Conference on the
Governance of High Seas Fisheries
and the UN Fish Agreement
Moving from Words to Action
St. John's, Newfoundland and
Labrador
May 1 to 5, 2005

Conférence sur la
Gouvernance des pêches en haute mer
et l'Accord des Nations Unies sur les
pêches
Passons à l'action
St. John's (Terre-Neuve-et-Labrador)
du 1er au 5 mai 2005

CONFERENCE REPORT

June 1st 2005

CONFERENCE REPORT

Participants from 49 States and Regional Economic Integration Organizations, fishing entities, fisheries management organizations, industry, civil society and academic communities attended the *Conference on the Governance of High Seas Fisheries and the UN Fish Agreement*, hosted by Canada in St. John's from May 1–5, 2005 and co-chaired by Ambassador Hasjim Djalal of Indonesia and Dr. Arthur May of Canada.

The Rt. Hon. Paul Martin, Prime Minister of Canada, opened the deliberations. Participants also heard from the Honourable Geoff Regan, Canada's Minister of Fisheries and Oceans, the Hon. John Efford, Canada' s Minister of Natural Resources, the Honourable Danny Williams, Premier of Newfoundland and Labrador, and the Hon. Trevor Taylor, Newfoundland and Labrador's Minister of Fisheries.

MINISTERIAL MEETING

Concurrent with the Conference, 19 countries participated in a Ministerial Roundtable at the invitation of the Government of Canada. Ministers issued a Declaration setting out their commitment to specific actions to improve the governance of high seas fisheries, as follows:

> **We, the Ministers at the St. John's Conference on the Governance of High Seas Fisheries and the UN Fish Agreement (UNFA):**
>
> Recognizing the need to ensure the long-term conservation and sustainable use of fish stocks through the effective implementation of the obligations of States in this respect;
>
> Acknowledging that the sustainable use of fish stocks is a significant and replenishable source of healthy food for large parts of the world's population, and that continued sustainable use provides for increased food security on a global basis;
>
> Expressing concern that in many parts of the world certain fish stocks are overfished;
>
> Expressing concern with the significant adverse impacts that such overfishing has had on the state of fisheries resources and their ecosystems, and on the economies of States and coastal communities around the world that depend on these resources for their livelihood;

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Reiterating our commitment to responsible fisheries;

Recognizing that all States have the right for their nationals to engage in fishing on the high seas subject to their treaty obligations, to the rights, duties and interests of coastal States, *inter alia* in the conservation and management of straddling fish stocks and highly migratory fish stocks, to the duty of States to cooperate with each other in their conservation and management, as well as the duty of States to control the activities of vessels flying their flag, in accordance with UNCLOS[1] and UNFA[2];

Recognizing the need for conservation and management measures for straddling fish stocks and highly migratory fish stocks adopted for the high seas and those adopted for areas under national jurisdiction to be compatible, and the obligation of States fishing on the high seas and coastal States to cooperate to this end;

Recognizing that sub-regional and regional fisheries management organizations and arrangements (RFMO/As) have played a significant role with regard to the governance of high seas fisheries and are the most effective means of cooperating in the conservation and management of high seas fish stocks and that good governance and management by these RFMO/As contribute to ensuring the effective long-term conservation and sustainable use of high seas fish stocks, including curbing overfishing;

Recognizing that RFMO/As today face new challenges and responsibilities, and while the governance of some RFMO/As has been improved by incorporating the principles and provisions of newly developed international instruments and tools, including, *inter alia*, those related to ecosystem considerations in fisheries management, other RFMO/As remain to be so improved and, to that end, there is a need for political will to further strengthen and modernize RFMO/As to ensure that such challenges and responsibilities are effectively addressed;

Reaffirming the importance of universal compliance with the existing international legal framework for the governance of high seas fisheries;

Acknowledging the need to ensure that there is a genuine link between flag States and their vessels and that the responsibilities deriving therefrom are fulfilled;

Reaffirming our commitment to the implementation of the relevant parts of Agenda 21 and to the Johannesburg Plan of Implementation agreed at the World Summit on Sustainable Development in 2002 in relation to achieving sustainable fisheries;

Commending the results of the March 2005 COFI Meeting, as well as the 2005 Rome Ministerial Declaration on Illegal, Unreported and Unregulated (IUU) fishing where the desire was expressed “to move from words to action through full implementation of various international instruments for sustainable fisheries adopted or enacted in the past decades”;

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[1] United Nations Convention on the Law of the Sea of 10 December 1982.
[2] 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 of 4 December 1995.

Acknowledging the ongoing work of the High Seas Task Force in the area of IUU Fishing,

We declare that we will move from words to the following actions:

1. We urge all States that have not already done so, to become parties to UNCLOS, UNFA and the FAO Compliance Agreement[3], and call on States and entities to effectively implement all provisions of these international agreements directly and within each RFMO/A of which they are a member.

2. Ministers representing States or Regional Economic Integration Organizations (REIOs) that are parties to UNFA commit to writing to Non-parties urging them to become party to UNFA at the earliest opportunity.

3. We will implement in a timely fashion the Johannesburg Plan of Implementation agreed at the World Summit on Sustainable Development in 2002 in relation to achieving sustainable fisheries

4. We will work within RFMO/As of which the State or REIO we respectively represent is a member, to review and strengthen them, where necessary, in a manner that does not overlap or duplicate the mandate of other existing RFMO/As, to:

    A. Implement a decision-making process which:

        i) relies on the best scientific information available;

        ii) incorporates the precautionary approach;

        iii) incorporates ecosystem considerations in fisheries management with due consideration to the work of relevant scientific bodies and initiatives;

        iv) uses criteria for allocations which properly reflect the interests and needs of coastal States and developing States, including small island developing States, in whose areas of national jurisdiction the fish stocks also occur, as well as those of fishing States; and,

        v) achieves compatibility between conservation and management measures established for the high seas and those established for areas under national jurisdiction;

    B. Ensure that the decision-making processes of these RFMO/As support the conservation and sustainable use of fish stocks they manage by:

        i) strengthening or developing dispute settlement procedures to provide for the review of fisheries conservation and management decisions and of behavior

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[3] Food and Agriculture Organization Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 24 November 1993.

following opting out of such decisions that may undermine conservation and management of the fish stocks concerned;

ii) strengthening or developing procedures for the settlement of disputes in accordance with UNCLOS and UNFA;

C. Establish or strengthen the monitoring, control and surveillance (MCS) regimes of RFMO/As including as needed joint MCS systems, the dissemination of collected data as may be agreed and regular compliance review mechanisms, ensuring that the costs of MCS systems are shared in a fair and transparent manner;

D. Establish regional guidelines for States to use in establishing sanctions for non-compliance by their flag vessels and nationals that are adequate in severity to effectively secure compliance, deter further violations and deprive offenders of the benefits accruing from their illegal activities.

5. We agree that in order to prevent or eliminate overfishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources:

A. Where a RFMO/A has established a total allowable catch (TAC) and allocations, members should ensure that their fishing effort does not result in catches that exceed their fishing possibilities;

B. Where a RFMO/A has established an overall TAC, but has not yet set allocations, members and the RFMO/A should monitor catches and fishing effort to ensure that the TAC is not exceeded;

C. Where the scientific advice regarding an unregulated stock indicates that conservation and management measures are necessary, RFMO/A members should, as a matter of priority, agree on appropriate measures and, in the interim, exercise restraint with regard to their fishing effort for that stock in accordance with the precautionary approach;

D. States, REIOs and entities, individually and through RFMO/As of which they are a member, should cap and then reduce excess fishing capacity to be commensurate with the status of fish stocks;

E. States, REIOs and entities should avoid the transfer of fishing capacity to other fisheries or areas including, but not limited to those areas where fish stocks are overexploited or in a depleted condition.

6. We will work together, including within RFMO/As of which the State or REIO we respectively represent is a member, to implement measures to further mitigate by-catch, particularly of vulnerable non-target marine species such as seabirds as well

as sea turtles and to adopt measures to conserve and manage shark stocks in directed and non-directed fisheries and to minimize waste and discards, in accordance with the FAO Guidelines and International Plans of Action for these species.

7. We will work together, including within RFMO/As of which the State or REIO we respectively represent is a member, to ensure that States that fish on the high seas do not engage in unsustainable fishing practices, including those that adversely affect coastal developing States.

8. We call upon States to cooperate in establishing new RFMO/As or arrangements, where necessary, with sufficiently comprehensive mandates, to facilitate cooperation in respect of fish stocks or areas of the high seas not currently managed by any RFMO/As taking due account of the commitments made in this Declaration.

9. We call upon all States and entities fishing in areas of competence of RFMO/As but that are not a member of those RFMO/As to immediately join or agree to apply the conservation and management measures established by such RFMO/As in accordance with UNCLOS and UNFA. Efforts need also be made to allow developing States to achieve legitimate development goals pertaining to poverty alleviation and improvement of the lives of fishermen.

10. We recognize that States, REIOs or entities that are neither members of RFMO/As nor have agreed to apply their conservation and management measures shall not have access to the fisheries resources to which those measures apply and any catches of such fishery resources should be denied market access in accordance with international law.

11. We urge all States Parties and other States to work together to prepare for the UNFA Review Conference to be held in May 2006 in accordance with Article 36 of the Agreement, which will *inter alia* assess the effectiveness of the Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks, including but not limited to the functions of RFMO/As as defined in Article 10 of UNFA.

12. We will follow up on commitments made at the FAO 2005 Rome Ministerial Declaration on IUU Fishing and will work within RFMO/As to establish or strengthen measures to prevent, deter and eliminate IUU fishing and other fishing activities by States, REIOs or entities that undermine the effectiveness of the conservation and management measures of the RFMO/As.

13. We will work to address possible gaps which may include those related to:

    A. the sustainable management of discrete high seas fisheries (including deep sea fisheries),

B. the conservation and sustainable use of marine biodiversity and sensitive marine ecosystems,

C. defining the genuine link between flag states and the fishing vessels flying their flag,

D. the obligations of port States and the development and implementation of stronger port state measures in accordance with international law, and that further steps should be taken in this direction.

14. We recognize the need to assist developing States in implementing relevant agreements, instruments and tools for the conservation and management of fish stocks, including through existing funds such as the UNFA Part VII Developing States Fund.

15. We will actively seek the cooperation of other States to join us in achieving our objectives set out in this Declaration.

16. We agree that officials identify practical ways to move forward on the commitments of Ministers as set out in this Declaration.

PRESENTATIONS AND REPORTS

Participants heard from the following speakers:

The Honourable Geoff Regan, Minister of Fisheries and Oceans

The Honourable Geoff Regan welcomed participants and underscored Prime Minister Paul Martin’s welcome to the delegates and ministers from 45 nations.

"Moving from words to actions" is more than a clever tag line, said Regan—it represents the expectations of the world. Despite the international treaties and instruments developed over the past 16 years, "implementation has been agonizingly slow. There is a disconnect between what we say and what we do." Comparing the myriad policies to "a Gordian knot that defies unravelling," Regan said he believes the problem lies in implementation and enforcement. Regional regimes need to be modernized, incorporate scientific evidence, factor in ecosystem deliberation and the precautionary approach, and be transparent. There should be zero tolerance of IUU fishing.

"If there was ever a time for leadership on global overfishing, it is now," concluded Regan. "History will determine if this is the beginning of the end of practices that decimate the ocean’s resources."

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Conference Co-Chairs

Dr. Arthur May welcomed participants to his hometown, noting that the Grand Banks supported fishers for centuries until the early 1970s, when technological advances outpaced resources. More progress in developing international law of the sea and regional fishery organizations was made from the 1960s to the 1990s than at any other time, yet this same period witnessed the degradation of one of the world's most productive marine ecosystems. "Time is running out," noted May. "The right words have been in place for a quarter of a century. We need to go from words to actions. The tragedy of the Grand Banks is the tragedy of the international commons."

Ambassador Hasjim Djalal of Indonesia reiterated Dr. May's words of welcome and noted that the mismanagement of fish resources is a serious problem aggravated by the damage that has been done to fish environments. Fish is a food resource increasingly seen as beneficial to human health at a time when destructive fishing techniques and gear, and IUU fishing are contributing to its exploitation. Education and assistance to developing countries must be part of the solution.

Compliance and Enforcement in Regional Fisheries Management Organizations (RFMOs): Rosemary Rayfuse, Australia

Rayfuse argued that enforcement—the act of compelling compliance—is necessary to ensure fulfillment of international agreements and targets. The target date of 2004 set in the International Plan of Action to Deter, Prevent, and Eliminate IUU Fishing has come and gone, and IUU fishing continues. The likelihood of meeting the 2015 target to restore depleted fish stocks seems unlikely.

The first challenge is to ensure that all high seas fish are subject to international regimes, which might require extending the mandates of existing regimes or adopting new ones. It is imperative to adopt conservation and management measures based on sound scientific data and precautions, for there is nothing to enforce in the absence of management measures. Rayfuse suggested the problem is not what flag a vessel flies, but the alacrity with which a flag state exercises its rights—open registries alone are not the problem. As IUU fishing operations become more complex, ever more ingenious and comprehensive measures are needed at the front and back ends of compliance and enforcement operations. This requires effective international cooperation and centralization, using every possible tool available. RFMOs and their contracting parties must not hold non-contracting parties to a higher standard than they hold themselves. It will be important to make the difficult political decisions and put the legal framework in place before any more fish stocks are irretrievably lost.

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Ecosystems Considerations in Fisheries Management: Scott Parsons, Canada

There is worldwide move to negotiate ecosystem considerations in fisheries management. Many international agreements in recent years stressed the need for an ecosystem approach. The UN Fish Agreement refers to the need to take ecosystem considerations into account, but, unlike the precautionary approach it does not include a specific definition or guidelines on how to do this. Many countries/entities have also endorsed ecosystem-based fisheries management, e.g., Australia, Canada and the EU. It is agreed that we are not talking about managing ecosystems. Rather, we are talking about managing human activities that are part of, or impact on, marine ecosystems.

The FAO in 2003 published technical guidelines for an ecosystem approach to fisheries (EAF). These guidelines emphasized that:

- fisheries should be managed to limit their impact on ecosystems to the extent possible;
- ecological relationships between harvested dependent and associated species should be maintained; and
- management should be compatible across jurisdictions.

Three examples illustrating how ecosystems considerations are currently being taken into account in fisheries management: CCAMLR, Gully of Alaska, and the Northeast Atlantic.

In summary, it is clear that there is a growing move to incorporate ecosystem considerations into fisheries management. This is critically important if we are to make progress in achieving more rational fisheries management. Nonetheless, there is at the moment no consensus on how best to do this. The precautionary approach which is a major advance in UNFA is integral part of an ecosystem approach.

The best way forward may be to move to an ecosystem approach incrementally, starting with more rigorous (usually more cautions) application of existing tools. While it is important to make progress on an ecosystem approach, we should be careful not to use ecosystem considerations as a crutch or excuse for failing to take painful but necessary single species decisions. It is also necessary that we move forward aggressively to address the worldwide problem of excessive fishing capacity. Unless we can reduce substantially the killing powers of the worlds fishing fleets, then it will be difficult to make real progress towards implementing an ecosystem approach to fisheries.

Fishing Aspirations and Fishing Capacity: Rebecca Metzner, FAO

The recognition of both fishing aspirations (the desire to fish and to make money doing so) and fishing capacity (the amount of fish that can be produced over a period of time by a given vessel or fleet, for a given resource condition) is key to successful fisheries management. Implicit in this is the understanding that management efforts to limit the catch will only be successful if harvesters are motivated to comply.

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Two management tools are available to fisheries managers: incentive blocking programs, and incentive adjusting measures. The former include limited entry programs, moratoria, buyback programs, and gear and vessel restrictions. These measures do not prevent over-capacity—they create incentives to increase capacity by encouraging fishers to over-invest capital to maximize revenues via catch quantities, at any cost. Incentive adjusting measures such as group fishing rights, area-based Territorial Use Rights, and individual fishing quotas, on the other hand, can be successfully used to manage capacity because they transform the fishing effort from competitive hunting to conscientious production. To be profitable within established catch limits, fishers must minimize costs. Fishers with user rights invest in the future, and align with sustainability. Despite the discomfort of applying this approach, it is the only durable and automatic self-adjusting management tool for managing capacity.

In order to apply this regime to the high seas, the open access condition of the fishery must be eliminated through binding international agreements.

Decision-making Processes of RFMOs: Ted McDorman, Canada

The challenge respecting RFMO decision-making processes is to respect state sovereignty while minimizing the scope of states to hinder the adoption of measures that science and the state of stocks require.

The trend in formal decision-making procedures for the adoption of management decisions among RFMOs is to adopt consensus; the more state-sensitive the decision, the more important is direct state consensus. The burden of explanation for using objection procedures could be placed on the objecting state, having it indicate the measures it intends to take as an alternative. Dispute settlement procedures could be used.

The trend among RFMOs is to base management decisions on science, although it is understood that scientific advice is to inform, not predetermine management measures. The challenge is to make management decisions more congruent with scientific advice.

Management decisions by the RFMO and a coastal state regarding a shared stock should not undermine one another. That said, RFMO conventions do not clearly state the meaning of "compatibility" or how it is to be implemented.

Allocation decisions are the most contentious. The challenge is to minimize state and community grievance that may lead to non-compliance. These decisions could be adopted by consensus.

New Areas and Gaps—How To Address Them: Erik Jaap Molenaar, Netherlands

The current crisis in marine capture fisheries has many causes. Geographical and substantive gaps in governance are among these.

Geographical gaps should be filled by the establishment of new RFMOs or arrangements. In the absence of a global fisheries management organization, having a body to regulate by default would be an asset.

A substantive upgrade of RFMOs to the level of UNFA is also necessary. This can be achieved through including the constitutive instruments of RFMOs and by proactive and progressive practice.

In relation to bottom-trawling on the outer continental shelves of coastal states, the latter should exercise their sovereign right to protect the living natural resources of the outer continental shelves, such as corals and sponges.

States and international organizations should act as custodians on behalf of the broader international community in filling international substantive gaps.

SETTING THE STAGE FOR THE WORKSHOPS

Workshop co-chairs Dr. Arthur May and Ambassador Hasjim Djalal welcomed participants and introduced the speakers.

The State of Global Fisheries and Ecosystems: Denzil Miller, CCAMLR

An ecosystem approach to fisheries is a possibility, but not a probability, stated Denzil Miller. He agreed with comments made the previous day by Scott Parsons who noted that ecosystem fisheries management is human management, not ecosystem management. An ecosystem approach to fisheries must balance two competing interests and conceptions: ecosystem well-being and human well-being. This involves managing human expectations and the ecosystem effects of human activities.

Available tools include conventional fisheries measures (effort, capacity, gear, and catch controls), precautionary or protection measures (setting aside marine protected areas), ecosystem management (by-catch regulation and IMAF regulation) and gear technology. CCAMLR established regulations and a monitoring program 21 years ago, recognizing that conservation and sustainable use are two sides of the same coin. Its conventions acknowledge the importance of maintaining a balance of economic well-being and human well-being, restoring depleted stocks, and accounting for anthropogenic and environmental effects.

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CCAMLR has processed through the design, data collection, interpretation, and modelling phases, and is now at the stage of developing explicit decision rules for implementation. A key element is that those decision rules are based on science.

Overall development of an ecosystem approach to fisheries is being hampered by the lack of a standard economic value system, and thus the appropriate economic assessment tools are wanting. Without such a system, “you are comparing apples to oranges,” noted Miller.

An ecosystem approach to fisheries is not new—Aboriginal communities have used it for years. It does require political as well as scientific solutions, informed participation by all concerned parties, and creativity. It is important to improve capacity to implement.

Economic Drivers of IUU Fishing: Carl-Christian Schmidt, OECD

Until recently, IUU fishing was only addressed as a legal and jurisdictional issue, not as an economic activity. Carl-Christian Schmidt noted that before this transition, the economic and social drivers of IUU fishing were not well understood. It is important to look at the expected profit, the expected benefit, the expected sanction, and the drivers of these.

FAO estimates that 30 million fishers worldwide try to make a living from fishing, and want to earn a decent wage. There is a huge demand for fish, which is bound to increase in the future; hence the price will increase. In the meantime, fines for IUU fishing are not a deterrent. In the developing world, fishers are driven into IUU fishing due to economic and social conditions. Fishers from poor countries join their crews, but the working conditions are poor. The magnitude of the problem is not empirically known, although anecdotal evidence suggests reason for serious concern. For example, estimates put the number of Patagonian toothfish taken by IUU fishing at 25% of total catch. The inability to have a more exact count underlines the fact that there is no adequate means of measuring the fisheries.

IUU fishing also results in by-catches. It also lowers prices because IUU catch is marketed at the lowest price.

The key issue is overcapacity, and the way forward is to improve domestic fishing management, which will in turn, help to improve the income of fishers. Although many suggest that improved monitoring and surveillance is a large part of the answer, Schmidt cautioned that it does come with a potential high price.

Vessel registration needs to be strengthened. Vessels move from areas where the cost of apprehension is high to areas where it is low. Some countries have traceability systems in place, and although they are not used for this purpose, it would be cost-effective to initiate. RFMOs need increased power and budgets, but this will only come if countries are willing to give away some of their power.

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Schmidt advocated opening membership of RFMOs and implementing incentive structures that are more conducive to reducing IUU fishing. He concluded with the thought that it might be time to rethink the high seas governance structure, which is part of the framework that has allowed IUU fishing to continue.

Current Fisheries Governance: Ambassador Satya Nandan, International Seabed Authority

Current fisheries governance is based primarily on the rights and duties of states prescribed in the UNCLOS (1982). The most significant part of the supplementary instruments is the 1995 United Nations Fish Stocks Agreement (UNFSA), which became law in December 2001, and has three main pillars. The first, a statement of principles and practices on which better management of fish stocks should be based, uses the precautionary approach to establish conservation and management measures. The second pillar ensures that the conservation and management measures are adhered to, and the third provides for peaceful settlement of disputes.

The first step in ensuring better implementation of UNFSA is to secure broader and more effective adherence to UNFSA. As of last month, there were 52 parties to the agreement, while the 1982 Convention has 148 parties, and the 1994 Implementation Agreement related to deep seabed mining has 121. Nandan stressed that it is “vitally important” for all parties to the 1982 Convention to become parties to UNFSA in order for there to be a seamless connection between the provisions of the Convention and the provisions of the implementing agreement.

A second problematic area is inadequate implementation at the regional level. The central role of RFMOs is fundamental to the success of UNFSA. State parties to UNFSA cannot avoid their obligation to cooperate by not becoming a member of a relevant RMFO. One critical weakness of UNFSA is that it provides no mechanism in which RFMOs (and states that fish in the area but do not join the relevant RFMO) can be held to account.

Ships flying “flags of convenience” have sought to avoid compliance with international conservation and management measures. However, Nandan said that there is reason for optimism given what has been achieved in the field of merchant shipping, particularly since the post 9/11 emphasis on maritime security. He suggested a number of measures that could help to improve the situation for the fisheries, including audit of flag states and more enforcement.

An interesting feature of UNFSA is the provision to take the special requirements of developing countries into account. Despite perceptions to the contrary, the 1982 Convention together with UNFSA does cover discrete high seas stocks as well as straddling and highly migratory stocks. However, real problems persist in relation to discrete high seas fish stocks.

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Nandan suggested that FAO should urgently develop technical guidelines under the Code of Conduct relating specifically to conservation and management measures for deep sea fish stocks, and that existing RFMOs be used to regulate deep sea fisheries on the high seas.

CONFERENCE WORKSHOPS

The Conference held five simultaneous workshops (not all participants took part in every workshop) that focused on the following five core themes:

- Ecosystem-based considerations in fisheries management, chaired by Denzil Miller
- Compliance and enforcement, chaired by Gudmundur Eiriksson
- Decision-making in Regional Fisheries Management Organizations and Arrangements (RFMO/As), chaired by Don McRae
- Balancing fishing capacity and fishing aspirations, chaired by Transform Aqorau
- New areas and gaps, chaired by Carlos Dominguez Diaz

Based on these themes, and taking into account, *inter alia*, the commitments set out in the Ministerial Declaration, participants in each workshop expressed a range of views on possible, practical ways by which States and RFMO/As might move forward to strengthen the implementation of measures to promote sustainable fisheries. Based on the reports of the Chairs of the workshops, the Co-Chairs of the Conference prepared a summary of key points of discussion in the workshops. Their summary is set out below.

WORKSHOP 1
ECOSYSTEM-BASED CONSIDERATIONS

1. The relevant components of an Ecosystem Approach to Fisheries (EAF) are:
    - identified in spatial and temporal terms;
    - needs driven;
    - inclusive of indirect and direct effects of fishing;
    - scientifically based;
    - operationally stated;
    - inclusive of all interested/affected parties; and
    - based on best practice.

The attached Annex sets out the background and general principles affecting EAF implementation.

2. The elements of EAF include:

- conventional fisheries measures;
- gear technology management;
- general ecosystem conservation;
- ecosystem impacts management;
- science;
- institutional transparency; and
- institutional and individual accountability.

This list may not be complete or fully inclusive, since there may be case-by-case differences for specific fisheries, areas or ecosystems. In addition, every category possesses associated actions ("tools"). Every tool may not be applicable to every case. Categories of such measures are identified with the associated "tools" in the Annex.

3. Building on current best practice, key actions to move EAF implementation forward are to:

- operationalize cautious approaches to new and developing fisheries;
- review and ensure that the principles addressing the need for EAF outlined in the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFA) are carried forward into the mandates of RFMO/As where appropriate;
- give necessary priority in developing EAF to account for essential human and scientific capacity as well as infrastructure needs, particularly in respect of the developing State needs;
- coordinate EAF through information exchange and coherent action, including effective RFMO/As networking and inter-regional cooperation;
- maximize cooperation between all EAF stakeholders, particularly in relation to ensuring informed decision-making on relevant matters;
- continue to promote appropriate science to facilitate objective development of EAF strategies; and
- base proactive and precautionary EAF implementation on the best scientific advice available.

By nature, EAF implementation will be a step-by-step process. It will require modification as understanding and knowledge increase of the systems and fisheries involved. The above items are considered crucial in the context of improving holistic ocean governance, subject to the principles set out in UNFA, articles 5 and 6.

WORKSHOP 2
COMPLIANCE AND ENFORCEMENT

1. The existing voluntary monitoring, control and surveillance (MCS) Network should be strengthened, while ensuring flexibility and capacity to provide training and technical support to fisheries enforcement agencies in developing States.

2. A global information system on high seas fishing vessels should be established, on the model of existing vessel information systems, to provide transparent and unbiased information regarding, *inter alia*, ownership and control of high seas fishing vessels.

3. States should encourage collaboration within RFMO/As, or regionally, to rationalize and improve the efficiency of compliance and enforcement measures, including exchange of information among relevant parties.

4. States should prepare guidelines on flag State performance in relation to high seas fishing vessels. These guidelines would constitute a statement of best practice, which would allow the evaluation of the extent to which flag States fulfil their responsibilities under international law.

5. States should adopt measures in respect of their nationals that make it a violation to engage in illegal, unreported and unregulated (IUU) fishing and related activities.

6. States should encourage RFMO/As to collect information from their members on the system of national sanctions relating to IUU fishing, allowing assessment of their adequacy and severity to effectively secure compliance, deter further violations and deprive offenders of the benefits accruing from their illegal activities.

7. The needs of developing States in combating IUU fishing should be recognized, including enhancing access to information and analytical capability, technical and financial assistance, improving legislative frameworks, ensuring capacity to take legal action against offenders, and facilitating participation in decision-making bodies.

WORKSHOP 3
DECISION-MAKING BY REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS

1. Ensuring RFMO/As rely on best scientific information available:

    - RFMO/As should consider ways in which scientific advice can best be utilized by decision-makers, for example, by ensuring that scientific advice includes a range of options from which decision-makers can choose, and should consider whether decisions based on scientific advice can be reviewed through dispute settlement.
    - States should provide assistance to developing States to ensure better catch data

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collection and to enable them to assess and use scientific information and to participate in scientific commissions. Exchange of scientific information should flow from developed to developing States and vice versa.

2. Compatibility between conservation and management measures established for the high seas and those established for areas under national jurisdiction:

   - States should view “compatibility” as encompassing compatibility between coastal State conservation and management measures and RFMO/A conservation and management measures, as well as compatibility between coastal state conservation and management measures and those to be established for high seas areas where no RFMO/As exist.
   - RFMO/As should look to various models for dealing with compatibility issues, including the use of dispute settlement procedures or weighted voting.
   - In resolving compatibility issues, RFMO/As should favour the more stringent conservation measure.

3. Allocation issues:

   - RFMO/As should consider developing criteria for making allocation decisions.
   - RFMO/As should consider the Northeast Atlantic Fisheries Commission (NEAFC) dispute settlement provisions as one possible model for dealing with disputes arising out of allocation decisions.

4. Decision-making procedures:

   - RFMO/As should seek to reach decisions by consensus and thus reduce the need for the invocation of objection procedures.
   - Objection procedures should be used in a responsible and proper way so that they do not constitute a threat to conservation. RFMO/As should develop criteria for the use of objections, which could include requiring explanations for objections to be given, requiring that the alternative conservation and management measures to be used by the objecting State be identified, and providing for dispute settlement.
   - When reviewing dispute settlement in the context of the use of objection procedures, RFMO/As should consider a range of options including the intervention of the chair, conciliation and mediation as well as third-party settlement. The impact on developing States of the cost of dispute settlement has to be taken into account.
   - States should ensure the transparency of the decision-making processes of RFMO/As.
   - Developed States should act to enhance developing State participation in the decision-making processes of RFMO/As through contributions to the UNFA Part VII Developing State Fund.

5. Strengthening dispute settlement:

   - RFMO/As should review their decision-making processes, including dispute settlement mechanisms, and consider models such as those adopted by NEAFC and the Western Central Pacific Fisheries Commission (WCPFC), and mechanisms for the adoption of provisional measures. RFMO/As could also use the dispute settlement provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and UNFA.

WORKSHOP 4
FISHING CAPACITY AND FISHING ASPIRATIONS

1. States, including through RFMO/As and other joint venture arrangements, should move immediately to establish capacity management plans that include *inter alia*:

   - periodic assessment of fishing capacity;
   - decision-making processes that ensure balance between available resources and ecosystem productivity;
   - rules for the transfer of capacity between RFMO/As and between areas globally;
   - rules for government support to fishing fleets within RFMO/As;
   - recognition of the difference between excess capacity and overcapacity; and
   - recognition of the fishing aspirations of developing States to participate in high seas fishing.

2. In recognition of the linkages between fishing subsidies and overcapacity the work in this area by the Food and Agriculture Organization of the United Nations (FAO), the World Trade Organization (WTO) and the Organization for Economic Cooperation and Development (OECD) in order to define red light and green light subsidies was noted, and States should closely monitor developments in this area.

3. The workshop identified the following tool kit that can be used to implement the commitments made in the Ministerial Declaration:

   - capacity management should be an element of any future review of the performance of RFMO/As;
   - the FAO should develop guidelines for capacity management to assist RFMO/As, and convene a workshop on capacity management; and
   - the WTO members should urgently complete negotiations on new disciplines for fisheries subsidies that contribute to overcapacity consistent with the commitments made in the Johannesburg Plan of Implementation agreed at the 2002 World Summit on Sustainable Development (WSSD).

4. States, including through RFMO/As:

   - should develop criteria to delineate the links between subsidies that contribute to sustainable fisheries and those that lead to overcapacity;
   - should develop guidelines and mechanisms on new entrants to fisheries, which should include consideration of the aspirations of developing States for participating in the fishery;
   - be empowered to license vessels fishing on the high seas as a means of controlling capacity, ensure that sustainable levels of fishing effort are not exceeded, and require that such vessels provide catch data to their respective RFMO/As;
   - should develop fishery management and/or fishery capacity adjustment mechanisms that include incentives for sustainable fishing methods and technologies that reduce habitat and environmental damage;
   - reduce and control total fishing capacity and offset construction of new vessels with removal from the fishery of the equivalent amount of capacity. They should make every effort to reduce overcapacity;
   - the FAO should undertake a series of technical consultations with RFMO/As to look at capacity assessments and strategies; and
   - where capacity is transferred to developing States, guidelines should be developed by RFMO/As for the transfer of genuine capacity that take into consideration the sustainability of resources in waters under national jurisdiction and on the high seas.

WORKSHOP 5
NEW AREAS AND GAPS

1. Participants shared the view that States should apply the fundamental management principles of UNFA to fish stocks found exclusively in the high seas (i.e., discrete high seas stocks). Such application can be confirmed formally at the 2006 UNFA Review Conference. Based on the outcome of the Conference, States should consider developing a legal instrument based on this commitment.

2. Marine biodiversity, sensitive ecosystems and deep sea species:

   - States should develop scientific criteria to define the geographic scope and the grounds to establish areas where habitats need special protection, with full respect for legal regimes applicable to those areas and their habitats and the applicable rules of international law.
   - With regard to deep sea fisheries and fisheries in sensitive marine ecosystems, both RFMO/As and flag States should adopt provisional measures, on a case by case basis, along the lines described in article 6 (6) of UNFA for new and exploratory

fisheries. At a minimum, provisional measures should cover the need to collect information on the fishery and interim fisheries management and conservation measures.

- RFMO/As should implement existing commitments to protect the marine environment adopted in international instruments, such as FAO IPOAs on sharks and seabirds, United Nations General Assembly resolution 59/25, FAO Technical guidelines on sea turtle bycatch and the requests by FAO Committee on Fisheries (COFI) in 2005 to collect and share data on deep sea fisheries and its impacts.

3. Creation of new RFMO/As and strengthening of existing RFMO/As:

   - States should review and, where necessary, upgrade the legal mandate of RFMO/As to ensure that they can:
     - adopt management measures that are binding upon their members, in accordance with the appropriate decision-making process;
     - collect the information they need to adopt management decisions and, in general, to fulfil their tasks; and
     - incorporate considerations of an ecosystem approach and habitat protection in their fisheries management decisions.
   - States should seek to fill current geographic gaps and gaps in the functional scope of existing RFMO/As, either through the creation of new RFMO/As or extending the mandates of existing RFMO/As to significant un-regulated areas or fish stocks.

4. Port state obligations, port state measures and trade measures:

   - States should act as responsible port States by, *inter alia*, applying the FAO Port State Model Scheme. They should promote its application internationally; in particular, RFMO/As should be encouraged to examine the Model Scheme with a view to its application by their members, or on a regional basis, without excluding the possibility of adopting an international legally binding instrument at a later stage.
   - States should promote the establishment of “positive lists” of vessels within RFMO/As to be used by port States and importing States when determining whether certain fish products have been caught in accordance with the measures adopted by the relevant RFMO/A. To further improve this mechanism, better coordination among RFMO/As is required.
   - States should enhance and harmonize catch documentation systems for key species. They should also improve traceability of fish and fish products, enable importing States to discriminate between fish harvested in accordance with RFMO/A rules and fish harvested in IUU fishing, and to provide for refusal of landing or imports of the latter.

5. Genuine link between flag state and fishing vessels: Flag State responsibilities:

   - There is a need to improve the legal definition of “genuine link” as a necessary condition for a State to grant its flag to fishing vessels. The basic content of the genuine link is reflected in the international instruments dealing with the duties of the flag State (the existence of a genuine link implies the ability to fulfill flag State obligations.)

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- The “genuine link” issue should be included in the agenda of the 2006 UNFA Review Conference and in the United Nations Informal Consultation Process (ICP), with a view to reaching a decision at the United Nations General Assembly on the process and the fora to be used to further elaborate the legal definition of genuine link.

5. Gaps in capacity in developing States:

   - Participants stressed the importance of the role of developing States in ensuring effective conservation, management and enforcement on the high seas. Use should be made of bilateral assistance programs, RFMO/A assistance programs, the UNFA Part VII Developing State Fund, the FAO Fish Code, World Bank Pro-Fish and the Global Environment Facility (GEF).
   - States should de-link bilateral assistance programs in fisheries from agreements on access to fisheries resources.
   - In donor States, Fisheries Administrations should improve their links with national aid agencies and take advantage of the opportunities their programs offer to provide technical and financial assistance for capacity-building in developing States.
   - States should be encouraged to participate in future events in this field, such as the Kuala Lumpur meeting on MCS in developing States and the Policy Coherence Workshop organized by the OECD.

ANNEX TO THE WORKSHOPS

IMPLEMENTING ECOSYSTEM-BASED CONSIDERATIONS IN FISHERIES MANAGEMENT

Background

This annex summarizes the views expressed by the participants in the workshop concerned.

Instituting an ecosystem approach to fisheries (EAF) is called for in the FAO Code of Conduct for Responsible Fisheries and the FAO Technical Guidelines for Responsible Fisheries (4) (Suppl. 2). In addition, Paragraphs 4 (A) (i)–(iii), 6 and 13 (B) of the Ministerial Declaration from the Conference as well as UNFA, articles 5 and 6, refer to such principles.

Notwithstanding the adoption of UNFA in 1995, progress on EAF implementation has been limited. This implies that an increased sense of urgency should be imparted to the practical implementation of EAF, particularly in high seas areas.

Toward Practical EAF

It was accepted that practical implementation of an EAF should be:

1. Identified in Spatial and Temporal Terms
    - The boundaries of the species, fishery or ecological system(s) concerned should be identified. A related consideration is that such boundaries may need to be applied for some time in order to improve understanding of temporal variability in key EAF (including abiotic) components.

2. Needs Driven
    - Needs, or “objectives,” not only require clear identification, but should also be prioritized to answer specific questions in an objective and measurable way.

3. Inclusive of Indirect and Direct Effects of Fishing
    - Such effects include the impact of fishing practice on species other than those targeted, as well as on the ecosystem as a whole. They also comprise secondary effects that may result from ecological interactions between harvested species and other species that are dependent or related to fishery stocks. Both direct and secondary effects of fishing may also affect particular species habitats.

4. Scientifically Based
    - Prioritization, measurement, monitoring and/or evaluation of objectives should have a firm scientific/objective basis. A priority consideration is to ensure that data collection is evenly implemented, standardized, and cost-effective. It is recognized that scientific interpretation of such data should be as open as possible and subject to any guidelines governing data access.

5. Operationally Stated
    - This requires that EAF properties, or attributes, to be considered are clearly identified, stated in operational terms and measurable.

6. Inclusive of All Interested/Affected Parties
    - Wide and transparent stakeholder participation is essential.

7. Based on Best Practice
    - This requires identification of best practices to date, taking account of lessons learned from past mistakes, and ensuring that information on such practices are available to all interested parties.

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Toward EAF Implementation

In addition to the general principles identified above, operational EAF implementation also should:

- ensure that the properties being applied are measurable and can be monitored;
- evaluate the impact of natural variability on key components;
- implement standardised risk appraisal procedures;
- promote common solutions where appropriate;
- implement adaptable and robust measures, including decision-making procedures, to deal with routine as well as extreme circumstances;
- actively coordinate approaches;
- account for the protection of biodiversity in accordance with principles set out in the Convention on Biodiversity;
- develop appropriate indicators to be evaluated in assessing success; and
- be subject to periodic review so as to improve regional, and international, practice.

Moving From Words To Action

The elements of EAF can be categorized and practical measures ("EAF tools") applied. Such measures and tools are identified below, but it should be emphasized that this list may not be complete or fully inclusive, as there may be case-by-case differences for specific fisheries, areas, or ecosystems. In addition, every tool may not be applicable to every case.

1. Conventional fisheries measures:
    - Direct control of fishing activities through regulation of fishing and management of access, capacity, effort, gear and catch (including TAC and fish size limits).

2. Gear technology management: Develop and introduce eco-friendly gear and provide incentives to promote best practice and use of gear.

3. General ecosystem conservation: Minimize risks of irreversible ecosystem changes resulting from fishing and to improve knowledge of ecosystems, and to protect biodiversity in its own right utilizing closed areas, closed seasons and protected areas (including specially managed areas).

4. Ecosystem impact management: This is directed at understanding and managing both direct and indirect impact of fishing (and other activities where appropriate) on target species as well as those dependent thereon, or related thereto, by monitoring and managing:

   - fisheries by-catch;
   - incidental mortality associated with fishing, including development of mitigating measures;
   - multi-use management;
   - appropriate indicators of ecosystem variability, against which impact may be assessed; and
   - other potentially important ecosystem impacts.

5. Science: Science should aim to provide objective advice on EAF, as well as improve understanding of the systems in which fishing is occurring, including addressing the role of uncertainty in guiding the development of regulatory measures. Key actions include:

   - monitoring of key properties and parameters (including abiotic variables) through purpose-designed scientific observer programs; and
   - modelling to facilitate understanding and strategic development/ application of EAF measures.

6. Institutional transparency: Transparency aims to ensure better understanding of EAF among all interested and affected parties through:

   - promotion of outreach and education;
   - informed decision-making (including the provision and utilization of scientific advice through pre-developed and efficient mechanisms); and
   - promotion of responsible fishing practices (including enhanced stewardship).

7. Institutional and individual accountability: Accountability for responsible EAF should be encouraged by:

   - ensuring adequate reporting procedures on EAF measures and application;
   - providing incentives to promote best EAF practice; and
   - discouraging activities which undermine effective EAF.

Key Considerations

1. EAF implementation will be a step-by-step process. It will require modification as understanding and knowledge increase of the systems and fisheries involved. It should also build on current best practice. Key considerations in implementing this process are as follows:

    - operationalizing cautious approaches to new and developing fisheries;
    - reviewing and ensuring that the principles addressing the need for EAF outlined in UNFA are carried forward into the mandates of RFMO/As where appropriate;
    - giving necessary priority in developing EAF to account for essential human and scientific capacity as well as infrastructure needs, particularly in respect of the developing State needs;
    - coordinating EAF through information exchange and coherent action, including effective RFMO networking and inter-regional cooperation;
    - maximizing cooperation between all EAF stakeholders, particularly in relation to ensuring informed decision-making on relevant matters;
    - continuing and promoting appropriate science to facilitate objective development of EAF strategies; and
    - basing proactive and precautionary EAF implementation on the best scientific advice available.

These items are considered crucial in the context of improving holistic ocean governance subject to the principles set out in UNFA, articles 5 and 6.

CONCLUDING PLENARY

The Conference concluded with a plenary session, chaired by the Conference Co-chairs, Ambassador Hasjim Djalal and Dr. Arthur May. Concluding statements and observations from participants noted the following:

The conference theme, “moving from words to action”, is a critical benchmark as new initiatives are undertaken over the next year to address overfishing on the high seas.

All states are committed to concrete action to address the gaps and challenges which exist in the conservation, management and protection of living marine resources on the high seas. Initiatives such as the upcoming 2006 review conference for UNFA, and the High Seas Task Force, represent critical opportunities for progress.

The specific proposals and conclusions discussed by the conference working groups, while not representing a consensus of all participants, represent a valuable menu for future discussion by and between states, RFMOs, and in other international fora.

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Five general themes were reflected in closing comments:

Strengthening Regional Fisheries Management Organizations

Participants generally noted that RFMOs are an indispensable tool for cooperation and sound management. In particular, RFMOs are a critical mechanism for developing and addressing regional priorities.

Many participants noted that the mandates of RFMOs must be broadened and strengthened in a way which ensures their ability to effectively strengthen, conserve and manage fisheries resources within their authority.

Participants indicated that they are committed to working to extending and strengthening RFMOs and ensuring effective conservation and management of RFMOs. Some suggested that action in this regard must occur on a regional basis and also internationally through organizations such as the FAO.

Some participants indicated they saw merit in international standards for RFMOs in areas like sanctions.

Many participants indicated that RFMOs should establish strong and durable relationship with other entities which manage other associated parts of the ecosystem within their area.

Some participants noted that there is considerable merit in establishing effective performance review mechanisms for RFMOs.

Fishing Capacity

A number of participants noted that overcapacity is an international problem and requires solutions at the national, regional and global level.

Some also noted that RFMOs have a responsibility to ensure that capacity is balanced with legitimate fishing opportunities.

IUU Fishing and MCS

Many participants noted the important work of the High Seas Task Force and stressed that the Task Force achieving concrete and effective solutions to this international problem.

Many participants noted that addressing the issue of port state enforcement and ports of convenience is essential to resolving the IUU fishing issue. Some participants noted the importance of applying standards to port state enforcement; some suggested that the port state model scheme developed by FAO should, at a minimum, be implemented.

Many participants noted that monitoring, control and surveillance systems must be strengthened. Some saw merit in the use of on-board observers.

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Effective Ecosystems Management and Eliminating Detrimental Fishing Practices

Participants noted that the resources of the world's oceans cannot be taken for granted; several expressed concern about deep sea biodiversity.

Many participants noted that implementing an ecosystems based approach is important to protecting biodiversity and allowing for the effective conservation and management of living marine resources on the high seas.

Some participants stressed the importance of science-based decision making within RFMOs and noted that strengthening science is critical to the effective implementation of ecosystems-based approaches.

In addressing the importance of ecosystems-based approaches, some nations noted that:

- reducing by-catch is essential;
- international guidelines, such as the FAO guidelines to minimize by-catch of turtles, should be developed and implemented; and
- protecting sensitive marine areas should be a priority.

Some states noted that the Johannesburg Summit on Sustainable Development validates ways to manage stocks in sustainable way.

Assistance to Developing States

Participants recognized the critical role of developing States in ensuring effective conservation, management and enforcement of fish stocks on the high seas.

A number of participants noted that developing states need both financial and technical assistance in developing their own fisheries and to allow them to effectively participate in RFMOs. It was noted that assistance to developing countries is essential to assist developing States in adopting ecosystem-based approaches, meeting management commitments, and developing sustainable fisheries.

Follow-up Initiatives

In conjunction with the above observations, many states identified opportunities for follow-up and action on the work of the Conference. In particular, it was noted that:

- The Faroe Islands will host the annual meeting of North Atlantic Fisheries Ministers on May 30–31, 2005.
- Morocco will be hosting the *Conférence Ministerielle sur la Coopération Halenetique eutre les États Africains Riverains de l'ocean Atlantique* (COMHAFAT/ATLAFCO) on July 11-15, 2005 in Rabat.

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- To promote responsible tuna fisheries and reduce by-catch in the long line fishery, Japan will convene the International Tuna Fishers Conference on Responsible Fisheries and the Third International Fishers Forum on July 25-29, 2005 in Yokohama Japan.
- Iceland will host a meeting of Ministers of Fisheries on September 8, 2005, in connection with the Icelandic Fisheries Exposition.
- Canada will host a meeting of experts early in 2006 to develop regional guidelines for States to use in establishing sanctions for non-compliance by their vessels.
- Australia will host a conference entitled *Sharing the Fish—Allocation Issues in Fisheries Management*, February 27–March 2, 2006, in Fremantle, Western Australia;
- Australia, New Zealand and Chile are working towards the development of an RFMO for the Southern Pacific RFMO with the first meeting scheduled for February 2006 in Wellington.
- The Center for Oceans Law and Policy, University of Virginia School of Law, the Marine Institute of Ireland and the Law of the Sea Institute of Iceland will host a Conference on Marine Scientific Research in Dublin, Ireland, May 24–26, 2006.
- India will be hosting a meeting of the COFI Sub-Committee on Aquaculture in Goa in September 2006.
- Japan will convene a joint meeting in early 2007 of tuna management RFMOs to promote their coordination and cooperation.

The Co-Chairs closed the Conference on May 5, 2005, thanking participants for their comments.