vessels.

EC Member States are required to carry out inspections in their ports of at least 5 per cent of landings and transhipment operations by third country fishing vessels each year. The proposed Regulation also requires the mandatory inspection of all fishing vessels that have been sighted as, or are presumed to have conducted, IUU fishing and have been reported via the Community alert system, or been listed in an RFMO IUU list. The inspection may cover the fishing vessel’s documents, logbook, fishing gear, catch on board and other possible evidence that might be of relevance to the alleged IUU fishing activities.

If the results of inspection disclose evidence that a third country fishing vessel has engaged in IUU fishing, the EC port Member State is required not to authorise the landing or transhipment of its catch in port. In such circumstances, the EC port Member State is to immediately notify its decision to the European Commission and transmit notification to the competent authority of the vessel’s flag state. Where the suspected IUU fishing has taken place on the high seas or in the maritime waters of a third country, the EC port Member State is required to co-operate with the flag state in carrying out investigations into the suspected breach and, where appropriate, in applying penalties consistent with international law.

**Further Information from the EC**

The EC has stated (on its web portal) that before 2010 it will establish implementing rules to ensure an efficient implementation of the Regulation. It has also stated that a practical handbook will also be published during mid 2009 for the benefit of stakeholder and authorities in the EC and in third countries.

As at April 2009, the EC advised that it is working on an finalising the implementation of the regulation and the development of technical provisions and a technical handbook to ease the implementation of the Regulation.
There is a suggestion in this that although the Regulation has been passed, its application is still subject to change (i.e. areas covered/exemption) and that there may still be scope for negotiation regarding its contents.
## ANNEX 3: MATRIX OF CATEGORIES OF BENCHMARK MEASURES FOR RESPONSIBLE FISHING AGAINST PROVISIONS OF INTERNATIONAL AND REGIONAL INSTRUMENTS

<table>
<thead>
<tr>
<th>Benchmark measures</th>
<th>International and Regional Instrument Reference</th>
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</thead>
<tbody>
<tr>
<td><strong>1. Ecosystem approach to fisheries management</strong></td>
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<tr>
<td>- Include objectives in legislation relating to ecosystem approach to fisheries management</td>
<td>Commitments to instrument:</td>
</tr>
<tr>
<td>- Adopt management measures that take into account the interdependence of fish stocks and effects of fishing on species associated with or dependent on harvested species</td>
<td>- Become party to the LOSC, FAO Compliance Agreement, and the UN Fish Stocks Agreement, and abide by their provisions [2005 Rome Declaration, para. 6, 1999 Rome Declaration, para. 12(h)].</td>
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<tr>
<td>- Adopt measures for the management of migratory species and straddling stocks</td>
<td>- Take steps to effectively implement the LOSC, UN Fish Stocks Agreement, FAO Compliance Agreement, and the FAO Code of Conduct [Kyoto Declaration, para. 5].</td>
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<tr>
<td>- Adopt measures to minimise waste and bycatch</td>
<td>- Collaborate with other States and relevant intergovernmental and non-governmental organisations and financial institutions to promote the effective implementation of the FAO Code of Conduct [1999 Rome Declaration, para. 12(d)].</td>
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<tr>
<td>- Adopt measures to eliminate destructive fishing practices</td>
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<td>- Adopt measures to control fishing capacity</td>
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<tr>
<td>- Adopt measures to protect endangered and threatened species; and sensitive and significant habitat (including protected species and closed areas)</td>
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### Ecosystem based fisheries management

- Adopt measures to minimise wastes, discards, catch by lost or abandoned gear, pollution originating from fishing vessels, catch of non-target species, both fish and non-fish species, and impacts on associated or dependent species, in particular endangered species and promote the development and use of selective, environmentally safe and cost-effective fishing gear and techniques [WCPO Convention, Art. 5(e)].
- Develop and facilitate the use of diverse approaches and tools, including the ecosystem approach, the elimination of destructive fishing practices, the establishment of marine protected areas consistent with international law and based on scientific information, including representative networks by 2012 and time/area closures for the protection of nursery grounds and periods, proper coastal land use and watershed planning and the integration of marine and coastal areas management into key sectors [Chapter 17, Agenda 21; (JPOI)] Accord the highest priority to achieving sustainability of both capture fisheries and aquaculture within the framework of the ecosystem approach [1999 Rome Declaration, para. 12(c)].
- Adopt conservation and management measures that take into account the interdependence of fish stocks and effects of fishing on species associated with or dependent on harvested species in the EEZ and on the high seas [LOSC, Art. 61(3), 61(4), and 119(1)(a) and (b); UN Fish Stocks Agreement, Art. 5(d) and (e); Agenda 21, para. 17.46; FAO Code of Conduct, para. 6.2 and 7.2.3].
- Develop and promote, in an integrated manner, better coastal and oceans management using an ecosystem-based approach, including for sub-regional areas, river basins and watersheds adjacent to coastal areas [APEC, SOD, para. 1].
- Engage in fisheries management reform, where appropriate, through RFMO reform, by advocating the application of an ecosystem approach to fisheries management [APEC, BPA, para. 1.c.i].
- Improve the enabling environment by encouraging technology transfer contributing to sustainable management [Reykjavik Declaration, para. 8].
- Provide alternative social support measures (including employment) [APFIC, Report of the 29th Session].
- Consider harvesting a multiple trophic levels in a manner consistent with sustainable development of these resources [Kyoto Declaration, para. 14].
- Improve the protection of critical sites for the replenishment of fisheries, such as spawning and aggregation sites [APEC, BPA, para.
<table>
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<th>Benchmark measures</th>
<th>International and Regional Instrument Reference</th>
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<tr>
<td>• Prevent adverse effects of non-fisheries activities on the marine ecosystems and fisheries [Reykjavik Declaration, para. 4]</td>
<td>[JPOI] Chapter 17 of Agenda 21</td>
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<tr>
<td>• Facilitate reduction in “race for fish” through rights based fisheries and co-management [APFIC, Report of the 29th Session].</td>
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<tr>
<td>• Consider the effect of structures or materials like artificial reefs and fish aggregating devices, as well as facilities such as maricultures and stationary nets and other artificial structures in the aquatic environment which have one or more effect on the following:</td>
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<tr>
<td>- Effect to aggregate fish schools;</td>
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<td>- Effect to attract spawners;</td>
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<td>- Effect to limit certain fishing activities in the areas; and</td>
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<td>- Effect to promote the ownership concept over the water surface by the fishers [SEAFDEC Fishing Operations, para. 8.11.1(2)].</td>
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<td>• Conserve and sustainably use biological diversity and its components in the aquatic environment and, in particular, prevent practices leading to irreversible changes, such as extinction of genes and species, genetic erosion and/or large-scale destruction of habitats [Kyoto Declaration, para. 12].</td>
<td>[JPOI] Chapter 17 of Agenda 21</td>
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<tr>
<td>• Ensure rich biological diversity is conserved, and sustainably managed, and the benefits arising from these biological and genetic resources are fairly and equitably shared toward enhancing social, economic and environmental well-being [ASEAN Vientiane Action Programme, sec. 3.3(iii)].</td>
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<td>• Be aware of the importance of maintaining the biodiversity and extent of aquatic habitats and ecosystems to the conservation and management of tropical fisheries [SEAFDEC Fisheries Management, para. 7.2.2(4)].</td>
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<td>• Protect biodiversity in the marine environment [WCPCF Convention, Art. 5(f)].</td>
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<tr>
<td>• Maintain the productivity and biodiversity of important and vulnerable marine and coastal areas, including in areas within and beyond national jurisdiction ([JPOI] Chapter 17 of Agenda 21)</td>
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<tr>
<td>• Implement the work programme arising from the Jakarta Mandate on the Conservation and Sustainable Use of Marine and Coastal Biological Diversity of the Convention on Biological Diversity, including through the urgent mobilization of financial resources and technological assistance and the development of human and institutional capacity, particularly in developing countries ([JPOI], chapter 17 of Agenda 21)</td>
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Management of Migratory species

• Take into account the biological unity and other biological characteristics of stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned in establishing compatible conservation and management measures [WCPCF Convention, Art. 8(2)(a)].

• Acknowledge the importance of migratory species being conserved and of Range States agreeing to take action to this end whenever possible and appropriate, paying special attention to migratory species the conservation status of which is unfavourable, and taking individually or in co-operation appropriate and necessary steps to conserve such species and their habitat (CCNS).

• Acknowledge the need to take action to avoid any migratory species becoming endangered (CCNS)

• Promote, co-operate in & support research relating to migratory species(CCNS) ;

• Endeavour to provide immediate protection for migratory species included in Appendix I of the CCNS (CCNS); and

• Endeavour to conclude Agreements covering the conservation and management of migratory species included in Appendix II of the CCNS (CCNS).

• Parties that are Range States of a migratory species listed in Appendix I shall prohibit the taking of animals belonging to such species.
<table>
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<tr>
<th>Benchmark measures</th>
<th>International and Regional Instrument Reference</th>
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<tr>
<td>Exceptions may be made to this prohibition only if:</td>
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<tr>
<td>a. the circumstances so require; provided that such exceptions are precise as to content and limited in space and time taking is for scientific purposes;</td>
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<td>b. the taking is for the purpose of enhancing the propagation or survival of the affected species;</td>
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<td>c. the taking is to accommodate the needs of traditional subsistence users of such species; or</td>
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<td>d. extraordinary. Such taking should not operate to the disadvantage of the species (CCNS).</td>
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<tr>
<td>• Parties that are Range States of migratory species listed in Appendix II shall endeavour to conclude AGREEMENTS where these should benefit the species and should give priority to those species in an unfavourable conservation status (CCNS).</td>
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<tr>
<td>• Parties are encouraged to take action with a view to concluding agreements for any population or any geographically separate part of the population of any species or lower taxon of wild animals, members of which periodically cross one or more national jurisdiction boundaries (CCNS).</td>
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Control of fishing capacity

• Identify, reduce and ultimately eliminate the economic incentives that lead to IUU fishing and the economic drivers that lead to fleet overcapacity, at the national, regional and global levels [2005 Rome Declaration, para. 4].

• Undertake to manage the number of authorisations to fish and the level of fishing effort commensurate with the fishing opportunities available to that member in the Convention Area [WCPO Conservation and Management Measure 2004-01, para. 1(e)].

• Ensure that measures to address IUU fishing or fleet overcapacity in one fishery or area do not result in the creation of fleet overcapacity in another fishery or area or otherwise undermine the sustainability of fish stocks in another fishery or area, and that such measures do not prejudice the legitimate expansion of fleets in developing countries in a sustainable manner [2005 Rome Declaration, para. 4].

• Establish mechanisms to curb, deter or eliminate excess fishing capacity so as to ensure the sustainable use of the fishery resources. Such mechanisms may be effected in a number of ways (e.g. buy-back scheme, zonation, closed seasons, mesh size regulations, etc.) after assessment on the status of the resources have been undertaken [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1].

• Take measures to prevent the build-up of excess fishing capacity where fisheries resources are considered to be under-exploited [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 2].
  • Identify steps needed to limit access (right-based fisheries) when over-capacity exists. Suggested measures include: implementing an improved system of national and local registration of fishing vessels; freezing the number of fishing vessels at existing levels; reducing the number of vessels at the appropriate rate with due consideration on socio-economic impacts, e.g. buy-back schemes, reallocating of number of vessels; alternative employment in other economic sectors through subsidy programs, on an adaptive basis that takes into account the best available information; closely monitoring the impact of vessel reduction on the fisheries resources including prevention of any new entry into the overexploited fishery; providing training on alternative occupational skills and incentives (including vessel buy back system) to encourage boat owners and fishers to leave over-exploited fisheries; and developing appropriate indicators to assist in the management of fishing capacity [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1(3)].

• Promote and strengthen awareness and consensus at all levels on the economic nature of fisheries management, in particular the management of fishing capacity [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1(5)].

• Ensure that other sector policies are compatible with policies aimed at managing capacity, especially those that may directly or
Benchmark measures | International and Regional Instrument Reference
--- | ---
indirectly provide incentives to further increase fishing capacity [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1(7)]. |  
- Include information on ownership and capacity of vessel in registry of fishing vessels [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1(8)].  
- Regularly collect data and information on the status and trend of the fisheries in support of the management of fishing capacity [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1(9)].  
- Apply a precautionary approach to management of capacity in case of uncertainty regarding the state of the fishery resources [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1(10)].  
- Implement management measures for fishing capacity, whenever possible, before the resources are over-exploited to avoid severe social and economic consequences [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1(11)].  
- Consider the socio-economic impacts caused by the reduction and relocation of fishing capacity and take appropriate measures to mitigate negative social consequences [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1(12)].  
- Facilitate equitable application of the national plan of action to manage fishing capacity in coastal fisheries [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1(1)].  
- Reduce the number of fishing boats and level of fishing effort using government incentives [para. A.5].

**Gear regulation**

- Take into account, in the design of fishing gears, qualified assessments of impacts on the sustainability of fisheries, giving due consideration to the specific characteristics and biodiversity of different fishing areas [Cancun Declaration, para. 5].
- Promote the development and use of selective fishing gear and practices that minimise waste of catch of target species and minimize bycatch of non-target species [Cancun Declaration, para. 6].
- Promote fisheries through research and development aiming at: (iii) reduction of discard mortality; (iv) development and use of selective, environmentally safe and cost-effective fishing gear and techniques [Kyoto Declaration, para. 15].
- Introduce improved selectivity of fishing gears/fishing practices [APFIC, Report of the 29th Session].
- Develop and introduce fishing gear and practices that can reduce or exclude the incidental catch to the extent practicable [SEAFDEC Fishing Operations, para. 8.4.8(1)].
- Check whether fishers are using the appropriate selective and environmentally friendly and safe fishing gear and practices before issuing a fishing license [Fishing Operations, para. 8.5.1(1)]. SEAFDEC
- Take into consideration the following factors in developing selective fishing gear and devices:  
  - the survival rate in escape from the gear [SEAFDEC regional guidelines Fishing Operations, para. 8.4.5(3)].  
  - operation of the fishing gear in the correct season and in the right area [SEAFDEC regional guidelines Fishing Operations, para. 8.4.5(4)]  
  - formulation of required rules and regulation [Fishing Operations, para. 8.4.5(5)].  
  - Habitat disturbance, aside from bio-diversity, and contamination and pollution, generation of debris and rubbish, direct mortality and predator-prey relationships [SEAFDEC regional guidelines Fishing Operations, paras. 8.4.7(4) and (5)].
- Give special consideration to destructive fishing gear and practices which have serious effect upon the bio-diversity in the fragile ecosystem [Fishing Operations, para. 8.4.8(1)]. SEAFDEC
- Eliminate the use of illegal and destructive fishing gears and practices by building awareness of their adverse impacts and developing and promoting responsible and selective fishing gears and practices [ASEAN Plan of Action on Sustainable Fisheries, para. A.3].
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<tr>
<td>• Consider appropriate measures regulating destructive fishing practices when revising the FAO Technical Guidelines on Ecosystem-based Fisheries Management [APFIC, Report of the 29th Session of COFI, para. 92].</td>
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<td>• Reduce trawling and push net effort (and clearly monitor the effect of capacity reduction) [APFIC, Report of the 29th Session].</td>
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<tr>
<td>• Conduct an assessment of longline fisheries to determine if a problem exists with respect to the incidental catch of seabirds [IPOA-Seabirds, para. 12].</td>
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Management of bycatch species

• Implement measures to reduce bycatch resulting in unintentional mortality [APEC, BPA, para. I.c.ix].
• Encourage vessels operating in fisheries managed under the WCPFC Convention to avoid to the extent practicable, the capture of all non-target fish species that are not to be retained [Resolution 2005-03, para. 1].
• Promptly release to the water unharmed any non-target fish species that are not to be retained [WCPFC Resolution 2005-03, para. 2].
• Promote the use of environmentally sound technologies, such as fishing gear and practices that minimise impact on non-target species [Agenda 21, para. 17.46(c), 17.74(d), and 17.87(c)] and maintain biodiversity and conserve aquatic ecosystems [FAO Code of Conduct, Art. 6.6 and 12.10].
• Give special consideration to economic and marketing research for discards especially for the catch by shrimp trawl fishing. Research activities that should be considered to solve the problems are:
  - Fish behaviour studies;
  - Development of selective fishing gear and practices;
  - Marketing study on target and non-target species;
  - Study on operational parameters (duration of fishing trip, mother boat operation);
  - Investigation of facilities on the vessels (facility and capacity of the preservation of catch, size of fish-hold, etc.);
  - Study on the survival of escaped fish; and
  - Study on the economic effect of using selective fishing gear and devises [SEAFDEC Fishing Operations, para. 8.5.3(1)].
• Implement measures to reduce bycatch resulting in unintentional mortality [APEC, BPA, para. I.c.ix].
• Encourage vessels operating in fisheries managed under the WCPFC Convention to avoid to the extent practicable, the capture of all non-target fish species that are not to be retained [Resolution 2005-03, para. 1].
• Promptly release to the water unharmed any non-target fish species that are not to be retained [WCPFC Resolution 2005-03, para. 2].
• Set a clear policy on the minimization of incidental catch including juveniles and aquatic animals [SEAFDEC Fishing Operations, para. 8.5.1(6)].

Rehabilitation

• Initiate central and local government level strategies and action plans to monitor and rehabilitate degraded coastal habitats including coral reefs, mangrove forests, sea-grass beds [Fishing Operations, para. 8.4.7(2)]. SEAFDEC
• Check and reverse degradation of the environment and loss of fisheries habitats by employing rehabilitation and mitigation measures to improve ecological condition by: SEAFDEC
  - Securing the migration routes and spawning areas for the commercially important species under either national or regional efforts.
  - Reducing negative impacts caused by human activities, and
  - Integrating inland fisheries management within the multi-purpose use framework of water resources [Fisheries Management, para. 17.46(c), 17.74(d), and 17.87(c)].
• Check and reverse degradation of the environment and loss of fisheries habitats by employing rehabilitation and mitigation measures to improve ecological condition by: SEAFDEC
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<td>7.3.5 ADD. 1[2].</td>
<td>• Support all activities that may lead to the recovery of depleted stocks, which may include the rehabilitation of fisheries resources via establishment of marine protected areas, artificial reefs, closed areas, closed seasons, and restocking programmes [Fisheries Management, para. 7.2.2(5)]. SEAFDEC</td>
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Closed areas and seasons

• Develop closed areas (marine parks, marine protected areas) in areas such as coral reefs to protect fragile coastal ecosystems [Fisheries Management, para. 7.6.10 ADD. 1[10]]. SEAFDEC
• Strongly implement management measures such as closed areas and seasons in critical habitats (e.g. coral reefs, seagrass beds, mangrove areas, etc.) which are important for sustaining fish stocks [Fisheries Management, para. 7.6.9(2)]. SEAFDEC
• Consider area or seasonal closure to protect critical stages of life cycle of fisheries resources [Fisheries Management, para. 7.6.4 ADD. 1(8)]. SEAFDEC
• Establish, in areas under its jurisdiction, terrestrial, freshwater, coastal or marine protected areas for the purpose of safeguarding the ecological and biological processes essential to the functioning of the ecosystems of the region [ASEAN Agreement on the Conservation of Nature and Natural Resources, Art. 13(1)].
• Use a range of tools for sustainable development such as marine protected areas [SOD, para. 3].
• Initiate the identification of ecologically and biologically significant areas and apply, as appropriate, area-based measures, such as marine protected areas, consistent with international law and based on best available scientific information, to manage and conserve these areas [APEC, BPA, para. l.b.ii].
• Develop technical guidelines on the design, implementation and testing of marine protected areas [APFIC, Report of the 29th Session of COFI, para. 103].
• Protect juvenile nursery areas (refugia/closed areas, seasonal closures) [APFIC, Report of the 29th Session].
• Take necessary measures to protect coastal wetlands and other areas of critical fisheries habitat from all kinds of degradation [Cancun Declaration, para. 8].
• Improve the conservation of vulnerable areas by managing activities having a destructive impact on these areas and associated species [APEC, BPA, para. l.b.xiv].

Threatened, endangered and protected species

• Ban fishing and taking of rare, threatened and endangered species [Fisheries Management, para. 7.2.2(7)]. SEAFDEC
• Protect and restore endangered marine species as part of fisheries management measures [Agenda 21, para. 17.74(c)].
• Develop programs to help developing economies contribute to marine turtle conservation based on FAO Guidelines to Reduce Sea Turtle Mortality in Fishing Operations, as well as implement the Indian Ocean and Southeast Asia turtle Memorandum of Understanding and the Inter-American Convention on the Protection and Conservation of Marine Turtles [APEC, BPA, para. l.c.x].
• Implement the conservation and management of marine turtles (2002 Regional Meeting on “Fish Trade and Environment”) by: SEAFDEC
  - Conducting comprehensive and quantify assessments on the factors of either fisheries or non-fisheries sectors (e.g. pollution, coastal area development, tourism, transportation, etc.) and their impacts on the reduction of marine turtle population;
  - Using the outcomes of these assessment as the basis to strengthen the current measures to conserve marine turtles;
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| - Collating and disseminating the outcomes of these assessments to enhance the awareness of the importance on marine turtle conservation;  
- Publicising marine turtle conservation programs and activities;  
- Emphasising that a comprehensive marine turtle conservation program is most effective for marine turtle conservation [SEAFDEC Fisheries Management, para. 7.6.1 ADD. 1(1)]. | • Implement the FAO guidelines to Reduce Sea Turtle Mortality in Fishing Operations [WCPC Resolution 2005-04, para. 1].  
• Collect and provide to the WCPC all available information on interactions with sea turtles managed under the Convention [WCPC Resolution 2005-04, para. 2]  
• Enhance the implementation of respective turtle mitigation measures that are already in place and collaborate with other CCMs in the exchange of information in the area [WCPC Resolution 2005-04, para. 3].  
• Require purse seine vessels flying its flag to:  
  - avoid encirclement of sea turtles to the extent practicable, and if encircled or entangled, take all practicable measures to safely release sea turtles;  
  - take all reasonable efforts whenever a sea turtle is sighted in the net to rescue the turtle before it becomes entangled in the net, including if necessary, the deployment of a speedboat;  
  - stop net roll, if a turtle is entangled in the net and assist the recovery of the turtle before returning it to the water; and  
• Take necessary measures to monitor fish aggregating devices and consider FAD designs and use that reduce the likelihood of sea turtle entanglement [WCPC Resolution 2005-04, para. 4].  
• Require longline vessels flying their flags to carry on board and when sea turtle interactions occur, employ the necessary equipment for the prompt release of incidentally caught sea turtles [WCPC Resolution 2005-04, para. 5(iii)].  
• Undertake research trials of appropriate size circle hooks in commercial pelagic longline fisheries and on the use of circle hooks in recreational and artisanal fisheries [WCPC Resolution 2005-04, para. 5(i) and (iii)].  
• Take actions to incorporate shark fisheries management measures within national fisheries management policy and framework. (2002 Regional Meeting on "Fish Trade and Environment") [Fisheries Management, para. 7.6.1 ADD. 2(1)] SEAFDEC  
• Use species composition as an indicator for better understanding of dynamic of shark fisheries [Fisheries Management, para. 7.6.1 ADD. 2(2)]; SEAFDEC  
• Improve coordination mechanisms with the industries to collect and understand the status and trend of shark fisheries [Fisheries Management, para. 7.6.1 ADD. 2(2)], SEAFDEC  
• Develop pilot projects to understand and manage shark fisheries[Fisheries Management, para. 7.6.1 ADD. 2(2)]; SEAFDEC  
• Promote research activities to maximise utilisation of harvested sharks and identification of species of shark products [Fisheries Management, para. 7.6.1 ADD. 2(2)], SEAFDEC  
• Develop the capacity of APEC economies to implement domestic plans of action for shark conservation and management [APEC, BPA, para. 1.c.xi].  
• Require fishers to fully utilise any retained catches of sharks [WCPC Conservation and Management Measure 2006-05, para. 6].  
• Encourage the release of live sharks that are caught incidentally and are not used for other purpose [WCPC Conservation and Management Measure 2006-05, para.10].  
• Employ one or more of the seabird mitigation measures provided in Conservation and Management Measure-2006-02, such as side setting with a bird curtain and weighted branch lines, night setting with minimum deck lighting, tori line, weighted branch lines, blue- |
### Benchmark measures

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<td>dyed bait, deep setting line shooter, underwater setting chute and management of offal discharge [WCPFC Conservation and Management Measure 2006-02, para. 2].</td>
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<tr>
<td>Undertake research to further develop and refine measures to mitigate seabird bycatch [WCPFC Conservation and Management Measure 2006-02, para. 7].</td>
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<td>Adopt measures aimed at ensuring that seabirds captured alive during longlining are released alive and in as good condition as possible [WCPFC Conservation and Management Measure 2006-02, para. 9].</td>
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### Optimal utilisation

- Increase the available supply of fish and fishery products for human consumption, nationally and internationally, through: (i) making optimum use of harvests and reducing post-harvest losses; (ii) developing, improving and sharing appropriate storage, processing and distribution technology; and (iii) developing and promoting effective systems ensuring the safety of food of aquatic origin, including harmonisation of international regulations [Kyoto Declaration, para. 16].
- Introduce and provide support for the development of technologies to optimise the utilisation of catch and reduce post-harvest losses, wasters and discards in industrial and small-scale fisheries [ASEAN Plan of Action on Sustainable Fisheries, para. C.1].
- Promote fisheries through research and development aiming at: (i) optimum use of unexploited or underexploited resources; (ii) identification of new, harvestable, aquatic resources; (iii) reduction of discard mortality; (iv) development and use of selective, environmentally safe and cost-effective fishing gear and techniques [Kyoto Declaration, para. 15].
- Promote fisheries through research and development aiming at: (i) optimum use of unexploited or underexploited resources; (ii) identification of new, harvestable, aquatic resources [Kyoto Declaration, para. 15].

### Cooperation and networks

- Strengthen, improve and establish regional and international fisheries management organisations and incorporate in its work ecosystem considerations and improve cooperation between those bodies and regional bodies in charge of managing and conserving the marine environment [Reykjavik Declaration, para. 3 regional]
- Exchange research and information on ecosystems to ensure conservation and sustainable management [APEC, BPA, para. I.a.viii].
- Implement measures after consultations with neighbouring states and promote participatory approach in the formulation and implementation of fisheries policies [SEAFDEC Fisheries Management, para. 7.1.1(1)].

### Data Collection, Monitoring and Research

- Collect data in sufficient detail to facilitate effective stock assessment.
- Collect data on non-target species such as bycatch species and dependent species.
- Verify data through appropriate systems.
- Promote research on fisheries as well as on associated ecosystems, particularly on the study of the profiles of all target and non-target species. The principles for data collection, compilation and exchange that need to be adopted by a State are:
  - Timely collection, compilation and analysis of data [UN Fish Stocks Agreement, Annex I Art. 1(1); FAO Code of Conduct, Art. 7.4.4].
  - Provision of training, financial, and technical assistance to developing States to enhance their capacity to implement data collection and verification, observer programmes, data analysis and research projects supporting stock assessments [UN Fish Stocks Agreement, Annex I Art. 1(2)].
  - Taking into account the operational characteristics of each fishing method to facilitate stock assessment [UN Fish Stocks Agreement, Annex I Art. 2(a)].
  - Verification of data through an appropriate system [UN Fish Stocks Agreement, Annex I Art. 2(b)].
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<td>target stocks, impacts of new types of gears on fisheries and ecosystems, relationships among populations in the ecosystem and effects of ecosystem changes resulting from fishing pressure, pollution or habitat alteration.</td>
<td>• Compilation of fishery-related and other supporting scientific data in an agreed format and provision of such data to relevant subregional or regional organisations [UN Fish Stocks Agreement, Annex I Art. 2(c) and 2(e)].</td>
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<td>• Advance the scientific basis for incorporating ecosystem considerations, building on existing and future available scientific knowledge.</td>
<td>• Cooperation among States in the exchange of data [UN Fish Stocks Agreement, Annex I Art. 2(c)].</td>
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<tr>
<td>• Compile fishery-related and other supporting scientific data, including VMS and observer data, in an agreed format and provide such data to relevant subregional or regional organisations and/or States (subject to confidentiality requirements in accordance with national law).</td>
<td>• Agreement among States, within the framework of subregional or regional fisheries management organisations or arrangements, on the specification of data and the format in which they are to be provided [UN Fish Stocks Agreement, Art. 14(2)(a) and Annex I Art. 2(d)].</td>
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<td>• Collect and exchange information on suspected IUU fishing, if possible on a real-time basis, in collaboration with FAO, RFMOs and other relevant arrangements, and by actively participating in the International MCS Network.</td>
<td>• Separate or joint analysis of data by scientists of flag States and relevant subregional or regional organisations [UN Fish Stocks Agreement, Annex I Art. 2(f)].</td>
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**General measures**

- Adopt the “Regional Plan of Action for the Improvement of Fishery Statistics” and the “Minimum Requirement of a National Fishery Statistical System in ASEAN Region”, with due regard to the current needs and issues of fisheries in the region [SEAFDEC Fisheries Management, para. 7.4 ADD. 1(1)].
- Promote and enhance data collection necessary for the conservation and sustainable utilisation of fisheries resources [Cancun Declaration, para. 4].
- Develop data collection and research programmes to assess the impact of fishing on non-target and associated or dependent species and their environment [WCPFC Convention, Art. 6(1)(c)].
- Approach the implementation of the FAO Code of Conduct, in particular as it relates to Article 7 (Fisheries Management), especially Article 7.4.2 and Article 12 (Fisheries Research), by considering ways to expand the scope of status and trends reporting to meet the responsibilities for research and the dissemination of information on the effects of climatic, environmental and socioeconomic factors on fishery conservation and management [Strategy for Improving Information, para. 29].
- Build capacity at both national and local levels to collect, compile, analyse and disseminate quality statistical data and information in a timely manner as an empirical basis for formulating policies and decisions for fisheries management [SEAFDEC Fisheries Management, para. 7.4 ADD. 1(1)].
- Recognise that many small-scale fisheries and multi-species fisheries, particularly in developing countries, are not well monitored and that awareness needs to be raised on the importance of monitoring these fisheries [Strategy for Improving Information, para. 24].
- Consider broadening the collection of information on the status and trends of fisheries to support further development of fisheries management incorporating ecosystem considerations [Strategy for Improving Information, para. 30].
- Collect information on various management measures, conflicts between commercial and coastal fisheries, by-catch, retained catch, waste, incidental catch, fishing gear inventory and other problem areas [SEAFDEC Fishing Operations, para. 8.4.3(3)].
- Consider the evolving needs for information on fishing operations in addition to the statistical data. Required information may cover not only fishing operations and fish stock but also socio-economic data including number of boats and potential catch effort [SEAFDEC Fishing Operations, para. 8.4.3(1)].
- Ensure that competent government authorities in coordination with the fishing industry and competent units of the Government offices in charge of coastal fisheries jointly establish baseline data and implement mechanisms to continuously produce the required data and information [SEAFDEC Fishing Operations, para. 8.4.3(2)].
- Implement an enumerator and scientific observer program in certain important fishing bases. The enumerators will collect catch data
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<td>from the landing places, fish auction hall, fishery markets or fishers villages in their areas. Scientific observers will collect catch data onboard and discards. [SEAFDEC Fishing Operations, para. 8.4.3(5)].</td>
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<td>• Improve the collection of statistical data on inland capture fisheries, covering all major ecosystems, catchment, types, sizes and importance of the fisheries at species level for planning and development process [SEAFDEC Fisheries Management, para. 7.3.5 ADD 1(1)].</td>
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<td>• Ensure that for catch assessment and other basic surveys, the database should be capable of producing all required standard outputs automatically to facilitate use of data [SEAFDEC Fisheries Statistics, para. 27].</td>
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<td>• Report and present information required to make policy decisions [SEAFDEC Fisheries Statistics, para. 28].</td>
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<td>• Develop a Food Balance Sheet as a means of assessing data quality and consistency [SEAFDEC Fisheries Statistics, para. 29].</td>
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<td>• Publish yearly statistical yearbook. National fishery statistical yearbook should be produced as soon as possible but not more than 2 years of completion of data collection considering the need for up-to-date statistical information and required work in the statistics production process [SEAFDEC Fisheries Statistics, para. 30].</td>
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Data collection methodologies

• Collect data from different sources using different methodologies to allow cross-checking of results for errors [SEAFDEC Fisheries Statistics, para. 19].

• Collect data through a combination of landing site sample surveys for catch and effort, a census for the structural parameters (boats and gears) as well as surveys for marketing, processing and some livelihood parameters, for marine fisheries (medium-scale and large-scale fisheries) [SEAFDEC Fisheries Statistics, para. 20].

• Collect data through a combination of sample surveys for catch and effort for those sectors of the fishery that can be managed through gear and effort restrictions may be conducted, for inland fisheries [SEAFDEC Fisheries Statistics, para. 21].

• Assess fish production/consumption and involvement for the small-scale family fishing sector in consumption (household) surveys [SEAFDEC Fisheries Statistics, para. 21].

• Use indicator surveys for pilot areas or fisheries using sampling surveys for catch and effort on a small-scale. This can be extrapolated over larger areas or other fisheries to obtain an overall estimate [SEAFDEC Fisheries Statistics, para. 22].

• Estimate total fish production with less emphasis on effort and more emphasis on involvement and auxiliary information to gauge the status of the fishery, e.g. socio-economic, consumption or fish trade surveys [SEAFDEC Fisheries Statistics, para. 22].

• Obtain information from fishers and other stakeholders, e.g. middlemen [SEAFDEC Fisheries Statistics, paras. 23 and 24].

• Select appropriate data collection methods [Fisheries Statistics, para. 15].

• Participate in and support the development of cost-effective methods for acquiring and validating data on small-scale and multi-species fisheries, including rapid appraisal methodologies and other approaches for data-poor situations and participatory processes that closely associate the fishers and their organizations to the data collection schemes [Strategy for Improving Information, para. 25].

Monitor and Improve Data Collection

• Monitor data collection, analysis and reporting system and ensure the sustainability of the system to meet the needs of fishery policy-making and management, and the agreed requirements of regional fishery bodies and arrangements and FAO, and take corrective actions as appropriate [Strategy for Improving Information, para. 45].

• Develop and implement mechanisms for the improvement of fisheries information, the application of research to enhance the
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<td>availability of best scientific evidence, and the adoption of a continuing process for the enrichment of fishery status and trends information to support conservation, management and sustainable use of fishery resources at local, regional and global levels [Strategy for Improving Information, para. 46].</td>
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<td>• Enhance capacity to collect data to ensure that the coverage of fisheries information is as complete as possible and includes all sectors, in particular the data necessary to evaluate small-scale and multi-species fisheries [Strategy for Improving Information, para. 25].</td>
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<td>• Evaluate the actions needed to improve information on the status and trends of fisheries, address these requirements on a priority basis, and report on the improvements made, as part of their biennial report to FAO on the Code of Conduct [Strategy for Improving Information, para. 47].</td>
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<td>• Review the required statistical data to accommodate new and emerging requirements, such as classification of commercially important fish species, etc. [SEAFDEC Fisheries Statistics, para. 14].</td>
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<td>• Clearly determine the objectives and minimum requirements of fishery statistical data and information with particular reference to national and local requirements [SEAFDEC Fisheries Management, para. 7.4 ADD. 1(1)].</td>
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<td>• Expand the classification of some major commercial shark species into the national fisheries statistics considering the national fisheries on sharks [2002 Regional Meeting on “Fish Trade and Environment” [SEAFDEC Fisheries Management, para. 7.4 ADD. 1(5)].</td>
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<td>• Provide a better understanding of status, trends &amp; utilisation of “low value/trash fish” for planning and management [APFIC Report of the 29th Session].</td>
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<td>• Adopt common terminology for data collection in relation to low value/trash fish [APFIC Report of the 29th Session].</td>
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Data verification

• A State is required to establish mechanisms for verifying fishery data such as:
• Position verification through vessel monitoring systems;
• Scientific observer programmes to monitor catch, effort, catch composition (target and non-target) and other details of fishing operations;
• Vessel trip, landing and transshipment reports; and
• Port sampling [UN Fish Stocks Agreement, Art. 14(1)(c) and Annex I Art. 6].

• Participate in the development of criteria and methods to ensure information quality and security for the purposes of best scientific evidence, in accordance with internationally agreed standards and practices, through mechanisms for data verification, and in a manner consistent with applicable confidentiality requirements [Strategy for Improving Information, para. 39].

Statistic Systems

• Investigate and identify current constraints of fisheries statistical systems [SEAFDEC Fishing Operations, para. 8.1.3(1)].
• Strengthen its national fishery statistical system and maximise its use for fisheries planning and management and develop standard definitions and classifications to facilitate regional fishery statistics and information exchanges [ASEAN Resolution on Sustainable Fisheries, para. A.7];
• Seek mechanisms to improve fisheries statistical systems, regional compatibility and standardisation to meet the management requirements on trans-boundary fish stocks [SEAFDEC Fishing Operations, para. 8.1.3(1)].
• Maximise the use of national fisheries statistical systems by focusing on clear objectives and timely results directly related to fishery management decision-making and planning processes [ASEAN Plan of Action on Sustainable Fisheries, para. A.1].
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<td>• Consider provision of sustained government support for the improvement and refinement of national fishery statistical systems [SEAFDEC Fisheries Management, para. 7.4 ADD. 1(2)].</td>
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<tr>
<td>• Review national fishery statistical systems to identify areas needing improvement [SEAFDEC Fisheries Management, para. 7.4 ADD. 1(1)].</td>
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<td>• Prioritise statistical data and information needs with particular reference to practical indicators for fisheries management and specific requirements of the region’s fisheries [SEAFDEC Fisheries Management, para. 7.4 ADD. 1(1)].</td>
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Types of data to be collected

For purposes of facilitating stock assessment and standardising fleet composition and vessel fishing power, the fishery data to be collected would need to include:

- Time series of catch and effort statistics by fisheries and fleet [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)].
- [SEAFDEC Fishing Operations, para. 8.1.3(2)], [WCPFC Convention, Art. 5(i)]..
- Total catch in number, nominal weight, or both, by species (both target and non-target) as is appropriate to each fishery [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)].
- Discard statistics, including estimates where necessary, reported as number or nominal weight by species, as is appropriate to each fishery [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)]. [FAO Code of Conduct, Art. 12.4] [WCPFC Convention, Art. 5(i)], [SEAFDEC Fishing Operations, paras. 8.4.3(4) and (6)].
- Effort statistics appropriate to each fishing method [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)].
- Fishing location, date and time fished and other statistics on fishing operations as appropriate [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)].
- Composition of the catch according to length, weight and sex [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)].
- Other biological information supporting stock assessments such as information on age, growth, recruitment, distribution and stock identity [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)].
- Other relevant research, including surveys of abundance, biomass surveys, hydro-acoustic surveys, research on environmental factors affecting stock abundance, and oceanographic and ecological studies [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)].
- Vessel identification, flag and port of registry [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)].
- Vessel type [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)].
- Vessel specifications (e.g. material of construction, date built, registered length, gross registered tonnage, power of main engines, hold capacity and catch storage methods) [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)].
- Fishing gear description (e.g. types, gear specifications and quantity) [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)].
- Navigation and position fixing aids [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)].
- Communication equipment and international radio call sign [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)].
- Crew size [UN Fish Stocks Agreement Annex I Art. 3 and Art. 1(1)].

Exchange of data  Requirements to exchange and share data

- Contribute and exchange, on a regular basis and through competent organisations, available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks [LOSC, Art. 61(5) and 119(2)].
- Exchange information, with another State or through FAO, with respect to activities of fishing vessels flying the flags of non Parties that undermine the effectiveness of international conservation and management measures [FAO Compliance Agreement, Art. VIII(3); UN Fish
**Benchmark measures**

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<td>• Make aggregated information from catch and transhipment reports available, in a full, timely, and regular manner, and as appropriate to relevant, national, regional and international organisations [IPOA-IUU, para. 50].</td>
</tr>
<tr>
<td>• Share the scientific, technical, and statistical data with other flag States and relevant coastal States through appropriate subregional or regional fisheries management organizations or arrangements [UN Fish Stocks Agreement, Art. 14(1)(a) and Art. 7(1)].</td>
</tr>
<tr>
<td>• Disseminate data subject to the terms on which they have been provided [UN Fish Stocks Agreement, Annex I Art. 1(1)].</td>
</tr>
<tr>
<td>• Enhance international cooperation including the appropriate transfer of technology, in remote sensing and satellite surveillance of fishing vessels to combat IUU fishing, particularly in remote areas with lack of deployment of MCS facilities [2005 Rome Declaration, para. 6].</td>
</tr>
<tr>
<td>• Work within RFMOs to facilitate the exchange of VMS and observer data, subject to confidentiality requirements in accordance with national law [2005 Rome Declaration, para. 4].</td>
</tr>
<tr>
<td>• Exchange information on suspected IUU fishing, if possible on a real-time basis, in collaboration with FAO, RFMOs and other relevant arrangements, and by actively participating in the International MCS Network [2005 Rome Declaration, para. 5].</td>
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</table>

**International and Regional Instrument Reference**

Support the compilation and integration of data

• Participate in, or support coordinated efforts for the compilation of a global inventory of fisheries and fish stocks (biological management units) or stock-complexes as a basis to improve the completeness of available information on the status and trends of fisheries and for inclusion in FIGIS [Strategy for Improving Information, para. 32].

• Collaborate with FAO to develop the definitions, form, content, methods and implementation (including the definition and allocation of responsibilities and the estimation of costs) of a programme for the compilation of a global inventory of fisheries and fish stocks (or stock-complexes), noting the requirements for and coordinating efforts with the actions being undertaken through IPOAs [Strategy for Improving Information, para. 33].

• Provide the FAO Fisheries Global Information System (FIGIS) with the best scientific information available [Strategy for Improving Information, para. 36].

• Support FAO and other FIGIS partners in the organisation of and participation in pilot projects and workshops to further develop and implement FIGIS, to develop training materials, and to conduct training [Strategy for Improving Information, para. 37].

• Support, both directly or through participation in regional fishery bodies and arrangements, development of FIGIS by:
  - providing national user requirements for outputs from and inputs to the system;
  - participating in national, regional and international processes to define the protocols for information exchange, quality assurance or quality rating, and transparency provisions to be specified in partnership agreements;
  - contributing timely information to FIGIS;
  - facilitating a systematic synthesis of information on fishery status and trends from national to regional and global levels; and
  - participating in complementary information and communication technology initiatives aimed at improving the generation and dissemination of research based knowledge relevant to sustainable development [Strategy for Improving Information, para. 35].

• Seek and agree on arrangements to facilitate the provision and exchange of information on the status and trends of fisheries with FAO and address the roles and entitlements of the partners, information quality, transparency and confidentiality [Strategy for Improving Information, para. 41].

• Formalise arrangements for working groups composed of fishery experts and set up by countries or regional fisheries bodies and...
 Benchmark measures | International and Regional Instrument Reference
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arrangements to analyse fisheries data and fish stocks information towards the evaluation of their status and trends [Strategy for Improving Information, para. 43].
• Work with FAO to ensure the participation of fishery experts from around the world in working groups, particularly where these working groups contribute to capacity building in developing countries [Strategy for Improving Information, para. 44].
• Apply regionally standardised definitions and classifications for statistical data to facilitate regional compilation, analysis and data exchange [ASEAN Plan of Action on Sustainable Fisheries, para. A.11].
• Support, upgrade and expand regional fisheries statistical systems by developing regionally compatible methodologies for national statistical data to facilitate regional fisheries assessment and data exchange [SEAFDEC Fisheries Management, para. 7.4 ADD. 1(3)].
• Use regionally comparable statistical methodologies to facilitate regional compilation and exchange of data [SEAFDEC Fisheries Management, para. 7.4 ADD. 1(1)].
• Agree with other States on the standards for collection, reporting, verification, and exchange of data on fisheries for highly migratory and straddling fish stocks [UN Fish Stocks Agreement, Art. 10(e)]; [Strategy for Improving Information, para. 26].

Research
• Study the effectiveness of multi-species management [Kyoto Declaration, para. 13].
• Promote research activities to assess the volume and the composition of discards [SEAFDEC Fishing Operations, para. 8.4.3(7)].
• Systematically assess the impacts of fishing, aquaculture and other activities affecting the marine environment, particularly in coastal areas [Cancun Declaration, para. 7].
• Promote research on fisheries as well as on associated ecosystems [FAO Code of Conduct, Art. 2(i) and 6.4], particularly on the study of the profiles of all target and non-target stocks [Agenda 21, para. 17.57], impacts of new types of gears on fisheries and ecosystems [FAO Code of Conduct, Art. 12.11], relationships among populations in the ecosystem [FAO Code of Conduct, Art. 7.2.3], and effects of ecosystem changes resulting from fishing pressure, pollution or habitat alteration (FAO Code of Conduct, Art. 12.5).
• Advance the scientific basis for incorporating ecosystem considerations, building on existing and future available scientific knowledge by:
  - identifying and describing the structure, components, and functioning of relevant marine ecosystems, diet composition and food webs, species interactions and predator-prey relationships, the role of habitat and the biological, physical, and oceanographic factors affecting ecosystem stability and resilience;
  - building or enhancing systematic monitoring and natural variability and its relations to ecosystem productivity;
  - improving the monitoring of bycatch and discards in all fisheries to obtain better knowledge of the amount of fish actually taken;
  - supporting research and technology development of fishing gear and practices to improve gear selectivity and reduce adverse impacts of fishing practices on habitat and biological diversity; and
  - assessing adverse human impacts of non-fisheries activities on the marine environment as well as the consequences of these impacts for sustainable use [Reykjavik Declaration, para. 5; APEC, SOD, para. 9].
• Assess the impacts of fishing, other human activities and environmental factors on target stocks, non-target species, and species belonging to the same ecosystem or dependent upon or associated with the target stocks [WCPFC Convention, Art. 5(d)].
• Assess habitats in shallow water areas to be given higher priority [ SEAFDEC Fishing Operations, para. 8.4.7(3)].
• Encourage research on species interaction and carefully consider the sizable cost involved in assessment work on tropical fisheries which may include several environmental parameters and multi-species nature of fish stocks [ SEAFDEC Fisheries Management, para. 7.2.3(1)].
• Study fish behaviour with utmost priority. Special consideration should also be given in areas where abundant juveniles exist and
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<th>Benchmark measures</th>
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<td></td>
<td>appropriate action including declarations of closed areas and seasons to fish should be taken [SEAFDEC Fishing Operations, para. 8.5.1(6)].</td>
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<td></td>
<td>Research on the multi-species composition in the catch and resources to clarify specific situations of tropical fisheries [SEAFDEC Fishing Operations, para. 8.5.4(3)].</td>
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<td>Develop an agreed set of factors to be applied in defining marine ecosystems in the Asia-Pacific region, and establish a key set of variables to monitor and to assess changes in these ecosystems [APEC, BPA, para. I.b].</td>
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<td></td>
<td>Build expertise through education and training for collecting and processing the biological, oceanographic, ecological and fisheries data needed for designing, implementing and upgrading management strategies [Reykjavik Declaration, para. 7].</td>
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<td></td>
<td>Assess the impact on the environment and fisheries resources of new fishing gear, practices and methods [SEAFDEC Fishing Operations, para. 8.5.1(2)].</td>
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<td></td>
<td>Study selective, environmentally safe and cost-effective gear and techniques to minimise the catch component of waste and juveniles, which may cause negative impacts on ecosystem [SEAFDEC Fisheries Management, para. 7.6.9(1)].</td>
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<td></td>
<td>Undertake studies on excess fishing capacity, but should not delay the implementation of appropriate action to regulate fishing capacity based on existing information [SEAFDEC Fisheries Management, para. 7.1.8 ADD. 1(4)].</td>
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<td></td>
<td>Study the existing marking systems and research into gear designs, operation and installation which can prevent or reduce gear loss, or which may aid recovery of lost gear should be promoted [SEAFDEC Fishing Operations, para. 8.2.4(7)].</td>
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### 3. Management Plans

- **Develop and implement fisheries management plans** which encourage responsible fisheries and sustainable use of marine ecosystems.
- **Develop and implement international NPOAs.**

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<tr>
<th>General requirements for fisheries management plans, policies and strategies</th>
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<tr>
<td>• Translate long-term management objectives into management actions, formulated as a fishery management plan or other management framework [FAO Code of Conduct Art. 7.3.3].</td>
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<tr>
<td>• Introduce immediately effective management plans with incentives that encourage responsible fisheries and sustainable use of marine ecosystems, including mechanism for reducing excessive fishing efforts to sustainable levels [Reykjavik Declaration, para. 2].</td>
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<tr>
<td>• Adopt effective fisheries planning and management standards which will promote the maintenance of the quantity, quality, diversity and economic availability of fisheries resources [Cancun Declaration, para. 1].</td>
</tr>
<tr>
<td>• Take steps to improve management systems as part of the practice of responsible fishing [Cancun Declaration, para. 1].</td>
</tr>
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<td>• Formulate a national policy and fisheries management plan in accordance with agreed regional guidelines for the implementation of the FAO Code of Conduct [SEAFDEC Fisheries Management, para. 7.1 ADD.1(1)].</td>
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<td>• Establish a committee which consists of representatives from relevant agencies to formulate the fisheries management policy [SEAFDEC Fisheries Management, para. 7.1 ADD.1(2)].</td>
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<td>• Develop appropriate implementation programs on the improvement of fisheries management including awareness building and human resources development [SEAFDEC Fisheries Management, para. 7.1 ADD.1(3)].</td>
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<td>• Incorporate fisheries management into the national development plan [SEAFDEC Fisheries Management, para. 7.1 ADD.1(4)].</td>
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<tr>
<td>• Implement the Regional Guidelines for Responsible Fishing Operations and Responsible Aquaculture in Southeast Asia [SEAFDEC Fisheries Management, para. 7.1 ADD.1(5)].</td>
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<tr>
<td>• Formulate national management objectives and frameworks. However, specific management policy, mechanisms and approaches should be considered for the implementation of the management actions for inland capture, coastal and commercial fisheries [SEAFDEC...]</td>
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<td>Benchmark measures</td>
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<td><strong>Fisheries Management, para. 7.1.1(1).</strong></td>
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<td>- Harmonise the national fisheries management policy on coastal fisheries within the framework of sustainable management adopted by regional and sub-regional organisations [SEAFDEC Fisheries Management, para. 7.1.1(1)].</td>
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<tr>
<td>- Promote and implement responsible fishing technologies and practices through the formulation of appropriate strategies, policy and action plans to ensure the sustainable use of fisheries resources, and to maintain food and livelihood security in the region [SEAFDEC Fisheries Management, para. 7.4 ADD. 1(1)].</td>
</tr>
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</table>

Ecosystem based fisheries management plans and policies
- Attach high priority to the implementation of the international plans of action, on sharks, seabirds, and fishing capacity, and put in place within the framework of national plans, measures to achieve the balance between harvesting capacity and available resources [1999 Rome Declaration, para. 12(f)].
- Address the issues on the management of inland capture fisheries in the same context of coastal fisheries management in terms of policy, mechanisms and approaches, considering the size and dispersed distribution pattern of the inland capture fisheries in the region [SEAFDEC Fisheries Management, para. 7.3.5 ADD. 1(1)].
- Develop the national policy and plan on the rehabilitation of the coastal ecosystem [SEAFDEC Fisheries Management, para. 7.6.10 ADD. 1(1)].
- Endeavour to develop, adopt and implement management plans based on scientific studies and aiming at preventing the decrease in the size of any harvested population to levels below those which ensure its stable recruitment and the stable recruitment of those species which are dependent upon, or related to them;
- Endeavour to develop, adopt and implement management plans based on scientific studies and aiming at maintaining the ecological relationship between harvested, dependent and related populations of living resources of the ecosystem considered;
- Endeavour to develop, adopt and implement management plans based on scientific studies and aiming at preventing changes or minimising risk of changes in the ecosystem considered with are not reversible over a reasonable period of time [Art. 4].
- Endeavour to develop, adopt and implement management plans based on scientific studies and aiming at restoring depleted populations to levels that would ensure stable recruitment.
- Develop management plans for the use of FADs (anchored and drifting) within waters under national jurisdiction [WCPFC Conservation and Management Measure 2005-01, para. 13].
- Develop management plans for the use of FADs (anchored and drifting) in areas beyond national jurisdiction to be submitted to the Commission by 1 January 2008. These plans should include strategies to limit the interaction with juvenile bigeye and yellowfin tuna [WCPFC Conservation and Management Measure 2006-01, para. 4].
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- Develop management plans for the use of FADs (anchored and drifting) in areas beyond national jurisdiction to be submitted to the Commission by 1 January 2008. These plans should include strategies to limit the interaction with juvenile bigeye and yellowfin tuna [WCPFC Conservation and Management Measure 2006-01, para. 4].

Adoption of NPOA-Seabirds
A State with a longline fishery is required to:
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<tr>
<td>• Design, adopt, and implement a national plan of action for reducing the incidental catch of seabirds in longline fisheries if a problem exists with respect to the incidental catch of seabirds [IPOA-Seabirds, para. 12]</td>
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<tr>
<td>• Adopt an NPOA-Seabirds no later than 2001 [IPOA-Seabirds, para. 17], which contain the following elements:</td>
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<td>- prescription of mitigation measures;</td>
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<td>- research and development;</td>
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<tr>
<td>- education, training and publicity; and</td>
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<tr>
<td>- data collection [IPOA-Seabirds, Part II].</td>
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<tr>
<td>• Take into account experience acquired in regional management organisations when developing an NPOA-Seabirds [IPOA-Seabirds, para. 12].</td>
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<tr>
<td>• Review assessments on the problem of the incidental catch of seabirds if it has earlier determined that an NPOA-Seabirds is not necessary [IPOA-Seabirds, para. 13].</td>
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<tr>
<td>• Immediately adopt an NPOA-Seabirds and implement it within two years if, based on a subsequent assessment, the State determines that the problem on the incidental catch of seabirds exists [IPOA-Seabirds, para. 13].</td>
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Adoption and Implementation of Shark-plan

A State with a shark fishery is required to:

• Adopt a national plan of action for the conservation and management of shark stocks if its vessels conduct directed fisheries for sharks or if its vessels regularly catch sharks in non-directed fisheries [IPOA-Sharks, para. 18].
• Strive to have a Shark-plan by 2001 [IPOA-Sharks, para. 20].
• Adopt a Shark-plan that contain a description of the prevailing state of shark stocks, populations, associated fisheries and management framework and its enforcement; and strategies for achieving the objectives [IPOA-Sharks, Appendix A].
• Adopt a Shark-plan that addresses the following objectives:
  - Ensure that shark catches from directed and non-directed fisheries are sustainable;
  - Assess threats to shark populations, determine and protect critical habitats and implement harvesting strategies consistent with the principles of biological sustainability and rational long-term economic use;
  - Identify and provide special attention, in particular to vulnerable or threatened shark stocks;
  - Improve and develop frameworks for establishing and co-ordinating effective consultation involving all stakeholders in research, management and educational initiatives within and between States;
  - Minimise unutilised incidental catches of sharks;
  - Contribute to the protection of biodiversity and ecosystem structure and function;
  - Minimise waste and discards from shark catches in accordance with Article 7.2.2(g) of the FAO Code of Conduct (for example, requiring the retention of sharks from which fins are removed);
  - Encourage full use of dead sharks;
  - Facilitate improved species-specific catch and landings data and monitoring of shark catches; and
  - Facilitate the identification and reporting of species-specific biological and trade data [IPOA-Sharks, para. 22].
• Carry out a regular assessment of the status of sharks stocks subject to fishing so as to determine if there is a need for development of a shark plan [IPOA-Sharks, para. 21].
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<tr>
<td>• Take into account the experience of subregional and regional fisheries management organisations when developing a Shark-plan [IPOA-Sharks, para. 18].</td>
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<tr>
<td>• Facilitate consultation and the effective participation of industry, fishworkers, environment and other interested organisations in the development of the Sharks-plan [IPOA-Sharks, para. 21; FAO Code of Conduct, Art. 6.13].</td>
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<tr>
<td>• Assess the implementation of the Shark-plan regularly, at least every four years, for the purpose of identifying cost-effective strategies for increasing its effectiveness [IPOA-Sharks, para. 23].</td>
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<tr>
<td>• Convene a workshop to promote the further implementation of the IPOA-Sharks and workshops to encourage regional and national plans of action [APFIC Report of the 29th Session of COFI, para. 15].</td>
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Adoption of NPOA-Capacity

A State is required to:

• Develop, implement and monitor national plans of action for managing fishing capacity, taking into account, inter alia, the effect of different resource management systems on fishing capacity [IPOA-Capacity, para. 19].

• Develop means to monitor fishing capacity systematically and accurately, and regularly assess any imbalance with available fishery resources and management objectives [IPOA-Capacity, para. 20].

• Develop, adopt and make public, by the end of 2002, national plans for the management of fishing capacity and, if required, reduce fishing capacity in order to balance fishing capacity with available resources on a sustainable basis [IPOA-Capacity, para. 21].

• Give due consideration, in the development of national plans, to socio-economic requirements, including the consideration of alternative sources of employment and livelihood to fishing communities which must bear the burden of reductions in fishing capacity [IPOA-Capacity, para. 22].

• Assess the possible impact of all factors, including subsidies, which contribute to overcapacity when developing an NPOA-Capacity [IPOA-Capacity, para. 25].

• Ensure that the matter of fishing capacity is addressed in an ongoing manner even if the State decides that a national plan to manage capacity is not necessary [IPOA-Capacity, para. 23].

• Review the implementation of its national plans to manage capacity at least every four years for the purpose of identifying cost effective strategies for increasing effectiveness. [IPOA-Capacity, para. 24].

Adoption of NPOA-IUU

A State is required to:

• Develop and implement, as soon as possible but not later than three years after the adoption of the IPOA (or 2004), NPOAs to further achieve the objectives of the IPOA-IUU and give full effect to its provisions as an integral part of their fisheries management programmes and budgets [IPOA-IUU, para. 25].

• Adopt an NPOA-IUU that would include actions to implement initiatives adopted by relevant regional fisheries management organisations to prevent, deter and eliminate IUU fishing [IPOA-IUU, para. 25].

• Encourage full participation and engagement of all interested stakeholders, including industry, fishing communities and non-governmental organisations in formulating an NPOA-IUU [IPOA-IUU, para. 25].

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<th>Benchmark measures</th>
<th>International and Regional Instrument Reference</th>
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<tr>
<td>Review the implementation of the NPOA-IUU at least every four years after its adoption for the purpose of identifying cost-effective strategies to increase their effectiveness [IPOA-IUU, para. 26].</td>
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<tr>
<td>Ensure that national efforts to prevent, deter and eliminate IUU fishing are internally coordinated [IPOA-IUU, para. 27].</td>
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<tr>
<td>Develop and implement national and regional plans of action to combat IUU fishing [2005 Rome Declaration, para. 3].</td>
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### 4. Fishing Vessel Registration

- Establish vessel registration systems which establish a genuine link between the State and the ship.
- Avoid flagging vessels with a history of non-compliance.
- Issue Certificates of Registry stating that the ship has the right to fly its flag.
- Develop specific requirements for new and imported vessels.
- Maintain records of fishing vessels entitled to fly their flags and authorised to be used for fishing beyond the EEZ.
- Include in the vessel registry the following information: name of fishing vessel, registration number, previous names (if known/if any) and port of registry; previous flag (if any); International Radio Call Sign (if any); Name and address of owner or owners; where and when built; type of vessel; length; gross register tonnage; moulded depth; beam; power of main engine or engines; type of fishing method or methods; name and address of operator (or manager) or operators managers; Name, street address, mailing address and nationality of the natural or legal persons responsible for managing the operations of the vessel; name, street address, mailing address and nationality of natural or legal person with beneficial ownership of the vessel; name and ownership history of the

### Fishing Vessel registration

A flag State is required to:

- Establish a genuine link between the State and the ship [LOS C, Art. 91(1); Rome Declaration para 5].
- Fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag [LOS C, Art. 91(1)].
- Issue documents such as Certificates of Registry stating that the ship has the right to fly its flag [LOS C, Art. 91(2); FAO Code of Conduct, Art. 8.2.2].
- Take effective action, consistent with international law, to deter reflagging of vessels as a means of avoiding compliance with applicable conservation and management rules for fishing activities on the high seas [Cancun Declaration, para. 13].
- Avoid flagging vessels with a history of non-compliance [IPOA-IUU, para. 38 and 40; UN Fish Stocks Agreement, Preamble; FAO Compliance Agreement, Preamble, Agenda 21, para. 17.52] except where:
  - the ownership of the vessel has subsequently changed and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of the vessel; or
  - having taken into account all relevant factors, the flag States determines the flagging of the vessel would not result in IUU fishing [IPOA-IUU, para. 36].
- Establish policies and legislation on national authorisations for all fisheries (including license, appropriate registration and fishing rights for coastal fisheries) [SEAFDEC Fishing Operations, para. 8.2.4(1) and (6)].
- Improve vessel registration systems [Bali Plan of Action on Sustainable Fisheries para. A.1].

### Maintain Records of Fishing Vessel Registration

A flag State is required to:

- Maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size [LOS C, Art. 91(2)(a)].
- Maintain records of fishing vessels entitled to fly their flags and authorised to be used for fishing [UN Fish Stocks Agreement, Art. 18(3)(c); FAO Compliance Agreement, Art. III(6), IV, VI(1), and VI(2); and FAO Code of Conduct, Art. 8.2.1]. The information that would need to be included in a record of fishing vessels are:
  - name of fishing vessel, registration number and port of registry;
  - previous flag (if any);
  - Name and ownership history of the vessel, and where this is known, the history of compliance by that vessel, in accordance with national laws, with conservation and management measures or provisions adopted at a national, regional or global level; and
  - International Radio Call Sign (if any);
vessel, and where this is known, the history of compliance by that vessel, in accordance with national laws, with conservation and management measures or provisions adopted at a national, regional or global level.

- Establish regulations on the marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognisable vessel and gear marking systems.

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<td>- Name and address of owner or owners;</td>
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<td>- Where and when built;</td>
<td>- Where and when built;</td>
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<td>- Type of vessel;</td>
<td>- Type of vessel;</td>
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<tr>
<td>- Length;</td>
<td>- Length;</td>
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<td>- Name and address of operator (or manager) or operators (managers);</td>
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<td>- Type of fishing method or methods;</td>
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<td>- Gross register tonnage;</td>
<td>- Gross register tonnage;</td>
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<tr>
<td>- Vessel dimensions, and where appropriate, a photograph, taken at the time of registration or at the conclusion of any more recent structural alterations, showing a side profile view of the vessel [IPOA-IUU, para. 42].</td>
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<tr>
<td>- Power of main engine or engines [FAO Compliance Agreement, Art. VI(1) and (2)].</td>
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<tr>
<td>- Name, address and nationality of the natural or legal person in whose name the vessel is registered;</td>
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<tr>
<td>- Name, street address, mailing address and nationality of the natural or legal persons responsible for managing the operations of the vessel;</td>
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</tr>
<tr>
<td>- Name, street address, mailing address and nationality of natural or legal person with beneficial ownership of the vessel;</td>
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- Maintain records of fishers, which should, whenever possible, contain information on their service and qualifications, including certificates of competency, in accordance with their national laws [FAO Code of Conduct, Art. 8.1.8].

- Maintain appropriate and compatible national records of fishing vessels, further specifying conditions for access to information [IPOA-Capacity, para. 17].

- Create and maintain mechanisms to collect the required information on vessels operating in waters of States other than those of the flag State, or on the high seas. The FAO Technical Guidelines can be referred to for more detailed information [SEAFDEC Fishing Operations, para. 8.2.1(1)].

**Marking Requirements**

A flag State is required to:

- Fully implement vessel marking requirements in accordance with the FAO Standard Specification and Guidelines for the Marking and Identification of Fishing Vessels and any applicable regional fisheries management organisation requirements [2005 Rome Declaration, para. 5].

- Mark small-scale fishing vessels in conformity with nationally recognised marking systems. The provincial code in lettering and/or numbering can be applied to national standard marking systems [SEAFDEC Fishing Operations, para. 8.2.4(8)].

- Consult with concerned fisheries subsectors and national and local government authorities and raise awareness on the necessity to mark fishing vessels and gears [SEAFDEC Fishing Operations, paras. 8.2.4(3) and (5)].

- Ensure that owners, managers, and fishers comply with the appropriate marking of fishing vessels and gear [SEAFDEC Fishing Operations, para. 8.2.4(10)].

- Conduct intensive nationwide information dissemination on the legal provisions and guidelines on the marking of fishing vessels and gear [SEAFDEC Fishing Operations, para. 8.2.4(9)].
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<tr>
<td>Mark fish Aggregating Devices (FADs) placed on the high seas, EEZs or archipelago seas to identify its owner and position. For owner identification, a FAD should be marked with an International Telecommunication Union Radio Call Sign (IRCS) which identifies the name and address of the owners. For position identification, a FAD should be marked with an electronic device (transponder or radio beacon), a radar reflector, or lamp as well as flags and/or shapes [SEAFDEC Fishing Operations, para. 8.11.3(2)].</td>
<td>• Mark fish Aggregating Devices (FADs) placed on the high seas, or archipelago seas to identify its owner and position. For owner identification, a FAD should be marked with an International Telecommunication Union Radio Call Sign (IRCS) which identifies the name and address of the owners. For position identification, a FAD should be marked with an electronic device (transponder or radio beacon), a radar reflector, or lamp as well as flags and/or shapes.</td>
</tr>
<tr>
<td>Mark not only fishing gears and vessels for both large- and small-scale fishing vessels but also Fish Aggregating Devices (FADs) such as payaos [SEAFDEC Fishing Operations, paras. 8.2.4(2), (5), and (8)]. Establish regulations on the marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognisable vessel and gear marking systems, [UN Fish Stocks Agreement, Art. 18(3)(d); FAO Code of Conduct, Art. 8.2.3 and 8.2.4; SEAFDEC, Fishing Operation, para 8.2.3 (1)].</td>
<td>• Mark not only fishing gears and vessels for both large- and small-scale fishing vessels but also Fish Aggregating Devices (FADs) such as payaos.</td>
</tr>
<tr>
<td>• Establish a licensing system and associated regulations to prohibit fishing on the high seas, in the waters of another state or waters of an RFMO, by vessels which are not duly licensed or authorised to fish, or fishing otherwise than in accordance with the terms and conditions of the license. Take into account the history of violations by fishing vessels and operators when considering applications for authorisation to fish by fishing vessels flying its flag. Authorise the use of vessels flying its flag for fishing in the high seas, in waters of another state, or waters of an RFMO, only where it is able to exercise effectively its responsibilities in respect of such vessels under the LOSC, the UN Fish Stocks Agreement, and the WCPF Convention.</td>
<td>• Establish a licensing system and associated regulations to prohibit fishing on the high seas, in the waters of another state or waters of an RFMO, by vessels which are not duly licensed or authorised to fish, or fishing otherwise than in accordance with the terms and conditions of the license. Take into account the history of violations by fishing vessels and operators when considering applications for authorisation to fish by fishing vessels flying its flag. Authorise the use of vessels flying its flag for fishing in the high seas, in waters of another state, or waters of an RFMO, only where it is able to exercise effectively its responsibilities in respect of such vessels under the LOSC, the UN Fish Stocks Agreement, and the WCPF Convention.</td>
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A CCM is required to ensure that operators of vessels:

• Mark the vessels for their identification with their International Telecommunication Union Radio Call signs (IRCS) [WCPFC Conservation and Management Measure 2004-03, para. 2.1.1].

• Mark vessels to which an IRCS has not been assigned, with the characters allocated by the International Telecommunication Union (ITU), or characters of national identification as may be required under bilateral fishery agreements, flowed by the fishing authorisation or vessel registration number assigned to the vessel by the member of the Commission concerned, the identifier being the WCPFC Identification Number (WIN) [WCPFC Conservation and Management Measure 2004-03, para. 2.1.1].

5. Flag State Authorisations to Fish and Effective Control over Nationals

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<th>General benchmark measures</th>
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<tr>
<td>Establish policies, legislation, and regulations on national authorisations for all fisheries [SEAFDEC Fishing Operations, paras. 8.2.4(1) and (6)] and establish ways to practically implement them [SEAFDEC Fishing Operations, para. 8.1.2(2)]. Establish a licensing system to cover at least major fisheries [SEAFDEC Fishing Operations, para. 8.1.2(1)]. Investigate licensing mechanisms and identify areas for improvement [SEAFDEC Fishing Operations, para. 8.1.2(2)]. Adopt practical mechanisms for the licensing of small-scale fishers that would guide their conduct and ensure that such mechanisms are elaborated in national registration systems [SEAFDEC Fishing Operations, para. 8.1.9(1)]. Introduce rights-based fishery management through licensing and community fishing rights [ASEAN Plan of Action on Sustainable Fisheries para. 1]. Coordinate linkages of all Government agencies that separately issue Certificates of Registration and authorisation to fish [SEAFDEC Fishing Operations, para. 8.1.2(3)].</td>
</tr>
</tbody>
</table>

Authorisation to Fish on the high seas, RFMO area or the EEZ of another State(by the flag state)

A flag State is required to:

• Ensure that only vessels with authorisations to fish conduct fishing operations in areas under the jurisdiction of regional fisheries management organisations and on the high seas [IPOA-IUU, para. 44; UN Fish Stocks Agreement, Art. 18(3); FAO Compliance Agreement, Art. III(2); FAO Code of Conduct, Art. 8.2.2].
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<th>Benchmark measures</th>
<th>International and Regional Instrument Reference</th>
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<td>including ensuring that fishing vessels comply with the provisions of such instruments and making it an offence under national legislation to contravene international conservation and management measures and enforce such measures irrespective of where violations occur.</td>
<td>• Ensure that fishing vessels operating in waters of other States comply with the regulations of the coastal State and that they secure appropriate fishing authorisation from the flag State [SEAFDEC Fisheries Management, para. 7.6.2(2)].</td>
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<tr>
<td>• Require vessels fishing on the high seas, in the waters of another state or waters of an RFMO to carry the license on board at all times and to produce it on demand for inspection by a duly authorised person.</td>
<td>• Issue appropriate authorisation to fish so that fishing vessels may operate in international waters or waters under national jurisdiction [SEAFDEC Fisheries Management, para. 7.6.2(1)].</td>
</tr>
<tr>
<td>• Create powers to include appropriate terms and conditions on fishing licence (data collection, VMS, Observers).</td>
<td>• Include the following information in an authorisation to fish: - the name of the vessel, and where appropriate, the natural or legal person authorised to fish [IPOA-IUU, para. 46.1]; - the areas, scope and duration of the license[IPOA-IUU, para. 46.2]; - the species, fishing gear authorised, and where appropriate, other applicable management measures [IPOA-IUU, para. 46.3].</td>
</tr>
<tr>
<td>• Investigate and take any action necessary when other States report that they have clear grounds to believe that proper jurisdiction and control with respect to a ship has not been exercised by a flag State.</td>
<td>• Establish regulations to prohibit fishing on the high seas by vessels which are not duly licensed or authorised to fish, or fishing on the high seas by vessels otherwise than in accordance with the terms and conditions of the license [UN Fish Stocks Agreement, Art. 18(3)(b)(iii)];</td>
</tr>
<tr>
<td>• Effectively regulate transhipment in order to combat IUU fishing activities and to prevent laundering of illegal catches, including (a) ensure that vessels involved in transhipment at sea have a prior authorisation to tranship and report to the national fisheries administration or designated institution the details of such transhipment, details of the vessels, and the port of landing of the transhipped catch (b) ensure that at-sea transhipment and processing of fish and fish products in coastal State waters are authorised or conducted in conformity with appropriate management regulations (c) establish regulations on transhipment on the high seas to ensure that the effectiveness of transhipment is not undermined.</td>
<td>• Require vessels fishing on the high seas to carry the license on board at all times and to produce it on demand for inspection by a duly authorised person [UN Fish Stocks Agreement, Art. 18(3)(b)(iii); IPOA-IUU, para. 46];</td>
</tr>
<tr>
<td>• Ensure that it does not issue a license to any fishing vessel previously registered in the territory of another Party which has undermined the effectiveness of international conservation and management measures unless that the flag State is satisfied that - any period of suspension by another Party of an authorisation for such fishing vessel to be used for fishing on the high seas has expired; - no authorisation for such fishing vessel to be used for fishing on the high seas has been withdrawn by another Party within the last three years; - there is sufficient information available on the circumstances in which the authorisation to fish was suspended or withdrawn; - the ownership of the fishing vessel has changed and the previous owner or operator has no further legal, beneficial or financial interest in, or control, of the fishing vessel [FAO Compliance Agreement, Art. III(5)].</td>
<td>• Prohibit any fishing vessel entitled to fly its flag to be used for fishing for highly migratory fish stocks in the Convention area beyond areas of national jurisdiction unless it has been authorised to do so by the appropriate authority [WCPFC Convention, Art. 24(2), Conservation and Management Measure 2004-01, para. 2].</td>
</tr>
<tr>
<td>• Ensure that no authorisation to fish in the Convention area is issued to a vessel that has a history of IUU fishing, unless the ownership of the vessel has subsequently changed and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no legal, beneficial or financial interest in, or control of the vessels, or the member concerned is satisfied that, having taken into account all relevant facts, the vessel is no longer engaged in or associated with IUU fishing [ WCPFC Conservation and Management Measure 2004-01, para. 1(f)].</td>
<td>• Take necessary measures to ensure that any fishing vessel flying its flag conducts fishing in areas under the national jurisdiction of another State only where the vessel holds an appropriate licence, permit or authorisation, as may be required by such other State [WCPFC Conservation and Management Measure 2004-01, para. 1(d)].</td>
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Criteria for issue of authorisation

- Take into account the history of violations by fishing vessels and operators when considering applications for authorisation to fish by fishing vessels flying its flag [Conservation and Management Measure 2004-01, para. 1(h)];
- Take necessary measures to ensure that the owners of the vessels on the WCPFC Record of Fishing Vessels flying its flag are citizens,
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<td>conservation and management measures is not undermined.</td>
<td>residents or legal entities within its jurisdiction so that any control or punitive actions can be effectively taken against them [Conservation and Management Measure 2004-01, para. 1(i)].</td>
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Terms and conditions of authorisations

- Establish regulations to apply terms and conditions to the license, authorisation or permit sufficient to fulfil any subregional, regional or global obligations of the State [UN Fish Stocks Agreement, Art. 18(3)(b)(i)];
- Flag states should establish conditions under which a fishing license may be issued, including:
  - vessel monitoring system [IPOA-IUU, para. 47];
  - catch reporting conditions [IPOA-IUU, para. 47];
  - reporting and other conditions for transhipping, where transhipment is permitted [IPOA-IUU, para. 47];
  - observer coverage [IPOA-IUU, para. 47];
  - maintenance of fishing and related logbooks [IPOA-IUU, para. 47, [SEAFDEC Fishing Operations, para. 8.5.1(1)];
  - navigational equipment [IPOA-IUU, para. 47];
  - marking of vessels and gear requirements [IPOA-IUU, para. 47];
  - compliance with other international conventions and national regulations with respect to maritime safety, protection of the marine environment, and conservation and management measures [IPOA-IUU, para. 47].

- Coastal states should establish conditions of the license, including:
  - Species to be caught and catch quotas [LOSC, Art. 62(4)];
  - Seasons and areas of fishing, the types, sizes, and amount of gear, and the type and size of fishing vessel [LOSC, Art. 62(4), SEAFDEC Fishing Operations, para. 8.5.1(1)];
  - Information required from fishing vessels [LOSC, Art. 62(4), SEAFDEC Fishing Operations, para. 8.5.1(1)];
  - Observers [LOSC, Art. 62(4)];
  - Landing of catch [LOSC, Art. 62(4)].

A CCM is required to ensure that the following conditions are imposed on a fishing licence:

- That the fishing vessel only conducts fishing within areas under the national jurisdiction of other States only where the fishing vessel holds any licence, permit or authorisation that may be required by other State [WCPFC Convention, Art. 24(3)(a)].
- That the fishing vessel is operated on the high seas in the Convention Area in accordance with the requirements of Annex III on the terms and conditions for fishing [WCPFC Convention, Art. 24(3)(b)].
- Comply with the markings and other technical specifications related to the marking of fishing vessels [Conservation and Management Measure 2004-03, para. 2.1.3(b) and 2.2].

A CCM is required to:

- Provide in the authorisation of fishing vessels:
  - the specific areas, species and time periods for which the authorisation is valid;
  - permitted activities by the vessel;
  - prohibition of fishing, retention on board, transhipment or landing by the vessel in areas under the national jurisdiction of another State except pursuant to a licence, permit or authorisation that may be required by such other State;
An operator of a fishing vessel is required to:

- Comply with the applicable national laws and regulations of a coastal State party to the Convention [WCPFC Convention, Annex III Art. 2].
- Allow and assist any person identified as an observer under the regional programme to:
  - embark at a place and time agreed to;
  - have full access to and use of all facilities and equipment on board which the observer may determine is necessary to carry out his or her duties
  - remove samples
  - disembark at an agreed place and time; and
  - carry out all duties safely [WCPFC Convention, Annex III Art. 3(1)]
- Not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with observers in the performance of their duties [WCPFC Convention, Annex III Art. 3(2)].
- Provide the observer with food, accommodation and medical facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel [WCPFC Convention, Annex III Art. 3(3)].
- Comply with any procedures established by the Commission to verify the quantity and species transhipped, and any additional procedures and measures adopted by the Commission with respect to transhipment in the Convention area [WCPFC Convention, Annex III Art. 4(1)].
- Allow authorised person by the Commission or by the member of the Commission in whose designated port or area a transhipment takes place to have full access to and use of facilities and equipment which the authorised person may determine is necessary to carry out his or her duties [WCPFC Convention, Annex III Art. 4(2)].
- Record and report vessel position, catch or target and non-target species, fishing effort and other relevant fisheries data in accordance with the standards set out in Annex I of the UN Fish Stocks Agreement.

Regulation of Transhipment

A State is required to:

- Ensure that all fishing, transport, and support vessels involved in transhipment at sea have a prior authorisation to tranship and report to the national fisheries administration or designated institution the details of such transhipment, details of the vessels, and the port of landing of the transhipped catch [IPOA-IUU, para. 49]
- Ensure that at-sea transhipment and processing of fish and fish products in coastal State waters are authorised or conducted in conformity with appropriate management regulations [IPOA-IUU, para. 51.6]
- Establish regulations on transhipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined [UN Fish Stocks Agreement, Art. 18(3)[h]].
- Encourage fishing vessels, to the extent practicable, to conduct transhipment in port [WCPFC Convention, Art. 29(1)]
- Effectively regulate transhipment in order to combat IUU fishing activities and to prevent laundering of illegal catches [2005 Rome Declaration, para. 5].
### Benchmark measures

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<th>International and Regional Instrument Reference</th>
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<tr>
<td>6. Authorisations to fish by the Coastal State (licensing of foreign fishing vessels)</td>
</tr>
</tbody>
</table>

- Formulate laws and regulations pertaining to the licensing of foreign fishing vessels and fishers and equipment in their EEZs.  
- Ensure that a license is issued only if the vessel concerned is entered on a record of vessels.  
- Avoid licensing a vessel to fish in its waters if that particular vessel has a history of IUU fishing.  
- Condition licences with:  
  - Species to be caught and catch quotas  
  - Seasons and areas of fishing, the types, sizes, and amount of gear, and the type and size of fishing vessel  
  - Information required from fishing vessels  
  - Requirement to participate in observers programs  
  - Requirements to install VMS  
  - Details of permitted landing of catch

A coastal State is required to:  
- Formulate laws and regulations pertaining to the licensing of foreign fishing vessels and fishers and equipment in their EEZs [LOSC, Art. 62(4)(a)].  
- Ensure that no vessel undertakes fishing activities within its waters without a valid license issued by the coastal State and the flag State [IPOA-IUU, para. 51.3].  
- Ensure that a license is issued only if the vessel concerned is entered on a record of vessels [IPOA-IUU, para. 51.4].  
- Avoid licensing a vessel to fish in its waters if that particular vessel has a history of IUU fishing [IPOA-IUU, para. 51.8].  
- Support the use of limited entry through a licensing system to control and regulate new or exploratory fisheries [SEAFDEC Fisheries Management, para. 7.5.4(1)].  
- Elaborate policies on the enforcement of the authorisation to fish by the kind of fisheries, whether provincial or district levels and implement as far as practicable [SEAFDEC Fishing Operations, para. 8.1.2(5)].

### States are required to:

- Establish national fisheries MCS measures.  
- Develop and implement a VMS in accordance with regional, subregional and global programmes, and require that flagged vessels and vessels of flagged by other States that fish in its EEZ, carry VMS equipment on board.  
- Adopt and implement a program of observers on board vessels.  
- Regulate for permitting observers of other

### Standard obligations

- In enforcing fisheries laws and regulations, undertake a range of MCS activities such as boarding, inspection, arrest and judicial proceedings to ensure the proper conservation and management of fisheries resources in the EEZ [LOSC, Art. 73].  
- Ensure that all fisheries policy makers and managers consider the full range of available MCS options, strategies and tools, take necessary actions to fully implement the IPOAs and any applicable MCS measures adopted by relevant RFMOs and that fishers have an understanding of their role in MCS [2005 Rome Declaration, para. 3].  
- Apply specific MCS-related measures from the commencement of the fishing activity to the final destination of caught fish in order to effectively deter, prevent, and eliminate IUU fishing [IPOA-IUU, para. 24].  
- Establish national fisheries MCS measures, including law enforcement, and where appropriate, other useful management measures like observer programs, inspection schemes and vessel monitoring systems [SEAFDEC Fisheries Management, para. 7.7.3(1)].  
- Enhance its MCS program [APEC, BPA, para. I.b.iv].
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<tr>
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<tr>
<td>States or representing an RFMO, to carry out functions agreed under subregional or regional observer programs.</td>
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<tr>
<td>▪ Encourage harmonisation of national MCS frameworks among neighbouring countries, including joint enforcement operations with other national enforcement agencies.</td>
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<td>▪ Provide financial and technical assistance to developing countries in the implementation of MCS capabilities, including VMS, with the support of FAO and relevant international financial institutions and mechanisms.</td>
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<td>▪ Formulate and apply fair, consistent and transparent sanctions with sufficient severity to effectively prevent IUU fishing and further deprive offenders from accruing benefits from such activities.</td>
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<td>▪ Withdraw, suspend, or cancel an authorisation to fish of a vessel if it has been established that the vessel has undermined international conservation and management measures.</td>
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<td>▪ Ensure that a vessel which has been involved in the commission of a serious violation of conservation and management measures for straddling and highly migratory fish stocks does not engage in fishing operations on the high seas of until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with.</td>
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<tr>
<td>A coastal state is required to:</td>
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<tr>
<td>▪ Establish and implement national and internationally-agreed boarding and inspection regime consistent with</td>
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<td>• Strengthen efforts to combat IUU fishing including by pursuing the use of at-sea measures, in accordance with international law, as key compliance tools [APEC, BPA, para. 1.c.v].</td>
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<tr>
<td>• Strengthen national enforcement capabilities to deter any unauthorised fishing within national jurisdiction and ensure compliance with national legislation and international law [SEAFDEC Fisheries Management, para. 7.6.2(3)].</td>
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<td>• Differentiate methodology for MCS and enforcement for small-scale and coastal fisheries [SEAFDEC Fishing Operations, para. 8.1.4(1)].</td>
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<td>• Provide opportunities in the training and education of fishers and fisheries staff in implementing MCS system [SEAFDEC Fisheries Management, para. 7.1.7(1) and (2)].</td>
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<td>Community Participation</td>
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<td>• Promote general public awareness and stakeholder participation regarding the various benefits of MCS should be promoted [SEAFDEC Fisheries Management, para. 7.1.7(1)].</td>
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<td>• Supplement existing MCS schemes through measures such as encouraging the fishing fleet to report any suspected IUU fishing activities they observe [2005 Rome Declaration, para. 4].</td>
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<td>• Decentralise or delegate certain management functions on MCS to designated communities or local governments as appropriate and take measures to legitimately implement these systems [SEAFDEC Fisheries Management, para. 7.1.7(3)].</td>
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<td>• Consider the existence of traditional systems, which could be used in terms of monitoring and controlling the resources [SEAFDEC Fisheries Management, para. 7.1.7(4)].</td>
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<td>Vessel Monitoring System</td>
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<td>A State has the obligation to:</td>
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<td>▪ Develop and implement a VMS in accordance with regional, subregional and global programmes [UN Fish Stocks Agreement, Art. 18(3)(g)(iii); Art. 5(j) and 18(3)(e); FAO Code of Conduct, Art. 7.7.3].</td>
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<td>▪ Require its vessels to carry VMS equipment on board [IPOA-IUU, para. 24.3].</td>
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<td>▪ Require vessels of other States that fish in its EEZ to submit certain information, such as vessel position reports [LOSC, Art. 62(4)(e)].</td>
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<td>▪ Ensure that all large-scale fishing vessels operating on the high seas are fitted with VMS no later than December 2008, or earlier if so decided by the flag State or any relevant RFMO [2005 Rome Declaration, para. 3].</td>
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<td>A CCM is required to:</td>
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<td>▪ Require fishing vessels that fish for highly migratory fish stocks on the high seas in the Convention area to use near real-time satellite position-fixing transmitters [WCPFC Convention, Art. 24(8)].</td>
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<tr>
<td>▪ Require its fishing vessels that fish in the Convention area in areas under the national jurisdiction of another member to operate near real-time satellite position-fixing transmitters in accordance with the standards, specification and procedures determined by the coastal State [WCPFC Convention, Art. 24(9)].</td>
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<tr>
<td>▪ Cooperate with other members to ensure compatibility between national and high seas VMS [WCPFC Convention, Art. 24(10), Conservation and Management Measure 2006-06, para. 8(b)].</td>
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<tr>
<td>▪ Ensure that fishing vessels on the high seas in the Convention area comply with the requirements established by the Commission for the</td>
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</table>
### Benchmark measures

- An Inspecting State is required to:
  - Board and inspect fishing vessels through duly authorised inspectors.
  - Inspect the vessel, its licence, gear, equipment, records, fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures.
  - Communicate without delay the results of that investigation to the flag State where the flag State authorises the inspecting State to investigate an alleged violation.

- A flag State is required to:
  - Respond to the notification of the investigating State within 3 working days of its receipt.
  - Take the necessary enforcement action with respect to the vessel.
  - Authorise the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel.
  - Ensure that vessel masters accept and facilitate prompt and safe boarding and disembarkment by the inspectors, and cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures.
  - Ensure that its vessel masters do not interfere with the inspectors in the performance of their duties; allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection; ensure that vessel masters provide reasonable facilities to the

### International and Regional Instrument Reference

- purposes of the Commission VMS and are equipped with ALCs that shall communicate such data as determined by the Commission [Conservation and Management Measure 2006-06, para. 8(a)].

- Observer Programs
  - To place observers on board vessels in exercising their sovereign right over marine resources in its EEZ [LOSC, Art. 62(4)(g); FAO Code of Conduct, para. 7.7.3].
  - Implement a national observer programme [IPOA-IUU, paras. 24.4, 47.4, and 80.9; FAO Code of Conduct, para. 8.4.3; SEAFDEC Fishing Operations, para. 8.4.3(5)]
  - Participate in subregional or regional observer programmes, and permit observers of other States to carry out functions agreed under such programmes [Art. 18(3)(g)(iii)].

- CCM is required to:
  - Ensure that fishing vessels flying its flag in the Convention area, except for vessels that operate exclusively within waters under the national jurisdiction of the flag State, are prepared to accept an observer from the regional observer programme [WCPFC Convention, Art. 25(4)].
  - Ensure that observers do not unduly interfere with the lawful operations of the vessels and give due consideration to the operational requirements of the vessel and communicate regularly with the captain or master for this purpose [WCPFC Convention, Art. 28(6)(d)].

- Boarding and inspection

- A State is required to
  - Develop and ensure effective implementation of national and internationally agreed boarding and inspection regimes consistent with international law [2005 Rome Declaration, para. 5].

- A coastal State is required to:
  - Undertake measures such as boarding and inspection in exercising its rights to conserve and manage living resources in the EEZ [LOSC, Art. 73(1)].
  - Establish and implement national and internationally-agreed boarding and inspection regime consistent with international law [IPOA-IUU, paras. 24.10 and 80.8; UN Fish Stocks Agreement, Art. 21(2)].

- An inspecting State, through its duly authorised inspectors, is required to:
  - Board and inspect fishing vessels through duly authorised inspectors [UN Fish Stocks Agreement, Art. 21(1)].
  - Inspect the vessel, its licence, gear, equipment, records, fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures [UN Fish Stocks Agreement, Art. 22(2)].
  - Inform all States whose vessels fish on the high seas in the subregion or region of the form of identification issued to its duly authorised inspectors [UN Fish Stocks Agreement, Art. 21(4)]
  - Clearly mark the vessel used for boarding and inspection to be identifiable as being on government service [UN Fish Stocks Agreement, Art. 21(4)].
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<td>inspectors.</td>
<td>• Secure evidence and promptly notify the flag State of the alleged violation where, following a boarding and inspection, there are clear grounds for believing that a vessel has engaged in any activity contrary to conservation and management measures for straddling and highly migratory fish stocks [UN Fish Stocks Agreement, Art. 21(5)].</td>
</tr>
<tr>
<td>• Secure the vessel’s authorisation to fish and order the vessel to return immediately to port if the master does not comply with direction. Advise the inspecting State of the action it has taken when the master has refused to cooperate with the inspector.</td>
<td>• Communicate without delay the results of that investigation to the flag State where the flag State authorises the inspecting State to investigate an alleged violation [UN Fish Stocks Agreement, Art. 21(7)].</td>
</tr>
<tr>
<td>• Allow the relevant authorities of a coastal State to board and inspect its vessel on the high seas if there are reasonable grounds for believing that the vessel has been engaged in unauthorised fishing of straddling and highly migratory fish stocks within an area under the jurisdiction of a coastal State.</td>
<td>• Remain onboard the vessel and secure evidence, where, following a boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation, and the flag State has either failed to respond or failed to take action [UN Fish Stocks Agreement, Art. 21(8)].</td>
</tr>
<tr>
<td>A port state is required to:</td>
<td>• Further require the master to assist in further investigation including, where appropriate, by bringing the vessel without delay to the nearest appropriate port [UN Fish Stocks Agreement, Art. 21(8)].</td>
</tr>
<tr>
<td>• Carry out the inspection of documents, fishing gear and catch on board fishing vessels when a fishing vessel is in its ports or offshore terminals</td>
<td>• Immediately inform the flag State of the name of the port to which the vessel is to proceed [UN Fish Stocks Agreement, Art. 21(8)].</td>
</tr>
<tr>
<td>• Collect information during inspection of fishing vessels at port such as the flag State of the vessel and identification details; name, nationality, and qualifications of the master and the fishing master; fishing gear; catch on board, including origin, species, form, and quantity; total landed and transhipped catch; and other information required by relevant regional fisheries management organisations or other international agreements.</td>
<td>• Take all necessary steps to ensure the well-being of the crew regardless of their nationality [UN Fish Stocks Agreement, Art. 21(8)].</td>
</tr>
<tr>
<td>• In case of appropriate management arrangement with the flag State of the vessel, invite that State to participate in the inspection.</td>
<td>• Observe international rules and generally accepted practices and procedures relating to the safety of the vessel and the crew, minimise interference with fishing operations and, to the extent practicable, avoid action which would adversely affect the quality of the catch on board [UN Fish Stocks Agreement, Art. 21(10)].</td>
</tr>
<tr>
<td>• Inspect the number of vessels in its ports</td>
<td>• Ensure that boarding and inspection is not conducted in a manner that would constitute harassment of any fishing vessel [UN Fish Stocks Agreement, Art. 21(10)].</td>
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<td>• Release the vessel to the flag State along with full information on the progress and outcome of its investigation [UN Fish Stocks Agreement, Art. 21(12)].</td>
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<td>• Only take actions which are proportional to the seriousness of the violation [UN Fish Stocks Agreement, Art. 21(16)].</td>
</tr>
<tr>
<td></td>
<td>• Board and inspect a fishing vessel, and if appropriate take action in accordance with international law, where there are reasonable grounds for suspecting that such vessel on the high seas is without nationality [UN Fish Stocks Agreement Art. 21(17)].</td>
</tr>
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<td>• Present credentials to the master of the vessel and produce a copy of the text of the relevant conservation and management measures or rules and regulations in force in the high seas area in question pursuant to those measures [UN Fish Stocks Agreement, Art. 22(1)].</td>
</tr>
<tr>
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<td>• Initiate notice to the flag State at the time of the boarding and inspection.</td>
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<td></td>
<td>• Do not interfere with the master’s ability to communicate with the authorities of the flag State during the boarding and inspection [UN Fish Stocks Agreement, Art. 22(1)].</td>
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<td>• Provide a copy of a report on the boarding and inspection to the master and to the authorities of the flag State, noting thereon any objection or statement which the master wishes to have included in the report [UN Fish Stocks Agreement, Art. 22(1)].</td>
</tr>
<tr>
<td></td>
<td>• Promptly leave the vessel following completion of the inspection if they find no evidence of a serious violation [UN Fish Stocks Agreement, Art. 22(1)].</td>
</tr>
<tr>
<td></td>
<td>• Avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances [UN Fish Stocks Agreement, Art. 22(1)].</td>
</tr>
<tr>
<td></td>
<td>• A flag State is required to:</td>
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<td></td>
<td>• Respond to the notification of the investigating State within 3 working days of its receipt [UN Fish Stocks Agreement, Art. 21(6)].</td>
</tr>
<tr>
<td></td>
<td>• Take the necessary enforcement action with respect to the vessel [UN Fish Stocks Agreement, Art. 21(7)].</td>
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Benchmark measures | International and Regional Instrument Reference
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required to reach an annual level of inspection sufficient to achieve the objective of this Agreement. Seek to agree on the minimum levels for inspection of vessels through, as appropriate, regional fisheries management organisations, FAO or otherwise.
   • In determining which vessels to inspect, give priority to: (1) vessels that have been denied entry or use of a port in accordance with this Agreement; (2) requests from other relevant Parties, States or regional fisheries management organizations that particular vessels be inspected, particularly where such requests are supported by evidence of IUU fishing or fishing related activities in support of such fishing by the vessel in question; and (3) other vessels for which there are clear grounds for suspecting that they have engaged in IUU fishing or fishing related activities in support of such fishing.
   • Authorise the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel [UN Fish Stocks Agreement, Art. 21(7)].
   • Ensure that vessel masters accept and facilitate prompt and safe boarding by the inspectors [UN Fish Stocks Agreement, Art. 22(3)];
   • Ensure that vessel masters cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures [UN Fish Stocks Agreement, Art. 22(3)];
   • Ensure that its vessel masters do not obstruct, intimidate or interfere with the inspectors in the performance of their duties; Allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection [UN Fish Stocks Agreement, Art. 22(3)];
   • Ensure that vessel masters provide reasonable facilities, including, where appropriate, food and accommodation, to the inspectors [UN Fish Stocks Agreement, Art. 22(3)]; and
   • Facilitate safe disembarkation by the inspectors [UN Fish Stocks Agreement, Art. 22(3)].
   • Direct the master of the vessel to submit immediately to boarding and inspection in the event that the master refuses to accept boarding and inspection, except in circumstances where, in accordance with generally accepted international regulations, procedures and practices relating to safety at sea, it is necessary to delay the boarding and inspection [UN Fish Stocks Agreement, Art. 22(4)]
   • Suspend the vessel’s authorisation to fish and order the vessel to return immediately to port if the master does not comply with such direction [UN Fish Stocks Agreement, Art. 22(4)].
   • Advise the inspecting State of the action it has taken when the master has refused to cooperate with the inspector [UN Fish Stocks Agreement, Art. 22(4)].
   • Allow the relevant authorities of a coastal State to board and inspect its vessel on the high seas if there are reasonable grounds for believing that the vessel has been engaged in unauthorised fishing of straddling and highly migratory fish stocks within an area under the jurisdiction of a coastal State [Art. 20(6)].

A port state is required to:
   • Take measures to promote the effectiveness of subregional, regional and global conservation and management measures, such as the inspection of documents, fishing gear and catch on board fishing vessels when a fishing vessel is in its ports or offshore terminals [UN Fish Stocks Agreement, Art. 23(2); WCPFC Convention, Article 27(2)].
   • Collect information during inspection of fishing vessels at port such as the flag State of the vessel and identification details; name, nationality, and qualifications of the master and the fishing master; fishing gear; catch on board, including origin, species, form, and quantity; total landed and transhipped catch; and other information required by relevant regional fisheries management organisations or other international agreements [IPOA-IUU, para. 58];
   • Ensure that inspections are carried in accordance with minimum standards (documented in Annex B), by inspectors that are properly qualified and authorised for that purpose taking into account guidelines provided in Annex E [DAPSM, Article 13]
   • Ensure that the inspector:
      - prior to the inspection, presents to the master of the vessel an appropriate document identifying the inspector as such [DAPMS, Article 13.b];
      - examines all relevant areas of the vessel, the fish on board, the nets and other gear, equipment, and any document or record on board that is relevant to verifying compliance with relevant conservation and management measures[DAPMS, Article 13.c];
   • Require the master of the vessel to give inspectors all necessary assistance and information, and to present relevant material and
In case of appropriate management arrangement with the flag State of the vessel, invite that State to participate in the inspection [DAPMS, Article 13.e];

Make all possible efforts to avoid unduly delaying the vessel to minimise interference and inconvenience, including any unnecessary presence of inspectors on board, and to avoid action that would adversely affect the quality of the fish on board [DAPMS, Article 13.f];

Make all possible efforts to facilitate communication with the master or senior crew members of the vessel, including where possible and where needed that the inspector is accompanied by an interpreter [DAPMS, Article 13.g];

Ensure that inspections are conducted in a fair, transparent and non-discriminatory manner and would not constitute harassment of any vessel [DAPMS, Article 13.h]; and

Not interfere with the master’s ability, in conformity with international law, to communicate with the authorities of the flag State [DAPMS, Article 13.i];

Inspect the number of vessels in its ports required to reach an annual level of inspection sufficient to achieve the objective of this Agreement [DAPSM];

Seek to agree on the minimum levels for inspection of vessels through, as appropriate, regional fisheries management organisations, FAO or otherwise [DAPSM];

In determining which vessels to inspect, give priority to:
- vessels that have been denied entry or use of a port in accordance with this Agreement;
- requests from other relevant Parties, States or regional fisheries management organizations that particular vessels be inspected, particularly where such requests are supported by evidence of IUU fishing or fishing related activities in support of such fishing by the vessel in question; and
- other vessels for which there are clear grounds for suspecting that they have engaged in IUU fishing or fishing related activities in support of such fishing [DAPSM, Article 12].

In order to effectively implement the boarding and inspection regime of the Commission, a CCM is required to:

Ensure that fishing vessels flying its flag accept boarding by duly authorised inspectors in accordance with the boarding and inspection procedures established by the Commission [WCPFC Convention, Art. 26(3)];

Carry out boarding and inspection on the high seas of fishing vessels engaged in or reported to have engaged in a fishery regulated pursuant to the Convention [WCPFC Conservation and Management Measure 2006-08, para. 5]

Ensure that vessels flying its flag accept boarding and inspection by authorised inspectors in accordance with the procedures [WCPFC Conservation and Management Measure 2006-08, paras. 7 and 18-27].

Implement boarding and inspection procedure in a transparent and non-discriminatory manner, taking into account, inter alia:
- such factors as the presence of observers on board a vessel and the frequency and results of past inspections; and
- the full range of measures to monitor compliance with the provisions of the Convention and agreed conservation and management measures, including inspection activities carried out by the authorities of Members of the Commission in respect of their own flag vessels [WCPFC Conservation and Management Measure 2006-08, para. 9].

Give priority for boarding and inspection efforts to the following:
- fishing vessels that are not on the WCPFC Record of Fishing Vessels and are flagged to Members of the Commission;
- fishing vessels reasonably believed to engage or to have been engaged in any activity in contravention of the Convention or any
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<th>Benchmark measures</th>
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<tr>
<td>conservation and management measure adopted;</td>
<td>[WCPFC Conservation and Management Measure 2006-08, para. 10].</td>
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<td>fishing vessels whose flag Member does not dispatch patrol vessels to the area of application to monitor its own fishing vessels;</td>
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<td>fishing vessels without observers on board;</td>
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<td>large-scale tuna fishing vessels;</td>
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<tr>
<td>fishing vessels with a known history of violating conservation and management measures adopted by international agreement or any country’s national laws and regulations</td>
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<td>Provide the following information to the Commission if it intends to carry out boarding and inspection activities:</td>
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<td>with respect to each inspection vessel it assigns to boarding and inspection activities under these procedures:</td>
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<tr>
<td>i. details of the vessel (name, description, photograph, registration number, port of registry (and, if different from the port of registry, port marked on the vessel hull), international radio call sign and communication capability);</td>
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<td>ii. notification that the inspection vessel is clearly marked and identifiable as being on government service;</td>
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<tr>
<td>iii. notification that the crew has received and completed training in carrying out boarding and inspection activities at sea in accordance with any standards and procedures as may be adopted by the Commission.</td>
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<td>with respect to inspectors it assigns pursuant to these procedures:</td>
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<tr>
<td>i. the names of the authorities responsible for boarding and inspection;</td>
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<td>ii. notification that such authorities’ inspectors are fully familiar with the fishing activities to be inspected and the provisions of the Convention and conservation and management measures in force; and</td>
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<tr>
<td>iii. notification that such authorities’ inspectors have received and completed training in carrying out boarding and inspection activities at sea in accordance with any standards and procedures as may be adopted by the Commission.</td>
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<tr>
<td>Avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties.</td>
<td>[WCPFC Conservation and Management Measure 2006-08, para. 28].</td>
</tr>
<tr>
<td>Prepare a full report on each boarding and inspection carried out pursuant to these procedures in accordance with a format that may be specified by the Commission and transmit a copy of the report inspection report to the authorities of the fishing vessel being inspected, as well as the Commission, within three full working days of the completion of the boarding and inspection.</td>
<td>[WCPFC Conservation and Management Measure 2006-08, para. 30].</td>
</tr>
<tr>
<td>Observe activities or conditions that would constitute a serious violation.</td>
<td>[WCPFC Conservation and Management Measure 2006-08, para. 32].</td>
</tr>
<tr>
<td>Upon receipt of a notification under paragraph 32, the authorities of the fishing vessels shall without delay:</td>
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<tr>
<td>assume their obligation to investigate and, if the evidence warrants, take enforcement action against the fishing vessel in question and so notify the authorities of the inspection vessel, as well as the Commission; or</td>
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<tr>
<td>authorize the authorities of the inspection vessel to complete investigation of the possible violation and so notify the Commission.</td>
<td>[WCPFC Conservation and Management Measure 2006-08, para. 33].</td>
</tr>
<tr>
<td>Engage in surveillance aimed at identifying fishing vessels of non-members undertaking fishing activities in the Convention area, attempt to inform such fishing vessel, and if warranted request permission from the fishing vessel and/or flag State of the vessel to board the vessel.</td>
<td>[Conservation and Management Measure 2006-08, paras. 43 and 44].</td>
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</tbody>
</table>

Participation in the International MCS network
<table>
<thead>
<tr>
<th>Benchmark measures</th>
<th>International and Regional Instrument Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Reciprocal enforcement measures (Lacey Act type measures)</td>
<td></td>
</tr>
<tr>
<td>• Initiate joint enforcement operations with other national enforcement agencies (e.g. navy, maritime police, coastguard) in situations where shortage of manpower is evident to undertake an effective surveillance [SEAFDEC Fisheries Management, para. 7.7.3(1)].</td>
<td></td>
</tr>
<tr>
<td>• Encourage harmonisation of national MCS frameworks among neighbouring countries [SEAFDEC Fisheries Management, para. 7.1.7(1)].</td>
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<tr>
<td>• Strengthen efforts to collaborate through MCS regimes and the MCS network [APEC, BPA, para. I.b.iv].</td>
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</tr>
<tr>
<td>• Provide financial and technical assistance to developing countries in the implementation of MCS capabilities, including VMS, with the support of FAO and relevant international financial institutions and mechanisms [2005 Rome Declaration, para. 9].</td>
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</tr>
<tr>
<td>• Investigate, at the request of any other member, any alleged violation by its nationals, or fishing vessels owned or controlled by its nationals, of the provisions of the Convention or conservation and management measures adopted by the Commission [WCPFC Convention, Art. 23(5) and 25(2)].</td>
<td></td>
</tr>
<tr>
<td>• Provide a report on the progress of the investigation to the requesting member and to the Commission, including details of any action taken or proposed to be taken in relation to the alleged violation [WCPFC Convention, Art. 25(2)].</td>
<td></td>
</tr>
<tr>
<td>• Draw the attention of the flag State of a fishing vessel which is believed to have engaged in an activity that undermines the effectiveness of conservation and management measures adopted for the Convention area [WCPFC Convention, Art. 25(10)].</td>
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<tr>
<td>• Notify the Executive Director of any factual information showing that there is reasonable grounds to suspect that a vessel that is not on the WCPFC Record of Fishing Vessels is or has been engaged in fishing for or transhipment of highly migratory fish stocks in the Convention area [Conservation and Management Measure 2004-01, para. 12].</td>
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</table>

**Fisheries prosecution**

• Refer the case to its authorities if the member is satisfied that sufficient evidence is available in respect of an alleged violation by a fishing vessel flying its flag with a view of instituting proceedings without delay and where, appropriate, detain the vessel concerned [WCPFC Convention, Art. 25(3)].

• Ensure that the vessel concerned does not engage in fishing activities until such a time as all outstanding sanctions imposed by the flag State have been complied with [WCPFC Convention, Art. 25(4)].

• Ensure that the vessel complies promptly with any sanctions which may be imposed by the coastal State in accordance with national laws and regulations [WCPFC Convention, Art. 25(4)].

• Establish arrangements for making available to prosecuting authorities of other members evidence relating to alleged violations [WCPFC Convention, Art. 25(5)].

• Immediately and fully investigate cases where there are reasonable grounds for believing that a fishing vessel on the high seas has engaged in unauthorised fishing within an area of national jurisdiction of a member of a Commission [WCPFC Convention, Art. 25(6)].

**Sanctions**

• Formulate and apply consistent and transparent sanctions with sufficient severity to effectively prevent IUU fishing and further deprive offenders from accruing benefits from such activities [IPOA-IUU, para. 21; UN Fish Stocks Agreement, Art. 19(2); FAO Compliance Agreement, Art. III(8); FAO Code of Conduct, Art. 8.2.7].

• Apply sanctions in a fair, transparent, and non-discriminatory manner [IPOA-IUU, paras. 52 and 65].

• Take enforcement actions in the EEZ such as the arrest of foreign fishing vessels and subjecting them to judicial proceedings [LOSC, Art. 73(1)].
<table>
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<tr>
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<th>International and Regional Instrument Reference</th>
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<tr>
<td>• Ensure that arrested vessels and their crews are promptly released upon posting of a reasonable bond or other security [LOSC, Art. 73(1)].</td>
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<tr>
<td>• Exclude imprisonment or any form of corporal punishment for fisheries violations by foreign fishing vessels in the EEZ [LOSC, Art. 73(3)].</td>
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</tr>
<tr>
<td>• Withdraw, suspend, or cancel an authorisation to fish of a vessel if it has been established that the vessel has undermined international conservation and management measures [UN Fish Stocks Agreement, Art. 19(2) and 22(4); FAO Compliance Agreement, Art. III(8); FAO Code of Conduct, Art. 7.7.2]</td>
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<tr>
<td>• Refuse to issue an authorisation to fish until after a certain period of time [FAO Compliance Agreement, Art. III(5)(b)].</td>
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<tr>
<td>• Refuse, withdraw or suspend authorisations to serve as masters or officers on such vessels [UN Fish Stocks Agreement, Art. 19(2); FAO Code of Conduct, para. 8.1.9].</td>
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<tr>
<td>• Ensure that a vessel which has been involved in the commission of a serious violation of conservation and management measures for straddling and highly migratory fish stocks does not engage in fishing operations on the high seas of until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with [UN Fish Stocks Agreement, Art. 19(1)(e)].</td>
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8. Port State controls

- **General**
  - A port State is required to:
  - • Make known to other States details of regulations and measures with respect to port State control of fishing vessels [FAO Code of Conduct, Art. 8.3.1].
  - • Ensure that measures are applied to vessels in a fair, transparent, and non-discriminatory manner [LOSC, Art. 25(3), 119(3), and 227; UN Fish Stocks Agreement, Art. 23(1); FAO Code of Conduct, para. 8.3.1; IPOA-IUU, para. 52].
  - • Strengthen its measures in ports for fishing vessels, consistent with international law, in order to prevent, deter, and eliminate IUU fishing [2005 Rome Declaration, para. 5].
  - • Strengthen efforts to combat IUU fishing by pursuing the use of port State measures [APEC BPA, para. 1.b.v].
  - • Undertake follow up work on the 2004 FAO Technical Consultation to Review Port State Measures to Combat IUU Fishing, especially with respect to operationalising the model scheme agreed at the Consultation [APFIC Report of the 29th Session of COFI, para. 25].

- **Designation of Ports**
  - • Publicise ports to which foreign-flagged vessels may be permitted admission and ensure that such ports have the capacity to conduct inspections [IPOA-IUU, para. 57], [DAPSM, Article 7].
  - • Designate one or more of its ports as transhipment ports for the purpose of the WCPFC Convention [WCPFC Convention, Art. 29(1)].

- **Advanced entry of notice**
  - • Require fishing vessels and vessels involved in fishing-related activities seeking permission to enter its ports to provide reasonable advance notice of their entry into port, a copy of their authorization to fish, details of their fishing trip and quantities of fish on board, with due regard to confidentiality requirements, in order to ascertain whether the vessels have engaged in or supported IUU fishing.
  - • Adopt regulations empowering the relevant national authorities to prohibit landing and transhipments where it has
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<td>been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas; and/or when a party has sufficient proof that a vessel seeking entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing.</td>
<td>• sufficiently in advance to allow adequate time for the port State to examine such information [DAPSM, Article 8]</td>
</tr>
<tr>
<td>• Deny the use of its ports for landing, transshipping, packaging and processing of fish and for other port services, inter alia, refuelling and resupplying, maintenance and drydocking, to a vessel which is in port but has been determined to have engaged in IUU fishing.</td>
<td>• Decide whether to authorise or deny entry of the vessel to its port based on the information provided and communicate this decision to the vessel or to its representative. [DAPSM, Article 9.1]</td>
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<td>• Take receipt of the authorisation for entry from the vessel master or representative upon the vessel’s arrival at port. [DAPSM, Article 9.2]</td>
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<td>• In the case of denial, communicate its decision to the flag State of the vessel and, as appropriate and to the extent possible, relevant coastal States, regional fisheries management organisations and other international organisations. [DAPSM, Article 9.3]</td>
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<td>Port enforcement</td>
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<td>• Take necessary steps to prevent any breach of the conditions associated with a port call [LOSC Art. 25(2)].</td>
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<td>• Not discriminate in form or in fact against the fishing vessels of any State [WCPFC Convention, Art. 27(1)].</td>
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<td>• Adopt regulations empowering the relevant national authorities to prohibit landing and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas [UN Fish Stocks Agreement, Art. 23(3); WCPFC Convention, Art. 27(3); IPOA IUU para 56 &amp; 59].</td>
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<td></td>
<td>• Deny entry of vessels into its ports when a party has sufficient proof that a vessel seeking entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing, in particular the inclusion of a vessel on a list of vessels having engaged in such fishing or fishing related activities adopted by a relevant regional fisheries management organisation in accordance with the rules and procedures of such organisation and in conformity with international law. [DAPSM, Article 9.4]</td>
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<td></td>
<td>• Deny the use of its ports for landing, transshipping, packaging and processing of fish and for other port services, inter alia, refuelling and resupplying, maintenance and drydocking, to a vessel which is in port but has been determined to have engaged in IUU fishing [DAPSM, Article 9.6]</td>
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<td></td>
<td>• Deny (pursuant to its laws and) a vessel that has entered one of its ports use of the port for landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including, inter alia, refueling and resupplying, maintenance and drydocking, if:</td>
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<td></td>
<td>a. the Party finds that the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities required by its flag State;</td>
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<td>b. the Party finds that the vessel does not have a valid and applicable authorization to engage in fishing or fishing related activities required by a coastal State in respect of areas under the national jurisdiction of that State;</td>
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<td>c. the Party receives clear evidence that the fish on board was taken in contravention of applicable requirements of a coastal State in respect of areas under the national jurisdiction of that State;</td>
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<td>d. the flag State does not confirm within a reasonable period of time, on the request of the port State, that the fish on board was taken in accordance with applicable requirements of a relevant regional fisheries management organization taking into due account paragraphs 2 and 3 of Article 4; or</td>
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<td></td>
<td>e. the Party has reasonable grounds to believe that the vessel was otherwise engaged in IUU fishing or fishing related activities in support of such fishing, including in support of a vessel referred to in paragraph 4 of Article 9, unless the vessel can establish:</td>
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<td>i. that it was acting in a manner consistent with relevant conservation and management measures; or</td>
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<td>ii. in the case of provision of personnel, fuel, gear and other supplies at sea, that the vessel that was provisioned was not, at the time of provisioning, a vessel referred to in paragraph 4 of Article 9, [DAPSM, Article 11].</td>
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<tr>
<td>Benchmark measures</td>
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<td>• Withdraw its denial of the use of its port pursuant to paragraph 1 of this Article in respect of a vessel only if there is sufficient proof that the grounds on which use was denied were inadequate or erroneous or that such grounds no longer apply. Where a Party has withdrawn its denial pursuant to paragraph 4 of this Article, it shall promptly notify those to whom a notification was issued pursuant to paragraph 3 of this Article. [DAPSM, Article 11.4 and 11.5]</td>
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<tr>
<td>• Safeguard the confidentiality of information collected in accordance with national law [IPOA-IUU, para. 60].</td>
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<tr>
<td>• Provide assistance to flag States, when a fishing vessel is voluntarily in a port or at an offshore terminal of the port State and the flag State of the vessel requests the port State for assistance in respect of non-compliance with subregional, regional or global conservation and management measures or with internationally agreed minimum standards for the prevention of pollution and for safety, health and conditions of work on board fishing vessels [FAO Code of Conduct, Art. 8.3.2].</td>
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**IUU vessel list**

In implementing the IUU list scheme of the WCPFC, a CCM is required to:

- Notify the owner of the vessels of its inclusion on the IUU Vessel List and the consequences which result from being included in the List [Conservation and Management Measure 2006-09, para. 16(a)].
- Take all the necessary measures to eliminate IUU fishing activities, including, if necessary, the withdrawal of the registration or the fishing licenses of these vessels, and to inform the Commission of the measures taken in this respect [Conservation and Management Measure 2006-09, para. 16(b)].
- Take all necessary non-discriminatory measures under applicable legislation, international law, and pursuant to paragraphs 56 and 66 of the IPOA-IUU, to:
  - ensure that fishing vessels, support vessels, mother ships or cargo vessels flying their flag do not participate in any transhipment or joint fishing operations with, support or re-supply vessels on the IUU Vessel List;
  - ensure that vessels on the IUU Vessel List that enter ports voluntarily are not authorized to land, tranship, refuel or re-supply therein but are inspected upon entry;
  - prohibit the chartering of a vessel on the IUU Vessel List;
  - refuse to grant their flag to vessels on the IUU Vessel List in accordance with paragraph 1f of Section A in Conservation and Management Measure 2004-01;
  - prohibit commercial transactions, imports, landings and/or transhipment of species covered by the WCPFC Convention from vessels on the IUU Vessel List;
  - encourage traders, importers, transporters and others involved, to refrain from transactions in, and transhipment of, species covered by the WCPFC Convention caught by vessels on the IUU Vessel List;
  - collect, and exchange with other CCMs, any appropriate information with the aim of searching for, controlling and preventing false import/export certificates for species covered by the WCPFC Convention from vessels on the IUU Vessel List [Conservation and Management Measure 2006-09, para. 17].
- Not take any unilateral trade measures or other sanctions against vessels on the draft or provisional IUU Vessel Lists or that have been removed from the IUU Vessel List, on the grounds that such vessels are involved in IUU fishing activities [Conservation and Management Measure 2006-09, para. 19].
- Request the removal of the vessel from the List during the intersessional period by providing information demonstrating that:
<table>
<thead>
<tr>
<th>Benchmark measures</th>
<th>International and Regional Instrument Reference</th>
</tr>
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</table>
| - it has adopted measures that will ensure that the vessel complies with all WCPFC measures;  
- it will be able to assume effectively its responsibilities as regards the monitoring and control of the vessel's fishing activities in the Convention Area;  
- it has taken effective action in response to the IUU fishing activities that resulted in the vessel's inclusion in the IUU Vessel List, including prosecution and imposition of sanctions of adequate severity.  
- the vessel has changed ownership and that the new owner can establish that the previous owner no longer has any legal, financial or real interests in the vessel or exercises control over it, and that the new owner has not participated in IUU fishing activities [Conservation and Management Measure 2006-09, para. 20].  
- Comply with the requirements relating to the time period for transmitting comments to the Director with respect to the Draft IUU Vessel List and modification of the IUU Vessel list [Conservation and Management Measure 2006-09, paras. 5, 6, and 23]. |

9. Catch Certification and other Trade Schemes

- Develop and implement a system of catch certification which requires that a certificate accompany exported wild caught seafood product.
- Ensure that the certificate contains (1) Basic information such as the name of the fishing vessel, home port and registration number, call sign, licence number, Inmarsat number and IMO number (if issued); (2) Information on the product (the type of species, catch areas and dates, estimated live weight and verified weight landed, as well as the applicable conservation and management measures and any transhipment at sea); (3) Information and declaration on export and import of the fisheries product (including the vessel name and flag, flight number, airway bill number, truck nationality and registration number, other transport documents and container number).
- Provide a process and the power for a relevant competent authority to validate each catch certificate attesting to the veracity of the details of such certificate.

EC Regulation 1005/2008

The importation of fishery products into the EC is only allowed when it is accompanied by a completed catch certificate validated by the flag state of the vessel.

To be valid, the catch certificate must contain all information specified in the template documents shown in Annex II of the IUU Regulation, including:
- Basic information such as the name of the fishing vessel, home port and registration number, call sign, licence number, Inmarsat number and IMO number (if issued);
- Information on the product (the type of species, catch areas and dates, estimated live weight and verified weight landed, as well as the applicable conservation and management measures and any transhipment at sea);
- Information and declaration on export and import of the fisheries product (including the vessel name and flag, flight number, airway bill number, truck nationality and registration number, other transport documents and container number).

A range of actions may be taken by EC Member States against third country fishing vessels that have not complied with the catch certification requirements. EC Member States are permitted to refuse importation of fisheries products without having to request additional evidence or send a request for assistance to the flag state on a number of discretionary grounds.

Relevant authorities of each exporting country are to validate catch certificates and in doing so, must have the power to provide such validation and attest to the veracity of the catch certificate.

Assistance of the competent authority

The competent authority of the EC Member State may, for the purpose of verification, may request the assistance of the competent authorities of the flag state or of a country other than the flag state from which fishery products have been indirectly imported.
<table>
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<tr>
<th>Benchmark measures</th>
<th>International and Regional Instrument Reference</th>
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<tbody>
<tr>
<td>• Provide assistance in terms of verification</td>
<td>In this case the request will state the reasons</td>
</tr>
<tr>
<td>of details of a catch certificate, within the stipulated 15 day timeframe, when</td>
<td>why the competent authority of the Member State</td>
</tr>
<tr>
<td>required by a competent authority of the EC Member State.</td>
<td>has doubts as to the validity of the certificate,</td>
</tr>
<tr>
<td>• Develop and implement a system of verifiable certification for seafood products</td>
<td>of the statements contained therein and/or the</td>
</tr>
<tr>
<td>which are imported from a third country, processed in the State and re-exported</td>
<td>compliance of the products with conservation and</td>
</tr>
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<td>to an EU Member Country.</td>
<td>management measures. A copy of the catch certificate</td>
</tr>
<tr>
<td></td>
<td>and relevant documentation will be forwarded.</td>
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<td></td>
<td>The Regulation provides that the procedure for</td>
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<td></td>
<td>verification shall be completed within 15 days</td>
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<td></td>
<td>of the date of verification request. Where the</td>
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<td>flag state authority cannot meet the deadline,</td>
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<td></td>
<td>the verifying authorities in the Member State</td>
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<td></td>
<td>may grant an extension which shall not exceed a</td>
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<td>further 15 days. The release of the product in</td>
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<td>question shall be suspended during the verification</td>
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<td></td>
<td>process with the cost of storage borne by the</td>
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<td></td>
<td>operator. Indirect importation of fishery products</td>
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<td></td>
<td>(i.e. where products are transported through or</td>
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<td>processes in a third countries other than the</td>
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<td></td>
<td>flag state) are also subject to the validation</td>
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<tr>
<td></td>
<td>of a catch certificate by the competent</td>
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<tr>
<td></td>
<td>authorities. Verifiable documentation or</td>
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<td></td>
<td>certification is required of products constituting</td>
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<td></td>
<td>one single consignment which are transported in</td>
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<td>the same form to the EC from a third country</td>
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<td>other than the flag state. Similarly, verifiable</td>
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<td></td>
<td>certificates are required for products</td>
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<td>constituting one single consignment which have</td>
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<td>been processed in a third country other than</td>
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<td></td>
<td>the flag state. Where this is the case, proper</td>
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<td>documentation is required of every step of</td>
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<td></td>
<td>transhipment or transit, as well as the exact</td>
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<td></td>
<td>description of the unprocessed and processed</td>
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<td></td>
<td>products and their respective quantities.</td>
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<thead>
<tr>
<th>10. Tracking Proceeds of Illegal Fishing</th>
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<tbody>
<tr>
<td>• Develop and implement the legislative,</td>
<td>There are no regional or international instruments</td>
</tr>
<tr>
<td>surveillance and forensic capacity to</td>
<td>which require a State to track the proceeds of</td>
</tr>
<tr>
<td>track the proceeds of criminal activity</td>
<td>illegal fishing. The proposed benchmark has</td>
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<tr>
<td>related to illegal fishing.</td>
<td>been developed for the purposes of canvassing</td>
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<tr>
<td>• Develop cooperation between fisheries</td>
<td>the current ability of each State to undertake</td>
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<tr>
<td>administrations and those units</td>
<td>such activity.</td>
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<tr>
<td>responsible for anti-money laundering</td>
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<td>and financial intelligence units.</td>
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<thead>
<tr>
<th>11. Reporting</th>
<th>Reporting of fishing vessel registrations</th>
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<tbody>
<tr>
<td>• Make readily available information</td>
<td>A State is required to:</td>
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<tr>
<td>included in their records of fishing</td>
<td>• Make readily available information</td>
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<tr>
<td>vessels to relevant regional fisheries</td>
<td>included in their records of fishing</td>
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<td>management organisations and the FAO.</td>
<td>vessels [FAO Compliance Agreement, Art. VI(1)</td>
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<tr>
<td>• Submit, for inclusion in the High Seas</td>
<td>and (2)].</td>
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<tr>
<td>Vessel Authorisation Record, data on</td>
<td>• Submit, for inclusion in the High Seas</td>
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<td>vessels entitled to fly its flag that</td>
<td>Vessel Authorisation Record, data on</td>
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<td>are authorised to be used for fishing on</td>
<td>vessels entitled to fly its flag that are</td>
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<td>the high seas.</td>
<td>authorised to be used for fishing on the</td>
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<tr>
<td>• Report to the FAO and relevant RFMO</td>
<td>high seas [2005 Rome Declaration, para. 6].</td>
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<td>any</td>
<td>• Supply detailed information on fishing</td>
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<td>vessels flying its flag to relevant</td>
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<td>regional fisheries management organisations,</td>
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<td>in accordance with the requirements</td>
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<td>adopted by those regional organisations</td>
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<td>[2005 Rome Declaration, para. 6].</td>
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<td></td>
<td>• Report the following to FAO:</td>
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<tr>
<td></td>
<td>- any modifications to the information</td>
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<td></td>
<td>included in the record of fishing vessels;</td>
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</tbody>
</table>
Benchmark measures | International and Regional Instrument Reference
--- | ---
modifications, additions, deletions to the information included in the record of fishing vessels; any exemption granted to fishing vessels of less than 24 metres in length; all relevant information regarding any activities of fishing vessels flying its flag that undermine the effectiveness of international conservation and management measures (subject to the confidentiality measures adopted by States in their national legislation); evidence supporting a claim of a Party that a fishing vessel not entitled to fly its flag has engaged in an activity that undermines the effectiveness of international conservation and management measures; information pertaining to the grant of authorisation to a fishing vessel that has previously undermined the effectiveness of international conservation and management measures.
- Provide annually statistical, biological and other data and information in accordance with Annex I of the UN Fish Stocks Agreement, and in addition, other data and information as the required by an RFMO.
- Provide information concerning its fishing activities in the RFMO areas, including fishing areas and fishing vessels in order to facilitate the compilation of reliable catch and effort statistics.
- Provide information on boarding and inspections carried out by its authorised inspection vessels and actions taken in response to boarding and inspections of their fishing vessels that resulted in observation of alleged violations.
- Immediately report fishing vessels which

- any additions to the record;
- any deletions from the record by reason of: (a) the voluntary relinquishment or nonrenewal of the fishing authorisation by the fishing vessel owner or operator; (b) the withdrawal of the fishing authorisation issued in respect of the fishing vessel; (c) the fact that the fishing vessel concerned is no longer entitled to fly its flag; (d) the scrapping, decommissioning or loss of the fishing vessel concerned; or (e) any other reason;
- any exemption granted to fishing vessels of less than 24 metres in length, the number and type of fishing vessels involved and the geographical areas in which such fishing vessel operate;
- all relevant information regarding any activities of fishing vessels flying its flag that undermine the effectiveness of international conservation and management measures, including the identity of the fishing vessel or vessels involved and measures imposed by the Party in respect of such activities, subject to the confidentiality measures adopted by States in their national legislation;
- evidence supporting a claim of a Party that a fishing vessel not entitled to fly its flag has engaged in an activity that undermines the effectiveness of international conservation and management measures;
- information pertaining to the grant of authorisation to a fishing vessel that has previously undermined the effectiveness of international conservation and management measures, including the identification of the vessel and the owner or operator, and as appropriate, any other information relevant to the Party’s decision [FAO Compliance Agreement, Art. VI].

A CCM is required to:
- Report the following information to the Commission in respect of each fishing vessel entered in the record of fishing vessels:
  - Name of fishing vessel, registration number, WCPFC Identification Number (WIN), previous names (if known), and port of registry;
  - Name and address of owner or owners;
  - Name and nationality of master;
  - Previous flag (if any);
  - International Radio Call Sign;
  - Vessel communication types and numbers (INMARSAT A, B and C numbers and satellite telephone number);
  - Colour photograph of vessel;
  - Where and when built;
  - Type of vessel;
  - Normal crew complement;
  - Type of fishing method or methods;
  - Length;
  - Moulded depth;
  - Beam;
  - Gross register tonnage;
  - Power of main engine or engines;
  - The nature of the authorisation to fish granted by the flag State;
  - Carrying capacity, including freezer type, capacity and number and fish hold capacity;
  - The form and number of the authorisations granted by the flag State including any specific areas, species and time periods for which it is valid [WCPFC Convention, Annex IV; Conservation and Management Measure 2004-01, para. 5].
<table>
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<tr>
<th>Benchmark measures</th>
<th>International and Regional Instrument Reference</th>
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<tr>
<td>have been engaged in IUU fishing to the flag State, coastal State, or regional fisheries management organisation concerned.</td>
<td>• Promptly inform the Commission of any additions to the record fishing vessels entitled to fly its flag and authorised to be used for fishing in the Convention area beyond its area of national jurisdiction, and any deletions from the record [WCPFC Convention, Art. 24(6); Conservation and Management Measure 2004-01, para. 6].</td>
</tr>
<tr>
<td>• Remit collected information from port inspection to the flag State and where appropriate to FAO and relevant regional fisheries management organisations.</td>
<td>• Submit to the Executive Director, information requested by the Executive Director with respect to fishing vessels entered in its national record of fishing vessels within 15 days of such request [WCPFC Conservation and Management Measure 2004-01, para. 7].</td>
</tr>
<tr>
<td>• Promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other relevant international organizations of its decision when a Party has denied the use of its port.</td>
<td>• The results of review of its own internal actions and measures taken pursuant to the record of fishing vessels, including sanctions and punitive actions and in a manner as regards disclosure [WCPFC Conservation and Management Measure 2004-01, para. 10];</td>
</tr>
</tbody>
</table>

**Reporting of fisheries data and management measures**

A State is required to:

- Build its capacity to conform to the FAO Strategy for Fisheries Status and Trends Report and provide comprehensive data on fisheries to relevant RFMOs, including reporting on the impacts of fishing [APEC BPA, para. I. a. i].
- Provide annually statistical, biological and other data and information in accordance with Annex I of the UN Fish Stocks Agreement, and in addition, other data and information as the Commission may require [WCPFC Convention, Art. 23(2)(a)].
- Provide information concerning its fishing activities in the Convention area, including fishing areas and fishing vessels in order to facilitate the compilation of reliable catch and effort statistics [WCPFC Convention, Art. 23(2)(b)].
- Provide information on steps taken to implement the conservation and management measures adopted by the Commission [WCPFC Convention, Art. 23(2)(c)].
- Keep the Commission informed of the measures they have adopted for the conservation and management of highly migratory fish stocks in areas within the Convention Area under their national jurisdiction [WCPFC Convention, Art. 23(3)].
- Keep the Commission informed of the measures it has adopted for regulating the activities of fishing vessels flying its flag in the Convention area [WCPFC Convention, Art. 23(4)].
- Include the following in its Annual Report to the Commission:
  - a report on the steps taken to implement the Resolution on Mitigating the Impact of Fishing for Highly Migratory Fish Species on Sea Turtles [WCPFC Resolution 2005-04, para. 11];
  - all catches of North Pacific albacore every six months, except for coastal fisheries which shall be reported on an annual basis [WCPFC Conservation and Management Measure 2005-03, para. 3];
  - all catches of albacore north of the equator and all fishing effort north of the equator in fisheries directed at albacore [WCPFC Conservation and Management Measure 2005-03, para. 4];
  - complete and accurate data relating to the bigeye yellowfin catch of vessels [WCPFC Conservation and Management Measure 2006-01, para. 2];
  - implementation of the IPOA-Seabirds and the status of its national plan of action on the matter [WCPFC Conservation and Management Measure 2006-02, paras. 1 and 2];
  - all available information on interactions with seabirds, including bycatches and details of species [WCPFC Conservation and Management Measure 2006-02, para. 11];
  - the number of vessels that have fished for swordfish in the area south of 20 degrees south no later than 90 days after the end of the year [WCPFC Conservation and Management Measure 2006-03, para. 4];
  - the catch levels of their fishing vessels that have taken striped marlin as a bycatch as well as the number and catch levels of vessels
<table>
<thead>
<tr>
<th>Benchmark measures</th>
<th>International and Regional Instrument Reference</th>
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</thead>
<tbody>
<tr>
<td>fishing for striped marlin in the Convention area south of 15 degrees south [WCPFC Conservation and Management Measure 2006-04, para. 4];</td>
<td>[WCPFC Conservation and Management Measure 2006-04, para. 4];</td>
</tr>
<tr>
<td>- implementation of the IPOA-Sharks and the status of its national plan of action on the matter [WCPFC Conservation and Management Measure 2006-05, paras. 2 and 3];</td>
<td>- implementation of the IPOA-Sharks and the status of its national plan of action on the matter [WCPFC Conservation and Management Measure 2006-05, paras. 2 and 3];</td>
</tr>
<tr>
<td>- annual catches and catch and fishing effort statistics for sharks by gear type, including available historical data [WCPFC Conservation and Management Measure 2006-05, para. 4];</td>
<td>- annual catches and catch and fishing effort statistics for sharks by gear type, including available historical data [WCPFC Conservation and Management Measure 2006-05, para. 4];</td>
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</table>

Reporting of port state activities
- boarding and inspections carried out by its authorised inspection vessels [WCPFC Conservation and Management Measure 2006-08, para. 40];
- actions taken in response to boarding and inspections of their fishing vessels that resulted in observation of alleged violations, including any proceedings instituted and sanctions applied [WCPFC Conservation and Management Measure 2006-08, para. 41];

Reporting of IUU activities
A CCM is required to:
- Immediately report fishing vessels which have been engaged in IUU fishing to the flag State, coastal State, or regional fisheries management organisation concerned [FAO Compliance Agreement, Art. V(2); IPOA-IUU, para. 59].
- Remit collected information from port inspection to the flag State and where appropriate to FAO and relevant regional fisheries management organisations. [IPOA-IUU, para. 58; DAPSM].
- Promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other relevant international organizations of its decision when a Party has denied the use of its port [DAPSM, Article 11.3].
- Transmit to the Executive Director a list of vessels presumed to be carrying out IUU activities in the Convention Area during the current and previous years, accompanied by the supporting evidence concerning the presumption of this IUU activity [WCPFC Conservation and Management Measure 2006-09, para. 4].
- Submit to the Executive Director any additional information which might be relevant for the establishment of the IUU Vessel List [WCPFC Conservation and Management Measure 2006-09, para. 10].
ANNEX 4: INFORMATION REQUIRED FOR THE FISHING RECORD

(a) Name of fishing vessel, registration number, previous names (if known), and port of registry;
(b) Name and address of owner;
(c) Name and nationality of master;
(d) Previous flag (if any);
(e) International Radio Call Sign;
(f) Vessel communication types and numbers (INMARSAT A, B and C numbers and satellite telephone number);
(g) Colour photograph of vessel;
(h) Where and when built;
(i) Type of vessel;
(j) Normal crew complement;
(k) Type of fishing method or methods;
(l) Length;
(m) Moulded depth;
(n) Beam;
(o) Gross register tonnage;
(p) Power of main engine or engines;
(q) The nature of the authorization to fish granted by [country];
(r) Carrying capacity, including freezer type, capacity and number and fish hold capacity.

(a) Name of fishing vessel, registration number, previous names (if known), and port of registry;
(b) Name and address of owner;
(c) Name and nationality of master;
(d) Previous flag (if any);
(e) International Radio Call Sign;
(f) Vessel communication types and numbers (INMARSAT A, B and C numbers and satellite telephone number);
(g) Colour photograph of vessel;
(h) Where and when built;
(i) Type of vessel;
(j) Normal crew complement;
(k) Type of fishing method or methods;
(l) Length;
(m) Moulded depth;
(n) Beam;
(o) Gross register tonnage;
(p) Power of main engine or engines;
(q) The nature of the authorization to fish granted by [country];
(r) Carrying capacity, including freezer type, capacity and number and fish hold capacity.
ANNEX 5: REVIEW OF COUNTRY LEGISLATION AGAINST BENCHMARK MEASURES FOR RESPONSIBLE FISHING

Note that in the following tables, a vacant cell indicates that the country has no legislation specific to this benchmark measure.
# REVIEW OF COUNTRY LEGISLATION AGAINST RESPONSIBLE FISHING BENCHMARKS – TIMOR LESTE

## 1. ECOSYSTEM APPROACH TO FISHERIES MANAGEMENT – TIMOR LESTE

<table>
<thead>
<tr>
<th>Benchmarks</th>
<th>Relevant Country Legislation</th>
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<tbody>
<tr>
<td>Include objectives in legislation relating to ecosystem approach to fisheries management.</td>
<td>The exploitation of fisheries resources shall be guided by the principles of their sustainable utilisation and precaution [Decree Law 6/2004, Article 78(1)]. The principles of sustainable utilisation and precaution shall be translated into conservation measures to be adopted in applicable regulations, which may include: 1. The definition of dimensions and minimum weight of species, periods of prohibition, areas of prohibited or restricted access, minimum mesh sizes, regulation on fishing gear, maximum amount of authorised catches per vessel or per person in a certain fishing or fishing area, fishing methods prohibited and schemes to restrict access and fishing effort; 2. The prohibition to fish internationally protected species, such as marine mammals; 3. The prohibition to fish rare species or species in danger of extinction [Decree Law 6/2004, Article 78(2)]. Fishing activities in national maritime waters and hydrographical basins of the country shall comply with and conform to the purposes, restrictions, conditions and methods provided for in the fisheries management plan [Decree Law 6/2007, Article 7(1)]. Until such a time as the fisheries management plan is adopted, the licensing of fishing vessels shall be guided by the principle of precaution and by applicable regulations, which shall define the criteria to be followed to this end [Decree Law 6/2007, Article 7(2)].</td>
</tr>
<tr>
<td>Adopt management measures that take into account the interdependence of fish stocks and effects of fishing on species associated with or dependent on harvested species.</td>
<td>Adopt measures for the management of migratory species and straddling stocks. Adopt measures to minimise waste and bycatch. Adopt measures to eliminate destructive fishing practices.</td>
</tr>
<tr>
<td>Adopt measures for the management of migratory species and straddling stocks.</td>
<td>Individuals or corporate bodies engaged in fishing activities shall use the best fishing methods, practices, gear and equipment so as to reduce the capture of incidental by-catches to a minimum possible, in accordance with applicable regulations. Trip limits for catch of bycatch species are specified in the regulations and incidental bycatches that exceed the limits shall be delivered to the Ministry [Decree Law 6/2004, Article 94].</td>
</tr>
<tr>
<td>Adopt measures to minimise waste and bycatch.</td>
<td>The use of firearms, explosives or toxic substances as means of capturing fishery resources in the hydrographic basins or in the national maritime waters shall constitute a crime punishable with a penalty of 1 to 5 years of imprisonment and a fine ranging from $300 (three hundred) up to $100,000 (one hundred thousand) American dollars [Law 12/2004, Article 1]</td>
</tr>
</tbody>
</table>

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It shall be prohibited (a) To use or to attempt to use, while fishing, explosive or toxic products or substances to weaken, stun, excite, or kill species or to render it easier, in any other way, to capture or to use any tool for fishing by electrocution; and/or (b) To possess or to carry aboard fishing vessels, products, substances or tools referred to in the paragraph (a) above, where such possession or transport involves people who are not law-enforcement agents in the exercise of their functions [Decree Law 6/2004, Article 83].

The import and sale of fishing nets in the country whose meshes are smaller in size than one inch as well as their use in river basins and national maritime waters shall be prohibited [Decree Law 6/2004, Article 87(1)].

The following acts shall be prohibited:
- Trawling inland, trawling with a double purse seine; the use of any type of driftnet fishing and the use of any fishing gear that adversely affects the seabed in national maritime waters is prohibited [Decree Law 6/2004, Article 87(2)].
- The use of any device susceptible of obstructing or that in any manner reduces the dimension of the mesh size shall, for all purposes, be considered as the use of fishing gear that does not correspond to the authorised specification [Decree Law 6/2004, Article 87(3)].

Other Articles relate to environmental management practices including:
- The prohibition of abandoning fishing gear [Article 89].
- The regulation of maximum time of fishing gear in the water [Article 90].
- The prohibition of fishing on coral reefs [Article 91].

The following acts shall be prohibited (a) The possession, transport, storage, processing, display and sale of fishing products from any provenance whose size or weight is below those allowed by the present decree-law and applicable regulations; (b) The fishing, purchase or sale of female crustaceans during their spawning season, irrespective of their weight or size; (c) The catching of lobsters during periods and in areas defined in applicable regulations [Decree Law 6/2004, Article 84].

Adopt measures to control fishing capacity.

The non-use of a permit without a just cause during its period of validity shall be considered as having been waived by the respective holder and shall produce the same effects as the expiration of a fishing permit, and such permit shall be written off at the fishing or at the fishing area for which it was granted [Decree Law 6/2004, Article 28].
Adopt measures to protect endangered and threatened species; and sensitive and significant habitat (including protected species and closed areas).

| Any fisherman or fishing vessel that captures any marine or aquatic species, whose size or weight is below the level permitted, or that does not belong to a target species, or that is included in the list of protected species the fishing of which is prohibited, shall, if such specimen is still alive, immediately return it back to the sea. The sale, the display for sale or the consumption of fingerlings shall be prohibited [Decree Law 6/2004, Article 80]. |
| It is an offence to fish for protected species punishable with a penalty of 1 to 5 years of imprisonment and a fine ranging from $500 (five hundred) up to $500,000 (five hundred thousand) American dollars [Law 12/2004, Article 3]. All persons engaged in fishing activities who, in the exercise of their functions, refuse to comply with orders of inspection officers or fisheries monitors, commit the offence of disobedience, which shall be punishable pursuant to the Penal Code, and shall also accrue a fine ranging from $200 (two hundred) up to $30,000 (thirty thousand) American dollars [Law 12/2004, Article 4]. |
| The Minister may, by ministerial order, declare as protected areas certain areas of the national waters in order to preserve or facilitate the recovery of fishing resources under specified categories [Decree Law 6/2004, Article 96]. |
| Fishing, collecting, removal, purchase, sale, display for sale, export and import of coral are prohibited. In addition, any act aimed at or resulting in the death, destruction or damage to any coral species, and any manufacturing or confection of any coral product is prohibited [Decree Law 6/2007, Article 85]. |
| For reasons of conservation and sustainable exploitation of fishing resources, the Minister may take the following measures: |
| - Decide on the temporary closure of a certain fishing; |
| - Establish the periods of prohibition, prohibiting fishing operations or the capture of certain species; |
| - Declare certain areas or fisheries as recovery or restocking areas; |
| - Prohibit, in a definitive manner, the fishing of certain species or fishing in certain maritime areas, in accordance with the present decree-law [Decree Law 6/2004, Article 79]. |
2. **DATA COLLECTION AND RESEARCH – TIMOR LESTE**

<table>
<thead>
<tr>
<th>Benchmarks (requirements of State)</th>
<th>Relevant Country Legislation</th>
</tr>
</thead>
</table>
| Collect data in sufficient detail to facilitate effective stock assessment. | In order to assess and recommend appropriate management, development and conservation measures for any fishery, and to prepare any Fishery Management Plan, the Managing Director may require any of the persons to maintain and furnish forms as he may specify:  
- all relevant data and information, including fishing time and effort, landing, processing, sales and other related transactions; and  
- accounts, records, returns, documents and other information additional to that specified under this Act [Fisheries Management Act 1998, Sec. 29(1)]. |
| Collect data on non-target species such as bycatch species and dependent species. | |
| Verify data through appropriate systems. | |
| Promote research on fisheries as well as on associated ecosystems, particularly on the study of the profiles of all target and non-target stocks, impacts of new types of gears on fisheries and ecosystems, relationships among populations in the ecosystem and effects of ecosystem changes resulting from fishing pressure, pollution or habitat alteration. | The Minister shall, in accordance with applicable regulations, promote measures for marine scientific research in the fields of scientific research fishing and aquaculture with the objective of assessing the status of the fisheries resources, harmonising the sustainable exploitation of fisheries resources or aquacultural products with the marine and aquatic environment, namely ensuring the obtention of knowledge on environmental conditions, biological knowledge of species as well as their inter-relationship and the impact of fishing and aquaculture on the ecosystems [Decree Law 6/2004, Article 122]. |
| Advance the scientific basis for incorporating ecosystem considerations, building on existing and future available scientific knowledge. | |
| Compile fishery-related and other supporting scientific data, including VMS and observer data, in an agreed format and provide such data to relevant subregional or regional organisations and/or States (subject to confidentiality requirements in accordance with national law). | |
| Collect and exchange information on suspected IUU fishing, if possible on a real-time basis, in collaboration with FAO, RFMOs and other relevant arrangements, and by actively participating in the International MCS Network. | The Minister shall, in coordination with the Minister for Foreign Affairs and Co-operation, encourage the conclusion of co-operation agreements with other countries in the region in the field of fisheries with the specific objective of:  
(a) Exchanging information on conservation and management measures, whether in national maritime areas and hydrographical basins or on the high seas;  
(b) Co-ordinating and integrating monitoring measures and promptly exchanging information on illegal fishing by foreign fishing vessels in the region;  
(c) Standardising the VMS equipment at the regional level or joining a regional VMS integrated service;  
(d) Harmonising the criteria, conditions, terms and requirements for the granting of fishing permits as much as
possible;
(e) Harmonising the management of fisheries and exchanging information on catches of shared stocks [Decree Law 6/2004, Article 115].
### Benchmarks (requirements of State) | Relevant Country Legislation
--- | ---
Develop and implement fisheries management plans which encourage responsible fisheries and sustainable use of marine ecosystems. | In consultation with the social, professional and, economic partners associated with the fishing sector and on the basis of scientific and technical data available, the minister shall promote the adoption of a fisheries management plan as a main instrument of utilisation and sustainable development of the sector and shall ensure its implementation.

The plan referred to above shall mark out, namely, the main fisheries, establish the total allowable catches, and include restrictions imposed on fishing vessels or on certain activities.

During the preparation of the fisheries management plan referred to in this Article, one shall observe, namely, the following:

(a) Consult the fishing communities, the fishing associations and the various other social, professional and economic partners associated with the sector;

(b) Manage the economic exploitation of fishing resources in a sustainable manner, respect the principle of precaution and only authorise measures, methods and fishing gear that do not cause harm or damage to the preservation of species, to the ecosystems or to the protection of the marine and aquatic habitats;

(c) Bear in mind the policies and practices of countries in the region as well as the relevant international and regional recommendations;

(d) Involve other services, public institutions and private entities, whose function or activity is associated with or affects the sector. [Decree Law 6/2004, Article 6 (3)]

Develop and implement international NPOAs
### 4. VESSEL REGISTRATION AND MARKING – TIMOR LESTE

<table>
<thead>
<tr>
<th>Benchmarks (requirements of State)</th>
<th>Relevant Country Legislation</th>
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</thead>
<tbody>
<tr>
<td>Develop and implement a registration system which establishes a genuine link between the State and the ship.</td>
<td>Any person, whether self-employed or not, who fishes in national maritime waters or in hydrographical basins as his or her main means of living or profession shall be registered at the national registry of fishing professionals in accordance with applicable regulations.</td>
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<tr>
<td>Avoid flagging vessels with a history of non-compliance.</td>
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<tr>
<td>Issue Certificates of Registry stating that the ship has the right to fly its flag.</td>
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<tr>
<td>Develop specific requirements for new and imported vessels.</td>
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<tr>
<td>Maintain records of fishing vessels entitled to fly their flags and authorised to be used for fishing, including records of vessels entitled for fish beyond the EEZ. Include in the vessel registry the following information: name of fishing vessel, registration number, previous names (if known/if any) and port of registry; previous flag (if any); International Radio Call Sign (if any); Name and address of owner or owners; where and when built; type of vessel; length; gross register tonnage; moulded depth; beam; power of main engine or engines; type of fishing method or methods; name and address of operator (or manager) or operators managers; Name, street address, mailing address and nationality of the natural or legal persons responsible for managing the operations of the vessel; name, street address, mailing address and nationality of natural or legal person with beneficial ownership of the vessel; name and ownership history of the vessel, and where this is known, the history of compliance by that vessel, in accordance with national laws, with conservation and management measures or provisions adopted at a national, regional or global level.</td>
<td>The competent Ministry shall keep an updated registry of fishing vessels licensed to fish on the high seas. The data to be entered in the registry shall be defined in applicable regulations [Decree Law 6/2004, Article 59].</td>
</tr>
<tr>
<td>Establish regulations on the marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognisable vessel and gear marking systems.</td>
<td>The Minister shall establish and maintain an updated administrative registry of all fishing companies and vessels operating in the national maritime waters and hydrographical basins of the country, as well as of national fishing vessels authorised to operate on the high seas. The requirements, conditions and data to be set out in the registry above shall be established by regulation [Decree Law 6/2004, Article 112].</td>
</tr>
<tr>
<td>Fishing vessels licensed to fish on the high seas and the respective fishing gear shall be marked in accordance with the Normative Specifications for Markings and Identification of Fishing Vessels of the FAO [Decree Law 6/2004, Article 61]. Holders of fishing permits shall be obliged to mark fishing vessels and the respective fishing gear in accordance with applicable regulations [Decree Law 6/2004, Article 113].</td>
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</table>
5. **FLAG STATE AUTHORISATIONS TO FISH AND EFFECTIVE CONTROL OVER NATIONALS - TIMOR LESTE**

<table>
<thead>
<tr>
<th>Benchmarks (requirements of State)</th>
<th>Relevant Country Legislation</th>
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<tr>
<td>Establish a licensing system and associated regulations to prohibit fishing on the high seas, in the waters of another state or waters of an RFMO, by vessels which are not duly licensed or authorised to fish, or fishing otherwise than in accordance with the terms and conditions of the license.</td>
<td>Fishing resources, their exploitation and utilisation for commercial or non-commercial purposes referred to in Article 9 above, shall be subject to a fishing permit [Decree Law 6/2004, Article 10 (1)].</td>
</tr>
<tr>
<td></td>
<td>Fishing on the basis of an access agreement on fisheries concluded with another State or with an international intergovernmental organisation or on the basis of contracts concluded with foreign fishermen’s associations or of individual contracts with foreigners, shall require a fishing permit [Decree Law 6/2004, Article 10 (2)].</td>
</tr>
<tr>
<td></td>
<td>Subsistence fishing shall be exempt from licensing, but it may only be undertaken in maritime areas where fishing is not prohibited or in relation to fishing resources whose capture has not been prohibited, or in the periods during which fishing has not been temporarily banned [Decree Law 6/2004, Article 10 (3)].</td>
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<td></td>
<td>Commercial fishing in national maritime waters requires the obtaining of a permit which shall be granted in accordance with and under the conditions established in the present decree-law and applicable regulations [Decree Law 6/2004, Article 22(1)]. Fishing vessels engaged in fishing-related operations shall be equally subject to a fishing-related operations permit in accordance with the provisions of applicable regulations [Decree Law 6/2004, Article 22(2)]. Permits for fishing and for the fishing vessel shall be issued to the shipowner for a specific fishing vessel [Decree Law 6/2004, Article 22(3)].</td>
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<td></td>
<td>In granting permits, the Minister shall give priority to requests that offer more added value guarantees, such as those that contribute to the development of a national fishing industry, to the creation of jobs for East Timorese nationals, to the promotion and facilitation of technology and know-how transfer in the fishing domain, to the creation of onshore fishing support structures and facilities, to those intended to develop a fish processing industry in the country or that have the potential to establish a fish export base. [Decree Law 6/2004, Article 22(4)].</td>
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<tr>
<td></td>
<td>Fishing permits shall not be granted to industrial fishing vessels, whether national or foreign, to operate in the northern coast of the country [Decree 6/2004, Article 45].</td>
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<td></td>
<td>Commercial fishing permits shall be granted in high seas fishing, only to national corporate bodies operating in fishing vessels that carry the national flag [Decree Law 6/2004, Article 23 (c)]. The granting of a high seas fishing permit to a foreign-flag fishing vessel shall be forbidden [Decree Law 6/2004, Article 53].</td>
</tr>
<tr>
<td>Take into account the history of violations by fishing vessels and operators when considering applications for authorisation to fish by fishing vessels flying its flag.</td>
<td>An application for a fishing permit or for its renewal shall be declined in the following circumstances:</td>
</tr>
<tr>
<td></td>
<td>(a) When, on the basis of assessment or scientific information available, the fishing of species mentioned in the application may result in damage to the preservation and management of such species, and of fishing resources in general, as well as of the marine environment or the aquatic ecosystems;</td>
</tr>
</tbody>
</table>
When the applicant is administratively or judicially recognised as an offender of two or more serious offences to the present decree-law and applicable regulations during the course of two years, to be counted from the date of the application;

(c) When the other requirements and conditions for the issuance or renewal of a fishing permit, provided for in the present decree-law and applicable regulations, have not been fulfilled;

(d) When the type of fishing involves the capture of accompanying fauna belonging to a fishing whose access is temporarily closed to economic exploitation and utilisation or when the fishing is in the process of restocking;

(e) When the type of fish to be caught with the permit requested is temporarily banned, when the entrance to a fishing area is temporarily closed, when the maritime area or species mentioned in the fishing permit are in the process of restocking, or when the envisaged maritime area is closed to fishing activities;

(f) When the beneficiary of a valid fishing permit, for whom a fishing permit has been applied for, is a person other than the applicant;

(g) When the shipowner proves not to have a fishing vessel in operational conditions during the period of validity of the permit or when he or she intends to use the permit to make illegal transactions with other shipowners or their representatives. [Decree Law 6/2004, Article 15]

The issuance of a commercial fishing permit referred to in Article 23.1, shall be subject to the fulfilment of the following requirements:

(a) Submission of the fishing vessel to inspection in a designated port;

(b) Prior payment of all overdue fines and compensation tariffs, if any;

(c) Submission of a document proving enrolment in businesses and in fishing vessels registries, in accordance with applicable regulations.

Fishing permits may only be granted to fishing vessels that meet the following additional requirements (a) The fishing vessel must be of East Timorese nationality; (b) The vessel must have the necessary identifying marks in accordance with the present decree-law and applicable regulations; (c) Be registered at the Ministry, with the fishing vessels registry for high seas operations; (d) Not have violated fishing conservation and management measures on the high seas [Decree Law 6/2004, Article 54].

In assessing fishing permit applications, the Minister shall take into account recommendations or measures from international, regional or sub-regional organisations regarding the conservation and management of fishing on the high seas [Decree Law 6/2004, Article 56(2)].

The request for the granting of a fishing permit shall be declined where the recommendations or measures referred to in Article 56(2) above are in favour of the suspension or prohibition of fishing certain species or fishing in areas mentioned in the fishing permit application [Decree Law 6/2004, Article 56(3)].

Authorise the use of vessels flying its flag for fishing in the high seas, in waters of another state, or waters of an RFMO, only where it is able to contribute towards the conservation and management of fishing resources on the high seas [Decree Law
The Minister shall ensure that the fishing vessels licensed to fish in high seas:

(a) Do not develop activities that are detrimental to the efficacy of international conservation and management measures;

(b) Develop fishing activities in accordance with the conditions set out in the fishing permit [Decree Law 6/2004, Article 57(1)].

Prior to granting a fishing permit, the Minister shall ensure that he or she may exercise effective control over the fishing vessel, namely, by imposing as a condition, that the fishing vessel calls from time to time a designated national port [Decree Law 6/2004, Article 57(2)].

The Minister, through the respective services, shall ensure:

(a) The collection of statistical data regarding the species and catches on the high seas;

(b) The monitoring, control and examination of licensed fishing vessels [Decree Law 6/2004, Article 57(3)].

The Minister shall promote the adoption of regulatory norms on high seas fishing, namely those regarding the implementation of international measures on conservation and management, monitoring, control and surveillance of fishing operations, the positioning of fishing vessels, the catches of target species and incidental by-catches, the identifying marks of fishing vessels and fishing gear, the permit application and the registration elements of fishing vessels [Decree Law 6/2006, Article 63].

<table>
<thead>
<tr>
<th>Require vessels fishing on the high seas, in the waters of another state or waters of an RFMO to carry the license on board at all times and to produce it on demand for inspection by a duly authorised person.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fishing permits shall be kept onboard the respective fishing vessels [Decree Law 6/2004, Article 55].</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Create powers to include appropriate terms and conditions on fishing licence (data collection, VMS, Observers).</th>
</tr>
</thead>
</table>
| Holders of commercial fishing permits shall have the following obligations:
  
(a) To implement the provisions of the present decree-law and regulations;

(b) To pay the fishing tariff due for the fishing permit within the deadlines defined by applicable regulations;

(c) To provide information required by law, permit, agreement or contract within the deadlines and manner in which they are established;

(d) To co-operate with the competent authorities in their monitoring and surveillance activities in accordance with the provisions of the present decree-law;

(e) To trade the catches in the national market, in full or in part, whenever the law, permit, agreement or contract so provides [Decree Law 6/2004, Article 20].

Holders of fishing permits shall have the duty to observe the fulfilment of the present decree-law and applicable regulations [Decree Law 6/2004, Article 18].

Refer to *Benchmarks on Monitoring, Surveillance and Control*. |
<table>
<thead>
<tr>
<th>Investigate and take any action necessary when other States report that they have clear grounds to believe that proper jurisdiction and control with respect to a ship has not been exercised by a flag State.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effectively regulate transhipment in order to combat IUU fishing activities and to prevent laundering of illegal catches including: (1) Ensure that all fishing, transport, and support vessels involved in transhipment at sea have a prior authorisation to tranship and report to the national fisheries administration or designated institution the details of such transhipment, details of the vessels, and the port of landing of the transhipped catch; (2) Ensure that at-sea transhipment and processing of fish and fish products in coastal State waters are authorised or conducted in conformity with appropriate management regulations; (3) Establish regulations on transhipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined.</td>
</tr>
<tr>
<td>The transhipment of high seas catches shall only take place in the designated national ports or wharfs [Decree Law 6/2004, Article 62].</td>
</tr>
<tr>
<td>The transhipment of catches in national maritime waters or on the high seas by fishing vessels or fishing-related vessels, whether national or foreign, shall be prohibited. Transhipments shall only be permitted in designated wharfs and they shall require a permit, and shall only take place in the presence of designated fishing officers. The transhipment of catches shall give rise to a tariff, the amount of which shall be established by a ministerial order of the Minister [Decree Law 6/2004, Article 103].</td>
</tr>
</tbody>
</table>
6. **AUTHORISATION TO FISH AND VESSEL LICENSING – TIMOR LESTE**

<table>
<thead>
<tr>
<th>Benchmarks (requirements of State)</th>
<th>Relevant Country Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formulate laws and regulations pertaining to the licensing of foreign fishing vessels and fishers and equipment in their EEZs.</td>
<td>Fishing resources, their exploitation and utilisation for commercial or non-commercial purposes referred to in Article 9 above, shall be subject to a fishing permit [Decree Law 6/2004, Article 10 (1)]. Fishing on the basis of an access agreement on fisheries concluded with another State or with an international intergovernmental organisation or on the basis of contracts concluded with foreign fishermen’s associations or of individual contracts with foreigners, shall require a fishing permit [Decree Law 6/2004, Article 10 (2)]. Commercial fishing permits shall be granted, in semi-industrial or industrial fishing in national maritime waters, to foreign or national corporate bodies [Decree Law 6/2004, Article 116]. The Minister may, in cooperation with the Minister for Foreign Affairs and Co-operation, conclude access agreements with other countries thereby authorising national fishing vessels to fish in the maritime waters of those countries [Decree Law 6/2004, Article 23].</td>
</tr>
</tbody>
</table>
Vessel skippers of foreign fishing vessels licensed to operate in national maritime waters shall notify the National Directorate of Fisheries and Aquaculture (a) within the deadline provided for in applicable regulations of their departure or entry into the above-mentioned waters; (b) of the details of the catches aboard and of its location in national maritime waters on a regular basis [Decree Law 6/2004, Article 48].

Foreign fishing vessels that do not hold a valid fishing permit authorising them to fish in national maritime waters or foreign fishing vessels which, though holding a valid fishing permit, are found navigating in a maritime area not covered by the respective permit shall, when in transit in the said maritime waters, keep the fishing gear and equipment trimmed and stowed onboard so as to render their use during the said transit impossible [Decree Law 6, Article 92].

| Ensure that a license is issued only if the vessel concerned is entered on a record of vessels. | Fishing permits shall be kept onboard the respective fishing vessels [Decree Law 6/2004, Article 55].
Maritime authorities of the country as well as every authority or public service empowered to report offences against the present decree-law and applicable regulations, as well as to national fishermen’s associations and regional fishing organisations, shall be notified of the data and identification of the fishing vessels licensed to operate in national maritime waters and engaged in fishing-related operations [Decree Law 6/2004, Article 34]. |
| Avoid licensing a vessel to fish in its waters if that particular vessel has a history of IUU fishing. | An application for a fishing permit or for its renewal shall be declined in the following circumstances:
(a) When, on the basis of assessment or scientific information available, the fishing of species mentioned in the application may result in damage to the preservation and management of such species, and of fishing resources in general, as well as of the marine environment or the aquatic ecosystems;
(b) When the applicant is administratively or judicially recognised as an offender of two or more serious offences to the present decree-law and applicable regulations during the course of two years, to be counted from the date of the application;
(c) When the other requirements and conditions for the issuance or renewal of a fishing permit, provided for in the present decree-law and applicable regulations, have not been fulfilled;
(d) When the type of fishing involves the capture of accompanying fauna belonging to a fishing whose access is temporarily closed to economic exploitation and utilisation or when the fishing is in the process of restocking;
(e) When the type of fish to be caught with the permit requested is temporarily banned, when the entrance to a fishing area is temporarily closed, when the maritime area or species mentioned in the fishing permit are in the process of restocking, or when the envisaged maritime area is closed to fishing activities;
(f) When the beneficiary of a valid fishing permit, for whom a fishing permit has been applied for, is a person other than the applicant;
(g) When the shipowner proves not to have a fishing vessel in operational conditions during the period of validity of the permit or when he or she intends to use the permit to make illegal transactions with other shipowners or their representatives. [Decree Law 6/2004, Article 15]
Fishing permits shall not be granted to industrial fishing vessels, whether national or foreign, to operate in the northern coast of the country [Decree Law 6/2004, Article 45]. |
In granting permits, the Minister shall give priority to requests that offer more added value guarantees, such as those that contribute to the development of a national fishing industry, to the creation of jobs for East Timorese nationals, to the promotion and facilitation of technology and know-how transfer in the fishing domain, to the creation of onshore fishing support structures and facilities, to those intended to develop a fish processing industry in the country or that have the potential to establish a fish export base. [Decree Law 6/2004, Article 22(4)].

<table>
<thead>
<tr>
<th>Condition licences with:</th>
<th>Holders of commercial fishing permits shall have the following obligations:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Species to be caught and catch quotas</td>
<td>(f) To implement the provisions of the present decree-law and regulations;</td>
</tr>
<tr>
<td>- Seasons and areas of fishing, the types, sizes, and amount of gear, and the type and size of fishing vessel</td>
<td>(g) To pay the fishing tariff due for the fishing permit within the deadlines defined by applicable regulations;</td>
</tr>
<tr>
<td>- Information required from fishing vessels</td>
<td>(h) To provide information required by law, permit, agreement or contract within the deadlines and manner in which they are established;</td>
</tr>
<tr>
<td>- Requirement to participate in observers programs</td>
<td>(i) To co-operate with the competent authorities in their monitoring and surveillance activities in accordance with the provisions of the present decree-law;</td>
</tr>
<tr>
<td>- Requirements to install VMS</td>
<td>(j) To trade the catches in the national market, in full or in part, whenever the law, permit, agreement or contract so provides [Decree Law 6/2004, Article 20].</td>
</tr>
<tr>
<td>- Details of permitted landing of catch</td>
<td>Holders of fishing permits shall have the duty to observe the fulfillment of the present decree-law and applicable regulations [Decree Law 6/2004, Article 18].</td>
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</table>
### 7. Monitoring Enforcement and Surveillance – Timor Leste

<table>
<thead>
<tr>
<th>Benchmarks (requirements of State)</th>
<th>Relevant Country Legislation</th>
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</thead>
<tbody>
<tr>
<td>Establish national fisheries MCS measures.</td>
<td>The Minister shall promote the training and capacity building of fishing officers and inspectors through specific training courses that take into account the prevailing practice in the countries of the region and that take advantage of the training possibilities that exist in these and other countries [Decree Law 6/2004, Article 105].</td>
</tr>
<tr>
<td>Develop and implement a VMS in accordance with regional, subregional and global programmes, and require that flagged vessels and vessels of flagged by other States that fish in its EEZ, carry VMS equipment on board.</td>
<td>The Minister shall take the necessary measures for the establishment and functioning of a vessel monitoring system (VMS), determine in which vessels the vessel monitoring system device shall be installed, and kept onboard during the first phase of the implementation of the system. The Ministry shall maintain a record of the vessels wherein the device shall be installed and kept onboard [Decree Law 6/2004, Article 150]. Fishing vessels shall be subjected to inspections on a periodical basis aimed at ensuring continued compliance with specifications established in the law in force. The frequency of the inspections, as well as the procedures and requirements for such inspections shall be defined in applicable regulations [Decree Law 6/2004, Article 49].</td>
</tr>
<tr>
<td>Adopt and implement a program of observers on board vessels</td>
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<tr>
<td>Regulate for permitting observers of other States or representing an RFMO, to carry out functions agreed under subregional or regional observer programs.</td>
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<tr>
<td>Encourage harmonisation of national MCS frameworks among neighbouring countries, including joint enforcement operations with other national enforcement agencies.</td>
<td>In co-ordination with the Ministers responsible for the environment and maritime transports, the Minister shall promote efforts towards obtaining membership for the fishing vessels of the country into a regional vessel monitoring system or he or she shall take measures towards the standardisation of the VMS equipment with those used by countries in the region [Decree Law 6/2004, Article 151].</td>
</tr>
<tr>
<td>Provide financial and technical assistance to developing countries in the implementation of MCS capabilities, including VMS, with the support of FAO and relevant international financial institutions and mechanisms.</td>
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</tr>
<tr>
<td>Formulate and apply consistent and transparent sanctions with sufficient severity to effectively prevent IUU fishing and further deprive offenders from accruing benefits from such activities.</td>
<td>Fishing in national maritime waters without a competent fishing license shall constitute a crime punishable with a penalty of 2 to 8 years of imprisonment and a fine ranging from $25,000 (twenty five thousand) up to $1,500,000 (one million and five hundred thousand) American dollars. [Law No. 12/2004]</td>
</tr>
<tr>
<td>Withdraw, suspend, or cancel an authorisation to fish of a vessel if it has been established that the vessel has undermined international conservation and management measures.</td>
<td>Semi-industrial or industrial fishing permits may only be revoked or suspended in the following circumstances by a decision of the Minister: (a) To protect and preserve fishing resources, upon scientific opinion of competent national or international institutions and following consultation with the National Consultative Council of the Ministry, or as a result of a recommendation by international or regional organisations of which the country is a member; (b) As a penalty imposed for an offence committed, in accordance with the provisions of the present decree-law; (c) For the non-use of the fishing permit without a just cause for a period longer than six months [Decree Law</td>
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<tr>
<td>State in respect of the violation have been complied with.</td>
<td>6/2004, Article 16]</td>
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<tr>
<td>The serious offences provided for in paragraphs (a) to (w) of Article 157 shall be punishable by fine and, cumulatively, by the suspension of the fishing permit for a period between one (01) to six (06) months. In case of recidivism of the offence within twelve months from the date the previous sanction was imposed, the fishing permit shall be revoked and the offender shall not be eligible for renewal of the fishing permit or for the obtention of a new permit for a period up to twenty-four (24) months [Decree Law 6/2004, Article 161].</td>
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<tr>
<td>The offences provided for in paragraphs (x) to (dd) and in paragraph (jj) of Article 157 shall be punishable by fines.</td>
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<td>No administrative or judicial authority shall impose punishment by confinement to foreign citizens for the commission, in the exclusive economic zone, of offences to the fisheries legislation, unless there is an agreement with the country of which they are nationals to that effect, nor shall, under any circumstances, any administrative or judicial authority subject the skipper or crewmembers of any fishing vessel to physical torture or maltreatment [Article 166]</td>
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<td>A shipowner of a national fishing vessel who, under the sponsorship of the country, is licensed to fish in the maritime waters of a third State and who commits a serious offence may lose the supra-mentioned sponsorship.</td>
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<td>Such shipowner shall be punishable by fine and the authorisation for a national fishing vessel to fish on the high seas shall be withdrawn upon the commission of a serious offence to the protection and preservation of species or to the marine environment of that maritime area.</td>
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<th>A coastal state is required to:</th>
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<tr>
<td>Establish and implement national and internationally-agreed boarding and inspection regime consistent with international law.</td>
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<th>An Inspecting State is required to:</th>
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<tr>
<td>Board and inspect fishing vessels through duly authorised inspectors.</td>
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<tr>
<td>Inspect the vessel, its licence, gear, equipment, records, fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures.</td>
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<tr>
<td>Communicate without delay the results of that investigation to the flag State where the flag State authorises the inspecting State to investigate an alleged violation.</td>
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<th>A flag State is required to:</th>
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<tr>
<td>Respond to the notification of the investigating State within 3 working days of its receipt.</td>
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| Holders of commercial fishing permits shall have the obligation to co-operate with the competent authorities in their monitoring and surveillance activities in accordance with the provisions of the present decree-law [Decree Law 6/2004, Article 20]. |

| The powers of officials who have the competence to report offences shall be defined in applicable regulations and shall include, namely, the power to detain the vessel skipper and its crewmembers, the power to seize fishing vessels and to transport the latter to a designated port or maritime area, visiting and examination rights to any part of the fishing vessel, to its load, equipment and onboard documents, as well as the power to seize any load, equipment, fishing gear, onboard documents or any evidence of the offences committed [Decree Law 6/2004, Article 141 (1)]. |

| The regulations shall define the procedures to be followed with regard to the destination of the catches, of the crewmembers detained, of the vessel seized and of other objects seized [Decree Law 6/2004, Article 141(2)]. |

| The exercise of the inspection functions referred to in Articles 140 and 141 shall not unnecessarily interfere with |
• Take the necessary enforcement action with respect to the vessel.
• Authorise the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel.
• Ensure that vessel masters accept and facilitate prompt and safe boarding and disembarkment by the inspectors, and cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures.
• Ensure that its vessel masters do not interfere with the inspectors in the performance of their duties; allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection; ensure that vessel masters provide reasonable facilities to the inspectors.
• Suspend the vessel’s authorisation to fish and order the vessel to return immediately to port if the master does not comply with direction. Advise the inspecting State of the action it has taken when the master has refused to cooperate with the inspector.
• Allow the relevant authorities of a coastal State to board and inspect its vessel on the high seas if there are reasonable grounds for believing that the vessel has been engaged in unauthorised fishing of straddling and highly migratory fish stocks within an area under the jurisdiction of a coastal State.

A port state is required to:
• Carry out the inspection of documents, fishing gear and catch on board fishing vessels when a fishing vessel is in its ports or offshore terminals
• Collect information during inspection of fishing vessels at port such as the flag State of the vessel and identification details; name, nationality, and qualifications of the master and the fishing master; fishing gear; catch on board, including origin, species, form, and quantity; total landed and transshipped catch; and other information required by relevant regional fisheries management organisations or other international agreements.
• In case of appropriate management arrangement with the flag State of the vessel, invite that State to participate in the inspection.
• Inspect the number of vessels in its ports required to reach an annual level of inspection sufficient to achieve the objective of this Agreement. Seek to agree on the minimum levels for inspection of vessels through, as appropriate, regional fisheries management organisations, FAO or otherwise.
• In determining which vessels to inspect, give priority to: (1) vessels that the normal course of fishing operations of the licensed fishing vessel [Decree Law 6/2004, Article 142].

Fishing vessels may be inspected or examined whenever they are in national maritime waters, ports or quays, or in the high seas in the case of national fishing vessels. Fishing officers may conduct their activity aboard fishing vessels, during a fishing trip or campaign, in accordance with applicable regulations [Decree Law 6/2004, Article 143].

The proceedings for reporting and processing a report, as well as the preliminary investigation of offences shall be defined by regulation [Decree Law 6/2004, Article 144].

The inspection of fishing gear or catches may be conducted upon disembarkation or upon the unloading of the catches [Decree Law 6/2004, Article 147]. The disembarkation or the unloading of catches shall be conducted in the presence of fishing officers or inspectors [Decree Law 6/2004, Article 148].

The unloading or disembarkation of fishing products by foreign fishing vessels shall need an authorisation from the National Director of Fisheries and Aquaculture, and the respective vessel skipper shall submit the respective unloading request in advance as specified in applicable regulations [Decree Law 6/2004, Article 149].

Inspectors or other services of the State may, in accordance with international law, pursue a foreign fishing vessel whenever there are well-founded reasons to believe that the vessel violated fishing laws and regulations in national maritime waters. The pursuit may continue and its seizure may take place outside of the national maritime waters boundaries if the pursuit was initiated in the interior of such waters and if it was continuous, but it shall cease at the moment in which the pursued fishing vessel enters the territorial sea of the Flag State or of a third State [Decree Law 6/2004, Article 152].

The Ministry shall approach, the Ministry of Foreign Affairs and Co-operation in order that the latter promptly notify the following through the appropriate channels:
(a) The flag State, where a foreign fishing vessel is detained or seized by the national authorities for having violated any of the provisions of the present decree-law or applicable regulations;
(b) The crewmembers’ State(s) of nationality where foreign crewmembers of a fishing vessel are detained for having violated any of the provisions of the present decree-law [Decree Law 6/2004, Article 50].

Port Authority staff members performing inspection and monitoring functions shall hold the required powers of authority and, in the exercise of such functions, shall enjoy the following prerogatives:
(a) To access and inspect at any time and without a need for prior notice premises, equipment, services and documents of the entities subject to inspection and monitoring by PATL;
(b) To requisition equipment and documents for review;
(c) To identify people who are in flagrant violation of the rules whose observance is incumbent upon it to monitor, in case it is not possible to call in the police authority in time;
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<th>have been denied entry or use of a port in accordance with this Agreement; (2) requests from other relevant Parties, States or regional fisheries management organizations that particular vessels be inspected, particularly where such requests are supported by evidence of IUU fishing or fishing related activities in support of such fishing by the vessel in question; and (3) other vessels for which there are clear grounds for suspecting that they have engaged in IUU fishing or fishing related activities in support of such fishing.</th>
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| (d) Call in administrative and police authorities when deemed necessary for the performance of its functions [Decree Law 3/2003 on Section 26

Port Authority officials in charge of supervising or monitoring port services as may be needed shall always be allowed free access on board of ships anchored at the ports or docked at berths within PATL’s area of jurisdiction, upon presentation of an identity card issued by PATL accrediting them to carry out such mission [Decree-Law No. 3 /2003, Section 6 (2)].

It is incumbent upon the Port Authority to promote and monitor the enforcement of laws, regulations, rules and technical requirements applicable within the scope of its responsibilities. For the purpose of the preceding item, PATL has authority, either directly or through qualified persons or entities credentialed by it, to proceed with the necessary examinations and verifications [Decree-Law No. 3 /2003, Section 7]. |
## 8. PORT STATE MEASURES – TIMOR LESTE

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<tr>
<th>Benchmarks (requirements of State)</th>
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<td>Strengthen its measures in ports for fishing vessels, consistent with international law, in order to prevent, deter, and eliminate IUU fishing. Ensure that measures are applied to vessels in a fair, transparent, and non-discriminatory manner.</td>
<td>PATL shall administer the ports situated within its area of jurisdiction, with the aim of economically running, maintaining and developing such ports, including the exercise of the competencies and prerogatives of a port authority as entrusted or as may be entrusted to it, and shall have the following responsibilities: (a) Manage, administer and develop ports and areas of the maritime public domain within its area of jurisdiction, ensuring the required efficiency in the use of spaces, both in the wet area and on the ground; (b) Ensure the coordination of, and monitor, activities being carried out within its area of jurisdiction, without prejudice to the responsibilities entrusted to other entities by law; (c) Provide or ensure the provision of services relating to the functioning of ports within and outside the area of its jurisdiction, namely in assisting ships and ensuring safe navigation; (d) Prepare plans on port organisation and extension of port areas and submit them to the competent Minister for approval; (e) Conduct surveys, plans and projects on sea and land works in compliance with approved plans and programmes; (f) Build, acquire, maintain and monitor sea and land works, as well as the floating and land equipment of the ports, and also maintain the bottom of, and the access to, such works; (g) Design and execute a strategic plan for commercial promotion of the ports under its jurisdiction. [Government Decree 3/2003, Sec.6].</td>
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<tr>
<td>Designate and publicise ports to which foreign-flagged vessels may be permitted admission and ensure that such ports have the capacity to conduct inspections.</td>
<td>The competent Ministry shall assign to each and every national fishing vessel engaged in commercial fishing in the national waters of Timor-Leste, a port of base which shall be the port of reference wherein the fishing vessel shall carry out the majority of its fishing and trading activities [Decree Law 6/2004, Article 109 (1)]. Foreign fishing vessels undertaking commercial fishing activities in the national waters of Timor-Leste shall also be assigned a port of base with which they shall maintain a dominant economic position [Decree Law 6/2004, Article 109(2)]. No fishing vessel may use a different port to engage in activities referred to in the present Article unless it is so authorised in writing by the competent service of the Ministry, in accordance with applicable regulations [Decree Law 6/2004, Article 109(3)].</td>
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<tr>
<td>Require fishing vessels and vessels involved in fishing-related activities seeking permission to enter its ports to provide reasonable advance notice of their entry into port, a copy of their authorization to fish, details of their fishing trip and quantities of fish on board, with due regard to confidentiality requirements, in order to ascertain whether the vessels have engaged in or supported IUU fishing.</td>
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<tr>
<td>Adopt regulations empowering the relevant national authorities to prohibit landing and transhipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas; and/or when a party has sufficient proof that a vessel seeking entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing.</td>
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<td>Deny the use of its ports for landing, transhipping, packaging and processing of fish and for other port services, inter alia, refuelling and resupplying, maintenance and drydocking, to a vessel which is in port but has been determined to have engaged in IUU fishing.</td>
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## 9. CATCH CERTIFICATION – TIMOR LESTE

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<tr>
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<td>Develop and implement a system of catch certification which requires that a certificate accompany exported wild caught seafood product.</td>
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<tr>
<td>Ensure that the certificate contains (1) Basic information such as the name of the fishing vessel, home port and registration number, call sign, licence number, Inmarsat number and IMO number (if issued); (2) Information on the product (the type of species, catch areas and dates, estimated live weight and verified weight landed, as well as the applicable conservation and management measures and any transhipment at sea); (3) Information and declaration on export and import of the fisheries product (including the vessel name and flag, flight number, airway bill number, truck nationality and registration number, other transport documents and container number).</td>
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<td>Provide a process and the power for a relevant competent authority to validate each catch certificate attesting to the veracity of the details of such certificate.</td>
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<tr>
<td>Provide assistance in terms of verification of details of a catch certificate, within the stipulated 15 day timeframe, when required by a competent authority of the EC Member State.</td>
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<td>Develop and implement a system of verifiable certification for seafood products which are imported from a third country, processed in the State and re-exported to an EU Member Country.</td>
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## 10. TRACKING PROCEEDS OF ILLEGAL FISHING – TIMOR-LESTE

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<tr>
<td>Develop and implement the legislative, surveillance and forensic capacity to track the proceeds of criminal activity related to illegal fishing in conjunction with those of anti-money laundering and financial investigation units.</td>
<td>As of 2008, Timor Leste was developing its anti-money laundering and combating the financing of terrorism system. Although Timor Leste has not yet established a Financial Intelligence Unit it has developed a system for reporting suspicious transactions to the Banking Payments Authority of Timor Leste.</td>
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<tr>
<td>Develop cooperation between fisheries administrations and those units responsible for anti-money laundering and financial intelligence units.</td>
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### REPORTING REQUIREMENTS – TIMOR LESTE

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<th>Benchmarks (requirements of State)</th>
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<tr>
<td>Make readily available information included in their records of fishing vessels to relevant regional fisheries management organisations and the FAO.</td>
<td>The Ministry shall transmit to the FAO and relevant regional organisations information on:</td>
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<tr>
<td>Submit, for inclusion in the High Seas Vessel Authorisation Record, data on vessels entitled to fly its flag that are authorised to be used for fishing on the high seas.</td>
<td>(a) Fishing vessels that are in violation of the conservation and management measures on the high seas, as well as any sanctions imposed;</td>
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<tr>
<td>Report to the FAO and relevant RFMO any modifications, additions, deletions to the information included in the record of fishing vessels; any exemption granted to fishing vessels of less than 24 metres in length; all relevant information regarding any activities of fishing vessels flying its flag that undermine the effectiveness of international conservation and management measures (subject to the confidentiality measures adopted by States in their national legislation); evidence supporting a claim of a Party that a fishing vessel not entitled to fly its flag has engaged in an activity that undermines the effectiveness of international conservation and management measures; information pertaining to the grant of authorisation to a fishing vessel that has previously undermined the effectiveness of international conservation and management measures.</td>
<td>(b) Operations of licensed fishing vessels on the high seas;</td>
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<tr>
<td>Provide annually statistical, biological and other data and information in accordance with Annex I of the UN Fish Stocks Agreement, and in addition, other data and information as the required by an RFMO.</td>
<td>(c) Permits granted to fishing vessels for high seas fishing that were previously sanctioned upon the revocation of the permit in the previous State of registration [Decree Law 6/2004, Article 60].</td>
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<td>Provide information concerning its fishing activities in the RFMO areas, including fishing areas and fishing vessels in order to facilitate the compilation of reliable catch and effort statistics.</td>
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<td>Provide information on boarding and inspections carried out by its authorised inspection vessels and actions taken in response to boarding and inspections of their fishing vessels that resulted in observation of alleged violations.</td>
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<td>Immediately report fishing vessels which have been engaged in IUU fishing to the flag State, coastal State, or regional fisheries management organisation concerned.</td>
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<td>Remit collected information from port inspection to the flag State and where appropriate to FAO and relevant regional fisheries management organisations.</td>
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<tr>
<td>Promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other relevant international organizations of its decision when a Party has denied the use of its port.</td>
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