



SUMMARY OF THE NINTH ROUND OF INFORMAL CONSULTATIONS OF STATES PARTIES TO THE UN FISH STOCKS AGREEMENT: 16-17 MARCH 2010

The Ninth Round of Informal Consultations of States Parties (ICSP 9) to 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 on 16 and 17 March 2010 at UN Headquarters in New York.

ICSP 9 was convened, in accordance with General Assembly resolution 64/72 of 4 December 2009, to serve as a preparatory meeting for the resumed Review Conference on the Fish Stocks Agreement, taking place in New York from 24-28 May 2010. During the two-day meeting, participants discussed the Secretary-General's report to the resumed Review Conference (A/CONF.210/2010/1). They also considered recommendations for the resumed Review Conference, including its organization of work, draft provisional agenda, bureau, and outputs. In addition, participants discussed possible future actions and events after the resumed Review Conference.

When the meeting concluded, most participants appeared satisfied with their achievements, pointing to the general approval given to the resumed Review Conference's proposed organization of work and agenda, as well as fruitful discussions on Conference outputs and possible future actions beyond May 2010.

This Briefing Note outlines the discussions held during ICSP 9, based on the agenda.

OPENING OF ICSP 9

Serguei Tarassenko, Director, UN Division for Ocean Affairs and the Law of the Sea (UNDOALOS), opened ICSP 9 on Tuesday morning, 16 March. He observed that ICSP 9 would serve as the final preparatory meeting for the resumed Review Conference of the Fish Stocks Agreement in May 2010. He stressed links between the Fish Stocks Agreement and food

security, economic prosperity, poverty alleviation and sustainable development. He also noted that two new states—Indonesia and Nigeria—had become parties to the Fish Stocks Agreement in the past year, bringing the total to 77. Reminding parties about the Assistance Fund for developing countries, he appealed for further contributions to the Fund, which currently has a balance of about US\$61,000.

Delegates elected David Balton (US) as Chair. He reflected on recent activities in the field of international fisheries, including the Second Joint Meeting of the Tuna Regional Fisheries Management Organizations (RFMOs) in San Sebastian, Spain. He also highlighted the adoption of the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, at a meeting held in Auckland, New Zealand, in November 2009. In addition, he drew attention to recent work under the Food and Agriculture Organization (FAO) on port state measures on illegal, unreported and unregulated (IUU) fishing, and on the performance of flag states.

Regarding the focus of ICSP 9, he noted similarities to ICSP 5, which had helped prepare for the Review Conference in 2006. He reminded delegates that the 2006 Review Conference had produced a set of detailed recommendations organized into four thematic clusters: conservation and management of stocks; mechanisms for international cooperation and non-members; monitoring, control and surveillance, as well as compliance and enforcement; and developing states and non-parties. He explained that the resumed Review Conference in 2010 would serve as a continuation of the original Conference, which was suspended rather than officially closed.

Finally, he set out the specific tasks facing ICSP 9: exchanging preliminary views on the Secretary-General's report to the resumed Review Conference; considering the organization of work during the resumed Review Conference; preparing a draft provisional agenda for the Conference; discussing the composition of the Conference bureau; sharing views on possible Conference outputs; and sharing ideas on future actions after the resumed Review Conference ends on 28 May.

Parties then adopted the agenda (ICSP9/UNFSA/Inf.1) and organization of work.

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CONSIDERATION OF THE STATUS AND TRENDS OF THE FISH STOCKS IN THE SECRETARY-GENERAL'S REPORT

Chair Balton asked for delegates' preliminary views on the Secretary-General's report to the resumed Review Conference (A/CONF.210/2010/1). He noted that the new report presents a similar picture to the report prepared prior to the 2006 Review Conference, with many fish stocks, including various shark and tuna species, considered overexploited or depleted. He also explained that the report contains two main sections: one presenting an overview of the status and trends of various fish stocks, and the other assessing the extent to which the recommendations of the 2006 Review Conference have been implemented to date.

OVERVIEW OF THE STATUS AND TRENDS OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS, DISCRETE HIGH SEAS STOCKS AND NON-TARGET, ASSOCIATED AND

DEPENDENT SPECIES: Many speakers commended the Secretary-General's report, with some offering comments on recent developments and on the section of the report dealing with an overview of the "status and trends" of various fish stocks.

Palau spoke on behalf of parties to the Nauru Agreement (which includes the Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Papua New Guinea, Solomon Islands and Tuvalu). Arguing that future action be based on science and the precautionary principle, he urged an improvement in RFMO decision making and the inclusion of climate change vulnerabilities in future assessments. He also urged other countries to follow Palau and the Maldives in establishing shark sanctuaries, noting that 100 million sharks are killed annually just for their fins.

Chile and New Zealand highlighted their support for the new Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean. Chair Balton said the Convention, which will establish a Southern Pacific RFMO, is highly innovative.

The US said the Secretary-General's report is consistent with conclusions reached in recent RFMO performance reviews. While noting widespread support for the precautionary approach and ecosystem management, he noted ongoing problems with lost or discarded fishing gear, excess fishing capacity, IUU fishing, and data accuracy, adequacy and reporting

Japan discussed recent work to develop a North Pacific RFMO. While acknowledging steps to review and strengthen RFMOs, he noted a perception that some RFMOs are "ineffective" and need to improve. As a result of this view, he suggested that other fora are starting to consider the same fisheries issues. He noted that this move to use various processes to address fisheries is "forum shopping." As an example, he noted that the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is discussing the listing of North Atlantic blue fin tuna at its Conference of the Parties in Doha this week.

The European Union (EU) expressed concern at the Secretary-General's conclusion that there have been no major changes in recent years in the overall status of fish stocks. She urged more timely and reliable data, further evaluation of the effectiveness of RFMOs, and efforts to strengthen governance of RFMOs and reduce bycatch.

IUCN noted the Johannesburg Plan of Implementation's goal of restoring depleted stocks "not later than 2015" and also highlighted the "unpredictable and unfavorable" impact of climate change. Even with poor data, he said it was clear that the situation facing tuna and shark species was "grim," and urged better data and sustainable fisheries management.

The Natural Resources Defense Council (NRDC), speaking for the Deep Sea Conservation Coalition, urged regular review of RFMOs to assess progress on implementation and address new issues. He said RFMOs should make decisions based on the best available science, the precautionary principle and the ecosystem approach.

Reflecting on these discussions, Chair Balton highlighted a clear commitment to the Fish Stocks Agreement and a desire to see it implemented more effectively. He underscored comments on the number of species described in the Secretary-General's report as overexploited or depleted, and the lack of up-to-date, reliable data.

REVIEW OF THE EXTENT TO WHICH THE RECOMMENDATIONS OF THE REVIEW CONFERENCE HAVE BEEN IMPLEMENTED: Chair Balton invited comments on the second substantive section of the Secretary-General's report, which assesses the extent to which the recommendations agreed at the 2006 Review Conference have been implemented.

The US proposed further performance reviews of RFMOs, more transparency in RFMO decision making, as well as more work on the performance of flag states, improved vessel monitoring, greater coordination to combat IUU fishing, and further work on compliance issues.

WWF said the Secretary-General's report gives a balanced perspective both on what progress RFMOs have achieved and what remains to be done. He proposed an ongoing, institutionalized and independent RFMO review process focused on best practice. He also supported work on capacity building and the role of subsidies.

Japan proposed systematic efforts to increase the number of parties to the Fish Stocks Agreement, support transparency, and increase capacity building for developing states.

Chile pointed to compliance issues for flag states. He suggested giving further consideration to the subsidiary responsibilities of states whose citizens work on flags of convenience vessels.

Noting that the Secretary-General's report was based in part on responses to a questionnaire, New Zealand said it inevitably focused on what has been done, rather than what has not. He highlighted the important input of civil society in these discussions.

Argentina noted a European Community regulation referred to in the Secretary-General's report (paragraph 328), and proposed more research on whether it is in accordance with international law, including the rules of the World Trade Organization.

Reflecting on the discussions, Chair Balton noted comments on: RFMO performance reviews; monitoring, control and surveillance; flag states' performance; compliance; port states and market measures; strengthened reporting requirements and improved data; transparency in RFMO decision making; fishing over-capacity; and more assistance to developing states to build their capacity in implementing the Fish Stocks Agreement.

RECOMMENDATIONS FOR CONSIDERATION BY THE RESUMED REVIEW CONFERENCE

Participants considered several topics under this agenda item, including proposals for the resumed Review Conference's organization of work, draft provisional agenda, bureau, outputs and possible future actions.

ORGANIZATION OF WORK: Chair Balton outlined a draft plan for how the five-day resumed Review Conference might be organized. He explained that the plan proposed spending the first two days reviewing the implementation of recommendations from the 2006 Review Conference in relation to:

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

Chair Balton suggested that on the third day of the conference, delegates could focus on "means to strengthen the substance and methods of implementation of the Agreement." He added that the fourth and fifth days of the five-day meeting could be focused on finalizing the outputs of the Conference.

Delegates generally favored the organization of work outlined by Chair Bolton. In terms of the details, delegates focused on three main areas: whether to have a "broad" discussion covering all the recommendations from the 2006 Review Conference, or whether instead to focus on just a few key issues; whether a drafting committee would be used, as it was in 2006; and the rules of procedure.

Rules of procedure: Several participants raised this issue. Chair Balton clarified that, because the 2010 event is a continuation of the 2006 Review Conference, the rules of procedure that were agreed on a provisional basis in 2006 still apply. Noting that decisions were taken by consensus in 2006, he hoped and expected that the same scenario would occur in 2010. He also encouraged everyone to refresh their memories on what rules had been previously agreed.

Drafting Committee: Brazil foresaw that a drafting group could be needed. Japan, supported by Norway, said this depends on what sorts of outputs are envisaged. The US said the drafting committee in 2006 tended to parallel and to some extent repeat the plenary process. Norway recalled that the drafting group in 2006 was "the same group of people [as in plenary] meeting

in a different room under a different Chair." He suggested that a smaller group might be more desirable, or that the plenary considers a draft from the Chair, Secretariat and/or a rapporteur. Chile preferred the use of a rapporteur rather than a drafting group.

While favoring a drafting committee, the Russian Federation said it should not necessarily meet every day during the resumed Review Conference. Brazil said it might start its work on the third day, so that it could take into account discussions during the first half of the meeting. Brazil further suggested that a drafting committee could present its draft to plenary on the fourth day, so that delegates had a day or two to complete their work.

Chair Balton observed that most speakers seemed to envisage some sort of drafting group, but that it may not need to meet every day, and could perhaps convene later in the meeting, depending on an assessment of how the discussions were moving forward in the early stages. He also noted comments that any group working on draft outputs outside of plenary should distill and capture recommendations made in plenary, rather than duplicating plenary discussions.

Focus of the discussions at the resumed Review

Conference: Norway preferred a broad scope and did not support "cherry picking" some issues to the exclusion of others. The US also supported a broad discussion of how well all the 2006 recommendations have been implemented, while allowing time for discussion of any new issues. Canada, Iceland, Cuba and IUCN also favored a broad approach. China agreed that new challenges and problems have emerged in recent years, so new recommendations may emerge.

Japan preferred a focused session, rather than trying to answer every question or address every issue. He sought a discussion on the effectiveness of RFMOs and a focus on recommendations from 2006 where little progress has been made, as well as on how to further strengthen implementation of the Fish Stocks Agreement. Argentina said there may not be sufficient time for detailed discussions on all of the 2006 recommendations. The Marshall Islands said the key issues would become evident from delegates' statements during the first two days of the meeting.

Regarding specific issues that might be taken up, Norway supported further discussion on flag states and implementing RFMO reviews. Noting that more than 20 parties have joined the Fish Stocks Agreement since 2006, he suggested that membership was now less of a concern. Brazil highlighted the mandate of RFMOs with regard to compliance and enforcement, the role of other fora in addressing dwindling fish stocks, fishing capacity and the elimination of subsidies. Chile supported a focus on the obligations of flag states, and Argentina stressed capacity building.

IUCN suggested a focus on lessons from RFMO performance reviews and increased fairness and transparency in allocation of catch levels, which would encourage developing countries to join RFMOs. He supported further investigation of area-based

management tools. He also highlighted 2010 as the International Year of Biodiversity. NRDC urged transparency in RFMOs and the recent work on ocean bottom fishing.

The International Collective in Support of Fishworkers urged a focus, *inter alia*, on the needs of fishing communities, artisanal and subsistence fishworkers, and access to fish stocks by fishworkers (including women fishworkers) and indigenous communities. He also proposed a discussion on fish stocks in the context of human rights.

The Russian Federation said RFMO Secretariats should coordinate with parties prior to the resumed Review Conference to try to arrive at a common view and some shared recommendations. This could help limit the time needed for a drafting group.

Summarizing the discussions, Chair Balton noted interest both in a broad approach covering all of the 2006 recommendations, and in a more focused agenda. He suggested that both could actually happen, with a wider discussion on the first two days indicating which issues are priorities for most delegations. He suggested that on the third day this could lead into a more precise discussion on recommendations that needed more work, and on any issues that have arisen since 2006 and could be the subject of new recommendations. Following this, delegates would spend at least part of the remaining time figuring out the recommendations/outputs, probably in a drafting group or alternatively in some other format.

DRAFT PROVISIONAL AGENDA: Delegates agreed to the draft provisional agenda (A/CONF.210/2010_) based on the organization of work already discussed. Chair Balton said he would forward this to the resumed Review Conference for its consideration.

COMPOSITION OF THE BUREAU: Chair Balton clarified that the Bureau from 2006 Review Conference was still in place, since the meeting in May 2010 is simply a resumption of the earlier, suspended conference. He asked delegates if they had any information on the availability of the original Bureau, noting that he was still available as Chair. Brazil and the EU indicated that their original Bureau members were no longer available, while China said it would need to consult with its capital. Delegates asked about the procedure for filling any vacancies and the ongoing presence on the Bureau of both parties and non-parties.

Chair Balton encouraged regional groups for which there may be a vacancy to consult informally among their missions in New York and identify candidates. He also suggested that non-parties may wish to consult among themselves. He requested that a slate of candidates be ready by 24 May, so that agreement can be reached on a full Bureau on the first morning of the meeting.

CONSIDERATION OF OUTPUTS OF THE RESUMED REVIEW CONFERENCE: Chair Balton indicated that two types of outputs were envisaged: the first would be a factual record of what took place during the resumed Review Conference; and the second would be a set of agreed (negotiated) results, which may include a new set of recommendations

based on participants' assessment of how well the 2006 recommendations are being implemented, as well as any new ideas that emerge.

The US supported this proposal and favored developing a set of recommendations to continue the momentum towards stronger implementation. Brazil expressed hope that agreed results would be reached by consensus.

POSSIBLE FUTURE ACTIONS: Delegates then discussed at length possible future actions or events after the resumed Review Conference in May, including subsequent meetings of the Review Conference and of the ICSP.

While there was a general consensus that the Fish Stocks Agreement needs a mechanism for ongoing review and discussion, there were a range of views on how to achieve this. Japan asked whether the Review Conference and the ICSP could be somehow combined into one. He also noted the budgetary implications of holding too many meetings. Brazil raised legal concerns about suspending and resuming the Review Conference indefinitely, asking whether Article 36 of the Fish Stocks Agreement, which mandates a Review Conference, envisages such an arrangement. While she acknowledged that the ICSP is informal, she felt that it could perform the same functions as the Review Conference.

Japan also noted some discomfort at suspending the Review Conference indefinitely, and wondered if the General Assembly could make a decision to hold a conference in future. In response, the Secretariat said it would consult with the Office of Legal Counsel for a definitive answer.

Norway said the key question here was what the best forum may be for advancing and strengthening implementation of the Fish Stocks Agreement. He wondered whether the more formal setting of the Review Conference really had significant benefits over a process like the ICSP.

New Zealand inclined towards keeping the option of a resumed Review Conference open. He noted that participation at ICSP 9 was somewhat "sparse" and drew largely from the New York missions, whereas a more formal process might have wider participation from fisheries ministries/departments and others from capitals. He was not concerned about the legal question of suspending and resuming the conference, since parties can decide how to proceed on the Fish Stocks Agreement.

Chile also favored maintaining the Review Conference option, noting its participatory and open nature. WWF stressed the Fish Stocks Agreement as a cornerstone of international fisheries and governance. He urged against giving the appearance of downgrading the process from a formal to an informal one, as this could send the wrong message.

The US said the Review Conference gives more weight and momentum to decisions. However, he suggested that participants revisit this issue towards the end of the Review Conference in May, when the success and value of the event will be more apparent. He said that he could "live with" the juridical issues if it was clear that the Review Conference was strengthening

implementation of the Fish Stocks Agreement. The Marshall Islands urged against giving up the Review Conference option if there was not a firm and effective alternative in place.

NRDC asked whether technical panels or other bodies could be set up to inform and feed into the work of either the ICSP or Review Conference process. However, Argentina said holding too many meetings could dilute developing country participation even further.

Chair Balton detected support for reviewing implementation of the Fish Stocks Agreement on an ongoing basis. He noted that some were worried at the juridical implications of suspending and resuming the Review Conference, while others seemed less concerned. In this regard, he stressed that “we are in effect the owners of this Agreement,” and have some discretion over how to proceed. He noted comments that the ongoing value of the Review Conference would become more obvious towards the end of the resumed conference in May, and that this should probably be resolved at that time. He also added that a decision on 28 May to suspend rather than close the Review Conference does not oblige countries to meet again under this format—it simply leaves that option open.

OTHER MATTERS

Proposed revisions to the Terms of Reference of the Assistance Fund under Part VII of the Fish Stocks Agreement:

The FAO reported on three revisions proposed for the Terms of Reference governing the Assistance Fund (ICSP9/UNFSA/INF.2/Rev). He explained that these revisions were designed to: reflect current FAO practice with regard to financial assistance applications: clarify activities for which financial assistance may be provided with regards to short-term, capacity-building training schemes (which would be permitted) as opposed to long-term educational programmes (which would not); and establish financial limits on assistance (up to US\$100,000 annually for a developing state party, and up to US\$200,000 annually for a subregional or regional organization).

Samoa stressed the importance of the Assistance Fund, which enables small island developing states to participate in relevant meetings. She said the revisions would streamline the process. She also urged more contributions to the Fund from developed countries.

Several speakers, including Norway and Canada, asked for clarification on the revisions about funding limits. Canada made some editorial proposals to a paragraph on the involvement of individual developing states parties in applications from regional or subregional organizations (paragraph 7b(*bis*)). He also proposed adding the word “individually” to clarify text proposing limits on financing to individual developing states parties (paragraph 14(*ter*)).

Brazil questioned whether the ICSP had the mandate to adopt changes to the Fund’s Terms of Reference. She also expressed concern about setting funding limits, suggesting that this would not address the basic problem, which is a lack of resources for the Fund. On the ICSP’s mandate, the Secretariat indicated that

the Fund was endorsed by the General Assembly, although the Terms of Reference were developed by the ICSP. Chair Balton recalled that the ICSP had also revised the original Terms of Reference in the past. Argentina noted that the General Assembly had also endorsed the Terms of Reference.

The EU said that because the text had only been available online since the previous week, she had not had an opportunity to review it with her colleagues.

In light of these comments, Chair Balton asked if these revisions were urgent. The FAO responded that they would facilitate the administration of the Fund and help the panel of experts, but that they could be revisited later. Based on this response, Chair Balton suggested that the proposed revisions be considered at a future meeting of the ICSP.

CLOSURE OF THE SESSION

In his closing remarks on 17 March, Chair Balton recalled that he had served as Chair ever since ICSP 1 in 2002—a role he said had been an “honor and a privilege.” However, he felt that the time had come to step down as ICSP Chair. He thanked everyone for their support, and said he would be happy to work with the future Chair. He also noted that he would continue as Chair of the resumed Review Conference in May.

Brazil expressed regret that Chair Balton was stepping down from his role. She noted how important it is to have a well-managed meeting, and congratulated Chair Balton on his excellent conduct. Serguei Tarassenko, Director, UN Division for Ocean Affairs and the Law of the Sea, thanked Chair Balton on behalf of the Secretariat. Delegates then gave Balton a round of applause.

Chair Balton thanked everyone for their participation in ICSP 9 and closed the meeting at 12:34 pm.

UPCOMING MEETING

RESUMED REVIEW CONFERENCE ON THE FISH STOCKS AGREEMENT:

The resumed Review Conference will take place from 24-28 May 2010 at UN Headquarters in New York. The conference will review and assess the adequacy of the provisions of the UN Fish Stocks Agreement and, if needed, proposed ways to strengthen the substance and methods of implementation. In this respect, it will consider recommendations made during the original Review Conference that was held (and suspended) in 2006. The resumed Review Conference will also consider any new issues or problems that have emerged since 2006. For more information, contact: UNDOALOS; tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: doalos@un.org; internet: <http://www.un.org/Depts/los/>