

## L20 Leaders' Summit on Fisheries Governance

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Conjectural Communiqué by  
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The problem of fisheries governance in the high seas persists, despite progress in bringing binding international conventions into force that provide the capacity for the global community to tackle the problem. The key agreement that must be adopted on a global basis is the UN Fish Stocks Agreement (UNFSA).

We, the leaders of the twenty key industrialised and developing nations, recognise the necessity to address today's failures and bring about sustainable resource management to ensure that mankind can benefit from the world's fisheries resources for present and future generations.

Fisheries governance for more than 90% of the world's capture fisheries resources is a matter of sovereign responsibility. By far the largest proportion of the world's fisheries and fishing effort takes place inside the exclusive economic zones of coastal states. The effectiveness or otherwise of management is a matter of national responsibility and is not directly addressed in this communiqué.

Most of the world's oceans lie outside EEZs and remain classed as high seas. They account for less than 10% of global fish landings but they are truly a global commons. It has long been concluded that governance of the global commons can only be achieved by cooperation between sovereign states. The challenge is to balance fundamental freedoms and self interest in using the commons' resources while cooperating to avoid the tragedy that can arise from failure to manage human activity that would otherwise result in depletion and eventual resource collapse.

Fishing in the high seas is a commercial activity. Companies fish; States don't. States have the responsibility to control commercial fishing. States must take individual and collective responsibility to ensure that fishing operations that take place under their jurisdictions do so on terms that safeguard fisheries resources for sustainable use now and for the future. Experience in fisheries managed under sovereign jurisdictions is demonstrating that access and management systems that create unequivocal and secure access rights and obligations are producing superior outcomes to fisheries management systems that rely on "top-down" command and control.

*Leaders agree that:*

*States with a real interest in high seas fisheries must ratify and apply the United Nations Fish Stocks Agreement (UNFSA) as this offers the greatest scope for the global community to improve fisheries governance.*

*The high seas fishing paradigm that identifies States rather than companies as fishers needs to change to resolve the inherent conflict of interest that arises for States from the confusion of roles and responsibilities.*

*Regional fisheries management organisations (RFMOs) should develop access and compliance regimes that emulate successful rights-based management models applied in national regimes as one way to provide strong incentives for fishers to comply willingly with management controls.*

### **Addressing Implementation of International Law**

Over the last forty years the global community has negotiated and brought into force binding international law to address the management of the global oceans' commons. Under the mandate of the UN Convention on the Law of the Sea (UNCLOS), Coastal States are permitted to extend their national jurisdiction beyond their territorial seas to encompass 200 mile exclusive economic zones. By the late 1980s this effectively brought more than 90% of the world's capture fisheries under sovereign state authority. However this solution failed to address fully the management of remaining fisheries solely or partly to be found in the high seas. The UN Fish Stocks Agreement (UNFSA) that entered into force in 2001 provides a legally binding convention to manage straddling and highly migratory fish stocks in the high seas and a set of principles for managing discrete high seas fish stocks.

However, unlike the widespread uptake of UNCLOS by the global community, the UNFSA has only been taken up by 56 states. Significant groupings of States, as in the case of many Latin American and East Asian States, have so far failed to ratify the agreement.

This reality is reflected among the L20 countries. Out of the twenty States that form the group, seventeen are parties to UNCLOS, but only eleven are parties to UNFSA. The FAO's Compliance Agreement, setting terms for the control of fishing vessels in the high seas has been accepted by eleven of the L20 countries<sup>1</sup>. But only six are parties to both UNFSA and the Compliance Agreement, of which three are parties through being member states of the EU.

Meetings of the FAO's Committee on Fisheries, several other UN based international institutions and the UN's General Assembly over recent years have repeatedly produced resolutions that call upon States that are not parties to UNFSA to become parties, but progress in ratifications remains slow. Ratification can necessitate significant domestic legislation in order to equip parties with legal powers to fulfil their obligations as parties to UNFSA. But it may now be concluded that the ten years that have elapsed since the finalisation of the UNFSA and its opening for ratification should have been sufficient time for states to have made those necessary legislative changes. Failure to ratify must now be seen as reflecting fundamental difficulties for a significant number of States.

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<sup>1</sup> See Table in Appendix

Failure to achieve a critical mass of parties to UNFSA will continue to undermine effective high seas fisheries governance. States that are not parties to UNFSA have:

- no obligation as RFMO members to require those organisations to meet RFMO performance expectations set out in UNFSA;
- no obligation to engage in the negotiation of new RFMOs that meet UNFSA principles for fisheries that are not presently managed by any existing RFMO;
- limited obligation to require the operators of vessels that they flag to cooperate with RFMOs that they are not parties to;
- no obligation to meet the criteria of responsible flag states set out in UNFSA and can freely offer themselves as open registries and be regarded as Flags of Non-compliance.

*The L20 Leaders recognise that the UNFSA presents some States with insurmountable obstacles to ratification. The Leaders recognise the need to resolve these obstacles without undoing the Agreement in any material way. They suggest that the forthcoming review of the Agreement may offer an opportunity to identify a path to this outcome.*

### **Addressing Effectiveness of Regional Management Arrangements**

Regional Fisheries Management Organisations (RFMOs) are membership based international organisations. They reflect the consensus of their members and are only as effective as their members permit them to be.

Most RFMOs predate the entry into force of the UNFSA and have required, or still require, reform of their constitutions if they are to conform to UNFSA expectations. Necessary reform may be delayed by the extent to which member states are not parties to UNFSA and thus under no legal obligation to require reform to be carried out.

While effective fisheries management should be expected to be the minimum primary objective of all RFMOs, in fact, as membership based organisations, effectiveness is entirely the result of the will of their members. Thus calls for external assessment of the capacity and operational effectiveness of RFMOs can be seen as reflecting the frustration of some states parties following failure to persuade all members to their view of how RFMOs should perform. However as organisations made up of sovereign state members, such external review is unlikely to be acceptable to all, leaving the task as one for the members to carry out internally.

It would undoubtedly assist the global community to form a consistent view on how UNFSA expectations of RFMOs should be “operationalised” if there were an agreed international guideline for RFMOs against which RFMOs could bench mark themselves.

Leaders agree that:

*Assessing and reviewing the performance of RFMOs against the proposed guidelines is a task for member states.*

*The FAO should develop an international guideline to operationalise the UNFSA expectations of RFMOs. It should be developed through the COFI consultation processes*

*and in consultation with the regular informal meetings of RFMO Secretariats at the time of each COFI meeting.*

*As part of that process, guidance should be developed for RFMOs to harmonise with each other on monitoring, control and surveillance processes as well as measures designed to encourage compliance, such as sanctions and catch and trade documentation schemes.*

### **Addressing Access and Allocation**

The fact that the FAO<sup>2</sup> has identified that 26% of the world's fisheries are either depleted or recovering from depletion. Less than 25% of the world's fisheries have room for catch and effort expansion, while half the world's fisheries are described as fully exploited and thus must be managed with due deference to precaution. This analysis provides strong evidence that effective management is a necessity for all fisheries and suggests that there is no case for uncontrolled access to any fishery anymore. The UN's General Assembly agreed at its 59<sup>th</sup> session that States should negotiate new RFMOs for fisheries oceans where no RFMOs presently apply.

RFMOs administer access for fishers through their member states. However several RFMOs make little or no attempt to allocate access among members. Most RFMOs set global catch limits, but prefer to control access by limiting fishing effort with only a few allocating those limits on an output basis.

Leaders have already noted that national fisheries administrations that manage access for fishers through unequivocal, secure access rights have greater success in achieving management objectives than those that manage by Olympic style open access regimes. There are very few examples of this lesson being applied in regionally managed fisheries.

Fisheries management is primarily an exercise in managing the activities and behaviour of fishers. Management regimes that provide strong, positive incentives for fishers to act responsibly, as in the cases of several models of rights-based fisheries management, not only produce better economic outcomes for fishers and sustainability outcomes for fish stocks, they can also reduce monitoring, control, surveillance and compliance costs. Much depends however on the institutional strength of the legal systems under which right-based fisheries management systems are established. Where there is both strong respect for the rule of law and effective systems to defend and uphold rights and obligations, there can be a strong expectation that they will thrive. Where legal systems are weak and subject to corruption, there can be little expectation that rights-based systems will be held in any regard by rights-holders.

One model<sup>3</sup> that has been proposed is to consider RFMOs in the context of a joint stock company, with the member states as shareholders. Access to the fishery may be regarded as a commodity that the RFMO can rent to fishers who compete by tender for allocated access to the fishery. The tender fees collected should not only offset entirely all the costs

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<sup>2</sup> State of World Fisheries and Aquaculture, FAO 2004

<sup>3</sup> High Seas Governance – A framework for the future, S. Crothers and L. Nelson, May 2005

incurred by the RFMO and its members, but a resource rental could be sought as a dividend to RFMO members.

Leaders agree that:

*RFMOs and their members should not only move rapidly to identify and allocate interests in fisheries among member states, but should explore ways in which those allocations can be distributed among fishers.*

*While recognising that access to regionally managed fisheries is normally administered by member states of RFMOs, Leaders consider that direct allocation of access to fishers by RFMOs could be explored.*

*Regardless of whether access is achieved through member states or directly by, for example the tendering process described, there is no good reason why access to and utilisation of high seas fisheries resources should be subsidised by member states.*

Failure to extract at least the fisheries management related costs of RFMOs from fishing beneficiaries means that fishers are being subsidised into the fishery and thus use of a common global resource. Failure to recover costs leaves the implicit subsidy being offset only by the contribution that may eventually be made to member state economies from employment and trading resulting from fishing. Leaders also agree that fishers are likely to be unwilling to pay for access unless they have strong expectations that they can recover those costs from their fishing efforts and subsequent sales revenues. This truth should act as a reality check on all stakeholders.

### **Addressing IUU Fishing**

*Leaders agree that considering the three different problems of illegal, unregulated and unreported fishing under one acronym heading (IUU) creates confusions as to the nature and seriousness of each problem as a threat to fisheries governance.*

Illegal fishing requires that a fishery is governed by a body of law, for example an RFMO that the flag state of the vessel is a party to and that a particular fishing act transgresses the law. In a high seas fishing context, illegal fishing can arise where a fisher fails to comply with legally binding conditions imposed by the control authority, normally the vessel's flag state. If the flag state is a party to UNFSA then it must have a system to authorise and control fishing vessels to operate in the high seas. Failure by a fisher to obtain an authorisation to fish and abide by the conditions of the authorisation, regardless of whether the fishery accessed is governed by an RFMO, can be an illegal act.

Unregulated fishing can arise where a fishery is not subject to regulation – as in the case of areas of the high seas not governed by an RFMO and where the flag state is not a party to UNFSA and thus does not authorise or regulate vessels to fish in the high seas where there are no RFMOs. It can also arise because the flag state places no regulation on the activities of vessels flying its flag, as in the case of the flag state operating an open register and choosing not to regulate fishing as a condition of registration.

Unreported fishing may or may not be illegal fishing. It can be illegal fishing if reporting is required but the fisher fails to comply. It may be legal though if there is no obligation to report because the flag state does not require reporting. In cases where there is no legal requirement to report then unreported fishing is both legal and unregulated.

UNFSA's states parties have obligations to regulate the activity of their vessels in the high seas, regardless of whether there is an RFMO or not. Vessels must have an authority to fish and catch reporting is generally a required condition. Thus it can be asserted that fishing by vessels authorised by UNFSA parties and complying with the conditions of their authorisations are fishing legally, are regulated in their fishing activities and those regulations are likely to require that catches are reported. This status will apply whether or not the fishery they are exploiting is governed by a RFMO.

*Leaders agree that the nexus to the problems of illegal, unregulated and unreported fishing can be found in the failure of States to become parties to UNFSA and apply the disciplines required by the Agreement.*

Where a flag state that is not a party to UNFSA operates an open register, vessels operating under those flags are most likely to be conducting legal, unregulated and unreported fishing, whether or not the fishery they are exploiting is governed by a RFMO. Open registries offer a haven for unscrupulous operators looking to domicile fishing ventures away from oversight by their national authorities.

One way to tackle open registers being available for fishing vessels, as distinct from merchant marine vessels, is through the connection between the International Maritime Organisation's conditions for registering vessels, the need to establish a "genuine link" between vessels and their owners and the operation of the marine insurance and re-insurance market. If the IMO required that fishing vessels could be registered by Flag States only on specific fishing vessel registers that required Flag States to regulate vessels to comply at least with RFMO requirements where they existed, in addition to other IMO vessel registration requirements, countries offering only open registry services approved for application for merchant vessel use would no longer be able to register fishing vessels to fish in areas managed by RFMOs. This would require fishing vessel operators to shift their vessel registration to complying fishing vessel registers. Failure to do so would render fishing vessels as stateless and they would no longer be able to obtain marine insurance. There is no evidence that FOC vessels presently operate without insurance.

It has been suggested that open registries arise because the mainly developing countries that operate them lack capacity to control fishing vessels. It has been suggested that the capacity could be obtained through targeted development assistance. However, even if the technical capacity could be developed, there is still doubt that developing countries with difficulties in operating robust legal systems would be capable of upholding MCS and compliance systems necessary for responsible high seas fishing.

*Leaders agree that eliminating open registers would eliminate a large proportion of unregulated and unreported fishing and redefine previously legal fishing as illegal where it takes place without regard to the requirements of relevant RFMOs.*

## **Conclusion**

The L20 Leaders have concluded that:

1. States with a real interest in high seas fisheries must ratify and apply UNFSA as this offers the greatest scope for the global community to improve fisheries governance;
2. UNFSA presents some States with insurmountable obstacles to ratification. The Leaders recognise the need to resolve these obstacles, without undoing the Agreement in any material way. They suggest that the forthcoming review of the Agreement may offer an opportunity to identify a path to this outcome;
3. Companies fish; States don't. The high seas fishing paradigm that identifies States rather than companies as fishers needs to be changed to resolve the inherent conflict of interest that arises for States from the confusion of roles and responsibilities;
4. RFMOs should develop access and compliance regimes that emulate successful rights-based management models applies in national regimes as one way to provide strong incentives for fishers to comply willingly with management controls;
5. Assessing the performance of RFMOs against the proposed guidelines is a task for member states.
6. The FAO should develop an international guideline to operationalise the UNFSA's expectations of RFMOs. It should be developed through the COFI consultation processes and in consultation with the regular informal meetings of RFMO Secretariats at the time of each COFI meeting;
7. As part of that process, guidance should be developed for RFMOs to harmonise with each other on monitoring, control and surveillance processes as well as measures designed to encourage compliance, such as sanctions and catch and trade documentation schemes;
8. RFMOs and their members should not only move rapidly to identify and allocate interests in fisheries among member states, but they should explore ways in which allocations can be distributed among fishers;
9. While recognising that access to regionally managed fisheries is normally administered by member states of RFMOs, Leaders consider that direct allocation of access to fishers by RFMOs could be explored;

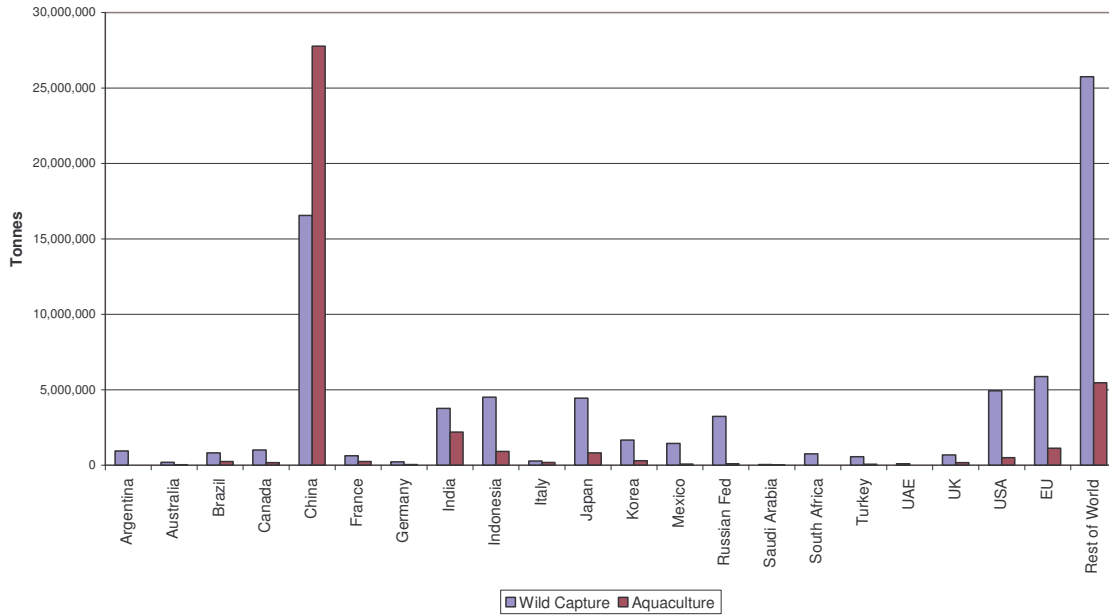
10. There is no good reason why access to, and utilisation of, high seas fisheries resources should be subsidised by member states;
11. Considering the three different problems of illegal, unregulated and unreported fishing under one acronym heading (IUU) creates confusions as to the nature and seriousness of each problem as a threat to fisheries governance;
12. The nexus to the problems of illegal, unregulated and unreported fishing can be found in the failure of States to become parties to UNFSA and apply the disciplines required by the Agreement;
13. Eliminating open registers would eliminate a large proportion of unregulated and unreported fishing and redefine previously legal fishing as illegal where it takes place without regard to the requirements of relevant RFMOs.

APPENDIX

<b>L20 Fishing Status Parties to Conventions</b>			
Country	UNCLOS	UNFSA	FAO Compliance
Argentina	X		X
Australia	X	X	X
Brazil	X	X	
Canada	X	X	X
China	X		
France	X	X	X
Germany	X	X	X
India	X	X	
Indonesia	X		
Italy	X	X	X
Japan	X		X
Korea	X		X
Mexico	X		X
Russian Fed	X	X	
Saudi Arabia	X		
South Africa	X	X	
Turkey			
UAE			
UK	X	X	X
USA		X	X
EU	X	X	X

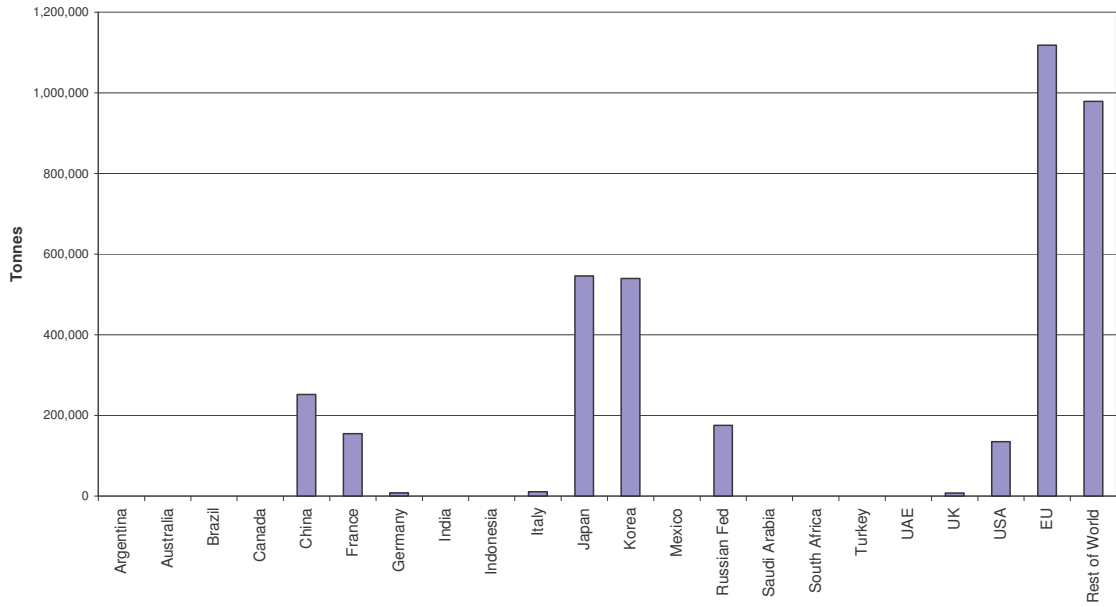
Source: UN Division for Oceans and Law of the Sea

**L20 Role in Fisheries Production**



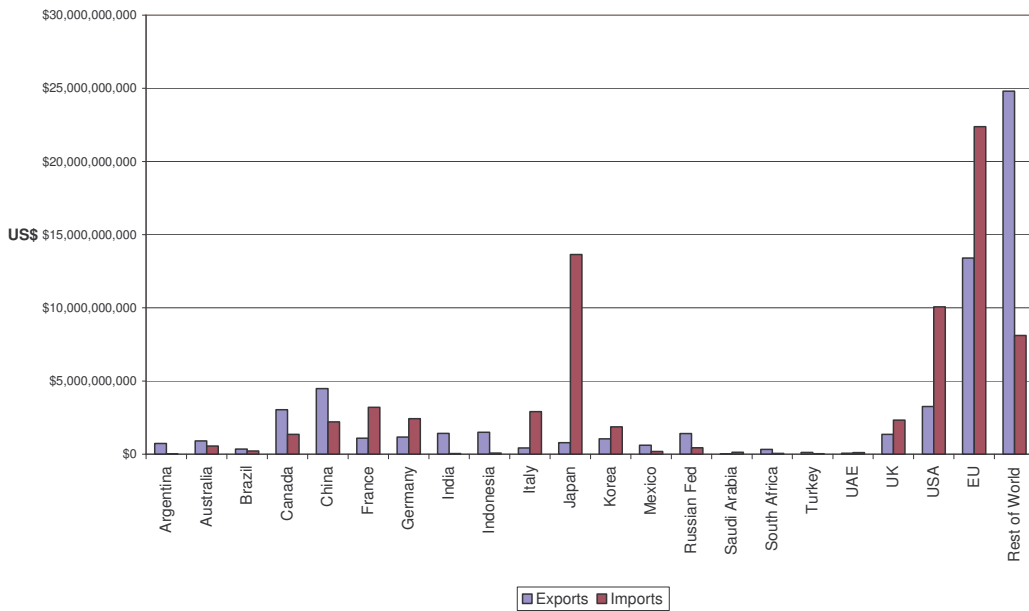
Source: FAO Capture Fisheries and Aquaculture Statistics

### L20 Role in Distant Water Fishing



Source: FAO Capture Fisheries Statistics

### L20 Members' Role in Fish Trade



Source: FAO Fisheries Commodities Trade Statistics