

GREENPEACE

Greenpeace Briefing Paper

Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks

New York, 22 to 26 May 2006

The UN Fish Stocks Agreement (FSA) is the most comprehensive global agreement relating to the conservation and management of straddling and highly migratory fish stocks. Enhanced implementation, increased participation, as well as the adoption of clear and consistent binding measures to address specific concerns such as illegal, unreported and unregulated (IUU) fishing, participatory rights within regional fisheries management organisations, and management of other high seas fish stocks are all essential if the underlying intent of the Fish Stocks Agreement is to be realised.

Greenpeace is calling on States participating in the Review Conference to focus on:

- Transforming Regional Fisheries Management Organisations (RFMOs) into Regional Ecosystem Management Organisations (REMOs) so that their Articles accord with those of the Fish Stocks Agreement, with ecosystem-based management, the precautionary principle, prior environmental impact assessment, the ability to establish marine reserves, and with reformed governance: transparency and no 'opt-out' provisions;
- The development of international management guidelines and time-bound goals applicable to all REMOs;
- Managing all high seas stocks under the auspices of the UNFSA consistent with international law; and
- Combatting IUU fishing through, *inter alia*, universal coverage by real-time, tamper proof VMS systems on all high seas fishing vessels; a single centralised Monitoring, Control and Surveillance network; a single, centralised high seas fishing vessel register; clear flag-state controls on nationals and corporations and the definition of the 'genuine link' for fishing vessels; rigorous port state inspections and controls; and the development of catch and trade documentation schemes.

I. CONSERVATION AND MANAGEMENT OF STOCKS

Article 36(2) of the FSA requires States Parties to review and assess the adequacy of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in the conservation and management of straddling fish stocks and highly migratory fish stocks.

With respect to other *high seas* fish stocks (sometimes called discrete stocks¹), it must be acknowledged that there is a major gap in international oceans governance. Greenpeace shares the Secretary-General's view² that there seems to be an emerging consensus among States according to which the general principles of the Agreement should also apply to other fish stocks on the high seas, as was evidenced by the 2005 Fisheries Resolution.³ This consensus needs to be given form, and it is our view that the mandate of the FSA must be extended to cover all high seas fish stocks. Whether this is by way of an additional Annex or Protocol or some other way, it is a matter of priority that it be addressed.

The failure of FSA Parties to observe the very specific provisions (especially articles 5, 6 and 8)⁴ with respect to deep-sea fishing activities by their vessels is a case in point. Where a fishery is on high seas stocks rather than a straddling stock, States should apply the FSA *mutatis mutandis* according to the 2005 Fisheries Resolution.

II. MECHANISMS FOR INTERNATIONAL COOPERATION; NON-MEMBERS

Greenpeace does not believe that the history of the FSA's implementation by Regional Fisheries Management Organisations (RFMOs) gives any cause for optimism that it will be implemented properly in the future. RFMO actions are dependent on States, and we repeatedly see States words and actions, in failing to act to achieve consensus, sometimes even blocking consensus, and in promoting their own interests in the fisheries concerned at the expense of the marine environment as a whole.

Therefore,

- (1) RFMOs need to be fundamentally changed, to become Regional Ecosystem Management Organizations (REMOs), and shift from single-species management to precautionary ecosystem management, as is required by the FSA. They must be given the functional ability, capacity and mandate to address the broader ecological impacts of human activities on and under the oceans;
- (2) New Regional Ecosystem Management Organisations should be established wherever high seas fishing is taking place⁵;
- (3) Existing RFMOs need to be held to the Articles of the FSA, and where they are failing to implement the Agreement, they must be given a specific time-frame in which to adopt such measures, or to close off access to the fisheries under their remit; and,
- (4) Existing RFMOs must be regularly assessed by an international body, (in the current environment, the General Assembly) to determine whether they are fulfilling their mandate under the Agreement. Where they are not, action must be taken by setting time-bound deadlines for such action, or fisheries under their management must be closed.

Incorporating the UNFSA obligations and principles into the constituent instruments for the new RFMOs, including the South Pacific RFMO under negotiation, is crucial, but that is not enough. The provisions of the FSA, including those of articles 5 and 6, are applicable to States, not just RFMOs, and the obligations of States Parties are not discharged by the incorporation of wording in RFMO instruments. They must be implemented by actions of those States when fishing

themselves, and when acting to form the RFMO and when acting within the RFMO once it is formed.

The above considerations call for further developments in international governance, but in the interim, can be addressed by this Conference and the General Assembly to establish terms of reference and a timeline for a review of existing RFMOs.

III. MONITORING CONTROL AND SURVEILLANCE; COMPLIANCE AND ENFORCEMENT

States must implement the FSA principles wherever their flagged vessels and their nationals engage in any fishing activities⁶ as well as ensure stringent port-state enforcement of all high seas fishing vessels. As the High Seas Task Force has observed, making the activities of citizens abroad liable to domestic sanctions is a powerful disincentive⁷ that also sends a strong signal to other countries.⁸ As such, it is absolutely crucial that throughout this Review Conference and during the discussions over the UNGA Oceans and Fisheries Resolutions, the definition of the 'genuine' link' between a flag state and a fishing vessel must for once and for all be dealt with through a time-limited, outcome-oriented process to enable states to take legal action against flag of convenience, or other vessels that are undermining agreed conservation and management measures within RFMO areas, as well as flouting international laws across the world's oceans. Additionally, specific measures to control nationals must be adopted.

A recent Greenpeace case study highlights the destruction of deep-sea life by IUU fishing. The case study involved redfish, five IUU trawlers and the North East Atlantic Fisheries Commission (NEAFC).

Redfish: Redfish is a straddling stock that swims both inside the Icelandic EEZ and in the international waters of the North Atlantic. Redfish is among the most economically important fish stocks for Iceland.⁹ According to Icelandic authorities, the current illegal catch of redfish is two times higher (30.000 tons) than the legal quota.¹⁰ The deep-sea genus *S. mentella* is the species that is most commonly harvested in the Irminger Sea by trawlers fishing its deep waters. They are known to have a low reproductive rate. As a straddling, deep-sea species that is slow to reproduce, these stocks require a highly precautionary management approach that adheres strictly to the ecosystem approach.

Five IUU trawlers: Greenpeace has been documenting the activities of five fishing trawlers as they have fished for redfish in the Irminger Sea, over-wintered in European ports, and then returned to their old fishing grounds in the North Atlantic.

In 2005, the European Union¹¹ and NEAFC¹² blacklisted the *Okhotino* (now *Rosita*)¹³, *Ostrovets* (now *Carmen*)¹⁴, *Oyra* (now *Eva*)¹⁵, *Ostroe* (now *Juanita*)¹⁶ and *Olchan* (now *Isabella*)¹⁷ for IUU fishing in the NEAFC Area. According to the Lloyd's Vessel Registers, the abovementioned vessels are all registered to A B Bocyp Fishing,¹⁸ based in Cyprus. The vessels are operated and managed by Northern Fishers Co. (Severnaya Rybolovetskaya Kompaniya) based in Murmansk, Russia.¹⁹ A previous registered owner, Pionerskaya Ocean Fishing Marine Centre of Kaliningrad, Russia²⁰ is still listed by the Lloyds Fairplay Register as being the beneficial owner of these vessels, and is listed as the manager and operator of two of A B Bocyp's other vessels.

At the time these vessels were blacklisted, they were all flagged to Dominica, but in late 2005 all were renamed and reflagged to Georgia while overwintering in the German port of Rostock.²¹ All vessels were photographed by Greenpeace and the Icelandic Coastguard on May 12, 2006, in the Irminger Sea.

To those States which argue that RFMOs such as NEAFC should be left to regulate such fisheries we have in answer these five vessels. Iceland has reported four of the five IUU trawlers under discussion to NEAFC for illegal fishing in Icelandic waters and all for unregulated fishing in the NEAFC area. Yet they continue to fish. They spent months in Rostock in Germany, and moved on

to Poland (one vessel) and Lithuania (the other four vessels). Despite EU regulations²² which prohibit Member States from equipping IUU vessels with provisions, fuel and other services, the five vessels at issue were supplied with provisions such as packaging material to equip them for their journey in November 2005 and then again a number of times in early 2006.²³

Flagged to Georgia, which is not a NEAFC member, nor an UNFSA party, the vessels fish with impunity, destroying the rich deep-water habitats where the redfish live, decimating the stocks. The RFMO model has clearly failed in the case of these five vessels, fishing in an area where there is a long established RFMO with competence over the fishery in question.

There are some measures that would make the activities of the five vessels more difficult. The elaboration of the 'genuine link' for fishing vessels would mean they could not hide behind the Georgian flag. MCS measures, including a centralised MCS authority, would assist in co-ordination and avoid resupplying and bunkering such vessels. A prohibition on all at-sea transshipments of fish and fish products would hinder the vessels in getting their ill-gotten gains to market, as would catch and trade documentation schemes. Port State measures are valuable but have proved ineffective in this case and must be strengthened. Control on nationals would, if implemented, assist in preventing avoidance by methods such as reflagging. But that is reliant on each country implementing and enforcing appropriate legislation.

It is clear that the RFMO model has failed. A global solution, such as an implementing agreement under UNCLOS to conserve and secure marine life for generations to come is essential. Such an Agreement requires the implementation of measures such as the precautionary principle, the ecosystem approach, prior environmental impact assessment, and regular review of State and RFMO actions is needed to address a global problem such as IUU fishing.

However, this will take many years to agree and implement. A UN General Assembly moratorium on high seas bottom trawling is the only feasible short-term measure that can ensure that States meet their obligations under the Law of the Sea Agreement, the Convention on Biological Diversity, the FSA, the FAO Compliance Agreement and other instruments, to effectively conserve the marine environment.

IV. DEVELOPING STATES

Greenpeace and the Environmental Justice Foundation recently undertook a joint expedition to expose illegal fishing activities in the waters of Guinea Conakry, one of the countries with the highest level of pirate fishing worldwide. It included three weeks work in the waters of Guinea, during which time fishing activities by foreign fleets in the area were observed and monitored.

Globally, pirate fishing accounts for 20% of the total catch – worth up to US\$9 billion a year, thus being one of the main threats to marine biodiversity worldwide. In Sub Saharan Africa it accounts for US\$1 billion. It is an enormous loss to developing States.

In the course of this expedition, Greenpeace and the Environmental Justice Foundation sighted 104 fishing boats in the waters of Guinea Conakry. Preliminary analysis of our observations suggest that some 50% of the vessels observed were engaged or linked to illegal fishing activities including fishing without a license, fishing inside the 12 nautical mile zone reserved for artisanal fishermen, operating with no name or hiding their identity or linked to activities that are illegal under Guinean law, such as transshipping. We also witnessed the environmental and social impacts of pirate fishing in an area where there is no control over fishing activities.

One specific problem highlighted was the problem of at-sea transshipment. In many areas, it has been demonstrated that one of the main ways vessels are able to land illegally caught fish is by transshipping their catch at sea rather than directly offloading them in ports. This is particularly true when transshipments take place in the absence of a strict regulatory framework and in areas

where surveillance is almost non-existent, such as the waters of developing countries that do not have the means to patrol their Exclusive Economic Zone (EEZ), or on the high seas.

Despite recent Guinean legislation requiring that vessels licensed to fish either land their catch in port or transship in the port of Conakry, a number of transshipments were documented in the area. Those observations have been documented separately.

The FAO Model scheme on port control provides for states to refuse pirate vessels access to ports. This is one simple but effective measure that can be taken to address IUU fishing. But this scheme is voluntary and must be made binding.

The effect of IUU fishing on developing States gives this Conference a special emphasis on the need to take effective measures to address IUU fishing as well as to enhance capacity of developing States to implement port State control measures.

V. NON-PARTIES

Clearly measures need to be taken to increase participation in the FSA. It must be recognised that the dispute over articles 7, 21 and 22 is ongoing, and we suggest that a process be put in place to establish ongoing negotiating framework to address these concerns.

¹ See Secretary-General's Report, para. 14, noting that "it is preferred to "discrete high seas stocks" because the discreteness of such stocks is generally unknown (e.g. fish caught on distinct seamounts hundreds or thousands of kilometres apart do not necessarily belong to discrete separate biological units)."

² Secretary-General's Report to the Review Conference, para 4, citing para. 12 of resolution 60/31 of 29 November 2005, which encouraged States, as appropriate, to recognize that the general principles of the Agreement should also apply to discrete fish stocks in the high seas.

³ Resolution 60/31 of 29 November 2005, para. 12

⁴ Articles 5 and 6 contain a suite of requirements relevant to deep-sea bottom trawling. Article 5(c) requires states to apply the precautionary principle, Article 5(d) requires states to assess the impacts of fishing on species belonging to the same ecosystem or associated with or dependent upon the target stocks, Article 5(e) requires states to adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened. Article 5(f) requires states to minimise catch of non-target species, including non-fish species, and minimise impacts on associated or dependent species, in particular endangered species. Named measures specifically include, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques. Article 5(g) specifically requires States to protect biodiversity in the marine environment. Articles 5(j) and (k) require states to gather information and conduct research, and Article 5(l) requires states to implement and enforce conservation and management measures through effective monitoring, control and surveillance.

Article 6 specifically requires states to apply the precautionary approach, including in 6.3(d) adopting plans which are necessary to protect habitats of special concern. Article 6.6 states that for new or exploratory fisheries, which would undoubtedly include many deep-sea fisheries, States are required to adopt, as soon as possible, cautious conservation and management measures, including, *inter alia*, catch limits and effort limits. The failure of States to do so constitutes a breach of this Agreement, at least where such fisheries involve straddling stocks. See Duncan Currie, "Protecting the Deep Sea Under International Law: Legal Options for Addressing High Seas Bottom Trawling", October, 2004. At <http://oceans.greenpeace.org/en/documents-reports/protecting-the-deep-sea>.

⁵ Note FSA art 8(5)

⁶ Note arts 5 and 6 and art 8(2).

⁷ High Seas Task Force, "Do we need to control nationals," 9 March 2005, at <http://www.high-seas.org/documents.htm>.

⁸ Final Report of the Ministerially-led Task Force on IUU Fishing on the High Seas, *Closing the Net*, released 3 March 2006, 3, 34 at http://www.high-seas.org/docs/HSTFfinal/HSTFFINAL_web.pdf.

⁹ See “The information centre of the Icelandic Ministry of Fisheries”, <http://www.fisheries.is/stocks/redfish.htm>.

¹⁰ The legal quota was 16.000 tons in 2005. =. See newspaper article from “Fiskaren” <http://www.fiskaren.no/incoming/article100308.ece>.

¹¹ Council Regulation 1300/2005.

¹² North East Atlantic Fisheries Commission internet pages, The NEAFC IUU list B, http://www.neafc.org/measures/iuu/docs/iuu-b-list_05may-2006.pdf.

¹³ IMO no. 8522169 and call sign 4LSL.

¹⁴ IMO no. 8522030 and call sign 4LFK.

¹⁵ IMO no. 8522119 and call sign 4LPH.

¹⁶ IMO no. 8522042 and call sign 4LSM.

¹⁷ IMO no. 8422838 and call sign 4LSY.

¹⁸ AB Bocyp Fishing Ltd., Fortuna Court, 248 Arch. Makarios III Ave., CY- Limassol, Cyprus former address was Fischerweg 408, 18069 Rostock.

¹⁹ Lloyds Register Fairplay: *Sea-Web*. <https://www.sea-web.org>.

²⁰ Pionerskaya Baza Okeanicheskogo Rybolovnogo Flota (Пионерская База Океанического рыболовного флота, Pionerskiy Ocean Fishing Marine Center), 1 Portovaja Street, 238540 Pionerskiy Kaliningradskiy Oblast, Russian Federation; Tel: +7 011 5321257 or +7 01155 21257, Fax: +7 011 5321987 or +701155 22550, telex 262124, pborf@online.ru, <http://www.pborf.kaliningrad.ru>.

²¹ Both Russia and Germany (through the European Union) are parties to NEAFC and the United Nations Fish Stocks Agreement. Neither Dominica nor Georgia are parties to either.

²² Regulation EC No. 1300/2005 and EC No. 51/2006.

²³ Greenpeace has photographs to document the services afforded the vessels.