

Southern Shark Industry Alliance (SSIA) and Traffic International

Supplementary Submission

29 September 2014

The context in which TRAFFIC views seafood labelling is that from the overarching principles of the FAO Code of Conduct for Responsible Fisheries and overarching International legal fisheries instruments, including the FAO Guidelines for Responsible Fish Trade (attached). These embody for signatories and members of relevant bodies the context in which they (this includes Australia) should view their responsibilities when considering, for the purposes of this Senate Inquiring, the labelling of seafood so that products are traceable, sustainable and legal. TRAFFIC interprets this through seeing a shared linkage between Responsible Management, Trade and Consumption (attached diagram) where seafood labelling is one part of Responsible utilisation and Conservation of aquatic resources. Unfortunately as our submission demonstrated Australia does not currently screen imported products for their legality, therefore allowing for the sale of illegal seafood products. Australia does not adequately monitor the trade of imported product or the provenance of products to ensure they are sustainable. As a first step to improving this situation Australia needs to introduce greater transparency to the provenance of products through improved labelling, such as those recommended in our submission and that of Greenpeace. Australia also needs to limit access of illegal and unsustainable products on to the Australian market.

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**FAO
TECHNICAL
GUIDELINES FOR
RESPONSIBLE
FISHERIES**

11

RESPONSIBLE FISH TRADE



Cover photo:

Fish landing and market in Cox's Bazar, Bangladesh.
FAO/Giulio Napolitano.

RESPONSIBLE FISH TRADE

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PREPARATION OF THIS DOCUMENT

This document contains the Technical Guidelines for Responsible Fish Trade that were adopted by the eleventh session of the FAO Sub-Committee on Fish Trade in Bremen, Germany, on 6 June 2008.

The Technical Guidelines for Responsible Fish Trade were considered by an Expert Consultation in Washington DC, United States of America, from 22 to 26 January 2007. A Technical Consultation was convened from 5 to 7 November 2007 in Rome, Italy, and from 2 to 3 June 2008 in Bremen, Germany.

The Technical Guidelines have been prepared with funding provided by FishCode, FAO's Interregional Programme of Assistance to Developing Countries for the Implementation of the Code of Conduct for Responsible Fisheries, through contributions from the Government of Norway to the FishCode Trust.

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Responsible fish trade.

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ABSTRACT

The main purpose of the Technical Guidelines is to provide general advice in support of implementation of Articles 11.2 “Responsible international trade” and 11.3 “Laws and regulations relating to fish trade”, of the Code of Conduct for Responsible Fisheries. These guidelines assist in the further dissemination, understanding and implementation of the Code of Conduct for Responsible Fisheries worldwide.

These Technical Guidelines are particularly important for two reasons:

- Fish and fish products are among the most traded agricultural and food commodities with more than one third of production entering international trade. This makes it especially important to ensure that all those involved in the sector operate according to the same set of rules.
- Trade in fish and fish products is also very important for developing countries. Fifty percent of international trade in fish and fish products originates from developing countries. This is an important source of revenue, employment and foreign exchange for these countries.

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ACRONYMS/ABBREVIATIONS

CAC	Codex Alimentarius Commission
CCRF	Code of Conduct for Responsible Fisheries
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COFI	Committee on Fisheries
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EEZ	Exclusive economic zone
FAO	Food and Agriculture Organization of the United Nations
GATT	General Agreement on Tariffs and Trade
IUU	Illegal, unreported and unregulated (Fishing)
MFN	Most favoured nation
MOU	Memorandum of Understanding
OECD	Organisation for Economic Co-operation and Development
OIE	World Organization for Animal Health
RFMO	Regional fisheries management organization
SPS	Agreement on the Application of Sanitary and phytosanitary Measures
TBT	Agreement on Technical Barriers to Trade
UN	The United Nations System
UNCED	United Nations Conference on Environment and Development
UNCLOS	United Nations Convention on the Law of the Sea
WCO	World Customs Organization
WHO	World Health Organization
WSSD	World Summit on Sustainable Development
WTO	World Trade Organization

BACKGROUND

1. From ancient times, fishing has been a major source of food for humanity and a provider of employment and economic benefits to those engaged in this activity. However, with increased knowledge and the dynamic development of fisheries, it was realized that living aquatic resources, although renewable, are not infinite and need to be properly managed, if their contribution to the nutritional, economic and social well-being of the growing world's population was to be sustained.

2. The adoption in 1982 of the United Nations Convention on the Law of the Sea (UNCLOS) provided a new framework for the better management of marine resources. The new legal regime of the oceans gave coastal States rights and responsibilities for the management and use of fishery resources within the areas of their national jurisdiction, which embrace some 90 percent of the world's marine fisheries.

3. World fisheries are a dynamically developing sector of the food industry, and many States have striven to take advantage of their new opportunities by investing in modern fishing fleets and processing factories in response to growing international demand for fish and fishery products. It became clear, however, that many fisheries resources could not sustain an often uncontrolled increase of exploitation.

4. Clear signs of overexploitation of important fish stocks, modifications of ecosystems, significant economic losses, and international disagreements on management and fish trade threatened the long-term sustainability of fisheries and the contribution of fisheries to food supply. Therefore, the Nineteenth Session of the FAO Committee on Fisheries (COFI), held in March 1991, recommended that new approaches to fisheries management embracing conservation and environmental, as well as social and economic, considerations were urgently needed. FAO was asked to develop the concept of responsible fisheries and elaborate a Code of Conduct to foster its application.

5. Subsequently, the Government of Mexico, in collaboration with FAO, organized an International Conference on Responsible Fishing in Cancún in May 1992. The Declaration of Cancún endorsed at that Conference was brought to the attention of the United Nations Conference on Environment and Development (UNCED) Summit in Rio de Janeiro, Brazil, in June 1992, which supported the preparation of a Code of Conduct for Responsible Fisheries (CCRF). The FAO Technical Consultation on

High Seas Fishing, held in September 1992, further recommended the elaboration of a Code to address the issues regarding high seas fisheries.

6. The One Hundred and Second Session of the FAO Council, held in November 1992, discussed the elaboration of the Code, recommending that priority be given to high seas issues and requested that proposals for the Code be presented to the 1993 session of COFI.

7. The Twentieth Session of COFI, held in March 1993, examined in general the proposed framework and content for such a Code, including the elaboration of guidelines, and endorsed a time frame for the further elaboration of the Code. It also requested FAO to prepare, on a "fast track" basis, as part of the Code, proposals to prevent reflagging of fishing vessels which affect conservation and management measures on the high seas. This resulted in the FAO Conference, at its Twenty-seventh Session in November 1993, adopting the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, which, according to FAO Conference Resolution 15/93, forms an integral part of the Code.

8. The development of the Code was carried out by FAO in consultation and collaboration with relevant United Nations Agencies and other international organizations, including non-governmental organizations.

9. The CCRF consists of five introductory articles: Nature and scope; Objectives; Relationship with other international instruments; Implementation, monitoring and updating; and Special requirements of developing countries. These introductory articles are followed by an article on General principles, which precedes the six thematic articles on Fisheries management, Fishing operations, Aquaculture development, Integration of fisheries into coastal area management, Post-harvest practices and trade, and Fisheries research. As already mentioned, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas forms an integral part of the Code.

10. The Code is voluntary. The Code was formulated so as to be interpreted and applied in conformity with the relevant rules of international law, as reflected in UNCLOS, 1982 and the relevant World Trade Organization (WTO) agreements, and in the light of, *inter alia*, the recommendations from the 1992 Declaration of Cancún and the 1992 Rio Declaration on Environment and Development, in particular Chapter 17 of

Agenda 21. The Code also contains provisions that may be or have already been given binding effect by means of other obligatory instruments amongst the Parties, such as the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on High Seas, 1993 and 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, 1995.

11. The Twenty-eighth Session of the Conference in Resolution 4/95 adopted the Code of Conduct for Responsible Fisheries on 31 October 1995. The same Resolution requested FAO *inter alia* to elaborate appropriate technical guidelines in support of the implementation of the Code in collaboration with Members and interested relevant organizations.

INTRODUCTION

These Guidelines for Responsible Fish Trade have no legal status and are intended to provide general advice in support of the implementation of Article 11.2: Responsible international trade and article 11.3: Laws and regulations relating to fish trade, of the Code of Conduct for Responsible Fisheries (CCRF) and to assist in further dissemination, understanding and voluntary implementation of the CCRF worldwide.

Fish and fishery products are among the most traded agricultural and food commodities with more than one third of production entering international trade. A specific feature of fish trade is the wide range in product types and markets. Significantly, one half of international fish trade originates from developing countries for which fish is an important earner of foreign exchange. Developed countries accounted for about 80 percent of the total value of imports of fish products.

Trade in fish and fishery products, is dynamic. Capture fisheries are levelling off while aquaculture continues to rise, thus affecting the nature of the sector's supply. The distribution chain, including the location and nature of processing activities, is constantly adjusting itself to changes in technology, communication and transportation. Freer trade and liberalized markets also increase the global nature of the sector. Trade is therefore more responsive to global, regional and national changes in supply and demand characteristics. The demand for fish and fishery products reflects changing consumer preferences and purchasing power, as well as demographic changes.

Article 6.14 in the General Principles section of the Code of Conduct for Responsible Fisheries in particular recognizes that: *International trade in fish and fishery products should be conducted in accordance with the principles, rights and obligations established in the World Trade Organization (WTO) Agreement and other relevant international agreements. States should ensure that their policies, programmes and practices related to trade in fish and fishery products do not result in obstacles to this trade, environmental degradation or negative social, including nutritional, impacts.*

As noted above, fish and fishery products are widely traded. Trade links production to consumption, making it necessary to ensure that sustainable management practices underpin production. The benefits from international trade include better incomes, employment and foreign exchange. Currently

the main barriers to trade are tariffs and non-tariff barriers, including technical issues related to safety and quality, certification and traceability. Other issues that continue to be of concern and have an impact on trade are subsidies that are prejudicial for trade and the environment. The improper use of anti-dumping, countervailing and safeguard measures is also a concern. In addition, producers and traders in developing countries are often in a disadvantaged position because of difficulties in obtaining market information.

The FAO Sub-Committee on Fish Trade of the Committee on Fisheries provides a forum for States to consult on technical, economic and environmental aspects of international trade in fish and fishery products, including production and consumption aspects. The FAO Sub-Committee on Fish Trade of the Committee on Fisheries also deals with issues related to technical cooperation. The FAO Sub-Committee on Fish Trade is an important forum where States can share their views on these issues, consider new developments, and recommend areas for further work.

On a global level, the WTO and organizations of the United Nations (UN) system, in particular the FAO, are the main actors shaping the global trade regime for fishery products. UN organizations address issues related to sustainable development, environmental conservation, food safety and quality and food security. The rules governing international trade, embodied in the WTO agreements, are negotiated in the WTO. Together, the WTO, FAO and other organizations provide a frame of reference for States to cooperate in the formulation of appropriate rules and standards for international trade, including trade in fish and fishery products.

The WTO system is based on a series of agreements whose aim is to establish a rules-based framework for trade and the liberalization of international markets for goods, services and investments. The General Agreement on Tariffs and Trade (GATT) provides for the liberalization of trade in goods through gradual reduction of tariffs, conversion of non-tariff import restrictions into tariffs (tariffication) and elimination of trade-distorting domestic support. Developing States are given special consideration under GATT. They are given more time to reduce their tariffs and other obstacles to trade, and there are other special provisions designed to help them adapt to the liberalization of trade.

The Codex Alimentarius Commission was created in 1963 by FAO and the World Health Organization (WHO) to develop food standards, guidelines and related texts such as codes of practice under the Joint FAO/WHO Food

Standards Programme. The main purposes of this Programme are protecting the health of the consumers, ensuring fair practices in the food trade, and promoting coordination of all food standards work undertaken by international governmental and non-governmental organizations.

The World Organisation for Animal Health (OIE) was created in 1924 to ensure global transparency in relation to animal diseases. The OIE collects, analyzes and disseminates veterinary scientific information and provides expertise in the control of animal disease. The OIE develops rules and standards that can be used for protection against the introduction of diseases and pathogens. OIE standards are recognized by the World Trade Organization as the reference for international sanitary rules.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in species that are threatened with extinction at the species level or that may be threatened as a result of international trade in specimens of the species. Several fish and shellfish species are listed under CITES Appendices.

11 – POST-HARVEST PRACTICES AND TRADE

Article 11.2 Responsible international trade

11.2.1 The provisions of this Code should be interpreted and applied in accordance with the principles, rights and obligations established in the World Trade Organization (WTO) Agreement.¹

1. International trade in fish and fish products² is covered under the international trading rules of the WTO. WTO agreements address such issues as tariffs and non-tariff measures, technical standards, including food safety and quality, rules of origin, anti-dumping measures, subsidies and safeguards, trade in services, intellectual property and dispute settlement.³

2. The WTO agreements⁴ are based on two fundamental principles: most favoured nation (MFN) treatment and national treatment. The MFN principle requires States to accord the same treatment at the border to all similar products sourced from other WTO member States. National treatment requires that once a product enters the customs territory of another WTO member, that member will treat the product no less favourably than like products produced by that importing Member State.

3. Many of the agreements are detailed and technical, but there are some dominant principles. For example, trade should be carried out without discrimination and there should be steady movement towards freer trade

¹ Throughout this portion of the document, the text in **bold** corresponds to articles 11.2 and 11.3 of the Code of Conduct for Responsible Fisheries.

² The Technical Guidelines refer to “fish and fish products” to make it clear that they apply to products originating from both capture fisheries and aquaculture. The CCRF articles refer to fish and fishery products.

³ The following WTO agreements are of particular relevance to fish and fish products: General Agreement on Tariffs and Trade 1994; Agreement on the Application of Sanitary and Phytosanitary Measures; Agreement on Technical Barriers to Trade; Agreement on Trade-Related Investment Measures; Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994; Agreement on Rules of Origin; Agreement on Subsidies and Countervailing Measures; Agreement on Safeguards; Agreement on Trade-Related Aspects of Intellectual Property Rights; and Understanding on Rules and Procedures Governing the Settlement of Disputes. Fish and fish products are not covered by the Agreement on Agriculture.

⁴ The WTO agreements can be accessed on the WTO Web site: www.wto.org

based on negotiations between and among members. Decision making within the WTO is based on consensus among members. The WTO has established a Dispute Settlement Understanding (DSU) that enables members to sort out disagreements and solve trade disputes. States should take note of the decisions made by the Dispute Settlement Body (DSB). Taking into account the decisions made by the DSB, States should also consider whether their measures and practices relevant to trade in fish and fish products continue to be compatible with the principles, rights and obligations established by the WTO Agreements.

4. International trade is dynamic and States should continually assess their trade rules and international legal requirements in this light, consistently with the WTO framework.

11.2.2 International trade in fish and fishery products should not compromise the sustainable development of fisheries and responsible utilization of living aquatic resources.

5. To provide a foundation for sustainable fish trade, States should adopt conservation and management measures to achieve long term conservation and sustainable use of aquatic resources. Conservation and management measures should be based on the best scientific evidence available and be designed to ensure the long-term sustainability of fisheries resources at levels which promote the objectives of their optimum utilization. States should also acknowledge the need to implement the precautionary approach and the application of the ecosystem approach, with the development of indicators that describe the level of biological, economic and social sustainability.

6. As responsible fisheries management measures are a necessary pre-condition for sustainable trade⁵, states should consider that in the absence of adequate conservation and management measures, increasing demand for fish to supply international markets can result in excessive fishing pressure, leading to overexploitation and wasteful use. This can have substantial impacts on food security and poverty, especially where there is a high level of dependence on fish in the diet. All persons and entities

⁵ Kurien, J. (ed.). 2005. *Responsible fish trade and food security*. FAO Fisheries Technical Paper No. 456.

engaged in the international trade of fish and fish products should ensure that their trade activities are consistent with the sustainable development of capture fisheries and aquaculture and the responsible utilization of living aquatic resource and do not undermine the effectiveness of fisheries conservation measures.

7. States that are WTO members taking measures to conserve living aquatic resources in relation to trade in fish and fish products should ensure they are compatible with WTO provisions. These provisions provide for exceptions⁶ to be made in particular circumstances to the general requirement for open trade between WTO members. Article XX states that, *“Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption”*.

8. States should take into account the increasing demand for verification that fish products in international trade are originating from legal fishing operations and sustainable fisheries and aquaculture.⁷

9. These trends include catch documentation and trade certification schemes developed by regional fisheries management organizations (RFMOs) and voluntary ecolabelling schemes. States should actively cooperate in developing and implementing catch documentation and trade certification schemes, such as those developed by RFMOs, by adopting appropriate regulatory provisions and encouraging private sector collaboration.

10. Ecolabelling can provide producers of fish and fish products with an opportunity to differentiate their products. Ecolabels can also have a beneficial effect on sustainable fisheries if properly designed and implemented. However, they also have the potential to create barriers to trade and may unfairly discriminate against non-ecolabelled products that

⁶ Article XX of the WTO General Agreement on Tariffs and Trade (GATT 1994).

⁷ Refer to Article 9 of the CCRF for Aquaculture Development principles.

are harvested sustainably. The lack of an ecolabel does not imply that the fish has not been sustainably harvested. States and proponents of ecolabelling schemes should refer to the FAO Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries.⁸ These guidelines are applicable to ecolabelling schemes that are designed to certify and promote labels for products from well-managed marine capture fisheries and focus on issues related to the sustainable use of fisheries resources.

11. Recognizing that all States should have the same opportunities to benefit from sustainable trade, and in view of the special conditions applying to developing States and States in transition and their important contribution to international fish trade, developed States and relevant organizations, in particular the FAO, should provide developing States and States in transition with financial and technical assistance. Such financial and technical assistance should aim at capacity building in areas such as improving fishery management, and developing and implementing catch documentation, trade certification and ecolabelling schemes.

12. States should encourage ecolabelling schemes regarding sustainable fisheries within their territories to be consistent with the FAO Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries .

13. To avoid trade-related measures compromising the sustainable development of fisheries and the responsible use of resources, States should cooperate, including through relevant RFMOs, to ensure that trade-related measures are compatible with the sustainable development of fisheries and responsible use of resources, and are consistent with WTO Agreements.

14. Trade-related measures to promote the sustainability of fisheries should be adopted and implemented in accordance with international law, including the principles, rights and obligations established in the WTO Agreements. Such measures should be used only after prior consultation with interested States. Unilateral trade-related measures should be avoided.

⁸ FAO. 2005. FAO Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries.

11.2.3 States should ensure that measures affecting international trade in fish and fishery products are transparent, based, when applicable, on scientific evidence, and are in accordance with internationally agreed rules.

15. States should promptly notify other States of measures affecting international trade in fish and fish products, including technical regulations, standards and procedures. They also should, when applicable, establish an inquiry point, and provide sufficient lead time for comments from interested States, consistent with WTO agreements.

11.2.4 Fish trade measures adopted by States to protect human or animal life or health, the interests of consumers or the environment, should not be discriminatory and should be in accordance with internationally agreed trade rules, in particular the principles, rights and obligations established in the Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Technical Barriers to Trade of the WTO.

16. States may adopt trade related measures for fish and fish products, under WTO agreements, if these measures are necessary to protect human and animal life or health, the environment, or if the measures relate to the conservation or fishery resources. States, however, must demonstrate that their measures do not result in *"arbitrary or unjustifiable discrimination between countries where the same conditions prevail, and do not constitute a disguised restriction on international trade"*.⁹

17. The recognized international standard setting body for food safety and quality is the FAO/World Health Organization (WHO) Codex Alimentarius Commission (CAC) and the recognized body for animal health is the World Organization for Animal Health (OIE). Consequently, States should adopt, at a minimum, agreed Codex Alimentarius standards for fish safety and quality and OIE standards for trade of live fish. States also should participate actively and facilitate participation, as appropriate, by developing States¹⁰ in the work of the CAC's committees relevant to international fish trade, such as the Codex Committee on Fish and Fishery Products and other committees working on food additives, veterinary drugs,

⁹ WTO GATT 1994 Article XX.

¹⁰ The CAC Trust Fund facilitates participation by developing States.

labelling, food hygiene, contaminants, sampling and analysis in order to ensure that the standards developed remain relevant to their objectives and CAC members.

18. Both the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT) require Members to ensure that their technical requirements give national treatment to products imported from other Members. However, the Agreements recognize that under exceptional circumstances differential treatment may be justified on the basis of objective criteria, including scientific criteria, and reasons.

19. SPS measures should be based on an objective assessment, as appropriate to the circumstances, of the risks to human, animal and plant life and health, and take into account relevant economic factors. Members should, when determining appropriate levels of protection, take into account the objective of minimizing negative trade effects.

20. States should harmonize these measures wherever possible. States should also recognize measures that are different from theirs, where those measures produce an outcome that can be objectively assessed to be equivalent. Members are also encouraged to consult to achieve bilateral or multilateral agreements of mutual recognition.

21. All technical standards and regulations should have a legitimate purpose and States should ensure that the impact or cost of implementing these standards and regulations are proportional to their purpose. If there are two or more ways of achieving the same objective, the least trade restrictive alternative should be pursued.

11.2.5 States should further liberalize trade in fish and fishery products and eliminate barriers and distortions to trade such as duties, quotas and non-tariff barriers in accordance with the principles, rights and obligations of the WTO Agreement.

22. Barriers to trade in fish and fish products (originating from both wild fisheries and aquaculture), including tariffs and non-tariff measures, reduce the opportunities for States to maximize their welfare and benefit from their comparative advantage and will increase the cost of fish and fish products for consumers.

23. As fish is a limited renewable resource with externalities in the production process, benefits from further market liberalization will only be produced if fisheries management that allows for the sustainable use of resources is in place. To ensure that societies maximize and sustain the benefits derived from the fisheries sector, States should seek market liberalization and improvements in fisheries management concurrently.

24. As part of market liberalization States should seek to eliminate trade and production distorting subsidies, especially those that are inconsistent with the sustainable development of fisheries and the responsible use of fish products, in particular subsidies that contribute to over-capacity, to over-fishing, and to illegal, unreported and unregulated fishing (IUU).¹¹

11.2.6 States should not directly or indirectly create unnecessary or hidden barriers to trade which limit the consumer's freedom of choice of supplier or that restrict market access.

25. Impacts on trade from non-tariff measures can arise from many sources, including technical measures such as requirements for product standards and conformity assessment, packaging and labelling. Sanitary and technical measures should not be more trade restrictive than necessary to fulfil legitimate objectives. Legitimate objectives are, *inter alia*; protection of human health and safety, animal or plant life or health, the environment or the consumer from deceptive practices

26. Other market access conditions can include requirements for traceability, documentation, banking and finance. Market access conditions can also reflect concerns about national and international security, especially in light of the risks of terrorism. States need to be conscious of the costs and impacts on trade that may arise from conditioning market access.

27. The WTO agreements provide Members the right to implement exceptional measures under certain circumstances. States should ensure that

¹¹ See 2001 WTO Ministerial Declaration (www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm#technology) paragraph 28 and 2002 Plan of Implementation of the World Summit on Sustainable Development (www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImpl.pdf) Art 31 f).

measures that affect trade do not undermine the fundamental WTO principles, particularly those of national treatment and MFN.

28. States should avoid concealed or unannounced restrictions to international trade of fish and fish products and the misuse of exceptions to the fundamental principles of the WTO Agreements.

11.2.7 States should not condition access to markets to access to resources. This principle does not preclude the possibility of fishing agreements between States which include provisions referring to access to resources, trade and access to markets, transfer of technology, scientific research, training and other relevant elements.

29. As globalization evolves, the nature of access to markets and access to resources is expanding to include trade in services (for example, chartering or other services) and investment (including sale of fishing quota and joint ventures) and intellectual property with links to investment. States should apply the principles of the Code of Conduct for Responsible Fisheries (CCRF) to such trade.

30. Access to markets and access to fisheries should be negotiated on their separate merits, in a transparent manner, and in conformity with WTO principles and the relevant articles in UNCLOS, respectively. Distant-water fishing States seeking access to a coastal States' exclusive economic zone (EEZ) resources should not withhold market access if unsuccessful in gaining access to fisheries. Coastal States have exclusive responsibility for determining how the living resources in EEZs are to be utilized.¹² This includes determining the coastal State's own catching capacity and, in that context, permitting other States to access any surplus of the allowable catch in conformity with UNCLOS provisions. In the EEZ, the coastal State has sovereign rights for the purpose of exploring, exploiting, conserving and managing the natural resources, whether living or non-living.

31. Coastal States can require the payment of fees and other forms of remuneration as part of licensing fishers, fishing vessels and equipment.^{13,14,15}

¹² Articles 61 and 62 of UNCLOS.

¹³ Article 62, 4(a) of UNCLOS.

32. States should ensure that fisheries access agreements and associated services are negotiated in conformity with contractual practices, including transparency in negotiations and levels of access payments.

11.2.8 States should not link access to markets to the purchase of specific technology or sale of other products.

33. Trade in the fisheries sector includes a range of goods and services, as well as trade in fishing quotas, fishing licences, permits, joint ventures and related items. Trade takes place both as traditional cross-border trade between two companies or within the same company.

34. States should not condition access to markets to the purchase of specific technology, the provision of specific services or sale of other products. This equally applies to State-owned companies. Negotiations should be conducted in accordance with WTO members' commitments to MFN and national treatment principles.¹⁶ The same principles should be applied to capture fisheries and aquaculture related development assistance.

11.2.9 States should cooperate in complying with relevant international agreements regulating trade in endangered species.

35. States should fully participate and cooperate in the development, implementation and enforcement of measures to regulate trade in endangered species, in particular those adopted by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

¹⁴ In the case of coastal States that are developing countries, the same part of the Article identifies that other forms of remuneration can include financing, equipment and technology relating to the fishing industry. This should not be read as a definitive list as other relevant capacity building measures can also be addressed pursuant to article 62(4).

¹⁵ Fisheries access agreements are undergoing considerable change and are under review in various fora.

¹⁶ States should take note of the 2005 WTO Ministerial Declaration (www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm) regarding Least Developed Countries and Trade Related Investment Measures.

36. CITES regulates international trade in species that are threatened with extinction at the species level or that may be so threatened as a result of international trade in specimens of the species. Several fish and shellfish species are listed under CITES Appendices.¹⁷

37. States and RFMOs should cooperate with FAO in the provision of advice to CITES in the context of the 2006 Memorandum of Understanding (MOU) between the two organizations.

38. In addition to promoting good sustainable management practices, States should also facilitate effective participation by developing States in the development, implementation and enforcement of measures to regulate trade in endangered species, in particular those adopted by CITES and other such measures as may be developed by relevant organizations, including RFMOs, within their competence, by providing assistance and through capacity building. States should adopt in their internal markets trade measures that are consistent with CITES.

11.2.10 States should develop international agreements for trade in live specimens where there is a risk of environmental damage in importing or exporting States.

39. States should note the risk posed by trade in live aquatic organisms destined for human consumption and trade in live specimens for aquarium use and as breeding stock for aquaculture.

¹⁷ CITES lists nominated species under one of three appendices. Appendix I lists species that members have agreed are most at risk of extinction. Trade in specimens from the wild of these species is usually prohibited. Appendix II lists species that members have agreed may be threatened unless international trade in wild specimens is controlled. Trade in Appendix II listed species is therefore generally permitted under specified conditions including documentation and possibly agreed limits of total numbers of specimens permitted to enter international trade. CITES members can also list species unilaterally under Appendix III. This requires all CITES members to document trade in such species and report trade to the CITES Secretariat, but no limits on trade are imposed at a global level. CITES has adopted revised criteria for listing commercially exploited aquatic species on its Appendices. The revised criteria were developed in consultation with the FAO and explicitly address the listing of fish species.

40. This trade may pose an environmental risk either through accidental introduction of non-indigenous species into the environment, or from the introduction of other organisms or diseases that specimens may carry. States should assess the risk posed by such trade in a fair, transparent and non-discriminatory manner, consistent with WTO agreements¹⁸ and other applicable law.

41. Care should be taken to ensure that the transportation and storage of live specimens, where applicable, takes place under acceptable conditions with due concern to animal health.

42. The WTO Agreements clarify that States have the right to take appropriate risk-based measures to protect human, plant and animal life, and health and the environment. The OIE standards provide a framework for the prevention of the spread of animal diseases. States should use OIE standards, guidelines and recommendations for fish health in live fish trade.

43. In negotiating international agreements, exporting and importing States should collaborate to minimize the environmental damage associated with trade in live species. States should encourage importers and exporters to collaborate to avoid destructive fishing practices and minimize losses.

11.2.11 States should cooperate to promote adherence to, and effective implementation of relevant international standards for trade in fish and fishery products and living aquatic resource conservation.

44. Within the existing frameworks of international organizations, States should actively participate¹⁹ and encourage other States to promote responsible and sustainable trade in fish and fish products.

45. In this respect States should promote adherence to international standards for trade in fish and fish products. States should adopt, use or give effect to international standards of relevance to trade.²⁰ Trade regulations should be consistent with relevant WTO agreements and provisions.

¹⁸ WTO SPS agreement.

¹⁹ Article 11.1.3 in the FAO Technical Guidelines for Responsible Fisheries – *Responsible fish utilization*, provides additional guidance in relation to standard setting procedures.

²⁰ Such as international standards set by CAC, OIE, RFMOs, World Customs Organization (WCO).

46. States should seek to ensure full cooperation on trade measures taken for resource conservation purposes. Such measures should be consistent with WTO rights and obligations.

11.2.12 States should not undermine conservation measures for living aquatic resources in order to gain trade or investment benefits.

47. A precondition for responsible, sustainable trade in fish and fish products is appropriate and effective fisheries management systems and a sustainable resource base, contributing to long-term food security.

48. The many activities of States, including the adoption of rules and policies regarding trade, services and investment, can undermine the conservation measures adopted by States and relevant RFMOs. States should ensure coherence between actions and arrangements to promote fisheries trade, services and investment on the one hand, and conservation objectives and actions being promoted at the domestic and international levels on the other hand. These rules and policies should be consistent with the States' international obligations as established by relevant international organizations.

49. States should cooperate in the conservation and management of living aquatic resources in accordance with international law.

50. All States (including coastal, port, flag and importing States) should cooperate and make best efforts to deter, prevent and eliminate trade in fish and fish products originating from illegal fishing and illegal fishery activities as this trade undermines responsible trade, the sustainable use of resources and the activities of responsible operators. Importing States and port States should avoid using unilateral measures.

51. States should ensure that activities, including activities to promote trade, investment, services and the use of subsidies, do not lead to illegal fishing activities. These include illegal fishing activities arising from overcapacity. States should also ensure that the import, export or charter of vessels does not contribute to overcapacity or illegal fishing. Flag States, port States and coastal States should cooperate, including through RFMOs, as appropriate, to consider the non-discriminatory use of trade measures consistent with WTO agreements to remove incentives to illegal fishing.

52. States should support measures to deter, prevent and eliminate IUU fishing on the high seas by *inter alia* exercising adequate control of vessels flying their flag and through relevant international fisheries management bodies, including through the use of measures that affect international trade, consistent with international law and WTO agreements, with a view to ensure sustainable and responsible fisheries

11.2.13 States should cooperate to develop internationally acceptable rules or standards for trade in fish and fishery products in accordance with the principles, rights, and obligations established in the WTO Agreement.

53. In order to facilitate responsible and non-discriminatory trade, States should participate and cooperate in the formulation of appropriate rules and standards for fish trade under the WTO framework, and also under other relevant frameworks such as agreements regarding environmental protection and the sustainable use of fishery resources.

54. National measures should be consistent with international rules and standards, guidelines and recommendations adopted under the WTO framework. Of particular importance to fish trade are the standards, guidelines and recommendations of the Codex Alimentarius for human health and food safety and those of the OIE for animal health. If States maintain measures that aim at higher levels of protection than those of the Codex Alimentarius and OIE, such measures should be based on scientific evidence and appropriate risk assessment.

11.2.14 States should cooperate with each other and actively participate in relevant regional and multilateral fora, such as the WTO, in order to ensure equitable, non-discriminatory trade in fish and fishery products as well as wide adherence to multilaterally agreed fishery conservation measures.

55. States that are members of international organizations, including the WTO and regional fisheries management bodies, or have ratified or accepted binding international conventions have obligations to comply with their rules and requirements. States should actively participate in decision making processes so the agreements remain relevant to their objectives and to their members.

56. Recognizing that all States should have the same opportunities, States, relevant intergovernmental and non-governmental organizations and

financial institutions should provide developing States and States in transition with financial and technical assistance on mutually agreed terms and conditions to actively participate in all aspects of the organizations, particularly to develop and maintain appropriate measures and standards.

57. States should endeavour at all times to act in conformity with the provisions of international and regional organizations and agreements that they are party to and avoid acting unilaterally.

11.2.15 States, aid agencies, multilateral development banks and other relevant international organizations should ensure that their policies and practices related to the promotion of international fish trade and export production do not result in environmental degradation or adversely impact the nutritional rights and needs of people for whom fish is critical to their health and well being and for whom other comparable sources of food are not readily available or affordable.

58. Fish and fish products constitute a major source of animal protein in some States and regions. Furthermore, fish and fish products can provide an important basis for maintaining the social fabric and employment. This is the case for both developed and developing States, but may be particularly important in some developing States.

59. There are multiple objectives for the fisheries sector. States that provide assistance and States that are recipients of assistance should ensure coherence between fisheries and development policies with a view to increase the effectiveness of both policy areas.

60. Attention should be paid to the challenges facing States where market liberalization and globalization put pressure on the exploitation of aquatic resources. Both the recipient and donor States need to bring the precautionary approach and ecosystem considerations to bear when considering development assistance to specific projects.

61. States and other organizations supporting initiatives related to international trade in fish products should adopt policies and procedures, including environmental and social assessments, to ensure that adverse impacts on the environment, livelihood, and food security needs are equitably addressed. Consultation with concerned stakeholders should be part of these policies and procedures.

62. States and relevant organizations should cooperate with each other in the development and implementation of best practices, standards and

guidelines for these activities.²¹ Changing conditions related to access to markets pose specific challenges to small-scale producers. States may give specific attention through capacity-building to these small-scale producers to organize their production and market access.

Article 11.3 Laws and regulations relating to fish trade

11.3.1 Laws, regulations and administrative procedures applicable to international trade in fish and fishery products should be transparent, as simple as possible, comprehensible and, when appropriate, based on scientific evidence.

63. Transparency requires that laws, regulations, administrative and operating procedures are publicly available and that decisions taken in consequence are readily understood. Transparency contributes to predictability and discourages corrupt practices.

64. Laws and regulations should avoid unnecessary requirements and duplication. States should provide plain language explanations and illustrative examples. FAO, other international and non-governmental organizations can facilitate transparency by providing information on the regulatory framework governing international trade in fish products.

65. Where laws, regulations and administrative procedures arise for technical reasons, States should ensure they are based on scientific evidence and referenced to internationally-agreed norms.

11.3.2 States, in accordance with their national laws, should facilitate appropriate consultation with and participation of industry as well as environmental and consumer groups in the development and implementation of laws and regulations related to trade in fish and fishery products.

66. Laws and regulations should be developed and implemented in consultation with stakeholders. Stakeholders include all those with a legitimate interest in the subject matter. The objectives of consultation should be to enable regulators to understand and accommodate the concerns

²¹ The OECD and the World Bank have, for example, developed guidelines on best practices related to development assistance.

of all stakeholders who will be affected. Involving all stakeholders in the development of laws and regulations fosters greater knowledge, understanding and acceptance of regulations and encourages voluntary compliance.

11.3.3 States should simplify their laws, regulations and administrative procedures applicable to trade in fish and fishery products without jeopardizing their effectiveness.

67. When appropriate, States should simplify regulations to make them easier to understand, apply and enforce. Complicated regulations are costly to comply with, may discourage trade and compromise legal trade and compliance.

11.3.4 When a State introduces changes to its legal requirements affecting trade in fish and fishery products with other States, sufficient information and time should be given to allow the States and producers affected to introduce, as appropriate, the changes needed in their processes and procedures. In this connection, consultation with affected States on the time frame for implementation of the changes would be desirable. Due consideration should be given to requests from developing countries for temporary derogations from obligations.

68. Procedures for States to notify changes, to legal requirements that are technical or related to food safety issues should be complied with in a timely fashion. These procedures may require notification to other States through established procedures such as those described in the SPS and TBT agreements.

69. Where the changes affect trade in fish and fish products of relevance to developing countries, appropriate consideration should be given to the capacity of those countries to comply. Appropriate flexibility may be needed vis-à-vis the ability of developing countries to implement necessary changes. Where needed, capacity-building should be promoted to meet and speed up the implementation of required changes.

11.3.5 States should periodically review laws and regulations applicable to international trade in fish and fishery products in order to determine whether the conditions which gave rise to their introduction continue to exist.

70. States should periodically review laws and regulations and the ways in which they are administered. There is a continuing need to ensure that legal measures and regulations applying to trade in fish and fish products are effective and necessary. States should also ensure that laws and regulations are implemented in an efficient and cost effective manner.

11.3.6 States should harmonize as far as possible the standards applicable to international trade in fish and fishery products in accordance with relevant internationally recognized provisions.

71. States should harmonize technical and safety standards where possible and participate actively in the development of standards by the Codex Alimentarius and OIE. In the absence of harmonization, States should make every effort to recognize different regulatory processes as equivalent when they can be shown to achieve the same outcome.²² The same approach should be encouraged for other standards affecting international trade in fish and fish products.

11.3.7 States should collect, disseminate and exchange timely, accurate and pertinent statistical information on international trade in fish and fishery products through relevant national institutions and international organizations.

72. States should collect and disseminate accurate and timely information, including statistical information, on international trade. This is a key element for the understanding of domestic and international markets, and the impacts of trade and fisheries management policies. To improve its usefulness, the information collected by States should distinguish between aquaculture and capture fisheries. International organizations, non-governmental organizations and regional fisheries management bodies and national or regional institutions play an important role in providing the public with statistical information. Information disseminated by these organizations can contribute significantly to improving cooperation with the sector.

73. Developed countries are encouraged to assist developing countries to build their capacity to collect and disseminate fishery and trade related information, including statistical information.

²² The SPS and TBT are relevant agreements.

74. FAO and the FISH INFONetwork²³ provide extensive information on fish trade. States should ensure that information related to fish trade is readily available to interested parties. Information services should meet the needs of stakeholders, including harvesters, processors, retailers, non-governmental organizations and consumers.

11.3.8 States should promptly notify interested States, WTO and other appropriate international organizations on the development of and changes to laws, regulations and administrative procedures applicable to international trade in fish and fishery products.

75. States should regularly revise laws, regulations and procedures to take into consideration new evidence and technical and scientific developments. Trade is a dynamic activity and relies on timely and accurate information. Prompt, transparent and widespread notification of developments and changes to laws, regulations, administrative and operating procedures is fundamental if delays and unnecessary costs and inefficiencies are to be avoided in international fish trade.

76. States should promptly notify and exchange information to facilitate the functioning of the trade system and to encourage compliance by States and trading enterprises. A number of WTO Agreements contain notification obligations. These obligations aid transparency and compliance. Where no such obligations apply, States should nonetheless inform trading partners directly of changes and developments relevant to the international trade in fish and fish products.

REFERENCES

- FAO.** 1995. Code of Conduct for Responsible Fisheries. FAO, Rome. 41p.
FAO Fisheries Department. 1998. Responsible fish utilization. *FAO Technical Guidelines for Responsible Fisheries*. No. 7. Rome, FAO. 33p.

²³ Refer to the FISH INFONetwork Web site www.fishinfonet.com or to www.globefish.org for additional information.

- FAO.** 2005. Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries. Rome, FAO. 90p. (Trilingual)
- Kurien, J.** 2005. Responsible fish trade and food security. *FAO Fisheries Technical Paper*. No. 456. Rome, FAO. 102p.

The main purpose of these Technical Guidelines is to provide general advice in support of implementation of Articles 11.2 “Responsible international trade” and 11.3 “Laws and regulations relating to fish trade”, of the Code of Conduct for Responsible Fisheries. These guidelines assist in the further dissemination, understanding and implementation of the Code of Conduct for Responsible Fisheries worldwide. The guidelines are particularly important for two reasons: i) fish and fish products are among the most traded agricultural and food commodities with more than one-third of production entering international trade. This makes it especially important to ensure that all those involved in the sector operate according to the same set of rules; and ii) trade in fish and fish products is also very important for developing countries. Fifty percent of international trade in fish and fish products originates from developing countries. This is an important source of revenue, employment and foreign exchange for these countries.



