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PORT STATE MEASURES TO COMBAT IUU FISHING:

INTERNATIONAL AND REGIONAL DEVELOPMENTS

by Judith Swan*

INTRODUCTION

In recent years, international recognition of the value of port State measures in combating illegal, unreported, and unregulated (“IUU”) fishing has intensified. All fish harvested at sea must be landed, and a coordinated system of controls at port — including requirements for vessels, information systems, inspections, and training — increasingly can be used to detect and enforce against IUU-caught fish. There is also an important cost-benefit consideration: the use of port State controls does not necessarily entail significant resources, and they represent a promising avenue for implementation by developing States. Operationally, the measures can be integrated into a wider system of port controls extending to areas such as health, safety, and security.

The concept of coordinated port State control for merchant vessels is not new. Comprehensive regimes and requirements relating to vessel safety, labor conditions and pollution prevention have been progressively developed by legally binding instruments for over two decades.¹

Additionally, port State measures for fishing vessels have been addressed by international fisheries instruments since 1982, but particularly since 1995. Relevant instruments have tended to focus on the role of the port States individually or through regional fishery bodies (“RFBs”), rather than through the mechanism of specific regional MOUs such as those developed for merchant ships.

In March 2005, the FAO Committee on Fisheries (“COFI”) endorsed the Model Scheme on Port State Measures to Combat IUU Fishing (“FAO Model Scheme”). The FAO Model Scheme built upon provisions of the preceding international fisheries instruments² and paved the way for the development of international consensus on whether a binding instrument on port State measures should be developed.³ The FAO Model Scheme includes elements of the 2001 FAO International Plan of Action to prevent, deter, and eliminate illegal, unreported, and unregulated fishing (“IPOA-IUU”) which contains guidelines for port State access, information to be collected from fishing vessels, and a process for actions to be taken where IUU fishing is suspected.

The FAO Model Scheme provides voluntary minimum standards for port State measures, including the responsibilities of a port State, inspections, follow-up actions, and information requirements for vessels. The annexes contain details on reporting requirements for and port State inspection procedures of foreign fishing vessels, training of port State inspectors, and more.

Implementing such port State measures are cost-effective and result in a compelling array of enforcement tools by the port State, flag State, and/or third State. For example, the imposition of port State measures can result in denial of port access, prohibiting the landing, transshipment, and/or processing of catch; the seizure and forfeiture of catch; the initiation of criminal, civil, or administrative proceedings under national law, and cooperating with the flag State and/or members of an RFMO on enforcement and/or deterrence.

However, not all States are currently prepared to implement port State measures. Industrial IUU fishing is often highly organized and driven by high stakes and high profits. It is an activity that falls in the realm of environmental crime. In some cases, IUU interests may offer economic or other incentives to a port State to avoid the implementation of controls; in other cases, port States lack the necessary capacity, policy and legal frameworks, and institutional arrangements. This has resulted in “ports of convenience” for IUU vessels seeking to offload their catch and resupply in ports that do not have or do not implement controls. As noted, there are different reasons why a State may not exercise controls, and the need to agree on a definition of “ports of convenience,” was underscored at the UN Fish Stocks Review Conference in May 2006.⁴

Despite such challenges, countries continue to progressively strengthen the role of the port State through international instruments. The pivotal role of the port State is realized in relation to relevant regional activity, information systems, and linkages with other IPOA-IUU tools. International fora firmly support stronger and deeper action based on the FAO Model Scheme as described below.

LINKAGES WITH REGIONAL GOVERNANCE AND OTHER IPOA-IUU TOOLS

It is said that port State measures are the “last untapped area” in efforts to combat IUU fishing. The spotlight had been directed mostly at the flag State, having primary responsibility for compliance, and the coastal State, having sovereign rights over its fishery resources. Port State measures did not reach the forefront until 2005, when the emergence of the FAO Model Scheme provided a launching pad for strengthened and coordinated approaches.

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Broader forces also drive the crescendo of international activity encompassing port State measures. Foremost is a shift toward intensified governance at regional level, involving the unprecedented and rapid increase in the establishment of RFBs and efforts to strengthen governance in existing bodies. At the international level, the development and strengthening of international information systems will add to effective implementation of port State measures. Finally, because the IPOA-IUU is to be applied in a holistic and integrated manner, linkages with other key compliance tools demonstrate the synergies contributing to the essential role of port State measures.

THE RAPIDLY INCREASING NUMBER OF NEW RFBs

The international community recognizes the continuing need to strengthen international cooperation and institutions that work on a regional basis and to increase coverage of the oceans.⁵ Consequently, the family of RFBs — already numbering thirty-eight including seventeen bodies with a management mandate — is rapidly expanding: in the past three years, no less than five RFBs have been or are being established. This will result in a growing body of international conservation and management measures for which strengthened and coordinated compliance tools will be essential. In this regard, it is foreseeable that port State measures will play an increasingly significant role.

Regional Fisheries Management Organizations (“RFMOs”) established in recent years include the South East Atlantic Fisheries Organization (“SEAFO”) (2003) and the Western and Central Pacific Fisheries Commission (“WCPFC”) (2004). The respective conventions of these RFMOs refer to port State measures, building upon provisions in the UN Fish Stocks Agreement.⁶

The South Indian Ocean Fisheries Agreement (“SIOFA”), signed in July 2006, has a mandate over fishery resources other than tuna in areas that fall outside national jurisdictions. Among other things, parties will conduct inspections of ships visiting ports of the parties to verify they are in compliance with SIOFA regulations and deny landing and discharging privileges to those that do not comply.

Negotiations to establish the South Pacific Regional Fisheries Management Organisation were initiated at the first meeting, held in February 2006. Participants agreed to work to establish, as a matter of priority, a legally binding instrument for the conservation and management of living marine resources, other than species listed in Annex I of the 1982 UN Convention, in the high seas of the South Pacific Ocean.⁷ It was also agreed that the second meeting, scheduled for November 2006, will consider the adoption of interim arrangements to apply prior to the entry into force of the instrument, in light of the information and advice provided by the working groups and participants.

Another initiative is underway to establish an RFMO in the North Western Pacific Ocean to regulate bottom trawl fishing, including through the development of interim measures for the management of bottom trawling and for the conservation of vulnerable marine ecosystems.⁸

WCPFC, SEAFO, and SIOFA give early indication of the importance with which they regard the role of port State meas-

ures in their regions. In particular, the WCPFC is developing its regional scheme based on the FAO Model Scheme and SIOFA has agreed to carry out port inspections. Other RFBs under negotiation have agreed to apply interim measures, but, at the time of writing, had not yet addressed the content of such measures.

STRENGTHENED GOVERNANCE IN RFMOs

Members of RFMOs recognize the benefits of strengthened governance and agree upon a number of actions and measures that will improve control and compliance with management measures. Consequently, port State measures, already adopted by many RFMOs,⁹ will be strengthened and integrated with a broad range of other compliance tools.

Parties to the UN Fish Stocks Agreement have agreed that there is a duty of non-members to cooperate in the conservation and management of fish stocks.¹⁰ To this end, RFMOs have been working towards enhancing participation by cooperating non-members and identifying the roles of non-members in the context of regional port State schemes.

A number of RFMOs have developed regional plans of action to combat IUU fishing¹¹ and port State measures and/or regional schemes would be an important component of these plans. Many RFMOs have adopted resolutions to support Monitoring, Control and Surveillance (“MCS”) measures that have similar requirements and are linked with port State measures. Examples include: regional schemes for boarding and inspection, observer coverage and monitoring transshipment; presumptions of IUU fishing by non-member vessels; and vessel lists for IUU and authorized vessels

Many have also recently adopted Vessel Monitoring Systems (“VMS”) requirements or schemes, enabling the detection of IUU fishing and fishers before a vessel enters into port. Flag States of these RFMOs increasingly implement the use of VMS to monitor fishing vessels under their control. VMS and other monitoring systems are moving toward electronic data transmission to promote the transmission of “real time” information.

Catches are generally registered routinely in a logbook, in landing declarations, and in sales notes and cross-checked with VMS-data to allow an effective management of the quota uptake. Port State controls can contribute to the verification of information obtained through VMS requirements and the catch information described above.

The international community underlined the importance attached to the use of VMS on the high seas in the March 2006 UN General Assembly Resolution on Sustainable Fisheries. It urged flag States to require that all their large-scale fishing vessels operating on the high seas be fitted with VMS no later than December 2008, as called for in the 2005 Rome Declaration on IUU Fishing.¹²

STRENGTHENED INTERNATIONAL INFORMATION SYSTEMS

FAO Databases

FAO maintains information systems with databases useful for combating IUU fishing. Information on IUU fishing vessels

is kept in the FAO High Seas Vessel Authorization Record (“HSVAR”) database. It contains descriptive elements of high seas fishing vessels as well as information on registration and authorization status, infringements, and other relevant information. Access to the database is granted by FAO to countries that provide data.¹³

The international community identified a need for additional data relevant to IUU fishing activities, vessels, and port State measures. In March 2006 the UN General Assembly, in its Resolution on Sustainable Fisheries,¹⁴ encouraged and supported the development of a “comprehensive global record” within FAO of fishing vessels that incorporates available information on beneficial ownership, subject to confidentiality requirements in accordance with national law. Potential synergies between the proposed global record and port State inspections are being considered. A data base that identifies IUU vessels and catch at port could assist in the activation of port controls with respect to relevant vessels. A report will be prepared for consideration by the 2007 Session of COFI.

International MCS Network

There have been recent efforts to strengthen the International MCS Network for Fisheries Related Activities, which has a protocol for information exchange that could be used to support port State controls.¹⁵ It consists of a network of national organizations and institutions formed to coordinate efforts to prevent, deter, and eliminate IUU fishing. The objective of the International MCS Network is to improve the efficiency and effectiveness of fisheries-related MCS activities through enhanced cooperation, coordination, information collection, and exchange among national organizations/institutions responsible for fisheries-related MCS. It is intended to give agencies support in meeting national fisheries responsibilities as well as international and regional commitments in relation to the UN Convention on the Law of the Sea, the Code of Conduct, the Fish Stocks Agreement, and the IPOA-IUU.

The strengthening of the MCS Network was recommended by the Organization for Economic Cooperation and Development (“OECD”) High Seas Task Force and is supported by the current UK IUU Action Plan.¹⁶

TRADE AND INTERNATIONALLY AGREED MARKET-RELATED MEASURES TO COMBAT IUU FISHING

Ports play a pivotal role as points of entry into a country for fish and fish products. This role contributes to the need for effective use of the IPOA-IUU tools aiming at diminishing the economic incentive for IUU fishing through preventing IUU caught fish from entering trade. In turn, these efforts are also buttressed by eco-labelling initiatives, trade monitoring under the Convention on International Trade in Endangered Species (“CITES”), and requirements for traceability— including the agreement on

rules of origin taken through the World Trade Organization (“WTO”). In this regard, the IPOA-IUU provides encouragement for internationally agreed market-related measures to be taken at the national, bilateral, and regional levels.¹⁷ An increasing number of RFMOs have adopted such measures.¹⁸

The IPOA-IUU encourages States to take all steps necessary, consistent with international law, to prevent fish caught by vessels identified by the relevant RFMO as having been engaged in IUU fishing from being traded or imported into their territories.¹⁹ To address this situation, many RFMOs have implemented catch certification and trade documentation schemes²⁰ that enable identification of the vessel that harvested a particular fish.

These schemes require that fish and fish products be accompanied by forms indicating, for example, when and where the fish were harvested and by whom. Catch certification schemes typically require such forms to accompany all fish and fish products to which they apply, whether or not they become part of international trade. Trade documentation schemes cover only fish and fish products that enter international trade. Inspection at port would serve to assist in verification of information required under the schemes, and therefore play a major role in their success.

At national level, many countries have adopted legislation based on the US Lacey Act,²¹ prohibiting activities such as the import, export, sale, purchase, or acquisition of IUU caught fish, and port State measures figure prominently in the enforcement of such legislation.²²

The IPOA-IUU also calls upon states to deter importers, transshippers, buyers, consumers, equipment suppliers, bankers, insurers, and other service suppliers within their jurisdiction from doing business with vessels engaged in IUU fishing, including adopting laws to make such business illegal.²³ Efforts are being made in a number of quarters to increase awareness of the detrimental effects of doing business with vessels engaged in IUU fishing by identifying marketing and sales routes of fish derived from IUU activities.²⁴ Information obtained through port inspections would assist with the identification of such routes, and conversely, identification of the routes would alert enforcement officers to the ports used for landing.

Port State measures could also contribute to efforts to target businesses involved in IUU fishing, prevent laundering of catches by IUU vessels and to take actions against businesses involved in IUU fishing and other cooperative actions with countries where the businesses are based.²⁵

FLAG STATE AND PORT STATE INTERACTIONS

The flag State has primary responsibility for its fishing vessels to ensure that they do not engage in IUU fishing. However, this has often proved ineffective due to the practice of IUU fishing vessels using flags of non-compliance or the inability or

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unwillingness of some flag States to effectively exercise control over their fishing vessels. In such cases, the port State is seen as the next line of defence to combat IUU fishing, and interactions between port States and flag States are significant in this regard.

Key interactions involving port States and flag States, described in the IPOA-IUU, encourage the port State to report to the flag State where there is clear evidence of IUU activity *and* where IUU fishing took place *beyond* the coastal State's jurisdiction. The port State may then take other action with the consent of, or upon the request of, the flag State.

In any event, where a port State has clear evidence that a vessel having been granted access to its ports has engaged in IUU fishing activity, the port State should not allow the vessel to land or transship fish in its ports, and should report the matter to the flag State of the vessel.

In addition, the port State should not allow a vessel engaged in IUU to land or transship fish in its ports.²⁶ However, there is no requirement to report to the flag State if the vessel is presumed to have engaged in IUU fishing as defined by a relevant RFMO.

Additionally, the IPOA-IUU encourages States to consider developing within relevant RFMOs port State measures building on the presumption that fishing vessels entitled to fly the flag of States not parties to a regional fisheries management organization and which have not agreed to cooperate with that RFMO, which are identified as being engaged in fishing activities in the area of that particular organization, may be engaging in IUU fishing. Such port State measures may prohibit landings and transshipment of catch unless the identified vessel can establish that the catch was taken in a manner consistent with those conservation and management measures.

The policies and procedures adopted by countries and RFMOs involving the refusal of port calls against certain flag vessels have varied.²⁷ For the most part, the vessels themselves are targeted and not the flag States. Vessels that have undermined conservation and management measures of an RFMO to which a country is party, are refused entry into port as are foreign fishing vessels that have taken part in an unregulated fishery on the high seas.

RFMOs take different approaches in their application of port State measures, with some only requiring measures for non-members and others including all members and national vessels. This could be an area for further coordination and strengthening.

ERA OF THE FAO MODEL SCHEME: SOME RESPONSES AND NEXT STEPS

There has been a swift and significant response by the international community to the endorsement by COFI of the FAO Model Scheme in March 2005. Prior to that time, the need for strengthened port State controls had been recognized by a num-

ber of international organizations and fora. The rapid global and high level response to the adoption of the Model Scheme is indicative that the scheme was long overdue, and that much work remains to be done at all levels.

THE UN SYSTEM

In its July 2005 report to the General Assembly, the UN Open-Ended Informal Consultative Process on Oceans and the Law of the Sea ("ICP") promoted the FAO Port State Model Scheme and suggested the possibility of a legally binding instrument.²⁸ The recommendation was made in the context of considering fisheries and their contribution to sustainable development. It is significant that, only four months after COFI endorsed the FAO Model Scheme, there was already a call for the possibility of adopting a legally binding instrument.

Four months after the ICP report, the UN General Assembly ("UNGA"), at its 60th session in November 2005, carried forward the momentum supporting a binding instrument in its Resolution on Sustainable Fisheries. Earlier that year, prior to the endorsement of the Model Scheme by COFI, the UNGA Resolution on Sustainable Fisheries had recognized the need for enhanced port State controls and encouraged the elaboration of a draft model scheme.²⁹

Importantly, in the November 2005 Sustainable Fisheries Resolution, the UNGA encouraged States to apply the FAO Model Scheme, promote its application through RFBs, and to "consider, *when appropriate*, the possibility of developing a legally binding instrument"³⁰ (emphasis added). The November Resolution continued the two-track approach encouraged

by ICP, recognizing that the value of the voluntary scheme but the need for a binding instrument.

Six months later, in May 2006, the momentum for the two-track approach was reinforced, and a new and more immediate call for a binding instrument was put forward by the Review Conference for the UN Fish Stocks Agreement. The Report noted the following in connection with the review and assessment of the Conference on matters relating to Monitoring, Control and Surveillance, and Compliance and Enforcement:

"A number of port States and RFMOs have developed measures or schemes to prevent the landing and transshipment of illegally caught fish in order to promote compliance with RFMO conservation and management measures. However, there is still much to be done in developing such measures or schemes. In particular, a more coordinated approach among States and RFMOs is required."³¹

To address this, the Conference recommended that States individually and collectively through RFMOs:

"Adopt all necessary port State measures, consistent with Article 23 of the Agreement, particularly those envisioned

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in the 2005 FAO Model Scheme on Port State Measures to Combat IUU Fishing, and promote minimum standards at the regional level; and in parallel, initiate, *as soon as possible*, a process within the FAO to develop, as appropriate, a legally binding instrument on minimum standards for port State measures, building on the FAO Model Scheme and the IPOA-IUU³² (emphasis added).

It is clear that the international community is moving forward in an increasingly strong manner, not only to enhance port State measures at all levels and apply the FAO Model Scheme, but to develop a legally binding instrument sooner rather than later.

MINISTERIAL INITIATIVES AND FORA

There were three Ministerial meetings or conferences and one Ministerially-led initiative between September 2005 and August 2006. Significantly, two Ministerial meetings that have taken place since the UN Fish Stocks Review Conference endorsed its recommendation for a process to be initiated within FAO as soon as possible to develop, as appropriate, a legally binding instrument on minimum standards for port State measures.

The Second Asian Pacific Economic Commission (“APEC”) Ocean-Related Ministerial Meeting, held in September 2005, involved twenty member economies and adopted the Bali Plan of Action Towards Healthy Oceans and Coasts for the Sustainable Growth and Prosperity of the Asia-Pacific Community. The Ministers committed, where appropriate, to undertake certain actions, including strengthening efforts to combat IUU fishing

including by pursuing the use of at-sea, port-state and trade-related measures, in accordance with international law, as key compliance tools, through APEC capacity building and sharing of best practices, and strengthening efforts to collaborate through MCS regimes and the MCS network.³³ They did not refer specifically to the FAO Model Scheme, but it is significant that port State measures figured as one of the three priority compliance tools.

At the 11th Conference of North Atlantic Fisheries Ministers (“NAFMC”), in June 2006, Ministers focused their discussions on fighting IUU fishing in the North Atlantic and on the progress made to strengthen RFMOs. They also agreed to focus future activities on strengthening port State control through the development of a legally binding instrument as advised by the 2006 UNFSA Review Conference, and to consider the potential for a comprehensive regional scheme for port State control, based on the outcome of the NEAFC process.³⁴

A Round Table Conference on Measures against IUU Fishing was held at Trondheim, Norway, on August 7, 2006, and was attended by Ministers or their representatives from eight coun-

tries and the European Commission. There, the Norwegian, Danish, and Swedish governments stressed the importance of introducing official management of ports, stating that IUU fishing is nothing short of theft from legitimate fishermen, undermining the conservation and management of fish stocks. They also stressed the value of continuing cooperative efforts to combat IUU fishing particularly through closer cooperation between relevant RFMOs. Specifically, participants agreed to look at future activities on strengthening port State control, through the development of a legally binding instrument as advised by the 2006 United Nations Fish Stocks Agreement Review Conference, and to consider the potential for a comprehensive regional scheme for port State control, based on the FAO Model.

The Ministerially-led High Seas Task Force (“HSTF”) of the Organization for Economic Cooperation and Development had an overall goal of setting priorities among a series of practical proposals for confronting the challenge of IUU fishing on the high seas. The end result announced in February, 2006 was an Action Plan on IUU Fishing currently being implemented under the leadership of the UK Minister responsible for fisheries. The HSTF, in its final report, reviewed the measures adopted by Task

Force members and RFMOs and compared them to the FAO Model Scheme. The report also made recommendations to strengthen both national port State measures and develop regional arrangements on port State controls. An outcome of the HSTF report was a proposal to support greater use of port and trade measures by promoting the FAO Model Scheme as the international minimum standard for regional port State con-

trols and to support the proposal by COFI that FAO develop an electronic database of port State measures.³⁵

CONCLUSION

The overdue FAO Model Scheme is being repeatedly and increasingly adopted at all levels as a framework for further development of port State measures. At the same time, the two-track approach recommended by ICP, the UN General Assembly, and the UN Fish Stocks Review Conference, which also had been endorsed at Ministerial meetings and conferences, has attracted considerable energy and support in a short space of time. Why is this so?

The need for a legally binding agreement at this stage could be questioned. The FAO Model Scheme, although still in its infancy, is already being used as the basis for national and regional measures; therefore, all efforts should be put into building on its recommended standards. Supporting this is the perception of implementation fatigue: the 1990s was the decade of developing international fisheries instruments, and this is the decade of implementation, not of creating more binding instruments. Laws, institutions, policies, and human capacity need to

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be developed to implement the instruments that have already been agreed. One should question whether a binding instrument would make any difference to environmental crime — would ports of convenience not continue to exist?

On the other hand, there are a number of reasons to respond, sooner rather than later, to the call for a binding instrument. Generally, the Model Scheme, although a sound document that reflects international consensus on a range of minimum standards, was developed and concluded in just one FAO Technical Consultation, an achievement, to be sure. However, the process was not as comprehensive or inclusive as those agreed for other international fisheries instruments.

The FAO Model Scheme could be regarded as a stepping-stone; a broader process, involving a full complement of players, could build on, and as appropriate, expand the current standards. Unlike more general voluntary fisheries instruments, the FAO Model Scheme is highly technical and specific, building on the IPOA-IUU. The next step could result in more comprehensive and universal technical standards that could be applied nationally and adapted regionally.

Experience to date in implementing the FAO Model Scheme could benefit the process to develop a binding instrument; strengths, constraints, and gaps uncovered in the process to implement the Model Scheme could be addressed. Such a process could accommodate the increasing commitment of the international community in combating IUU fishing.

Implementation of the Model Scheme would not preclude development of a binding instrument but could enhance the final outcome. Although an agreed binding instrument could mean that port controls based on the FAO Model Scheme will need to be updated, the fact that the measures are binding would strengthen the prospects for strong and coordinated efforts to combat IUU fishing.

It is anticipated that the issue will be considered in the next session of COFI in March 2007. By that time the international community will have had further opportunities to express its views on the subject, including in the November, 2006 General Assembly Resolution on Sustainable Fisheries. In the meantime, in many quarters, exemplary progress is being made in implementing the FAO Model Scheme at national and regional levels.



Endnotes: Port State Measures to Combat IUU Fishing

¹ Key regimes include (1) the 1982 Paris Memorandum of Understanding on Port State Control (“the Paris MOU”), which established a coordinated control system with respect to vessel safety and pollution prevention standards and equipment, *available at* <http://www.parismou.org> (last visited Nov. 6, 2006); (2) MOUs establishing regional port State regimes around the world, which incorporate universal standards and were inspired by procedures agreed under the Paris MOU; (3) The International Maritime Organization’s (“IMO”) technical conventions, many of which contain provisions for ships to be inspected when they visit foreign ports to ensure that they meet IMO requirements, *available at* <http://www.imo.org/home.asp> (last visited Nov. 6, 2006); and (4) IMO’s global strategy for port State control.

² The 1993 FAO Compliance Agreement refers to situations where the port State has reasonable grounds to believe that a fishing vessel voluntarily in its port has been used to undermine management measures of a regional fishery management organization (“RFMO”); The 1995 UN Fish Stocks Agreement took a stronger approach than the Compliance agreement, and referred to the “right and duty” of a port State to take non-discriminatory measures in accordance with international law to promote the effectiveness of sub-regional, regional and global conservation and management measures. It also provided that States may, among other things, inspect documents, fishing gear and catch on board fishing vessels, when they are voluntarily in its ports or at its offshore terminals, and empower their authorities to prohibit landings and transshipments where the catch was taken in a manner which undermines high seas conservation and management measures; the 1995 FAO Code of Conduct for Responsible Fisheries, in the context of fishing operations, recommends that port States should take non-discriminatory measures to achieve and assist others in achieving the objectives of the Code of Conduct, and inform other States; the 2001 FAO International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing (“IPOA-IUU”) contains guidelines for port State access, information to be collected from fishing vessels and the process for actions to be taken where IUU fishing is suspected.

³ David J. Douman, The FAO/FFA Regional Workshop to Promote the Full and Effective Implementation of Port State Measures to Combat IUU Fishing, Aug. 28–Sept. 1, 2006, *Role of the Port State in Combating IUU Fishing and Promoting Long-term Sustainability in Fisheries*, *available at* ftp://ftp.fao.org/FI/DOCUMENT/tc-psm/Reg_Workshop_2006/Default.htm (last visited Sept. 30, 2006).

⁴ Report of the Review Conference on 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. New York, 22 to 26 May 2006 A/CONF.210/2006/15 (July 3, 2006), para. 82, *available at* http://www.un.org/depts/los/convention_agreements/reviewconf/reviewconferencedraftreport.pdf (last visited Nov. 6, 2006) [hereinafter Fish Stocks Report].

⁵ See Fish Stocks Report, *id.*

⁶ See Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 Dec. 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, art. 23, *available at* <http://www.oceanlaw.net/texts/unfsa.htm> (last visited Nov. 6, 2006) [hereinafter UN Fish Stocks Agreement].

⁷ Report of the First International Meeting on the Establishment of the Proposed South Pacific Regional Fisheries Management Organisation, held in Wellington, New Zealand, 14–17 February 2006. Participants understood that conservation and management includes the sustainable utilisation of resources and the protection of the marine environment, and that the new instrument should, as far as possible, avoid duplication and overlap with existing international instruments and should be consistent with international law relating to law of the sea. The meeting was attended by representatives from 26 states and regional economic integrated organisations, including coastal states and states with a historical fishing interest in accordance with FAO statistics. Eleven international and regional fisheries organisations, and eight non-governmental organisations and industry groups also participated as observers at the meeting.

⁸ Participants are the Republic of Korea, Japan and the Russian Federation. The three States have agreed to cooperate in the compilation, analysis and exchange of data on bottom trawling in this region.

⁹ See High Seas Task Force, *Port States Measures Final Report — Promoting Responsible Ports*, *available at* <http://www.high-seas.org/> (last visited Sept. 30, 2006); see also T. Lobach, the FAO/FFA Regional Workshop to Promote the Full and Effective Implementation of Port State Measures to Combat IUU Fishing, Aug. 28–Sept. 1, 2006, *Port State Measures to Combat IUU Fishing: The FAO Model Scheme on Port State Measures*, *available at* http://www.fao.org/fi/NEMS/events/detail_event.asp?event_id=34648 (last visited Sept. 30, 2006).

¹⁰ See UN Fish Stocks Agreement, *supra*, note 6, at art. 17.1.

ENDNOTES: PORT STATE MEASURES TO COMBAT IUU FISHING *continued from page 43*

¹¹ See J. Swan, *International action and Responses by Regional Fishery Bodies or Arrangements to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, FAO Fisheries Circular no. 996, at 64 (2004).

¹² Paragraph 45.

¹³ See L. Garibaldi & P. Kebe, *Discrepancies Between the FAO and ICCAT Databases for Tuna Catches in the Mediterranean*, SCRS/2004/081 col. vol. Sci. Pap. ICCAT, 58(2), at 644-661 (2005).

¹⁴ See UN General Assembly, *Sustainable Fisheries, Including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention of the Law of the Sea of 10 December 1982, Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and Related Instruments*, U.N. Doc. A/RES/60/31 (Nov. 17, 1995).

¹⁵ See Chatham House, *Report: Illegal, Unreported and Unregulated Fishing*,

1st Chatham House Update and Stakeholder Consultation Meeting (June 20, 2006), available at http://www.illegal-fishing.info/item_single.php?item=document&item_id=91&approach_id= (last visited Sept. 30, 2006).

¹⁶ See High Seas Task Force website, *Strengthen the International Monitoring, Control and Surveillance Network*, www.high-seas.org/docs/Media/B%20-%20International%20MCS%20Network.pdf. (last visited Sept. 30, 2006); see also *Illegal Fishing info.com* website, www.illegal-fishing.info (last visited Sept. 30, 2006).

¹⁷ 2001 FAO International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing paras. 65–76, available at <http://www.fao.org/DOCREP/003/y1224e/y1224e00.HTM> (last visited Nov. 6, 2006) [hereinafter IPOA-IUU].

¹⁸ See Swan, *supra* note 11, at 64.

¹⁹ IPOA-IUU, *supra* note 17, at ¶ 66.

²⁰ See P. Miyake, *Meeting of FAO and non-FAO Regional Bodies or Arrangements*, Jan. 9–11, 2002, *Catch Certifications and Feasibility of Harmonizing Certifications among Regional Fisheries Management Bodies* (2002).

²¹ The Act makes it unlawful for any person subject to the jurisdiction of the United States to “import, export, transport, sell, receive, acquire, or purchase ... any fish or wildlife taken, possessed, transported or sold in violation of any law or regulation of any State or in violation of any foreign law.” 16 U.S.C. 3371 et seq.

²² See PAUL A. ORTIZ, AN OVERVIEW OF THE US LACEY ACT AMENDMENTS OF 1981 AND A PROPOSAL FOR A MODEL PORT STATE FISHERIES ENFORCEMENT ACT, PREPARED FOR THE MINISTERIALLY LED TASK FORCE ON ILLEGAL, UNREPORTED AND UNREGULATED FISHING ON THE HIGH SEAS, (November 2005), available at http://www.high-seas.org/docs/Lacey_Act_Paper.pdf (last visited Nov. 6, 2006).

²³ IPOA-IUU, *supra* note 17, at ¶ 73 & 74.

²⁴ See Communique from the 11th Conference of North Atlantic Fisheries Ministers held in Trondheim, Norway, June 8–9, 2006, available at <http://odin.dep.no/fkd/english/news/news/047041-990029/dok-bn.html> (last visited Sept. 30, 2006).

²⁵ ICCAT has undertaken activities in this regard. An example at national level is Iceland, which initiated a campaign to increase awareness of the IUU problem within the fisheries sector itself by writing letters to over a thousand companies that were involved in the fisheries sector. In the letters, the companies were encouraged to be alert to avoid getting involved in supporting IUU activities in any way. It is believed that almost all fisheries companies want to avoid being in any way linked to these illegal activities and welcome help in avoiding involvement. Speech delivered on behalf of the Icelandic Minister responsible for fisheries, see *supra* note 14.

²⁶ IPOA-IUU, *supra* note 17, at ¶ 56.

²⁷ See FAO, Fisheries Department Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, *FAO Technical Guidelines for Responsible Fisheries* (2002), at 122.

²⁸ See UN General Assembly, *Report on the Work of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea at its Sixth Meeting Letter dated 7 July 2005 from the Co-Chairpersons of the Consultative Process Addressed to the President of the General Assembly*, ¶ 9, U.N. Doc. A/60/99 (July 7, 2005).

²⁹ See UN General Assembly, *Sustainable Fisheries, Including Through the 1995 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, and Related Instruments*, U.N. Doc. A/RES/59/25 (Jan. 17, 2005).

³⁰ UN General Assembly, *Sustainable Fisheries, Including Through the 1995 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, and related instruments*, U.N. Doc. A/RES/60/31 (Nov. 17, 2005).

³¹ See Fish Stocks Report, *supra* note 4, at Annex “Outcome of the Review Conference” at note 40.

³² See Fish Stocks Report, *supra* note 4, at Annex “Outcome of the Review Conference” at note 43(d).

³³ See Fish Stocks Report, *supra* note 4, at ¶ I.c.v.

³⁴ See Report: Illegal, Unreported and Unregulated Fishing, 1st Chatham House Update and Stakeholder Consultation Meeting, Chatham House, 10 St. James’s Square, London SW, May 9, 2006, available at http://www.illegal-fishing.info/uploads/Update_and_consultation_mtg090506.doc (last visited Nov. 6, 2006).

³⁵ HIGH SEAS TASK FORCE (2006), CLOSING THE NET: STOPPING ILLEGAL FISHING ON THE HIGH SEAS (Governments of Australia, Canada, Chile, Namibia, New Zealand, and the United Kingdom, WWF, IUCN and the Earth Institute at Columbia University) (2006).