

SUMMARY OF THE RESUMED REVIEW CONFERENCE OF THE UN FISH STOCKS AGREEMENT: 24-28 MAY 2010

The resumed Review Conference of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea (UNCLOS) relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement) took place from 24-28 May 2010 at UN Headquarters in New York.

The Review Conference was mandated by Article 36 of the UN Fish Stocks Agreement and by General Assembly resolutions 63/112 and 64/72. These resolutions established that the Review Conference, which had originally convened in 2006, could resume its work from 24-28 May 2010.

The resumed Review Conference focused on three substantive issues: areas in which implementation of recommendations adopted at the Review Conference in 2006 are proceeding well overall; areas in which implementation of recommendations from the 2006 Review Conference are at an early stage or where there has been little progress; and means to further strengthen the substance and methods of implementation of the UN Fish Stocks Agreement (UNFSA).

During the first three days of the meeting, delegates convened in plenary to share their views on these three issues. On the morning of the fourth day, Conference President David Balton distributed a draft outcome that sought to reflect these discussions, particularly areas where further action may be needed. Delegates met in a drafting group to further negotiate the draft text, which eventually agreed on an outcome document that was adopted late on the meeting's fifth and final day.

The outcome document recommends further actions in a range of areas. A key issue addressed was the conservation and management of fish stocks, including outcomes on sharks, the ecosystem approach, excess fishing capacity and developing states' abilities to develop their fisheries. The outcome also addresses mechanisms for international cooperation; monitoring, control and surveillance, compliance and enforcement; and developing countries and non-parties to the UNFSA. In addition, the document provides guidance on the future of the UNFSA process, establishing that the Informal Consultations of States Parties (ICSPs) would continue and also that the formal Review

Conference could resume, although not until at least 2015. The final report will be transmitted to the RFMO secretariats and the UN General Assembly.

The outcome was described by many participants as "focused" and "targeted." However, some left the meeting feeling that although there was progress on several key issues, the level of ambition overall had not been sufficient to address the many daunting challenges that lie ahead.

A BRIEF HISTORY OF THE UN FISH STOCKS AGREEMENT

The UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks—which was originally called for by Chapter 17 of Agenda 21—was convened by the UN General Assembly to address problems related to the harvesting of fish stocks on the high seas. The Conference included six substantive sessions held between 1993 and 1995 and resulted in the adoption of the UN Fish Stocks Agreement (UNFSA or "Agreement") in August 1995.

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The UNFSA, which now has 77 parties, seeks to ensure the long-term conservation and sustainable use of straddling and highly migratory fish stocks. The Agreement includes general principles for conservation and management, and provisions on, *inter alia*: application of the precautionary approach; compatibility of conservation and management measures; cooperation for conservation and management; regional fisheries management organizations (RFMOs); collection and provision of information and cooperation in scientific research; non-members of RFMOs; duties of, and compliance and enforcement by flag states; international, subregional and regional cooperation in enforcement; procedures for boarding and inspection; measures taken by port states; special requirements and forms of cooperation with developing countries; and dispute settlement. The Agreement establishes a set of rights and obligations for states to conserve and manage the two types of fish stocks, and associated and dependent species, as well as to protect the marine environment.

With regard to funding, Part VII of the Agreement sets out the option of special funds to assist developing states parties. As a follow up to this, in 2003 the UN General Assembly adopted resolution 58/113, which established the Assistance Fund. This voluntary fund aims to assist developing countries implement the Agreement. As at 31 December 2009, the fund had received contributions totaling US\$836,153.

INFORMAL CONSULTATIONS 2002-2006 (ICSP 1-5): Since its entry into force on 11 December 2001, delegates have met for Informal Consultations of States Parties (ICSP) at UN Headquarters in New York every year since 2002. The ICSP considers regional, subregional and global implementation of the Agreement. In its first five sessions from 2002-2006, it focused on various issues, including assistance for developing countries under Part VII (ICSP 1), the Assistance Fund and financial issues (ICSP 2), flag states and implementation at the regional level (ICSP 3), and preparation for the 2006 Review Conference (ICSP 4 and 5).

REVIEW CONFERENCE: The Review Conference of the UNFSA was held from 22-26 May 2006, at UN Headquarters in New York. The Conference, which was mandated by Article 36 of the Agreement and by General Assembly resolution 59/25, assessed the adequacy of the Agreement's provisions for securing the conservation and management of straddling fish stocks and highly migratory fish stocks, and proposed means to strengthen implementation of its provisions to better address any continuing problems in conservation and management.

The Review Conference concluded with recommendations to, *inter alia*: integrate ecosystem considerations in fisheries management; reduce urgently the world's fishing capacity to levels commensurate with the sustainability of fish stocks; strengthening RFMOs' mandates to implement modern approaches to fisheries; perform RFMO performance reviews; develop a legally-binding instrument on minimum standards for port state measures and a comprehensive global register of fishing vessels; expand assistance to developing countries; and establish a continuing dialogue to address concerns raised by non-parties. At the conclusion of the meeting, delegates decided to suspend rather than formally close the Review Conference, thus providing an opportunity for the Conference to resume at a

later date. The UN General Assembly subsequently decided in resolutions 63/112 and 64/72 that the Review Conference would resume in 2010.

INFORMAL CONSULTATIONS 2007-2010 (ICSP 6-9): Since the 2006 Review Conference, the ICSP has convened four times. Its focus has included: the performance of RFMOs and the control, monitoring and surveillance of illegal, unreported and unregulated (IUU) fishing (ICSP 6); non-parties and a follow up to the Review Conference (ICSP 7); and wider participation in the Agreement and initial preparations for the resumed Review Conference (ICSP 8).

ICSP 9 took place on 16 and 17 March 2010. In accordance with General Assembly resolution 64/72, delegates focused on preparing for the resumed Review Conference. Participants discussed the Secretary-General's report to the resumed Review Conference (A/CONF.210/2010/1). They also considered the resumed Review Conference's organization of work, draft provisional agenda, Bureau and outputs. In addition, participants considered possible future actions and events after the resumed Review Conference.

REPORT OF THE CONFERENCE

Review Conference President David Balton (US) opened the meeting on Monday morning, 24 May 2010. He reminded participants that delegates had decided to suspend the original Review Conference in 2006, with a view to resuming it at a later date. As a result of this decision, he explained that the Bureau and Chair elected in 2006 will remain in place, although individuals who are no longer available will need to be replaced. He added that the 2006 rules of procedure, which had been adopted on a provisional basis, would also still apply.

Patricia O'Brien, UN Under-Secretary-General and Legal Counsel, spoke on behalf of UN Secretary-General Ban Ki-moon. She underscored the Fish Stocks Agreement as a comprehensive legal regime for the long-term management of straddling and highly migratory fish stocks, and observed that 20 States Parties had joined since 2006. However, in spite of efforts to improve governance, she warned that fish stocks globally have continued to decline, and identified problems such as excessive by-catch, destructive fishing practices, climate change, IUU fishing, and lack of progress in reducing fishing capacity. She said the resumed Review Conference could provide an impetus for progress on flag state performance, data collection, subsidies, and by-catch from lost and abandoned fishing gear.

President Balton noted areas of progress in recent years, including RFMOs, positive reforms in existing RFMOs, and the rise in the number of parties to the UNFSA. However, he added that the worrying state of many fish stocks persists, with most either overexploited or depleted. He hoped for progress during the week to address the status of these resources in order to improve the marine environment and benefit those whose livelihoods depend on them.

Delegates then approved the provisional agenda (A/CONF.210/2010/L.1). On the organization of work (A/CONF.210/2010/L.2), Balton proposed that delegates consider three main issues: areas in which implementation of recommendations adopted at the Review Conference in 2006 are proceeding well overall; areas in which implementation of recommendations from the 2006 Review Conference are at an early stage or where there has been little progress; and means to

further strengthen the substance and methods of implementation of the UNFSA. He suggested that delegates consider the first two questions on 24 and 25 May, and the third question on 26 May. He further proposed that he would distribute a draft outcome document on the morning of 27 May, which could be the subject of informal discussions and should be finalized and adopted by the end of the meeting on 28 May. Participants agreed to the proposed organization of work.

Delegates also took note of the report of the ninth Informal Consultation of States Parties (ICSP 9), held in March 2010 (ICSP9/UNFSA/INF.4).

President Balton briefed delegates on the composition of the Bureau, indicating that Andrés Couve (Chile), Liu Zheng (China) and Sainivalati S. Navoti (Fiji) would continue as Vice Presidents. The Conference also elected several new members to replace those who were no longer available: Carmen-Paz Marti (Spain), Cyrille Condé (Guinea); and Annelie Urriola (Panama).

This summary report outlines the discussions held during the resumed Review Conference and its outcomes, based on the agenda.

GENERAL STATEMENTS: In his opening statement, Australia, for the Pacific Islands Forum, said more must be done to improve RFMOs' overall performance, and highlighted the precautionary approach, IUU fishing, and capacity building, particularly for small island developing states (SIDS). He stressed the UNFSA as offering the "best long-term approach" for fish stocks management, and the opportunity provided by this meeting to review progress, identify shortfalls and take strong action.

Marshall Islands, on behalf of parties to the Nauru Agreement, emphasized the importance of the resumed Review Conference, noting the interrelation between the outcomes of this meeting and the Nauru Agreement. Palau described shark finning as a "wasteful, cruel and unsustainable" practice. He called for a moratorium on shark finning and for implementation of a rule under which sharks would have to be landed with their fins attached.

The Republic of Korea noted the need to improve data accuracy and information sharing, and RFMO performance reviews. Chile underlined: its support for the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing ("FAO Agreement on Port State Measures"); the need to negotiate a binding agreement on flag states' obligations; and the importance of the principle of compatibility for conservation measures adopted within and beyond areas of national jurisdiction.

China expressed support for the UNFSA even though it is not a party, and outlined its efforts to fulfill the international obligations. He emphasized the needs of developing nations, calling for an equitable utilization of fisheries resources and enhanced capacity building.

The European Commission, speaking for the European Union (EU), supported modernizing and conducting performance reviews for RFMOs and regional fisheries management arrangements (RFMAs). She also supported strengthening requirements for fisheries data collection; the adoption of measures consistent with the FAO Agreement on Port State Measures; and a more extensive use of catch documentation schemes.

Peru reported on a meeting of the Permanent Commission for the South Pacific held from 4-5 May 2010. The Russian Federation outlined its progress in conserving fish stocks, including ratifying the UNFSA and signing the FAO Agreement on Port State Measures.

Norway identified areas of progress, including strengthening the roles of RFMOs and increasing the number of parties to the UNFSA. He highlighted Norway's focus on fishing and protecting vulnerable marine ecosystems (VMEs), and hoped this meeting would focus on guidelines on by-catch management and discards.

New Zealand praised the efforts of tuna RFMOs in facilitating change in South Pacific tuna fishing. He hoped the International Commission for the Conservation of Atlantic Tunas (ICCAT) would promote similar efforts, including recommendations made at the 15th Conference of the Parties to the Convention on International Trade in Endangered Species (CITES), held in March 2010. He emphasized effectiveness and fairness in participation in fisheries, and flag states' performance.

The US said the resumed Review Conference should focus on concrete management outcomes that strengthen the substance and methods of implementing the UNFSA. She also emphasized the key role of member states in ongoing RFMO progress.

The South East Atlantic Fisheries Organisation (SEAFO) highlighted measures taken in compliance with the UNFSA, including: application of the precautionary and ecosystems approaches; closure of 10 VMEs to fishing; addressing by-catch issues; compiling a marine "footprint" assessment; port state regulation; and the use of vessel monitoring systems (VMS). He said SEAFO is undertaking a performance review.

ICCAT reported on its activities on the Northeast Atlantic bluefin tuna, including: the obligatory transfer of VMS records to the Secretariat; a boarding and inspecting system on fishing and transshipment vessels; and work with NGOs to identify information gaps; and its "Bluefin Tuna Year Programme."

The Northwest Atlantic Fisheries Organization reported on progress to date, highlighting work on applying the precautionary and ecosystems approaches; the introduction of measures for preventing by-catch of sharks and turtles; a three-year marine footprint programme; and the closure of 18 VMEs to deep sea fishing. He also noted that a performance review was being undertaken.

The North East Atlantic Fisheries Commission (NEAFC) spoke on behalf of the Regional Fishery Body Secretariats Network, a group of 48 fisheries bodies concerned with poverty alleviation, food security, the economics of coastal fisheries, equity, and environmental knowledge. He noted that the wide variety of mandates shared by the Secretariats Network is an asset for implementing international fisheries management agreements, emphasizing the need to increase the capacity of RFMOs, not just criticize them.

IUCN said the best way to assess implementation of the UNFSA is by reviewing the health of the stocks in question. Noting the critical importance of cooperation and adequate data, he proposed a prohibition on high seas fishing in any area or for any stock where there is no cooperative arrangement in place, or for which there is insufficient data available. He noted the value of marine protected areas, and also highlighted UN General Assembly resolution 61/105 on bottom fishing.

The Latin American Organization for Fisheries Development underscored the value of new RFMOs, which have created an environment where many countries' concerns can be addressed and allayed.

Greenpeace, for the Deep Sea Conservation Coalition, observed that over 60% of fish stocks are overexploited, depleted or fished unsustainably. He proposed bottom fishing and by-catch as major areas for review. He stressed the role of non-governmental and intergovernmental organizations, and supported IUCN's proposal that fishing be prohibited for any fish stocks where adequate data are not available.

The International Ocean Noise Coalition (a partnership of more than 150 NGOs) highlighted human-generated ocean noise pollution as a threat to marine biodiversity. She said noise generated by shipping and other sources can result in "behavioral deviations" affecting spawning and migration, which can reduce catch rates by 40-80%. She proposed a General Assembly resolution mandating the FAO to undertake a more detailed study on this matter.

The Pew Environment Group said high seas fisheries should be given a high priority, noting that more than one billion people rely on fish as their primary source of protein. He expressed concern that the current RFMO system is not living up to its potential, and said delegates should strengthen governance by improving RFMO performance and accountability, as well as UN oversight. He highlighted new studies from the University of British Columbia on RFMO performance, and the Pew Environment Group on port state performance. He recommended that fishing be prohibited for species and in areas where there is no conservation management plan in place.

ASSESSMENT OF THE EFFECTIVENESS OF THE AGREEMENT IN SECURING THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Discussions under this substantive agenda item took up the bulk of participants' time and attention during the resumed Review Conference. The agenda item contained two sub-items:

- review of implementation of the recommendations adopted at the Review Conference in 2006; and
- proposed means of further strengthening, if necessary, the substance and methods of implementation of the provisions of the UNFSA.

Under the first sub-item on the 2006 Review Conference, delegates discussed both areas where there had been good progress, and others where implementation was at an "early stage" or there had been little progress. The main exchange of views took place on the first two days of the resumed Conference. Discussions on how to strengthen implementation of the Agreement took place on the third day, with participants making numerous proposals in this regard. During the final two days of the meeting, delegates negotiated an outcome document that focused in large part on steps to strengthen implementation of the Agreement, drawing on the discussions under this agenda item.

REVIEW OF IMPLEMENTATION OF THE RECOMMENDATIONS ADOPTED AT THE REVIEW CONFERENCE IN 2006: On Monday and Tuesday, delegates engaged in an extensive evaluation of implementation of the recommendations adopted at the 2006 Review Conference. In

their assessments, participants identified both areas where there had been forward movement, and other areas where there had been little or no progress.

Areas of progress: Delegates identified several main areas where progress had been made on the recommendations adopted in 2006. These included the establishment of new RFMOs; enhanced mandates for some existing RFMOs; the completion of performance reviews for five RFMOs; the regulation of deep-sea fisheries; and the adoption of the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing (also known as the "FAO Agreement on Port State Measures"). Many countries also outlined their national activities in support of the Review Conference recommendations.

On the establishment of new RFMOs, the EU and many others welcomed agreement on the South Pacific Regional Fisheries Management Organization (SPRFMO), with New Zealand highlighting its "groundbreaking" approach.

On collaboration among RFMOs, the US, Japan and others highlighted progress in the Kobe process, which supports collaboration among five tuna RFMOs. Several delegates also welcomed the RFMO performance reviews conducted to date. Australia said the independent reviews of the Indian Ocean Tuna Commission (IOTC) and the Commission for the Conservation of Southern Bluefin Tuna had resulted in detailed work plans. India cited collaboration in the Bay of Bengal Programme and Bay of Bengal Large Marine Ecosystem project, which yielded tangible results in managing and conserving stocks.

Marshall Islands, on behalf of parties to the Nauru Agreement, noted some progress implementing the precautionary and ecosystem approaches. Norway identified forward movement in applying the ecosystem approach and area-based management tools. He also reported some advances in measures to retrieve lost fishing gear and negotiations under the FAO to develop guidelines for dealing with discards.

Chile, Japan, Samoa and others highlighted the FAO Agreement on Port State Measures. The EU drew attention to the FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas, EC Council Regulations on collection and management of data, and the EU Action Plan on Sharks.

Mozambique identified various initiatives addressing the need for the precautionary principle and ecosystem approach, and dealing with data collection, information sharing, fleet capacity reduction and IUU fishing. Canada congratulated those RFMOs that have achieved successes in marine ecosystem protection.

The Inter-American Tropical Tuna Commission (IATTC) noted that the Antigua Convention will enter into force in August 2010, which will update the IATTC Convention. ICCAT reported progress on IUU fishing; reducing by 40 percent the bluefin tuna fisheries capacity; closing areas to swordfish and bluefin tuna fisheries; catch documentation schemes; and observers' programmes on bluefin tuna.

Areas of limited progress: Numerous speakers identified areas where little or no progress had been made on implementing recommendations from the 2006 Review Conference. These comments covered all four issue clusters and many sub-issues set out in the 2006 recommendations (A/CONF.210/2006/15 and A/CONF.210/2010/INF/1). The four main issue clusters covered by the 2006 recommendations were: conservation and management

of stocks; mechanisms for international cooperation and non-members; monitoring, control and surveillance, and compliance and enforcement; and developing states and non-parties.

Conservation and management of stocks: Many speakers noted the need to improve implementation of conservation and management measures using the best available scientific information.

Marshall Islands, on behalf of parties to the Nauru Agreement, underscored serious challenges with IUU fishing and enforcement, as well as implementation of compatible measures in the context of the Western and Central Pacific Fisheries Commission (WCPFC). He emphasized the persistent problem of overcapacity and said the needs of SIDS must be addressed.

The EU urged improved collection and transmission of data and a comprehensive network of marine protected areas. With Fiji and Australia, the EU also highlighted the need to strengthen implementation of the ecosystem approach.

Brazil proposed strengthening the accuracy of data collection in accordance with Article 14 of the UNFSA, eliminating subsidies, and strengthening the interface between science and policy. Peru noted disparities in data at the regional level. The Seychelles said data must be accurate and timely and Chile said decisions should be informed by the best scientific information available. Monaco highlighted the importance of impact studies. China recommended that RFMOs assist developing countries in their scientific research to allow them to participate in expert scientific committees.

NRDC suggested that a new RFMO be developed for the high Arctic, since climate change and receding ice is making fishing possible. She supported open and free access for NGOs and IGOs to all RFMOs.

The Republic of Korea, Samoa and others highlighted ongoing IUU fishing as a major problem. Samoa raised the issue of continued IUU fishing in Pacific Island Forum Fisheries Agency (FFA) waters and drew attention to the unregulated area between the southern boundary of the forthcoming North Pacific RFMO and the northern boundary of the SPRFMO, calling on the North Pacific RFMO to extend its boundary by 10 degrees so these waters are regulated. New Zealand, NRDC and IUCN also noted this possible gap, and IUCN added its concern over the possibility that the North Pacific RFMO may focus only on bottom fishing, which would not fulfill the sense of a 2006 recommendation that all stocks in an area are to be conserved and managed. In response, Japan said the jurisdiction of the North Pacific RFMO will encompass all non-tuna species, and will not be restricted to bottom fisheries.

On compatibility of conservation measures between countries' exclusive economic zones (EEZs) and the high seas, Chile lamented that interim measures applied by the new SPRFMO were incompatible with states' national strategies and stated that they were not adequate for species conservation. He also expressed concern at the "precarious" state of straddling mackerel stocks.

The US expressed concern over the uneven implementation of the FAO International Plan of Action for the Management of Fishing Capacity (IPOA-CAPACITY), and supported ongoing work in the World Trade Organization to eliminate subsidies that lead to IUU fishing, overfishing and overcapacity. She also

urged states and RFMOs to establish marine protected areas and adopt compatible measures in accordance with Article 7 of the UNFSA.

Greenpeace, on behalf of the Deep Sea Conservation Coalition, said the resumed Review Conference should recommend that all RFMOs establish high seas marine protected areas. He also called for interim measures to implement resolutions 61/105 and 64/72 to cover bottom trawling and deep sea gill netting for sharks. NRDC said all fisheries should be subject to prior impact assessment, arguing that there was no reason why this should apply only to bottom fisheries.

Iceland argued that discussions on vulnerable marine ecosystems (VMEs) and bottom fishing were outside the scope of the present meeting. He said basic scientific data on fisheries catches to guide sustainable fisheries should be acquired before applying the precautionary and ecosystem approaches.

International cooperation and non-members: Many speakers highlighted the need to strengthen the mandates and measures taken by RFMOs, and increase collaboration and transparency. Japan highlighted RFMOs as the most effective mechanism for conservation and management of fisheries resources, and urged strengthening their capacity.

Chile stressed the need for at least three more nations to join SPRFMO and warned that interim measures for straddling pelagic fisheries were inadequate. Canada encouraged cooperation between members and non-members of RFMOs. He also promoted the sharing of best practices among RFMOs.

The EU and others urged all RFMOs to undertake performance reviews and act on the recommendations. She expressed concern that management measures taken by some RFMOs are not effective and decision-making procedures are not transparent. Norway highlighted independent input in performance reviews, while noting that it is for member states to decide which recommendations are implemented.

The US expressed frustration at lack of progress by RFMOs in preventing fish stock declines, noting that short-term economic interests often outweigh issues of long-term sustainability. She said RFMOs are only as effective as members allow them to be, and urged performance reviews and reform to enhance RFMOs' credibility. She further proposed that RFMOs dealing with straddling stocks replicate the welcome progress made with tuna RFMOs under the Kobe process. She urged easier participation for IGOs and NGOs in RFMOs, and also proposed that ICCAT and IOTC consider reforms of their basic instruments to meet UNFSA requirements.

New Zealand said states control RFMOs and are responsible for their success or failure. The Pew Environment Group, speaking also for the Natural Resources Defense Council, reported that RFMO performance reviews revealed a general failure in meeting their mandates. She proposed that RFMOs insist on prior environmental impact assessments for new fisheries, particularly for target fisheries and sharks, and prevent fishing any species listed under CITES or the IUCN Red List. The International Coalition of Fisheries Associations (ICFA), a coalition of national fisheries trade groups, urged states to strengthen RFMOs' capacity and enforcement capabilities, and highlighted RFMOs' role in shark management.

Monitoring, control and surveillance, and compliance and enforcement: Japan reviewed issues preventing implementation and compliance, stressing the need for more positive incentives

rather than penalties and sanctions and the need for RFMOs to implement area-based management solutions. Australia underscored the need to enhance global information exchange and establish a global record of vessels in the context of the FAO Agreement on Port State Measures. Iran said port and market control measures on the demand-side are one way to address shark finning.

On the performance of flag states, Canada said controls of port entry would assist in curbing IUU fishing, even if they are not fully adequate. He also called on RFMOs and states to improve their efforts concerning shark and tuna management and in implementing mechanisms to sanction non-compliant states with regard to IUU fishing controls. Ecuador called for urgent measures to address flag states' responsibility. The Republic of Korea said criteria for flag state evaluations are needed. Iceland noted that UNFSA Article 18 sets out flag states' duties, and suggested that what is needed are criteria for actions, possibly by coastal states, against IUU fishing vessels in the high seas.

New Zealand noted that it was easy for fishing operators to switch flags. He said countries should take responsibility for their nationals involved in IUU fishing.

The EU said it was committed to eliminating IUU fishing through its catch documentation scheme (CDS) and support for the FAO record of fishing vessels, while cautioning that technical issues need to be addressed.

The Seychelles said RFMOs should be able to address non-compliance directly. He said there is a problem not only with countries that are not members of relevant RFMOs, but with countries that are members but do not honor their obligations. Solomon Islands expressed concern over transshipment occurring in the high seas pockets adjacent to countries' EEZs; emphasized SIDS' limitations on monitoring and policing such areas; and called for more cooperation on data sharing and capacity building.

The US welcomed FAO's initiative to assess flag states in ensuring that vessels comply with flag states' regulations. She supported the International Monitoring, Control, and Surveillance (MCS) Network for Fisheries-Related Activities in the role of prevention and elimination of IUU fishing. Norway said many vessels engaged in IUU fishing are moving to areas where measures are not implemented, and encouraged all RFMOs to adopt adequate measures.

The Marshall Islands, for the parties to the Nauru Agreement, advocated a "package" of measures including regional joint inspection and patrols, VMS, and measures on transshipment and observation.

Greenpeace proposed establishing a global register of fishing vessels by the end of 2010. He also supported a fully centralized, tamper proof VMS; fully independent observers on board large vessels; a harmonized CDS prohibiting trade in IUU caught fish; and ratification of the FAO Agreement on Port State Measures by all states. Japan emphasized the role of RFMOs' CDS as a useful tool to prevent IUU fishing products entering into the markets.

Developing states and non-parties: Brazil proposed prioritizing the needs of developing states in accordance with Article 25 of the Agreement. The Seychelles said most developing states do not have the resources or capacity to access fisheries, and Mozambique highlighted the need for capacity building and funding.

Marshall Islands warned against any RFMO process that "strangles" international progress to achieve UNFSA goals. He pointed to the absence of any coherent, transformative and sustained efforts to support the development aspirations of SIDS, noting that fisheries are the primary development pathway for many SIDS.

The US said the Assistance Fund under UNFSA Part VII can be complemented by funding from, *inter alia*, international financial institutions and RFMOs. Canada said the eleventh meeting of the UN Open-ended Informal Consultative Process on Oceans and Law of the Sea, taking place in June 2010, would be an opportune moment to consider other ways to assist developing countries. The EU outlined its activities and said RFMOs should also promote developing states' fisheries.

New Zealand said the "big issue" was how to allocate fishing rights rationally. On how to encourage membership in RFMOs, he suggested that the need to reach decisions by consensus could act as a disincentive for new countries to join, and could encourage IUU fishing by non-members.

Peru said the allocation of fishing quotas must not be discriminatory between old and new participants, and recalled Article 116 of UNCLOS on the right to fish on the high seas. He highlighted the SPRFMO allocation criteria, which include conservation principles and the aspirations of developing states. In response, Iceland said Article 8 (3) of the UNFSA limits the right to become parties of RFMOs to states that have real interest in fisheries, noting that under his interpretation "real interest" applies only to coastal states and states that have already been fishing for a particular stock, and that new entrants would not have a right to start fishing for a fully exploited stock if they do not have a "real interest". Brazil stressed the rights of developing countries to participate in high seas fisheries, consistent with Article 25 of the Agreement.

The International Collective in Support of Fishworkers stressed the dependence of artisanal fisheries on straddling and highly migratory stocks. While agreeing on the need to eliminate subsidies that promote overfishing and overcapacity, he said subsidies that meet the genuine sustainable fisheries aspirations of developing countries could be viewed as an incentive for sustainable development.

During this session, President Balton also invited Satya Nandan, Chair of the WCPFC and the former Chair of the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, which negotiated the UNFSA, to make a statement. He highlighted WCPFC progress on conserving bigeye and yellowfin tuna stocks based on a precautionary and area-based management principles. On broader challenges for the UNFSA, he observed the critical role of states, and underscored that Japan, the EU, the US, the Republic of Korea, the fishing entity of Chinese Taipei, and increasingly China control the largest fishing fleets and markets, and are members of all straddling and highly migratory stocks RFMOs. He urged all members of RFMOs to follow scientific advice and comply with and enforce the RFMOs' decisions.

FURTHER STRENGTHENING IMPLEMENTATION OF THE PROVISIONS OF THE UNFSA: On Wednesday, delegates discussed means of further strengthening the substance and methods of implementing the provisions of the UNFSA. Opening the session, President Balton explained that since the resumed Review Conference was a continuation of the original

2006 Review Conference, the recommendations made in 2006 remain valid. However, he added that discussions held over the previous two days to review the 2006 recommendations had made it clear that additional recommendations are needed, based on gaps in implementation and developments since 2006. He suggested using the four issue clusters set out in the 2006 recommendations (A/CONF.210/2006/15 and A/CONF.210/2010/INF/1) as the basis for new proposals: conservation and management of stocks; mechanisms for international cooperation and non-members; monitoring, control and surveillance, and compliance and enforcement; and developing states and non-parties.

Conservation and management of stocks: Delegates focused on several key issues, including fisheries data, capacity, the ecosystem approach, sharks, and stock specific reference points.

On data, the US proposed requesting RFMOs to strengthen obligations for accurate data reporting, including sanctions for persistent non-compliance. New Zealand said improved data reporting should be a core outcome, and agreed that failure to comply with obligations should have consequences. Peru recommended additional fishing data and biological measures for conservation and management, including zones for fish stock reproduction and minimum catch size. Japan advocated positive incentives to promote collection and submission of data. New Zealand supported the use of best available scientific data but cautioned against taking no action in the absence of scientific information.

On capacity, the US urged stronger efforts to reduce overcapacity in a transparent and equitable way. The EU expressed support for FAO-CAPACITY. Noting that much of the increase in fishing capacity comes from a “small number of players,” Japan proposed a targeted approach. Marshall Islands recommended high seas pocket closures. Brazil said the rights of developing countries to participate in fisheries must be recognized.

On stock reference points, the US urged use of the best scientific information for stock specific reference points and determining action to be taken if those reference points are exceeded. Australia proposed harvest strategies with stock specific reference points, adding that actions should be taken if targets are exceeded.

On the ecosystem approach, the US supported implementing specific measures, including applying risk assessment tools and assessments for vulnerable species and habitats, plans for currently unregulated fisheries, and measures for commercially traded by-catch. The EU supported the precautionary and ecosystem approaches, suggesting a global network of marine protected areas.

The EU also recommended the judicious use of environmental impact assessments, where appropriate. NRDC said environmental impact assessment requirements prior to engaging in fisheries were important to prevent extinction of vulnerable marine organisms, including turtles, marine mammals and sharks, and to protect vulnerable ecosystems. Greenpeace urged strengthening implementation of UNFSA provisions on environmental impact assessments (Article 5(d)) and biodiversity (Article 5(g)). Iceland said he was puzzled by earlier suggestions from some observers to apply any decision on bottom fisheries and VMEs to all fisheries. He said this issue was being addressed in a separate General Assembly process and proposals in this

Review Conference could affect those discussions. He could not agree to prior assessment of all fisheries. He also said Article 5(d) was adequate and should remain unchanged.

On sharks, the US called on states and RFMOs to implement species data collection and develop conservation management plans, and requested RFMOs to consider a recommendation for sharks to be landed with fins naturally attached. Costa Rica advocated a ban on shark finning. Palau, supported by NRDC, supported a moratorium on shark finning by January 2012. However, Iceland and the Russian Federation opposed a moratorium, with the Russian Federation calling for additional data. Japan supported management of shark fisheries but cautioned that recommendations for legitimate shark fisheries should differ from shark finning measures. Canada also cautioned against a “one-size fits all” solution on sharks.

Canada highlighted climate change as an emerging issue, and proposed a focus at the governance level on ocean acidification and sea-level rise.

International cooperation and non-members: Many parties recommended strengthening and reforming RFMOs. The US recommended that they modernize their mandates. She also recommended entry into force of recently revised and new RFMOs and called on RFMOs that have not yet done so to conduct and complete performance reviews, and to consider conducting reviews every five years. She encouraged strengthened cooperation among RFMOs, and said straddling stocks RFMOs should share best practices. She proposed that RFMOs’ management measures be reviewed by scientific panels, and suggested that tuna RFMOs use the Kobe II Strategy Matrix to assist in setting management measures. Canada highlighted Kobe II’s linking of scientists and policy makers.

New Zealand noted that inadequate mandates obstruct good governance. With Japan and others, he supported more cooperation among non-tuna RFMOs. Australia advocated continued performance reviews that include an independent component and proposed that recommendations from the reviews be integrated into RFMOs’ workplans. She added that there should be no gaps in high seas areas covered by new and existing RFMOs.

Greenpeace supported RFMO performance reviews every five years. IUCN called for new RFMOs or RFMAs where needed, suggesting that all highly migratory, straddling and high-seas discrete stocks should be covered. Canada supported RFMOs’ greater transparency and full disclosure.

NEAFC cautioned that RFMOs should be reviewed on a case-by-case basis rather than providing recommendations that assume they are all identical.

The EU, Australia and Greenpeace highlighted area-based management measures. Iceland said it was not necessary to change the area-based management tools contained in the 2006 recommendations. The Russian Federation said the 2006 recommendations should form the basis for action, but measures need not be limited to establishing marine protected areas.

Mexico suggested outcomes focused on reducing fishing fleet capacity, subsidies, discards and by-catch, improved fishing gear, juvenile fish and incidental fish stocks, and the private sector’s role in conservation management. Norway supported the FAO process on discards.

Monitoring, control and surveillance, and compliance and enforcement: The EU, US, Chile, Norway and others supported a recommendation encouraging states to ratify the FAO Agreement on Port State Measures. New Zealand urged the FAO to take steps to ensure effective implementation of this FAO Agreement through collection and assessment of data, and the US suggested that RFMOs should adopt measures compatible with the Agreement.

The US, New Zealand and Australia supported annual reviews by RFMOs to assess compliance by states.

On flag state responsibility, Chile supported a binding agreement to determine responsibility and measures that flag states should apply to eliminate IUU fishing. The EU encouraged the FAO to hold a technical consultation soon to determine criteria for assessing flag states' performance. She also highlighted the role of CDS in combating IUU fishing.

Canada and the US supported the International MCS Network. Canada also stated that flag states need to ensure compliance with conservation and management, port states should adopt measures in agreement with the FAO Agreement on Port State Measures, and range states should be encouraged to join RFMOs or at least follow their practices. He also highlighted the role of technology, citing the economic and scientific benefits of using miniature cameras to record what vessels are catching. The EU said new technology should be cost effective.

Marshall Islands called for: access to high seas fisheries data; a toolbox approach and stringent transshipment measures; vessel blacklisting; market state measures such as labeling; and more sustained international support for patrol boats.

Australia noted previous comments on the need for states to take responsibility for the actions of their nationals and added that RFMOs have a role to play. Chile and others supported steps to ensure compatibility of regimes for EEZs and high seas. China said timely and accurate reporting will require more incentives than penalties for fishing states.

Greenpeace, speaking for the Deep Sea Conservation Coalition, urged stronger recommendations to target the role of transshipment in IUU fishing. He supported a global record of fishing vessels and proposed funding and expanding the International MCS Network from levies on commercial fishing vessels operating in RFMOs.

Developing states and non-parties: On the Assistance Fund for developing countries under Part VII of the UNFSA, Brazil said the "chronic paucity" of resources in the Assistance Fund must be addressed. Fiji said the terms of reference for the Fund should be addressed, particularly in terms of support for monitoring and surveillance. Samoa acknowledged the role of Assistance Fund on MCS programmes, encouraging donors to continue their contributions.

Norway supported calls for contributions to the Assistance Fund. He suggested that RFMOs could also develop their own funds in addition to the global Assistance Fund. Canada supported participation of developing countries and SIDS in the UNFSA and supported capacity building. The EU supported building the capacity of SIDS and developing countries to fulfill their aspirations to participate in high seas fishing. Costa Rica called on more states to join the Lima Declaration to build capacity in developing countries. New Zealand cautioned that capacity building should not be viewed as the only "prism" through which UNFSA participation is addressed.

Marshall Islands recommended that measures to address development aspirations should be benchmarked with goals and mainstreamed with international institutions and industry involvement. Peru said historic fishing practices should not be the only criterion for determining fishing quotas, and urged equitable participation for all states.

The Pew Environment Group, speaking also on behalf of NRDC, highlighted recommendations in UNEP's recent "green economy" report on ending subsidies that promote overfishing and IUU fishing. Argentina supported eliminating subsidies in the context of the UNFSA, and said market measures must conform to World Trade Organization (WTO) rules. WWF noted that even though discussions on subsidies currently discussed at the WTO were aimed at assisting developing countries to participate equally in fisheries, caution was required in considering how these subsidies would affect conservation. Mexico called for a recommendation on assisting developing nations' market access.

Solomon Islands called for assistance to SIDS on: combating IUU fishing; long-term management of stocks; high seas inspections; and VMS. The Republic of Korea said limitations on institutional and technical capacity restrict the ability of developing states to collect and report fisheries data. Seychelles urged more support for states affected by piracy in the Western Indian Ocean, which restricts participation in high sea fisheries. The International MCS Network reaffirmed its commitment in assisting developing countries and RFMOs implement the recommendations of this meeting.

OUTCOME OF THE CONFERENCE: On Thursday morning, President Balton distributed a draft outcome document. In a plenary session, he explained that the draft tried to reflect the points and proposals delegates had made over the previous three days. He indicated that the document contained a short preamble and four substantive sections based on the four clusters that had been discussed during the resumed Review Conference. It also contained a final section on how the UNFSA process should move forward, including whether the Review Conference should resume at a later date.

Delegates made initial comments in plenary on Thursday morning, with several endorsing the draft as a good basis for further discussion. They then adjourned to a drafting group setting for a section-by-section and line-by-line negotiation of the text. After lengthy negotiations from 3:00-9:30 pm on Thursday and 9:00 am until 1:45 pm on Friday, followed by a final discussion in plenary, delegates concluded their work and adopted the outcome document late Friday afternoon.

The following sets out the main areas of discussion for each section, and the key agreements reached.

Preamble: While participants spent some time finessing the preamble, no particularly contentious issues emerged.

Outcome: The preamble contains five preambular paragraphs that, *inter alia*, reaffirm the recommendations of the 2006 Review Conference. They further state that the application of the precautionary approach, based on best available scientific evidence, is key to the recovery and long-term conservation and sustainable use of straddling and highly migratory fish stocks.

Conservation and management of stocks: This section required more time to negotiate than any other, with delegates raising a range of different suggestions and engaging in lengthy discussions on almost every paragraph. The key points

of contention arose related to text on “positive and negative incentives,” the ecosystem approach, marine protected areas, discrete stocks, sharks, precautionary reference points for stocks, and elimination of subsidies.

Regarding text on “positive and negative incentives” to encourage the submission of fisheries data, several speakers asked for a clarification of this term. The EU said the text may need to be strengthened and suggested referring to “sanctions” rather than “negative incentives.” The US also supported stronger language on non-compliance. However, China opposed sanctioning states that fail to report such data, arguing that in many cases it is due to lack of capacity. India supported deleting the word “negative.” Mexico supported the original text referring to “positive and negative incentives.” Argentina pointed to the lack of clarity in the text about “who is supposed to submit the data” and added “members of RFMOs.” Norway suggested deleting both “positive” and “negative.” New Zealand, supported by Peru but opposed by India, proposed language supporting “action against persistent non-compliance.” After extensive discussions, delegates agreed to Norway’s suggestion to remove reference to both “positive” and “negative” in the context of incentives to promote compliance. They also included text on taking “steps to address persistent failure” to fulfill data obligations.

On text supporting the ecosystem approach, Argentina opposed reference to associated and dependent species, pointing out that UNFSA’s mandate concerns only straddling and highly migratory fish stocks. She also proposed deleting reference to vulnerable habitats on the grounds that the UN General Assembly is addressing the issue of VMEs. However, several speakers, including New Zealand and the US, preferred to keep this issue in the text. The US favored referring to associated and dependent species and vulnerable habitats, as it conforms to the ecosystem approach. Canada suggested replacing “vulnerable habitats” with VMEs and using the language of UN General Assembly resolution 61/105. However, Argentina opposed this, and in light of this opposition, the reference to either vulnerable habitats or VMEs was ultimately not included in the final text. Finally, India’s proposal to delete “ecosystem-based fisheries management” and replace it with “ecosystem approach” was eventually accepted by the group.

Text referencing “marine protected areas” was ultimately removed from the document. Although this language was supported by the EU and Marshall Islands, speaking for parties to the Nauru Agreement, others raised various objections: Argentina argued that marine protected areas were being considered in the General Assembly; Iceland and the Russian Federation said the concept as articulated in the text was broader than just fish stocks; Mexico said it needed further clarification; and Norway felt the language added nothing to previous agreements. As a result, the reference was deleted from the document.

On text focusing on sharks, the EU, supported by China, did not support requirements for sharks to be landed with their “fins naturally attached,” noting that separation should be permitted as long as the shark carcass remains on board the vessel and is subject to strict monitoring. The US, supported by Brazil, Costa Rica, Palau, Australia and Argentina, said the requirement to have the fins attached can help with enforcement and data collection. After considerable discussion, the group agreed to compromise text that accommodated both the EU’s position

and the position of others, stating that sharks should be “landed with their fins naturally attached or through different means that are equally effective and enforceable.” With regard to language dealing with the enforcement of existing shark finning prohibitions, Canada proposed replacing “prohibition” with “measures to reduce or combat.” However, this was not accepted by other delegations.

On the precautionary approach, Chile suggested that in the absence of information for determining specific reference points for fish stocks, the precautionary approach should be applied. The EU said referring simply to Annex II of UNFSA (which refers to precautionary reference points) would suffice, and suggested adding restoration of stocks to levels that can produce “maximum sustainable yield.” The US opposed the inclusion of maximum sustainable yield, as this is a minimum standard for reference points under Annex II. Delegates agreed with the US position, and the reference to maximum sustainable yield was not included.

On text addressing fisheries-related subsidies, Mexico, supported by Ecuador, suggested language on “special and differentiated treatment for developing countries.” However, the US said this could imply that subsidies related to IUU fishing are acceptable, and instead suggested taking language from the 2006 Review Conference recommendations. Argentina suggested reference to the efforts undertaken through the WTO. After some discussion, delegates agreed to text highlighting the need to eliminate subsidies while also completing efforts undertaken in the WTO, “taking into account the importance of the fisheries sector to developing countries.”

Outcome: On the conservation and management of stocks, the outcome document makes a series of recommendations for states and for regional economic integration organizations, individually or through RFMOs, including recommendations to:

- comply with their obligations as members or cooperating non-members of RFMOs to submit fisheries data;
- create incentives to promote compliance with, and take steps to address persistent failure to fulfill, such obligations;
- strengthen “implementation of an ecosystem approach” in support of fisheries management and the preparation of stock assessments to “conserve and manage associated and dependent species and their habitats”;
- strengthen, on the basis of best science available, enforcement of existing prohibitions on shark finning, including through the requirement that “sharks be landed with their fins naturally attached or through different means that are equally effective and enforceable”; and
- apply Annex II of the UNFSA and establish “reference points for specific stocks and provisional reference points when information for a fishery is poor or absent in accordance with the precautionary approach.”

International cooperation and non-members: Much of the discussion on this section focused on RFMOs. With regard to text on modernizing the mandates of RFMOs and RFMAs, Brazil added language on the need for this to reflect the aspirations of developing states, particularly least developed countries and SIDS.

Text requesting RFMOs to undertake independent performance reviews was a particular focus, especially with respect to the frequency of these reviews. Originally, the draft text proposed reviews every five years, as had been suggested

by the US earlier in the week. However, in the drafting group, Chile and others argued that it was too much like a mandate for RFMOs/RFMAs. Ultimately, delegates agreed to compromise text proposed by the US whereby reviews will occur “on a regular basis, for example at least every five years.” Regarding text on the transparency of independent reviews of RFMOs, Norway added that the outcomes should be made publicly available.

There was also discussion on text supporting strengthened cooperation among RFMOs/RFMAs over issues such as mitigating and managing by-catch, applying the ecosystems approach and implementing monitoring, control and surveillance tools. Argentina proposed amending the text to reflect that such cooperation should be between member states of RFMOs/RFMAs, rather than between the RFMOs/RFMAs themselves. However, others disagreed, with New Zealand, Australia and the EU noting the need for RFMOs/RFMAs to collaborate and be accountable as institutions. Given this opposition to changing the text, the emphasis on cooperation between the actual RFMOs/RFMAs was retained.

Outcome: The text on International Cooperation and Non-Members puts forth the modernization of the mandates of RFMOs/RFMAs to reflect explicit provisions for the use of modern approaches to fisheries conservation and management and to strengthen efforts to agree on participatory rights of RFMO members, giving due regard to the aspirations of developing states. It encourages the early entry into force of revised RFMO/RFMA agreements and requests them to undertake performance reviews by 2012 and then on a regular basis after that, suggesting five years as a possible interval. RFMOs/RFMAs are invited to conduct joint meetings to exchange views on key issues; facilitate a harmonized approach to dealing with issues like mitigating and managing by-catch; and to share best practices where appropriate.

Monitoring, control and surveillance (MCS), and compliance and enforcement: Under this section, delegates focused on compliance by members with RFMO measures, ratification of the FAO Agreement on Port State Measures, the responsibilities of flag states, countries controlling the activities of their nationals, transshipment at sea, and the International MCS network.

On the FAO Agreement on Port State Measures, Norway, India, Panama, Mexico, Chile and Canada questioned language that would “urge” states to join. The group agreed to a suggestion from the US to adopt language from General Assembly resolution 64/72 that would instead “encourage” countries to join.

On text supporting CDS and other market-related measures to prevent illegally harvested fish or fish products from entering the market, Brazil said it was problematic, since such action does not apply to management agencies. However, New Zealand argued that legal enforcement agencies could act on this, and text on this topic was ultimately retained.

On the responsibilities of flag states, Canada proposed expanding the text to include the outcomes of an expert workshop held in Vancouver, Canada in 2008. However, India, Brazil and Solomon Islands opposed this. After further discussion, delegates agreed to President Balton’s proposal to include part of Canada’s text, which states that criteria for

assessing flag states’ performance are to be developed through FAO, including through a technical consultation to be held by 2011.

On control of fishing activities of nationals, the Russian Federation, EU and New Zealand supported inserting text that nationals of one country using another country’s flag would not escape notice. However, Argentina felt that this text could cause confusion with the paragraph on flag states’ responsibilities. Ultimately, delegates agreed to include text on countries controlling the fishing activities of their nationals where they are undermining international law, “to the extent possible.”

Participants also spent some time working on a paragraph dealing with transshipment at sea (that is, the transference of goods from one ship to another before landing). Chile sought to add language on independent on-board observers, limitation of transshipment to countries that are members of RFMOs, and the need for transshipment to follow RFMO procedures. Solomon Islands said other measures in addition to on-board observers should be included, while the EU said Chile’s proposal conflicted with WTO rules on fair trade. Delegates finally agreed to text that would increase the coverage of independent on-board observers and through “other equally effective means.”

On text urging countries to join the International MCS Network, the EU suggested deleting this proposal, stating that he was yet to be convinced of the Network’s value and the recommendation to join and fund it. However, the US supported its value to members, and delegates agreed to compromise text that countries should “consider” joining and providing funding.

Outcome: This section calls for annual assessments of the compliance of RFMO members. It encourages states to join the FAO Agreement on Port State Measures, supports measures to prevent illegally harvested fish or fish products from entering into commerce, and outlines the need for states to control the fishing activities of their nationals. It supports expediting efforts through the FAO, in cooperation with International Maritime Organization (IMO), to create a unique vessel identifier, as well as strengthening of measures to control transshipment activities.

Developing states and non-parties: Several paragraphs were discussed under this cluster, including capacity building for developing countries to participate in high seas fisheries, the contribution of the Assistance Fund under Part VII of the UNFSA, and other funding mechanisms, including through RFMOs. Some new paragraphs were also proposed.

On capacity building of developing states for participation in high seas fisheries, Samoa, supported by Argentina, provided text clarifying that assistance was for development of states’ own fisheries and for improved market access.

Outcome: The outcome document calls for capacity building for developing states to facilitate greater participation in high sea fisheries for straddling stocks and highly migratory stocks. It supports capacity building for assistance in implementation of the UNFSA, contributions to the Assistance Fund and to other mechanisms to assist developing states, and the establishment of mechanisms through RFMOs. It also highlights the need to avoid adverse impacts on, and ensure access to, subsistence, artisanal fishers and women fishworkers, as well as indigenous peoples in developing states, particularly SIDS. Finally, it calls on countries to become parties to the UNFSA.

Dissemination of the report and further reviews: On Friday, delegates considered the follow-up process in plenary. President Balton recalled that the Review Conference had been suspended in 2006, leaving open the option of resuming it later. Noting that there was both an informal process (ICSP) and the formal Review Conference, he asked for input on recommendations for whether to retain either or both of these processes. He also asked for input on the frequency of any future process.

Many participants spoke, expressing a variety of views on the most suitable format for further discussions. They all agreed on the value of maintaining some mechanism for continuing to review implementation of the UNFSA. Several also endorsed UN Headquarters in New York as the most appropriate venue for future discussions.

New Zealand favored suspending the Review Conference so it could meet again in the future at an appropriate time. Norway was less convinced that the formality of the Review Conference added value and inclined towards the ICSP as a more flexible format. Brazil also favored the ICSP process as opposed to resuming the Review Conference, noting that we should avoid a “plethora of meetings.”

Peru highlighted the “Lima Declaration” adopted on 5 May 2010 by Member Countries of the Standing Committee of the Permanent Commission of the South Pacific, the Latin American Fisheries Development Organization and the Organization of Central American Fisheries and Aquaculture Sector. He drew attention to the final paragraph of the Lima Declaration, which proposes that the resumed Review Conference should take place again in four more years. He further stressed that the fisheries sector is dynamic and subject to frequent change, meaning that an ongoing process is important. Chile, Panama, Mozambique, Mexico and several other countries supported this approach.

Canada noted that the Commission on Sustainable Development’s 2014-2015 sessions will include a focus on marine resources, oceans and seas. He suggested that a resumed Review Conference could take place after this so it can review the outcomes from this cycle.

Greenpeace, speaking for over 60 NGOs, including the Deep Sea Conservation Coalition, WWF and the Pew Environment Group, stressed that the world’s oceans are not improving, and said it was critical to strengthen implementation. He preferred resuming the Review Conference in 2-3 years.

Noting the various differences of opinion, the US proposed a compromise text that would retain the ICSP process and also leave the way open for a resumed Review Conference “not earlier than 2015.” Delegates agreed to this compromise.

They also accepted a suggestion by India to including text indicating that a resumed Review Conference should include in its mandate UNFSA Article 36 (2), which deals with reviewing and addressing the “adequacy of the provisions of this Agreement.” India made this proposal on the grounds that the focus of the current meeting had primarily been on implementation of the Agreement

Japan and others suggested that the UN General Assembly could also consider the focus of future ICSPs.

Outcome: The final section of the outcome document requests the Review Conference President to transmit the report of the meeting to the secretariats of all RFMOs, the General Assembly, IMO, FAO and other relevant organizations. It also agrees to

continue the ICSPs and keep the UNFSA under review through the resumption of the Review Conference at a date not earlier than 2015.

CLOSING PLENARY

On Friday afternoon, delegates convened for the closing plenary. The conference adopted the report of the credentials committee (A/CONF.210/2010/5). The FAO then presented the report on the status of the Assistance Fund for developing states parties in implementing the UNFSA. He underscored the low current balance of approximately US\$45,000, thanked Norway for its recent pledge of US\$100,000, and encouraged other contributions. Participants took note of the report (A/CONF.210/2010/2).

Following this, UNDOALOS Director Serguei Tarassenko briefed delegates on the Hamilton Shirley Amerasinghe Fellowship on ocean law and on plans to mark the second World Oceans Day on 8 June 2010.

President Balton then explained the process for finalizing the report of the conference. He explained that it will have two main parts. The first part will be a factual description of events, with a draft text to be posted on the Secretariat’s website on 30 June 2010 and a deadline for comments of 16 July. He further explained that the second part of the report will be the negotiated outcome document. Delegates adopted the report as proposed by President Balton.

Argentina expressed disappointment that the mandate to examine the provisions of the UNFSA (Article 36, paragraph 2) had not been addressed. She also registered her disappointment at the way non-parties’ proposals had been addressed. Finally, she stated that she could not associate her country with the recommendations adopted at this meeting. Mexico and Ecuador joined Argentina in expressing regret that there had been no analysis of the UNFSA provisions.

Norway expressed satisfaction with the meeting, which he said had been well run and had achieved very good results. He looked forward to continuing work on implementing the UNFSA in the future.

New Zealand agreed with Norway and said his one regret was that too much time had been spent on legal issues and not enough on substantive discussions on the realities in global fisheries. He thanked President Balton for successfully navigating the group through a difficult process.

In his closing remarks, President Balton reflected on a successful week. He expressed his satisfaction that the process had been open and inclusive, with all participants making meaningful inputs. He concluded that this had been a good outcome that will have an impact beyond this meeting. He noted that the “tentacles” of the UNFSA process have spread to all aspects of fisheries, not only to highly migratory and straddling fish stocks, but to related species and other bodies. Acknowledging that there is much work to be done on global fisheries, he expressed the hope that by working together “we can achieve something for those who depend on it.” He declared the conference suspended at 6:02 pm.

A BRIEF ANALYSIS OF THE RESUMED REVIEW CONFERENCE

PLENTY MORE FISH IN THE SEA?

Global fisheries are in crisis, with an estimated 80% either fully exploited or overexploited. This was the uncomfortable reality facing negotiators attending the resumed Review Conference on the UN Fish Stocks Agreement (UNFSA). Seen in this light, the 2010 Conference presented a timely opportunity to review implementation of the recommendations agreed four years earlier at the 2006 Review Conference, and to agree on new steps to strengthen implementation of the Agreement.

At the end of the week-long event, delegates duly delivered an outcome document that set out new actions in four key areas: conservation and management of fish stocks; international cooperation; the needs of developing states; monitoring, control and surveillance, and compliance and enforcement. The outcome document emerged only after long negotiations, skillfully chaired by Amb. David Balton. The outcome was described by many relieved participants as “focused” and “targeted”. However, some left the meeting feeling that although there were breakthroughs on such issues as sharks, flag states’ responsibilities and deep-sea fisheries, the level of ambition overall had not been sufficient to address the many daunting challenges that lie ahead.

This brief analysis reflects on progress since 2006 and areas in which the 2010 conference built constructively on the 2006 recommendations and added new issues that have emerged in recent years. It identifies areas where progress was less satisfactory and where significant challenges remain, and reflects on the future of the UNFSA process.

A GOOD HAUL: BUILDING ON THE 2006 CONFERENCE

On the opening day of the resumed Review Conference, many delegates were congratulating each other on the increase in the number of parties to the UNFSA. In the four years since 2006, 20 new parties have jumped on board the Agreement, bringing total membership to 77. This was certainly grounds for optimism.

Another change since 2006 that pleased many participants at the 2010 conference was the creation of new regional fisheries management organizations (RFMOs), and steps taken by several existing RFMOs to modernize their focus and activities. Nevertheless, the US and many others were clearly less than satisfied with the overall progress made by RFMOs on implementing sufficient measures for the sustainable conservation and management of fish stocks. The US, in particular, arrived armed with recommendations on undertaking and implementing more performance reviews, and promoting more collaboration among RFMOs (particularly those dealing with sharks).

While such an emphasis on RFMO improvement was welcomed by many, some delegates pointed out that RFMOs can ultimately achieve only as much as member states allow. If some RFMOs are falling short of what is needed, they asked, then shouldn’t we blame member states, rather than the RFMOs themselves? As a consequence, there was a strong focus in the 2010 outcome document on states’ obligations to follow

scientific advice, since the total allowable catches set (by member states) for RFMOs are often much higher than those recommended by scientists.

Another issue from 2006 that reemerged in 2010 was the precautionary approach. However, this time the focus was on applying a precautionary approach to “stock reference points.” These reference points are essentially an estimated value, based on scientific evidence, which corresponds to the state of the resource and of the fishery and is used for fisheries management. The US and Australia sought text in the outcome document that would apply the precautionary approach in this field. While the EU initially preferred referring to a more liberal “maximum sustainable yield,” they were persuaded of the merits of a more conservative approach to limiting fishing levels. As a result, the 2010 outcome document clearly reinforces delegates’ commitments to the precautionary and ecosystem approaches.

One area that received less attention at the 2010 conference was the need to develop legally-binding port state measures to combat illegal, unreported and unregulated (IUU) fishing. The reason for this relative lack of focus was that much progress has already been made since 2006, with growing support for the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing.

Instead, the 2010 conference shifted the spotlight onto flag states, with participants rallying around a proposal to develop criteria for assessing the flag states’ performance and to take “steps to address persistent failure to carry out those responsibilities.” If this political commitment is put into action, it will represent a significant step towards the reduction of IUU fishing.

Another major focus in 2010 was shark fishing. Many delegates agreed that the practice of shark finning, where fins are removed while the shark is still alive and the body is thrown back to sea, is “wasteful, cruel and unsustainable.” The final text includes a recommendation that sharks should be landed with their fins naturally attached. Even though “other equally effective different means” are permitted, the recommendation still represents progress since 2006, where shark finning was not mentioned.

Finally, progress was also made in relation to deep-sea fisheries, with adoption of an EU proposal on establishing long-term conservation and management measures in accordance with the 2008 FAO International Deep-Sea Fisheries Guidelines on Deep-Sea Fisheries in the High Seas. This strengthens the UNFSA’s principle of promoting the protection of habitats of special concern.

A DROP IN THE OCEAN?

Notwithstanding these advances, many delegates left the resumed Review Conference acknowledging that much more needs to be done to rebuild the overfished and depleted fisheries covered by the UNFSA. While participants reaffirmed that UNFSA is the right forum to address these issues, the lack of state compliance with the UNFSA’s provisions still constitutes an impediment to the recovery of such stocks, as well as associated and dependent species and habitats of special concern.

One issue that left many observers and parties disappointed was the lack of progress on data reporting—a critical component in monitoring and compliance efforts. Attempts to build on the 2006 recommendations (which simply acknowledged

states' obligations on reporting catch data) were met with resistance, with several delegations preferring to focus on "positive incentives" to encourage data reporting, rather than on penalties or sanctions for states that consistently fail to meet their obligations. Ultimately, strong opposition by a handful of delegates resulted in watered down text suggesting that states "take steps to address persistent failure to fulfill [their]... obligations".

Efforts by the EU and others to promote networks of marine protected areas (MPAs) were also frustrated, with several parties and non-parties raising a variety of objections, including that the use of MPAs for conservation were being addressed in other bodies, or that the reference to the Johannesburg Plan of Implementation in the draft proposal was too broad for this forum. Although reference to marine protected areas remains in the 2006 recommendations (which remain active), the fact that such references were removed from the 2010 outcome arguably represents a step backwards for supporters of this approach.

LOOKING AHEAD: UNCHARTED WATERS

As negotiations drew to a close, conflicting views between parties and non-parties to the Agreement became evident. While non-parties, such as Argentina and Mexico, were clearly willing to participate in the process, they felt that the Review Conference is not conforming to its mandate, as set out in Article 36 (2) of the Fish Stocks Agreement. This article states that the Review Conference "shall review and assess the adequacy of the provisions" of the UNFSA itself. By contrast, most parties are (perhaps naturally) more interested in reviewing implementation of the UNFSA's provisions and the recommendations of the 2006 Review Conference, and have no wish to renegotiate the text of a treaty they have already ratified. Frustrated with the lack of focused discussion on Article 36 (2) during proceedings, Argentina indicated in the closing plenary that it did not wish to be formally associated with the 2010 outcome. Looking ahead, it remains to be seen whether this discord will create a stumbling block in the future success of the Agreement.

The future of the review process of the UNFSA was also the subject of much debate. While everyone agreed that there should be some forum for continuing discussions on the Agreement and its implementation, there were clearly different views on whether to continue with both the (formal) Review Conference and the Informal Consultations of States Parties (ICSPs). Some participants clearly felt that continuing with both a formal and an informal process was unnecessary, and several developing countries added their preference for avoiding a multiplicity of meetings and settings. While Brazil and some others seemed to feel that only the ICSP was needed and that the Review Conference should come to an end, Peru, Chile and various other countries argued that the formal process should continue. Behind the scenes, a few countries fretted that ending the formal process would send the wrong signal about the importance parties attach to the UNFSA, or that it was somehow being "downgraded." After a long discussion during the closing plenary, delegates agreed to keep the Review Conference process alive, although it will not resume until 2015 at the earliest. In addition, they also maintained the ICSP process, while leaving open the question of when it would meet, and how often. Given that the ICSP has met annually in the past, it seems likely that this may continue, and the issue will be taken up by the General Assembly later in

2010. While this outcome seemed generally acceptable, some observers felt that it would have been useful to have more precise language on the timing of future meetings, particularly the Review Conference, which according to the outcome document can happen in 2015 or any time thereafter. As one delegate pointed out, conservation and management measures for fisheries are part of a dynamic process, which require policies to evolve quickly as new issues emerge. Given that the formal process will not meet for at least five years and perhaps longer, it will be up to the ICSP to provide this type of strong response in the short term. Whether it can do so remains to be seen.

ALL AT SEA

As delegates left New York, many seemed satisfied that the resumed Review Conference had delivered an outcome document with focused recommendations and agreement on a future process, even if this process remains a little unclear. They could point to progress on issues such as shark finning, RFMOs' performance and collaboration, flag states' responsibilities, and a variety of other issues. However, with such immense challenges facing global fisheries, it remains unclear whether the level of ambition overall has been sufficient to address the many daunting challenges that lie ahead. As one delegate pointed out as he was leaving the meeting, "We have to see whether these outcomes make a material difference to what's actually happening in our seas." Only if it delivers material improvements in the condition of the fish stocks in question can the UNFSA truly be judged a success.

UPCOMING MEETINGS

JOINT TUNA RFMOS MEETING OF EXPERTS TO SHARE BEST PRACTICES ON THE PROVISION OF SCIENTIFIC ADVICE: This meeting of the Regional Fisheries Management Organizations addressing tuna issues is taking place from 31 May to 2 June 2010, in Barcelona, Spain. For more information, contact: ICCAT Secretariat; tel: +34-914-165-600; fax: +34-914-152-612; e-mail: info@iccat.int; internet: <http://www.iccat.int/Documents/Meetings/Announce/2010-RFMO/2010-RFMO-1.htm>

JOINT TUNA RFMOS WORKSHOP ON IMPROVEMENT, HARMONIZATION AND COMPATIBILITY OF MONITORING, CONTROL AND SURVEILLANCE MEASURES, INCLUDING MONITORING CATCHES FROM CATCHING VESSELS TO MARKETS: This event is taking place from 3-5 June 2010, in Barcelona, Spain. For more information, contact: ICCAT Secretariat; tel: +34-914-165-600; fax: +34-914-152-612; e-mail: info@iccat.int; internet: <http://www.iccat.int/Documents/Meetings/Announce/2010-RFMO/2010-RFMO-2.htm>

SHARKS INTERNATIONAL CONFERENCE: This event, which is taking place from 6-11 June 2010 in Cairns, Australia, aims to provide a forum to share ideas, update information and report on the progress of the most recent scientific studies in the field of shark and ray ecology. For more information, contact: Sharks International Secretariat; e-mail: sharksinternational@gmail.com; internet: <http://www.sharksinternational.org>

ELEVENTH MEETING OF THE INFORMAL CONSULTATIVE PROCESS ON OCEANS AND THE LAW OF THE SEA: This meeting, which will focus on capacity building, is taking place from 21-25 June 2010 at UN Headquarters in New York. For more information, contact: ICP Secretariat, DOALOS; tel: +1-212-963-3969; fax: +1-212-963-5847; e-mail: doalos@un.org; internet: http://www.un.org/Depts/los/consultative_process/consultative_process.htm

IWC 62: This year's meeting of the International Whaling Commission (IWC) will convene from 21-25 June 2010 in Agadir, Morocco. For more information, contact: IWC Secretariat, tel: +44-1223-233-971; fax: +44-1223-232-876; e-mail: secretariat@iwcoffice.org; internet: <http://iwcoffice.org/meetings/meeting2010.htm>

WORKSHOP ON TUNA RFMO MANAGEMENT ISSUES RELATING TO BY-CATCH : This joint meeting of the RFMOs addressing tuna issues will take place from 23-25 June 2010 in Brisbane, Australia. For more information, contact: ICCAT Secretariat; tel: +34-914-165-600; fax: +34-914-152-612; e-mail: info@iccat.int; internet: <http://www.tuna-org.org/RFMOsAus1.htm>

WORKSHOP ON RFMOS MANAGEMENT OF TUNA FISHERIES, WITH AN EMPHASIS ON REDUCING OVERCAPACITY: This meeting of the RFMOs addressing tuna issues will take place from 29 June to 1 July 2010, in Brisbane, Australia. For more information, contact: ICCAT Secretariat; tel: +34-914-165-600; fax: +34-914-152-612; e-mail: info@iccat.int; internet: <http://www.tuna-org.org/RFMOsAus2.htm>

AD HOC WORKING GROUP OF THE WHOLE TO RECOMMEND A COURSE OF ACTION TO THE GENERAL ASSEMBLY ON THE REGULAR PROCESS FOR GLOBAL REPORTING AND ASSESSMENT OF THE STATE OF THE MARINE ENVIRONMENT, INCLUDING SOCIO-ECONOMIC ASPECTS: This meeting is taking place from 30 August to 3 September 2010 at UN Headquarters in New York. For more information, contact: DOALOS Secretariat; tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: doalos@un.org; internet: http://www.un.org/Depts/los/global_reporting/global_reporting.htm

NORTH-EAST ATLANTIC ENVIRONMENT SUMMIT: This Summit is taking place from 20-24 September 2010 in Bergen, Norway. It is a ministerial meeting of the Commission of the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR). For more information, contact: OSPAR Commission; tel: +44-20-7430-5200; fax: +44-20-7430-5225; e-mail: secretariat@ospar.org; internet: <http://www.ospar.org/>

GLOBAL CONFERENCE ON AQUACULTURE 2010: This event is being held from 22-25 September 2010 in Phuket, Thailand. The conference is co-sponsored by the Fisheries and Aquaculture Department of the UN Food and Agriculture Organization (FAO), the Network of Aquaculture Centres in Asia and the Pacific, and the Department of Fisheries of the Government of Thailand. It is organized around the theme "Farming the Waters for People and Food." For more information, contact: Conference Secretariat; tel: +66-2-561-1728; fax: +66-2-561-1727; e-mail: aqua-conference2010@enaca.org; internet: <http://www.aqua-conference2010.org>

INFORMAL CONSULTATIONS ON DRAFT RESOLUTIONS ON SUSTAINABLE FISHERIES UNDER THE SIXTY-FIFTH SESSION OF THE GENERAL ASSEMBLY: Informal consultations on draft resolutions under the General Assembly's agenda item on "Oceans and the Law of the Sea" are tentatively scheduled to take place on several dates in September, October and November 2010 at UN Headquarters in New York. With regard to sustainable fisheries and the UNFSA, consultations have been tentatively scheduled to run from 14-17 September and from 15-23 November. These consultations will follow up on the recommendations from the resumed Review Conference. They are expected to result in the adoption of one or more resolutions by the General Assembly in December 2010. For more information, contact: DOALOS; tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: doalos@un.org; internet: http://www.un.org/Depts/los/reference_files/calendar_of_meetings.htm

GLOSSARY

CDS	Catch documentation scheme
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
EEZ	Exclusive Economic Zone
FAO	Food and Agriculture Organization of the United Nations
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICSP	Informal Consultations of States Parties to the UN Fish Stocks Agreement
IMO	International Maritime Organization
IOTC	Indian Ocean Tuna Commission
IUU	Illegal, unreported and unregulated (fishing)
MCS	Monitoring, control and surveillance
NEAFC	North East Atlantic Fisheries Commission
RFMA	Regional fisheries management arrangement
RFMO	Regional fisheries management organization
SIDS	Small island developing states
SPRFMO	South Pacific Regional Fisheries Management Organization
UNCLOS	United Nations Convention on the Law of the Sea
UNFSA	UN Fish Stocks Agreement ("Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks")
VME	Vulnerable marine ecosystem
VMS	Vessel monitoring system
WCPFC	Western and Central Pacific Fisheries Commission