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UNODC/WWF Fisheries Crime Expert Group Meeting

24-26 February 2016, Vienna

WWF meeting report

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Introduction

The key conclusions from the Expert Group Meeting (EGM) on fisheries crime, jointly convened by WWF and the United Nations Office on Drugs and Crime (UNODC), 24-26 February 2016, and some suggestions on next steps, are set out below. These suggestions and next steps are aimed primarily at contributing to, and helping to bring coherence to, the plethora of emerging fisheries and wildlife crime-fighting initiatives, particularly those aimed at combating transnational and organised fisheries crime impacting on coastal community livelihoods in developing countries.

This report is WWF's report from the Expert Group Meeting. It has been reviewed by a group of EGM participants to ensure accuracy and transparency. A full list of invitees and participants is included as Appendix 1.

The formal report of the EGM was submitted as a Conference Paper (E/CN.15/2016/CRP.2) to the 25th session of the Commission on Crime Prevention and Criminal Justice (CCPCJ; the Vienna-based for which the UNODC provides secretariat support). The Conference Paper is included as Appendix 2. Its Key Recommendations are elaborated later in this report. A side event at the CCPCJ, presented the initiative, and WWF participated on a panel at the event, together with the Fisheries Minister of Indonesia and the Deputy Fisheries Minister of Norway, and UNODC.

Summary and conclusions

1. The 'Key Recommendations' in the CCPCJ Conference Paper need to be converted into **a clear commitment by member states and a clear CCPCJ mandate for UNODC** to support states in pursuing the range of actions envisaged by the EGM and other relevant meetings.
2. The most important starting point is that **states should review their domestic fisheries and all other related legislation to ensure appropriate offences and penalties are created in all relevant pieces of legislation** relevant to fisheries activities and associated supply and value chains, including international harmonisation, including appropriate extraterritorial application to ensure that they are comprehensive, consistent and foster complementarity with other relevant laws and support the fight against fisheries crime.
3. **Note that fisheries crime is defined broadly** to include not only fish harvesting offences but others relating to the trade in fish and fish products, financial transactions associated with that trade and the provision of services to those involved. This covers a lot of legislation. Note that the 'review' part of the process is important – many states already have relevant serious offences in various pieces of legislation but may not be applying them to fisheries crime fighting.
4. **All states with an interest in combating environmental crime should consider setting up multi-agency task teams (MATTs), or equivalent** internal cooperative arrangements, with broad mandates that cover not only designing and conducting the review of legislation referred to above but also supporting enforcement cooperation initiatives such as Interpol-related NESTs.
5. It is important that the **mandates and terms of reference for MATTs are broad enough to encompass all aspects of environmental crime fighting, including international connectivity** aspects, especially the need to review and strengthen domestic legislation to ensure it supports enforcement and the

fight against fisheries crime, including universalisation across relevant states and harmonised to facilitate cooperation between them.

6. To assist states, in marshalling the political will to drive this substantial and complex law reform programme, and to marshal the requisite financial and technical resources to do it, **it would be helpful to develop a draft CCPCJ resolution for next year's Conference that sets out the scope of the law reform ambition.** Such a resolution would, in effect, establish a 'soft law' commitment, like FAO's International Plans of Action (IPOAs), that would serve as a checklist and template for states to work from. Importantly, there is also much that can be done immediately by making better use of existing laws, such as they are, without waiting for strengthened laws.
7. There needs to be much better recognition of the extent to which **fisheries and other agencies, domestically, and related bodies, internationally, are often acting in isolation and thus prone to frustrating broader fisheries crime fighting opportunities throughout supply and value chains.** Such frustration is often due to legislative frailties, with governments unable to tackle fisheries crime holistically with a multi-agency approach to the whole supply chain, including vessels, processing, logistics and marketing, including supporting services and business models. States need to make specific arrangements to help their fisheries agencies, which are on the front line of complex patterns of offending throughout supply and value chains.

Domestically, establishing MATTs should help marshal the necessary cross-agency support for fisheries agencies. **Internationally, there is an important task ahead for relevant international bodies to clarify their interests, roles and responsibilities so that overlapping mandates can be managed and cooperative arrangements deepened.** Such bodies should specifically promote cooperation between each other. This will be particularly important for UNODC and FAO in helping their members adjust legislation, operating procedures, training, capacity development, etc. in fighting fisheries crime.

8. **The issue of corruption needs to be given greater emphasis and attention.** Improperly obtained official allocations, permits, licences, permissions, etc. significantly undermine and complicate efforts to secure both legality and sustainability. Likewise, improper evasion of catch reporting and non-payment of fees, taxes and charges, starve states of much needed revenue. Importantly, as much attention needs to be given to those who make corrupt payments as to those who corruptly accept such payments. There is strong connectivity with difficulties in identifying beneficial owners.
9. In this regard, it was noted that **identifying the beneficial owners of fishing vessels and companies throughout both supply and value chains is frustratingly difficult.** Specific attention needs to be given to how best to address this problem – if they cannot be identified and located, they cannot be pursued, prosecuted and punished.
10. Consideration should be given to the **creation of an offence of 'the illegal use of a fishing vessel'.** (This idea arose subsequent to the EGM.) It could help simplify the complex task of coordinating multiple agencies responsible for myriad pieces of legislation by bringing together a suite of principal offences into one piece of legislation with officers from multiple agencies trained and empowered to enforce its provisions. Such offences could include: smuggling drugs, weapons and people; vessel safety and crew conditions breaches; and failure to disclose a controlling or beneficial interest; as well as fisheries management offences.

11. It will be **important to ensure that legislation and other mechanisms enable states' judiciaries to have the discretion to impose penalties proportionate to the offence or to have a deterrent effect not only to impose punitive and deterrent penalties on those responsible but also to avoid unfairly penalising those not responsible, especially crew** on board fishing vessels and other ordinary workers throughout supply chains. It is important that this issue is handled by way of judicial discretion with all involved exposed to serious penalty. If limits to liability are imposed by regulation, captains and fishing masters simply swap roles with cooks and bottle washers. WWF is aware that this is a sensitive issue for workers representatives, especially the International Transport workers' Federation (ITF), and states should be suitably sensitive and cautious in approaching this dilemma.
12. It would be useful to sound out potential champion states on the merits of proposing resolutions for both ECOSOC and the UNGA. This idea has been elaborated since the EGM. The most important opportunity is to **propose a resolution for next year's CCPCJ to be adopted by ECOSOC to create a 'soft law' mandate for states to pursue criminalising offences** for activities throughout fisheries supply and value chains. Meanwhile, this year's UNGA could set 'fisheries crime at sea and beyond' as a topic for next year's UN Informal Consultative Process on Oceans and the Law of the Sea (ICP) with a view to adopting UNGA Oceans Resolution text about criminalising relevant maritime activities within UNCLOS' purview.
13. **IUCN's World Conservation Congress (WCC), meeting later this year, is to discuss a resolution on wildlife crime, broadly defined.** If adopted, both the IUCN's Environmental Law Centre (ELC) and its expert network, the Environmental Law Commission, will be engaged providing excellent opportunities to further advance the international conversation. This is a suggestion from WWF.

Introduction

The Fisheries Crime Expert Group Meeting (EGM) was jointly organised by WWF International (WWF) and the UN Office on Drugs and Crime (UNODC). The Norwegian Ministry of Trade, Industry and Fisheries provided funding support and had previously funded a suite of initiatives aimed at describing and developing the concept of fisheries crime and related concepts. In particular, the First International Symposium on Fish Crime had recently met in Cape Town, South Africa, 12-13 October 2015.

Given this prelude, the EGM was well attended. A list of invitees and attendees is included as Appendix 1. This network of interested experts, continues to grow not only within governments but also within the wider community, both within the fishing and fish trade industry itself and across civil society more widely, as interest in fighting fisheries crime, and environmental and wildlife crime more broadly. It is particularly notable that retail consumers of fish and fish products have been expressing a strong desire to be assured that their purchases are derived from 'legal' and 'sustainable' sources.

The principal outcome of the EGM is the joint UNODC/WWF CCPCJ Conference Paper (see Appendix 2) submitted to the 2016 CCPCJ. This Paper summarises the discussions, draws out points of general agreement and then makes some key recommendations. These key recommendations are elaborated upon below. In essence, the Conference Paper seeks to focus the attention of CCPCJ member governments on the timely importance of ensuring that not only primary fisheries offences but also associated offences throughout supply chains and value chains are appropriately criminalised. This is to reflect:

- (i) the potentially serious impact such unacceptable activities can have not only, directly, on living marine resources themselves but also, indirectly, on the livelihoods of dependent fishers, communities and economies; and
- (ii) the need to be able to pursue transnational and organised crime given the highly globalised nature of parts of both the original fishing activity, including planning and preparing for and servicing and supporting such activities, and the subsequent trade in fish and fish products and associated money flows (the value chains); and
- (iii) that supporting legislation is strong and allows for effective enforcement, bearing in mind substantial capacity building and technical support will be required to ensure that such laws are enforced.

Such criminalisation seeks to reflect: (i) the potentially serious impact such unacceptable activities can have, not only directly on marine resources themselves but also, indirectly, on the livelihoods of dependent fishers, communities and economies; and (ii) the need to be able to effectively pursue transnational and organised crime given the highly globalised nature of parts of both the original fishing activity and the subsequent trade in fish and fish products and associated money flows.

Given this rather tightly focused outcome from the EGM, WWF and UNODC agreed that WWF would produce this complementary report on its own that sought to engage experts and stakeholders more broadly in the work of the CCPCJ by encouraging both the obvious enthusiasm of assembled experts to help states do more to identify and fight fisheries crime and the growing interest among stakeholders aroused by the suite of initiatives taken by Norway's Ministry of Trade, Industry and Fisheries.

This report is particularly aimed at engaging the interest of the broader WWF network of National Offices and others, with a view to encouraging states to deepen their environmental crime fighting commitments both unilaterally and cooperatively, through CCPCJ and other relevant international bodies and processes.

Background

It has become clear to many within governments, the fishing industry and the conservation community that there is a pernicious subset of the industry that persists in flouting fisheries management laws, regulations and guidelines set by governments that are aimed at conserving and sustainably using fishery resources. Customarily low civil penalties or weak criminal sanctions, combined with often poor compliance and enforcement regimes, often provide little or no incentive to comply.

This is significantly complicated by the highly globalised nature of much of the fishing industry compared to the usually localised nature of the management and compliance capability. Thus those who own and control fishing vessels are often remote from those actually operating them. Traders and consumers of fish and fish products are similarly remote from those catching the fish. The biggest problem is that those responsible for and benefitting from illegal activity are often in jurisdictions safely removed from those where the original offences are committed. Meanwhile, those providing services to such operations, especially financial and insurance services, are remoter still.

The ambition to adequately penalise fisheries offences, through appropriate criminalisation and imposition of equivalent dissuasive administrative penalties, is aimed at effectively confronting such people by establishing penalty regimes severe enough and pervasive enough to deter them, especially in encouraging international cooperation to that end – a ‘nowhere to hide’ approach.

In 2008, the topic of discussion at the UN Informal Consultative Process on Oceans and the Law of the Sea (ICP) was ‘safety and security’ at sea. Attempts to get illegal fishing included in the discussion were largely ignored. Trafficking in fish was not seen as being in the same class of wrongdoing as trafficking in drugs, weapons or people.

The pervasive ‘it’s just fish’ culture was real: (i) fisheries managers who knew what was going on but genuinely felt their role was to help fishers do the right thing and not punish them for doing the wrong thing; (ii) on the high seas, these same fisheries managers felt constrained by a ‘freedom to fish’ implied by broader freedoms set out in UNCLOS; while (iii) others remained content to leave fisheries managers in their jealously guarded sectoral silos thus remaining complacently ignorant of the seriousness of the problems; such that (iv) poor recognition of criminality and impacts on fisheries creates a climate of impunity within which criminal actors can then thrive.

The subsequent UNGA 2008 Sustainable Fisheries Resolution had a Norwegian-sponsored paragraph, “59. Notes the concerns about possible connections between international organised crime and illegal fishing in certain regions of the world, and encourages States, including through appropriate international forums and organisations, to study the causes and methods of and contributing factors to illegal fishing to increase knowledge and understanding of those possible connections, and to make the findings publicly available, bearing in mind the distinct legal regimes and remedies under international law applicable to illegal fishing and international organised crime.”

Norway subsequently supported UNODC in preparing a report on 'Transnational Organised Crime in the Fishing Industry'. This report served to start a conversation about not only the extent to which criminals were involved in fishing and the fish trade but also how fishing vessels were used by criminals to traffic drugs, weapons and people (and as platforms for piracy and terrorism) - in no small part because the pervasive 'it's just fish' culture meant that governments tended not to subject fishing vessels to the same degree of regulatory control and oversight as is customary for merchant shipping.

This UNODC report was launched at CCPCJ in 2011 where Chile and Norway also introduced a resolution aimed at establishing the concepts of 'marine living resources crime' and 'transnational organised crime at sea'. These initiatives helped to start conversation among agencies not customarily involved in implementing fisheries legislation around the need for agencies with responsibility for legislation controlling flows of fish products and associated money flows and service provision to get involved and the inescapable need for international cooperation if such involvement is to be effective.

The conversation was driving a growing realisation that some fishers and fish traders were engaged in criminal acts – and acts of serious wrongdoing that should be criminalised – including corruption, organised and transnational crime. I.e., as is typically found, a case being dealt with administratively or criminally in respect of primary fisheries offences (dependent on jurisdiction) may, in serious cases, invoke traditional criminal jurisdiction in respect of fraud, tax evasion, conspiracy, money laundering etc.

Meanwhile, the concept of 'IUU' fishing, invented by CCAMLR twenty years ago as a jurisdictional concept, had evolved into an effective – if rather imprecise - badge for a broad, deep and persistent concern in the wider international community over inappropriate and irresponsible fishing by both the governments involved and the people conducting and benefitting from such fishing and throughout supply and value chains. Words such as 'piracy' and 'criminal' accurately describe the popular, public mood, if not the legal technicalities of the behaviour.

States and other international entities and stakeholder responded promptly by adopting through the Food and Agriculture Organization of the United Nations (FAO) a non-binding International Plan of Action to Prevent Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) while the OECD hosted a 'High Seas Task Force' (HSTF) established by a ministerially-led group of concerned states with industry and community participation, including WWF. The proposals in the HSTF's 2006 Report¹ built on the IPOA-IUU in formulating its proposals.

FAO then converted its ongoing work with Member States, including the implementation of the voluntary Model Scheme on Port State Measures to Combat Illegal Unreported and Unregulated Fishing by encouraging their use of port state controls as a default response to flag state irresponsibility, much as merchant shipping had been doing for years, into negotiation and adoption of a binding FAO Agreement on Port State Measures to Prevent Deter and Eliminate Illegal Unreported and Unregulated Fishing (PSMA). This has now received enough instruments of ratification and recently entered into force.

Meanwhile, Norway and the Pew Charitable Trusts provided initial funding for INTERPOL to establish Project Scale and INTERPOL's Fisheries Crime Working Group, an initiative focusing and expanding INTERPOL's capabilities in response to growing interest among governments in pursuing the perpetrators of criminal acts within their jurisdiction even when they, and those responsible, are in another country's jurisdiction.

¹ Closing the Net, <https://www.oecd.org/sd-roundtable/papersandpublications/39375276.pdf>

Five major areas of concern are now evident:

- (i) Ordinary retailers and consumers want reassurance that the fish products they buy, sell and eat are sustainably harvested by compliant fishers using honest supply chains - and responsible market states are responding appropriately, especially the EU and the US;
- (ii) Responsible governments do not like having their sovereignty challenged and, regardless of any 'it's just fish' culture, they take a dim view of foreign fishers undermining their attempts to ensure the conservation and sustainable use of natural resources within their jurisdiction and control – and so contributing to the political will to act;
- (iii) The extent to which fishery-dependent coastal communities in developing countries are often the poorest of the poor yet bear the brunt of this irresponsible commercial behaviour is becoming more widely appreciated as a great injustice – adoption of a stand-alone Oceans Sustainable Development Goal 14 by the UN reflects this; and
- (iv) The extent to which fisheries/fish trade – and forestry/timber trade - offences should be criminalised remains controversial in some quarters but there is an emerging sense that appropriate criminalisation of environmental, natural resource, and wildlife offences is warranted; and it is generally accepted that fighting transnational and organised crime in all these areas needs a comprehensive, coherent and cooperative approach if it is to be effective.
- (v) There is growing awareness and concern around the range of other problems associated with the involvement of fishing vessels and fish product supply chains in fisheries crime, notably both labour conditions tantamount to slavery or human trafficking and corruption of public officials, at multiple points along supply chains, not just on fishing vessels.

The scene is thus set to clearly elaborate a role for fisheries crime fighting as a significant part of the broader effort by government agencies, responsible industry and concerned citizens and consumers in fighting environmental, natural resource and wildlife crime and corruption, including ensuring supply chains handle only products from legal and sustainable sources. Importantly, criminalising fisheries offences where this is not yet done, using existing unused offences, or increasing appropriate sanctions and penalties, offers effective opportunities to take the fight to those who control and benefit from organised and transnational criminal activity. The global community now has a chance to attack the source of the problem, rather than just continuing to keep the symptoms at bay.

Many countries already have criminal provisions that can apply to the illegal harvesting of fisheries resources such that, in many instances, the task required is just to ensure that offences have been criminalised in such a way as to ensure UNTOC provisions and procedures apply. The same applies for triggering cooperation through Interpol where criminalisation is more important than severity of potential punishment.

It is also important to remember that combating crime works on different levels within society. Crime prevention strategies are as important as prosecution. Within a country, crime prevention involves close cooperation between police and a wide range of other agencies within and beyond government. It is similarly important that a wide range of international bodies cooperate so that all their efforts, within each agency's mandate, pull in the same direction towards greater compliance. This also serves to enable the criminal

justice system to more effectively investigate and prosecute fisheries crime throughout the whole supply and value chains.

Key recommendations from the CCPCJ Conference Paper and opportunities for WWF to help

- 1. States are encouraged to conduct comprehensive reviews of national legislation to ensure all potential fisheries crimes are adequately criminalised with penalties commensurate with the seriousness of the crimes**, including penalties of four or more years' imprisonment and equivalent administrative penalties where possible. In particular, states should adopt US Lacey-Act type legislation.

This is the principal message from the EGM. While many states already have criminal provisions in much applicable legislation, it is often not brought to bear in pursuit of fisheries offences. If the intent of the Recommendation is to be met, there is a lot of preparatory work that needs to be done by states, both collectively and individually, ahead of initiating such reviews. Note, in particular, the following two awareness-raising recommendations.

Such a review would probably best be carried out by the multi-agency task team (MATT) that is the subject of Recommendation 4, below, but that too requires a certain level of political will and institutional awareness to have been achieved. As the 2012 1st International Chiefs of Environmental Compliance and Enforcement Summit Report co-organised by INTERPOL and UNEP, noted: 'one of the main obstacles to participation in such networks is the "continuous need to address the 'value proposition' of networks and networking" – or, put another way, ministers are always asking these officials, 'is it worth your time and my money?'.

Such legislative reviews should be undertaken with technical assistance from agencies such as UNODC and FAO. Importantly, the reviews need to identify and highlight the presence of other crimes, including organised and transnational crimes, which occur simultaneously or in association with typical fisheries law violations.

Likewise, it is important that the scope of any such review includes the need to ensure that a framework for universalisation is created as discussed in Recommendation 5 – which, in turn, requires a political decision to pursue universalisation.

There was strong agreement among experts that such reviews and strengthening of legislation, and any other initiatives of states, need to have a strong focus on expanding and strengthening cooperation between states in pursuing transnational and organised fisheries crimes. This is a key unifying theme of Recommendations 5-10. It was particularly encouraging to have expertise from FAO and INTERPOL as well as UNODC at the meeting. These three bodies have different responsibilities for helping states develop and implement relevant legislation with both administrative and criminal sanctions and there is an obvious need for cooperation and coordination between them. Interpol, for instance, while not responsible for legislative development, is well placed to identify gaps from operational experience.

A key issue being the interaction between fisheries management legislation as a core responsibility for FAO and wildlife crime legislation being a core responsibility for UNODC while fisheries crime includes not only

fisheries management offences but also related offences throughout supply and value chains. FAO and UNODC have an opportunity to cooperate in helping states ensure that their fisheries legislation is fully modernised with an appropriate suite of both administrative and criminal sanctions in all relevant legislation.

As elaborated in Recommendation 3, below, making sure that fisheries agencies and officials are fully engaged in the broader fisheries crime fighting effort remains a critical consideration necessitating substantial and enduring engagement from FAO.

There is a useful follow-up task for UNODC, FAO, WWF and other partners to help create order out of this package of recommendations – (i) to help prepare suggested scope and terms of reference for states to use in initiating a comprehensive review of their national legislation, (ii) to help develop relevant programs and projects to support the conduct of such reviews, and (iii) to help mobilise the resources needed to conduct, complete and implement them. All national legal systems are different such that model legislation is of limited usefulness but a review process can be tailored to fit particular circumstances.

Finding champion states prepared to initiate suitably broad and comprehensive reviews of their legislation as an encouragement to others will be important. Such activity by champions would inevitably involve engagement with other states given the inevitable focus on broadly defining fisheries crime throughout supply and value chains and on the transnational and organised aspects of such crime.

There are two key focal points for such reviews of legislation: (i) to ensure that illegal harvesting of fish is appropriately criminalised as well as being subject to deterrent administrative sanctions; and (ii) illegal acts throughout supply and value chains are similarly criminalised (including offences such as falsification of catch certificates, corruption, money laundering, human trafficking, etc.)

2. Conduct awareness-raising aimed at states' acknowledgement of fisheries crime as 'real' crime and 'serious' crime necessitating an appropriate and proportionate criminal justice system and law enforcement response.

We need to be making the point that illegal fishing is a serious problem with potentially serious consequences for resource conservation, for livelihoods of fishers, for the wellbeing of dependent communities, for economies throughout supply chains, for corruption of officials – and, in particular, for government revenue losses. To blithely cite global estimates of the aggregate value of fish products derived from illegal fishing is no longer helpful.

Now, the key issue is: who suffers – at all points along supply chains and value chains involved (as a logical OECD economist once pointed out, price-conscious consumers may benefit from more plentiful and thence cheaper fish). In particular, we need to confront and get beyond the 'it's just fish' culture that sustains ineffective fisheries compliance regimes and a lack of understanding and concern on the part of other agencies responsible for regulating aspects of supply and value chains beyond fisheries management.

The other key issue, of course is: who benefits. More serious than the actual act of illegally harvesting fish is the surrounding web of criminal activity that enables it – not only in supporting and enabling illegal harvesting but also, subsequently, in turning illegal harvest into money. This is what INTERPOL aims its enforcement support at. Experts emphasized that difficulty in following money trails to locate and identify beneficial owners of vessels and companies involved remains a frustration in this regard.

3. **Conduct awareness-raising at the highest political levels to ensure states' understanding of the full range of fisheries crimes**, particularly their organised, transnational nature, and of the extent of the serious harm they can cause, to urgently bolster cooperative efforts to address fisheries crime both domestically and globally.

This gets to the definition of 'fisheries crime'. It is a broad concept that spans not only the on-the-water, predicate crime in breach of fisheries legislation but also the full suite of offences in breach of a broad suite of other legislation (see an indicative, but not exclusive, list in Annex 2 of the attached CCPCJ Conference Paper) covering issues such as corruption, safety at sea, people trafficking, document fraud, and money laundering. A critical law reform issue is thus to ensure that other legislation, covering predicate offences in these other areas, explicitly recognizes cross-over crimes in the fisheries area.

This is a critical issue. Experts repeatedly emphasized the importance of governments recognizing that, all too often, fisheries management authorities will not only reach settlements in court actions that impose non-deterrent civil penalties but also, and far more importantly, conclude matters before there has even been a chance for other agencies to consider, let alone investigate, whether there have been any breaches of legislation for which they are responsible. Similarly, opportunities are lost to investigate whether offences have been committed in other states. Such pursuit of 'little fish' while leaving 'bigger fish' undisturbed is clearly a matter of great frustration to those interested in pursuing the involvement of organised and transnational crime in fisheries offences throughout supply and value chains.

This raises the important issue of the need for inter-agency cooperation on a whole suite of issues (from information sharing and coordinating to joint investigations and enforcement) among the national agencies with separate but overlapping mandates and responsibilities, including recognizing and agreeing to several points of intervention whether during operations at sea, in ports or on land (elaborated in Recommendation 4).

Such awareness raising also needs to focus on the now clear link between illegal fishing and unacceptable labour practices and abuses of human rights. The most extreme of these being forced labour and the well documented use of human trafficking on some fishing vessels. However, there are many other unacceptable practices including long hours, inadequate food, systematic cheating by owners and their agents of the fishers accrued wages, withholding documents, physical abuse and violence and fishers being abandoned on unsafe vessels for months on end, without pay and being forced to rely on charity to survive – and that is to only name a few.

The ILO has adopted the Work in Fishing Convention 2007 (No. 188) which establishes international minimum labour standards for fishing vessels, its provisions also include a port State control and a no more favourable treatment clause. Such port state control provides an entry point to detect other crimes, including illegal fishing and human trafficking offences. As it provides a useful tool to combat fisheries crime and there is clearly a nexus between illegal fishing and crew abuse, it should be widely and promptly ratified. Given the modern day slavery in the sector it is also important the ILO Protocol of 2014 to the Forced Labour Convention, 1930, (P29) is also widely ratified as it provides additional protection to persons who have been subject to forced labour and human trafficking.

Another opportunity to raise awareness is the International Tribunal for the Law of the Sea Case 21 Advisory Opinion on the extent of liability for flag states for any failure of their due diligence obligation to control vessels flying their flag to prevent them being involved in IUU fishing. It is reasonable to expect all flag states

to review and revise their laws to ensure that such due diligence obligations can be met, or risk legal action from aggrieved coastal states themselves.

- 4. States are encouraged to establish cooperative cross-disciplinary multi-agency fisheries crime task teams at national level** and UNODC is encouraged to support requesting states in establishing such task teams.

The Cape Town Fish Crime Symposium referred to such bodies as ‘multi-agency task teams’ or MATTs. This was the stand-out recommendation from the EGM – whatever else governments might do, setting up such bodies, and ensuring that they are led by a the highest possible level in the government with an energetic and experienced coordinator, is an essential starting point.

These MATTs should have a broad environmental crime mandate that includes fisheries crime. They should be Ministerial, high level, task forces capable of ensuring that the necessary legislation, policies and resources are in place for separate operational task forces, like Interpol’s NESTs, to fulfil their mission. These are two very different forms of task forces, with different missions, mandates and modes of operation. Both are important.

- 5. Make greater use of ‘alternative’ and supplementary criminal jurisdictions throughout the fisheries supply and value chains to pursue fisheries crime law enforcement efforts.** All countries affected by fisheries crimes are strongly urged to more actively exercise their authorities in this field.

There was strong agreement among experts that this needs to be done. In pursuing transnational and organized crime, however, it’s important that states mutually recognize each other’s legislative arrangements. The 2013 Report for WWF by Professors Rose and Tsamenyi, ‘Universalising Jurisdiction over Marine Living Resources Crimes’ is aimed at giving some shape to this ambition. They suggest a four stage legislative process:

1. States need to define marine living resources crimes (what is included in the term, MLR, what is harm to MLR);
2. States need to universalize such crimes by ensuring they have appropriate extraterritorial effect (there is a transnational link warranting ‘long-arm’ legislation (it’s an offence in one jurisdiction to be materially involved with an offence in another jurisdiction – viz. the US Lacey Act));
3. States need to harmonise their domestic legislation to ensure that:
 - a. specific offences are included and recognised (global and regional standards identify offences and those which should be serious offences with proportionate sanctions);
 - b. cross-over offences, ancillary offences and corporate offences are identified)
4. States need to work together to expand their enforcement jurisdiction:

- a. through law enforcement cooperation – e.g., legal assistance, confiscation, extradition (NB the value of negotiating mutual legal assistance agreements – MLAAAs – to facilitate law enforcement cooperation);
- b. through long-arm measures – e.g., civil penalty debts, unlawful possession;
- c. through port control measures – e.g., implementing the PSMA, recognising a global blacklist of vessels, establishing a list of non-cooperating states; and
- d. through high seas measures – e.g., contributing to and using the FAO Global Record, allowing and conducting inspections at sea).

6. States are urged to make better use of existing cooperation mechanisms including provisions under UNTOC and UNCAC, and support development of further bilateral regional and multilateral mechanisms, recognising the critical role of cooperation in facilitating enhanced information-flow, intelligence development and sharing regarding the investigation and prosecution of fisheries crimes, especially with regard to use of UNODC, INTERPOL and World Customs Union (WCO) databases.

Experts identified this as a critical issue identifying that states need to work with each other not only formally through such arrangements and mechanisms but also informally. A key opportunity in building this cooperation architecture is the use of regional fisheries bodies, especially regional fisheries management organizations (RFMOs) where areas beyond national jurisdiction are involved. Much was made of the importance of being able to strike a flexible balance between informal cooperation, including with non-state actors, to help identify potential criminality and formal cooperation between agencies to facilitate prosecutions.

Information flow needs to be encouraged and facilitated whenever and wherever appropriate. This inevitably involves multiple channels of communication of information of inevitably variable utility to enforcement authorities but such information flows serve many ancillary purposes not least of which is public support for the political will needed to marshal the resources to operate effective enforcement regimes.

7. Develop practical manuals and Standard Operating Procedures to assist fisheries crime law enforcement officials, including in the criminal justice sphere, in addressing fisheries crime; to include at minimum a list of all potentially relevant laws, offences, agencies and investigation techniques, (particularly financial investigation) based on best practices. For example, extend the ICCWC Wildlife and Forest Crime Analytic Toolkit to include a broadly defined fisheries crime component.

There was widespread, strong support for development of suitable manuals and toolkits, especially:

- (i) to help compliance officers and police recognize the potential for offences under legislation other than the fisheries legislation for which they are primarily responsible and thence enable collaborative initiation, or widening, of investigations;

- (ii) in turn, to help judicial and law enforcement agencies appreciate the seriousness of fisheries crime, especially when authorizing and designing operations and interdictions on vessels or premises ashore where warrants have to be obtained from courts on the basis that more than one crime type may be being targeted;
- (iii) to provide the basis for cooperation in developing global or regional standards aimed at universalizing domestic arrangements to facilitate international operational cooperation in the pursuit and prosecution of multiple offenders in multiple jurisdictions; and
- (iv) To provide related training and capacity development in the use or application of the manuals and toolkits.

8. There is a clear need to build capacity and transfer technical skills in the criminal justice sector and law enforcement arena to address fisheries crime along the entire supply and value chains, including bringing together coastguard and port enforcement agencies with ‘traditional’ land based enforcement bodies, via comprehensive training and mentorship for all relevant agencies facilitated by appropriate agencies such as UNODC and INTERPOL.

There is a useful follow-up task for UNODC, FAO, WWF and others to help development and delivery of relevant programs and projects for capacity development, starting with improving skills for review of legislation that relates to enforcement throughout fisheries supply and value chains. There is much to be done to develop, trial and apply enforcement guidelines, manuals and toolkits. Such follow-up and capacity development initiatives should be discussed with governments and external partners with a view to identifying champion states prepared to trial them. Capacity development can also be scaled up to joint sub-regional and regional training and capacity building initiatives, requiring engagement with other states.

Capacity building and skills transfer needs a whole of government approach that builds cooperation between key partner agencies including customs administration, taxation authorities, fisheries authorities and inspectorates, coastguards, police and other law enforcement authorities. Key areas of need include:

- (i) Support for fisheries compliance officers in needing to be mindful of the full suite of potential fisheries offences throughout supply and value chains when preparing for and conducting inspection and compliance activities;
- (ii) Support for the judiciary and associated agencies and professionals to better understand the environmental, social and economic harm that can be done by fisheries crime – marrying up real world seriousness with legal seriousness; and
- (iii) Ensuring cross-over crimes are clearly understood and can be acted upon – making the connections between agencies and officials responsible for legislation covering crimes like corruption, document fraud, money laundering, etc. with limited experience of fisheries crime or environment crime more broadly.

INTERPOL is already involved, especially through its NEST programme, in providing a range of capacity and technical support through both standing programmes and through contribution to specific investigations. Such assistance might involve authorities from a wide range of agencies, including customs, port health, fisheries, tax, port control, border forces and immigration control, coastguards and/or navies; as well as

serious fraud investigators, financial investigators, asset recovery teams, ministries of justice responsible for mutual legal assistance, and prosecutors.

9. Make greater use of financial mechanisms, within the context of enhancing transparency and traceability, to investigate and punish fisheries crimes, in particular with reference to **uncovering beneficial ownership of vessels and companies throughout supply and value chains.**

Two lines of thinking emerged from EGM discussions:

Firstly, it's important to ensure that penalties for serious crimes include not only potentially lengthy custodial sentences but also potentially crippling financial penalties. Insofar as fisheries crime activity is a commercial activity – potential penalties should be sufficient to ensure commercial deterrence.

Secondly, general experience has shown that it is often very difficult to identify beneficial owners of vessels and companies involved in fisheries offences. This is a serious impediment to efforts to provide effective deterrence to those commissioning and benefitting from serious fisheries crimes as well as to those committing the crimes. If you can't identify those responsible for and benefitting from serious criminal activity, you can't confront them let alone impose penalties upon them.

The customary use of pervasive corporate secrecy provisions and offshore tax havens significantly exacerbates the problem. Ownership and control of fishing vessels, and all vessels more generally, however, pose particular problems associated with opaque chartering arrangements with owners and operators based in different jurisdictions. The EU has sought to address this problem by casting a wide net covering anyone 'directly connected': "Action can also be taken against: 'legal persons' such as corporations, companies and cooperatives (hereafter referred to as 'companies'), and 'natural persons' (or 'individuals') if they are found to have conducted business 'directly connected' to IUU fishing, including the trade in/or the importation of fishery products".

In similar vein, at a Chatham House meeting in February 2016,, a Spanish official introduced the concept of 'national business state' to add to flag state, coastal state, market state, to broaden the range of responsibility to those states harbouring and handling ill-gotten money.

The growing mood among governments to confront such people, if for reasons of avoided tax revenue as much as corruption and criminality, bodes well for development of the requisite political will to attack this secrecy problem.

10. States are urged to pursue fisheries crime as a critical emerging oceans issue for discussion in appropriate international fora.

It was suggested that interested governments might like to suggest to the UNGA that the topic for next year's ICP (the UN Informal Consultative Process on Oceans and the Law of the Sea) should be something along the lines of 'fisheries crime throughout supply and value chains'. It is important to note, however, that UNCLOS only covers maritime activities by vessels involved in the actual illegal catching of fish or in providing support to such vessels. The rest of the fisheries supply and value chains are covered by other international bodies and fora. For instance, the CCPCJ, dealing with criminal issues, is one of nine functional commissions under

ECOSOC (UN Economic and Social Council) which has the same status as the UNGA such that its resolutions have the same status as the UNCLOS fisheries and oceans resolutions.

Looking to the UNGA or ECOSOC for endorsement by, and leadership from, the international community are not alternatives. Given the emphasis given by EGM participants to the importance of recognising and pursuing fisheries crime throughout supply and value chains, however, there are probably more and better opportunities to be found in engaging ECOSOC through the CCPCJ and other fora than in engaging the UNGA through ICP.

Discussions subsequent to the EGM raised the idea of seeking to adopt a suitable crime-fighting resolution at next year's CCPCJ that might be subsequently adopted by ECOSOC. Such a resolution would then act as a 'soft law' framework for states to work from in marshalling their responses to fisheries crime and wildlife crime, natural resources crime and environmental crime more broadly.

Interestingly, this discussion is contributing to a wider conversation about how to characterise the criminal offences under discussion. Are they fisheries crimes, marine living resources crimes, wildlife crimes, forestry crimes, natural resources crimes and/or environmental crimes? Ultimately it doesn't matter how such crimes are labelled and categorised as long as the appropriate activities are made offences and suitable criminal and administrative penalties are created.

When it comes to marshalling the political will to act, however, such descriptors are very important. WWF and UNODC, for instance, are comfortable with the proposition that wildlife crime includes all species and so embraces fisheries crime and illegal logging, thus allowing decades of work on marshalling political will to protect charismatic megafauna to be built upon – as well as reflecting natural world realities. Others see fisheries crime as the best focal point for building political will. Other nuances abound.

There is thus a key task ahead, to find a way to ensure that such variant notions can be used synergistically to maximise the political will to act effectively in pursuit of wrongdoing that undermines efforts to secure the conservation and sustainable use of all the world's natural resources. Many international bodies, governments, agencies, communities, companies, civil society organisations and countless individuals want to make a contribution and they deserve appropriate encouragement, support and facilitation.

Appendices

Appendix 1 List of invitees and attendees to the WWF/UNODC Fisheries Crime Expert Group meeting, 24-26 February 2016, Vienna

Appendix 2 UNODC/WWF Outcome of the Fisheries Crime Expert Group meeting, 24-26 February 2016, Vienna; Conference Paper submitted to CCPCJ 2016 (E/CN.15/2016/CRP.2)

Appendix 1 List of invitees and attendees to the WWF/UNODC Fisheries Crime Expert Group meeting, 24-26 February 2016, Vienna

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11 May 2016

English only

**Commission on Crime Prevention
and Criminal Justice****Twenty-fifth session**

Vienna, 23-27 May 2016

Item 7 of the provisional agenda*

**World crime trends and emerging issues and responses in
the field of crime prevention and criminal justice****Outcome of the UNODC/WWF Fisheries Crime Expert
Group meeting, 24-26 February 2016, Vienna***Summary*

In order to facilitate an understanding of fisheries crime and its scope, including serious crime and transnational organised fisheries crime, and to identify criminal justice and law enforcement tools to address such crime, the United Nations Office on Drugs and Crime (UNODC) and World Wildlife Fund (WWF) co-hosted an Expert Group Meeting on Fisheries Crime on 24 to 26 February 2016 in Vienna. The multi-disciplinary expert meeting brought together international participants from national agencies, research institutions, law enforcement bodies, intelligence agencies as well as legal experts and NGOs with expertise in the emerging field of fisheries crime. The three main goals of the meeting were to identify ways to most effectively use criminal justice and law enforcement tools to tackle transnational organised fisheries crime and develop necessary new tools; to discuss means to enhance international cooperation and inter-agency coordination in investigating and prosecuting fisheries crime; and finally to discuss the capacity building needs and opportunities to improve knowledge and skills to better address fisheries crime along the entire value chain (eg document fraud, tax evasion, human trafficking, illegal fishing), and how the international community, and in particular UNODC Global Programme for Combating Wildlife and Forest Crime, can provide support. The meeting provided a platform to discuss and better understand what constitutes fisheries crime and what supplementary law enforcement and criminal justice system tools, demarcated from Illegal Unreported and Unregulated Fishing and compliance control measures, can be used to address this organized crime. The meeting focused

* E/CN.15/2016/1.

on practical law enforcement and prosecution case examples highlighting fisheries crime's economic, organised and transnational nature. The meeting discussed challenges in the criminal justice and law enforcement sector with regards to investigating and prosecuting such crime, and sought cooperative, collaborative solutions in better addressing fisheries crime. Following the presentations and working group discussions, participants highlighted several challenges and opportunities concerning fisheries crime law enforcement and, therefrom, elaborated recommendations for improvement which form the basis of this conference room paper; a list of nine key recommendations can be found in Annex I.

I. Background: understanding what fisheries crime is and why it must be urgently addressed

The wild capture fisheries sector involves a wide range of actors, from small artisanal fishers to globalized industrial corporations, all constrained by sustainability concerns. Fish and fish products from many of these fisheries are some of the most traded food commodities globally, representing a significant source of employment and wealth creation in coastal communities and of foreign currency earnings, particularly in developing countries. The sector also has an important role as a generator of household income and employment throughout supply chains.¹ In 2010, both wild capture fisheries and aquaculture provided fish with a total value of USD 217.5 billion, with developing countries providing over 50% of the world fish trade.² Over 500 million people in developing countries depend on fisheries (directly or indirectly) for their livelihoods.³ The value added by the marine fisheries sector in Africa alone amounts to just under USD 24 billion; 1.3% of the GDP of all African countries.⁴ The current state of world fisheries resources - namely, 85% of globally commercial stocks are over and fully exploited (of this, 29% is over-exploited),⁵ - renders fish ever more valuable which, in turn, increasingly attracts the attention and involvement of transnational organised crime syndicates to the fisheries sector.⁶

Parts of the sector are particularly vulnerable to organised criminal activity due to the transnational nature of global industrial fishing and associated law enforcement challenges combined with the porous regulatory regime associated with sea-borne activities.⁷ The United Nations recognises the link between illegal fishing and transnational organised crime⁸ as reflected in UNGA Resolution 67/79.⁹ The 2011 UNODC Report on Transnational Organised Crime in the Fishing Industry highlighted the vulnerability of the fisheries sector to multiple crimes, with its findings endorsed by UNGA Resolution 67/79 and UNGA Resolution 68/71.¹⁰ Under the United Nations Convention against Transnational Organised Crime (UNTOC) and United Nations Convention against Corruption (UNCAC), of which UNODC is also the guardian, UNODC works on addressing various forms of transnational organised crime, including migrant smuggling and trafficking in persons, drugs trafficking, arms trafficking, money laundering, among others. In a number of General Assembly, Commission on Crime Prevention and Criminal Justice and Economic and Social Council resolutions, application of these conventions to wildlife crime is explicitly recognised. The UNODC's Global Programme for Combating Wildlife and Forest Crime operates to strengthen States' law enforcement, prosecutorial and judicial capacity, including technical skills to address wildlife crime, where 'wildlife' refers to all aquatic and terrestrial flora and fauna species, including marine living resources, which includes fish, sharks and other commercially exploited marine taxa.

¹ United Nations Food and Agriculture Organisation (FAO). *The State of World Fisheries and Aquaculture: Opportunities and Challenges*. Rome; 2014.

² OECD Tax crimes in the fisheries sector 2013.

³ FAO, (2012), *Strategy for Fisheries, Aquaculture and Climate Change*.

⁴ *The Value of African Fisheries*. FAO Fisheries and Aquaculture Circular No. 1093, FIPS/C1093 (En). Rome; 2014.

⁵ United Nations Food and Agriculture Organisation (FAO). *The State of World Fisheries and Aquaculture: Opportunities and Challenges*. Rome; 2014.

⁶ 2011 UNODC Report at 17 and 110.

⁷ 2011 UNODC Report at 3,4.

⁸ *Ibid* at para 100. See subsequently UNGA Resolution 63/112 (5 December 2008) UN Doc A/RES/63/112.

⁹ 30 April 2013) UN A/RES/ 67/79 at operative clause 68.

¹⁰ (25 November 2013) UN Doc A/68/71 /L. 19.

Many jurisdictions' legislative, institutional, administrative, policy and budgetary arrangements have been geared towards treating transgressions in the fisheries sector as a fisheries management problem only, attracting relatively lenient administrative sanctions, rather than as a broad criminal concern throughout the value chain. The result is largely ineffective identification of fisheries crime and a severe lack of requisite criminal justice sector cooperation and coordination to address complex global fisheries crime involving several criminal offences along supply and value chains, often involving multiple jurisdictions both within and between countries. An improved understanding of what fisheries crime is and its relationship to transnational organised crime is imperative to address the issue.

To facilitate the understanding of fisheries crime and to identify appropriate criminal law enforcement tools to address such crime UNODC and WWF jointly hosted an Expert Group Meeting on Fisheries Crime on 24-26 February 2016 in Vienna. The multi-disciplinary expert meeting brought together international experts from national agencies, research institutions, law enforcement bodies, intelligence agencies as well as legal experts and NGOs with expertise in the emerging field of fisheries crime throughout supply and value chains. The purpose of the meeting was threefold, namely: (i) to identify ways to most effectively use criminal justice and law enforcement tools to tackle transnational organised fisheries crime and develop new tools as necessary; (ii) to identify means to enhance international cooperation and inter-agency coordination in investigating and prosecuting fisheries crime; and (iii) to discuss the capacity-building needs and opportunities to improve knowledge and skills to better address fisheries crime along entire supply and value chains and how the international community, and in particular UNODC Global Programme for Combating Wildlife and Forest Crime, can provide support.

A common understanding emerged amongst the experts of what constitutes fisheries crime, namely, serious offences within the fisheries resource sector that take place along the entire food products supply chains and associated value chains, extending into the trade, ownership structures and financial services sectors. The 'seriousness' of fisheries crimes was highlighted with reference to the extent of harm such crimes can cause to society at large; this is independent of whether or not such crimes fulfil the legal definition of 'serious' under UNTOC. Fisheries crime is not only associated with fishing per se, but include also the planning of fishing activities (financial, insurance, ownership and registration of vessels etc) and a wide variety of related criminal offences including corruptly obtained permits and licences, document fraud, tax evasion, money laundering, kidnapping, human trafficking, and drug trafficking (listed in Annex 2). Fisheries crime is wide-spread, usually transnational, largely organised, and can have severe adverse social, economic and environmental impacts both domestically and internationally.

The complexity of fisheries crime was illustrated with reference to practical international examples, highlighting the constantly changing business models and modus operandi of organised criminal networks (clusters, pyramid, flat organisations) in response to criminals' desire to maximise profit and exploit confidentiality, legal and enforcement weaknesses. Flexibility in response strategies is thus vital. Ultimately, there is an urgent need to address fisheries crime globally via action at appropriate and cost-effective points along fish product supply chains and associated value chains, including via control of ports, market controls and control of nationals, through a cooperative criminal law enforcement approach.

Participants highlighted the need to recognise the existence and potentially broad scope of fisheries crime regardless of the extent to which individual States may have developed

‘fisheries crime’ as a legal concept and/or included relevant provisions in domestic laws, regulations, administrative arrangements, policies and institutions. The review and strengthening of related criminal laws may be required to better facilitate addressing fisheries crime more broadly, especially where it is transnational and organised. There was also agreement that more awareness is needed about how to use the UNTOC as a legal basis for cooperation to investigate and prosecute fisheries crimes. All State Parties to the UNTOC consent to make all ‘serious’ crimes ‘punishable by a maximum deprivation of liberty of at least four years or a more serious penalty’. Addressing fisheries crime on a practical level requires a shared understanding of what fisheries crime is and the ability to identify fisheries crime along the need to take steps to address them, including ensuring compliance with the UNTOC requirements.

Additionally, at management and operational levels there is a need to enhance understanding of the broad nature and existence of all forms of fisheries crime, and how to combat them. Awareness-raising via advocacy and education is key to sensitising States to what fisheries crime constitutes, who fisheries criminals are, and the need to urgently address the challenges associated with this form of crime.

II. Key findings and recommendations - tools to address fisheries crime

A. Law enforcement tools

Jurisdiction

Criminal investigation of fisheries crime should be instigated, conducted and facilitated by relevant agencies within appropriate national jurisdictions along the entire fisheries supply and value chains. Examples of jurisdictions include national jurisdictions from which crews are drawn in instances of human trafficking; jurisdictions where insurers of vessels operate and beneficial owners reside; market state jurisdictions for illegally harvested resources; and the jurisdictions from which corruption money originates, as well as where it ends up. Additionally, the need for market and money destination countries to take a more active role in the exercise of their jurisdictional authority was stressed. This is premised on the need to attack the organised fisheries crime business model from all angles, along the entire value chain as the initial fisheries jurisdiction alone rapidly ‘runs out of road’. These jurisdictions have a particularly important role to play concerning fisheries crime associated with ‘stateless vessels’ that do not have a flag state.

Intelligence gathering and sharing

The meeting underscored the vital need for improved gathering of intelligence around fisheries crime, both predicate and associated, and effective sharing of this information between agencies within States and between States. Intelligence used to successfully solve cases and prosecute criminals should be fed back into identifying and solving new fisheries crime cases. It was recognised that there are severe evidential difficulties in proving fisheries crime, especially offences committed at sea, and the current challenge is thus to transform information from a variety of sources into actionable intelligence and into evidence that can be used for successful prosecutions. The need to find and improve channels for gathering information from non-state actors, especially other actors along supply chains, and converting this into actionable intelligence, evidence and witness testimony was recognised.

Information-flow

A core challenge highlighted was the need to facilitate more fluid information flow around fisheries crime. The requisite processes should be not so formal as to frustrate the flow of information but not too informal so as to render the information unreliable or unusable. The key role of documentation indicating evidence of criminal activity at all points in supply and value chains in the globalised fisheries sector, and the particular difficulty in gathering it from throughout the value chain and sharing it with relevant agencies and jurisdictions in fisheries crime cases, was emphasised with reference to a number of practical cases (most noteworthy the South African/US *Bengis* case, where this obstacle was overcome by persistent international cooperation). In this regard the need for greater access to vessel documents, including log books, licensing, and Vessel Monitoring Systems (VMS), was highlighted.

Overall, better use of information along the entire fisheries and fish product and value chains, including relating to trade, financial matters, and vessel ownership, preferable in 'real time', to facilitate identification of and gathering of evidence with a view to building a case and securing successful prosecution is required. Such information can be gleaned from export/import data, corporate structures and service providers etc.

There is a clear need to improve capacity to identify beneficial owners of vessels - particular attention needs to be given to law reform and international cooperation in this regard to expose them to deterrent sanction, both criminal and civil, recognising that exposure to severe financial penalty can be as effective a deterrent as jail time.

It was suggested that international agencies or bodies should cooperate to use existing law enforcement platforms, such as those available through INTERPOL and World Customs Organisation. Additionally, it was suggested that the development of a more broadly accessible global information 'clearing-house mechanism', facilitating information gathering and exchange pertinent to fisheries crime in its broadest sense, would be beneficial; such a mechanism could be used, for example, to track national revision of legislation pertaining to fisheries crime and act as a repository of information on fisheries crimes committed, prosecutions pursued and penalties imposed, including linking to other existing information systems, for example human trafficking, document fraud and financial crimes.

Financial investigation

Experts acknowledged that fisheries crime are, at their core, economic crimes in that they are rooted in opportunities to make an enhanced profit. Financial crime in the fisheries sector, such as tax fraud and money-laundering, are thus important forms of fisheries crime offences. Accordingly, financial investigation should play a key role in investigation of fisheries crime. In particular, such investigations are useful in efforts to identify 'beneficial owners' of companies and vessels that hide behind complex corporate structures and confidentiality arrangements with a view to penalising them; this may require piercing of the 'corporate veil'. Further, financial investigations have an important role to play in uncovering forgery and corruption in the acquisition of relevant licenses, permits and other requisite paperwork, especially in the conduct of distant water fishing and international trade, and can assist in identifying who falls within the corrupt 'protection economy' surrounding and supporting the committing and concealing of fisheries crime. Ultimately the aim in investigating fisheries crime should be to identify, deter and eliminate the criminals controlling and profiting from the full suite of criminal activities, that is, the

organisers and beneficiaries of fisheries crime. In this regard, restitution should be part of an appropriate sentence for fisheries crime offences (e.g. *Bengis* case).

The vital need for greater transparency surrounding information and its gathering and exchange to deter and prosecute fisheries crime was acknowledged. This is particularly relevant to the identification of beneficial owners of vessels as well as, more broadly, in the context of identifying and investigating potential financial and other crimes associated with predicate fisheries crimes.

Enhanced transparency was also emphasised as a key factor in seeking to disrupt and address corruption. Corruption at multiple points along supply and value chains was identified as a significant impediment to fighting crime in the fishing industry and transparency was identified as an important deterrent. This can facilitate countering corruption through supply chain security including the criminal justice sector, by strengthening and developing mechanisms to deter corrupt conduct by officials. Use of UNCAC cooperation mechanisms was identified as one way in which corruption issues could best be pursued.

Compliance and criminal investigation

Greater use should be made of the broad range of potential laws in which investigations of fisheries crime throughout supply and value chains can be grounded, in addition to often narrowly focused fisheries legislation often with weak penalty regimes. In particular this includes criminal codes, tax legislation, anti-corruption law, labour laws, organised crime laws and the law criminalising document fraud. It was emphasised that, where there is suspicion that a minor fishery offence may be linked to broader organised criminal activity, reliance should be made on all and any laws applicable so as to allow the identification of the full suite of potential offences warranting further investigations by relevant authorities.

In this regard it was acknowledged that it would be beneficial for fisheries crime experts to help develop checklists and manuals for fisheries control and law enforcement agencies involved in identifying, investigating and prosecuting both predicate and associated fisheries crime to assist each other in fulfilling their respective roles. Such checklists should cite all potential laws and offences alongside the relevant implementing agencies of such laws. Manuals on specific investigative techniques in fisheries crime, e.g. financial investigations, may also be useful.

A Toolkit for States to assess their legislative, law enforcement criminal justice capacity to address fisheries crime domestically and to collaborate internationally, with a view to reforming their laws to the extent warranted, would be beneficial. An expansion of the International Consortium on Combating Wildlife Crime (ICWC) Wildlife and Forest Crime Analytic Toolkit to cover the full range of fisheries crimes in more detail may serve this purpose or provide a template.

B. Cooperation and coordination

Greater law enforcement cooperation domestically between agencies and at an international level is imperative. Nationally, the relevant legal frameworks granting mandates to agencies in question must facilitate cooperation between them. Cooperation across borders between governments and law enforcement agencies, as well as broader inter-agency cooperation at national and international level, is key to conducting

successful international criminal operations and investigations that can trigger prosecutions and secure convictions and deterring penalties.

Relevant international bodies with a criminal law and law enforcement mandate, including UNODC, INTERPOL, ILO and OECD, are encouraged to coordinate and cooperate. The cooperation extends to the FAO in its fisheries law reform work. Cooperation with non-state actors, especially those in fisheries and fish product supply chains and value chains exposed to fisheries crimes, can also be very helpful. Practical experience shows that informal cross-border cooperation between officials during operations may be as prompt and productive as cooperation through formal channels. When it comes to prosecution, particularly regarding evidence gathering and extraditions, however, formal channels become necessary – here, existing mutual legal assistance agreements (MLAA) or the provisions of UNTOC can provide the requisite legal basis. Inter-state bilateral agreements may also provide an appropriate avenue and existing agreements need to be reviewed and revised to ensure that they explicitly include fisheries crimes, broadly defined, within their scope.

There was unanimous agreement that in light of the cross-disciplinary, complex nature of fisheries crime, extending well beyond ‘traditional’ fisheries management ambits, multi-agency task teams or units would be beneficial at national level to facilitate more effective and comprehensive law enforcement across the full range of relevant legislation. Ideally, such teams or units would facilitate cooperative involvement of all relevant agencies and departments including tax, customs, revenue, ports, police, fisheries, environment etc. Clear agency mandates and rules must be put in place regarding both the running of the team or unit, including operational aspects. It was identified that high level political support of such teams or units is valuable to their successful functioning. To this end, States’ formal acknowledgment of the serious nature of fisheries crimes at national political level will be a key driver in developing adequate political, and thence resource, support of such internal and international mechanisms to better address fisheries crimes throughout supply and value chains. The value of leadership of such teams or units by experienced and competent individuals was underscored.

C. Capacity-building

The experts recognised that capacity building can support States to significantly improve national criminal law enforcement responses to all forms of fisheries crimes. In particular, this need was highlighted in relation to conducting investigations, and subsequent criminal justice responses, specifically with regards to the identification, securing and analysis of relevant evidence; responding to this evidence and effectively punishing offenders. The need to deliver awareness raising and capacity building training to all relevant agencies, (including the police) as well as in particular to prosecutors and judges was underscored. Capacity building at ports would also be valuable (e.g. intelligence led risk profiling of containers in support of inspection regimes).

The positive role that such training can play in building and facilitating good working relationships between officials in the various key agencies involved in fisheries crime law enforcement was highlighted. The importance of ensuring that capacity building is ‘owned locally’ and delivered in a coordinated manner as part of sustained, on-going programmes, not as one-off events, was strongly emphasised. Financial sustainability will thus be key. Capacity building programmes must keep pace with the changing and complex nature of fisheries crime and therefore need to be flexible to promptly adapt accordingly. The use of

experts for skills transfer, mentoring and operational training in particular is necessary as well as with regards to follow-up training and ongoing operational support.

The meeting highlighted the acute need, within both developed and developing countries, for the sensitisation of legal practitioners, prosecutors and judges to the existence and seriousness of fisheries crimes throughout both supply and value chains. In particular they must be made aware of the array of potential offences beyond those found in fisheries regulations, including in other jurisdictions, which may be used as grounds for a fisheries crime prosecution. This recommendation arose from the observation that prosecutors often ‘drop the fisheries ball’ too early, settling for a moderate administrative fine for a fishing offence, instead of pursuing ordinary criminal law offences as a potentially serious criminal investigation aimed at identifying the ‘heads’ of the criminal organisation involved. Even in the event that fishing offence-cases make it to court, penalties are frequently far too lenient, failing to reflect the serious nature of fisheries crime or to act as a deterrent.

In this regard, States should further ensure that their judicial systems have sufficient discretion to proportionately address fisheries crime, including ordering restitution where appropriate.

D. Law and policy

It emerged at the meeting that many States are not aware that they can employ the mutual legal assistance arrangements under UNTOC to facilitate criminal investigation and prosecution of transnational organised fisheries crime where bilateral agreements are not in place to this end. Alternatively, UNTOC’s mechanisms can be used to supplement existing bilateral or multilateral agreements to the extent that they do not adequately include fisheries crime in their ambit. At the same time, such bilateral agreements may benefit from adjustment to better incorporate provisions covering the full suite of offences constituting fisheries crime. The greater potential for use of UNTOC’s mutual legal assistance provisions as a legal basis for cooperation to facilitate investigating and prosecuting transnational fisheries crime should be brought to States’ attention. More broadly, States should consider the extent to which UNTOC can be used to complement existing law enforcement efforts to fight ‘serious’ fisheries crimes.

The value of all States enacting US Lacey Act-like provisions at domestic level was emphasised with particular relevance to granting market States criminal jurisdiction over fisheries crimes throughout supply chains. Such provisions would criminalise the import, distribution and possession of natural resources or derived products within a market state that had been acquired in breach of the domestic laws of an originating or exporting state, including flag States.

States should review, and revise where necessary, the full range of relevant domestic law pertaining to the entire fisheries supply and value chains. This entails assessment of criminal codes and all other legislation covering the array of potential fisheries crimes in the fisheries sector, broadly defined. This scope includes money-laundering, document fraud, organised crime, racketeering, bribery and corruption, tax evasion, insurance fraud, violation of labour standards, human trafficking, obstruction of justice, customs violations, violation of hygiene and food safety standards etc. It is necessary to ensure that all such offences are appropriately criminalized, and attract commensurate criminal and/or equivalent administrative penalties, reflecting the seriousness of fisheries crime, and their economic nature, taking into account that jail time may be no substitute for economic loss, with a view to offering both effective deterrence and appropriate penalty.

Ideally such criminal offences should attract four or more years' imprisonment or 'a more serious penalty' to meet the serious crime element under the UNTOC and so trigger use of its cooperation mechanisms. It is important that hefty administrative penalties (including potential loss of fishing licenses for example) are included.

Whilst there is value in criminalizing fisheries offences, this is not imperative to pursue successful investigation and prosecution of fisheries crime provided that other offences, such as document fraud or tax evasion, are appropriately criminalised. In this regard, the need to make use of the 'full range of the law' was underscored. The complementary roles of different international organizations (particularly UNODC and FAO) in assisting States that request law reform/legislative review was recognised. States should ensure that steps to combat fisheries crime, especially transnational organised crime, do not have a disproportionate impact on compliant trade and that, where appropriate, small scale fishers should be offered alternative livelihood programmes, as an alternative to participation in illegal or corrupt fish supply chains.

E. Awareness-raising

Current law enforcement practice in many jurisdictions reflects that fisheries crime is rarely prosecuted in court with the result that opportunities to investigate and prosecute the organisers of such crimes are lost, along with effective deterrence opportunities throughout supply and value chains. It is recognised that this is in part due to a lack of awareness at political and judicial level of the serious nature and extent of fisheries crimes and, thus, a lack of commitment to effectively address it.

At a political level, States need to be made aware of the scale and importance of the issue and the extent of their responsibilities for taking appropriate and effective action at relevant points in these supply and value chains. This is likely best achieved by emphasising the economic loss to governments that fisheries crime causes either directly through lost revenue and tax evasion, or indirectly through loss of potential domestic economic activity and adverse social impacts, moving beyond solely focusing on the harm to the natural resource itself. Political buy-in is key to effectively addressing all forms of fisheries crime.

Awareness-raising efforts should thus be pitched at state level, highlighting, inter alia, the scale of the loss of taxation and other economic revenue associated with fisheries crimes throughout supply and value chains and related severe adverse social, economic and environmental impacts with additional costs to governments, legitimate businesses and the wider community. The value of these 'top down' drivers in pursuit of improved criminal law enforcement concerning fisheries crime was underscored, as was the value of non-state actors, especially within fish product supply chains, in helping to generate the political will needed to trigger commitments from the highest levels.

Annex 1

Key Recommendations

1. Conduct awareness-raising at the highest political levels to ensure States' understanding of the full range of fisheries crimes, particularly their organised, transnational nature, and of the extent of the serious harm they cause, to urgently bolster cooperative efforts to address fisheries crime both domestically and globally.
2. Conduct awareness-raising aimed at States' acknowledgement of fisheries crime as 'real' crime and 'serious' crime necessitating an appropriate and proportionate criminal justice system and law enforcement response.
3. Make greater use of financial mechanisms, within the context of enhancing transparency and traceability, to investigate and punish fisheries crimes, in particular with reference to uncovering beneficial ownership of vessels and companies throughout supply and value chains.
4. Make greater use of 'alternative' and supplementary criminal jurisdictions throughout the fisheries supply and value chains to pursue fisheries crime law enforcement efforts. All countries affected by fisheries crime are strongly urged to more actively exercise their authorities in this field.
5. States are encouraged to establish cooperative cross-disciplinary multi-agency fisheries crime task teams at national level and UNODC is encouraged to support requesting States in establishing such task teams.
6. Develop practical manuals and Standard Operating Procedures to assist fisheries crime law enforcement officials, including in the criminal justice sphere, in addressing fisheries crime; to include at minimum a list of all potentially relevant laws, offences, agencies and investigation techniques, (particularly financial investigation) based on best practices. For example, extend the ICCWC Wildlife and Forest Crime Analytic Toolkit to include a broadly defined fisheries crime component.
7. States are urged to make better use of existing cooperation mechanisms including provisions under UNTOC and UNCAC, and support development of further bilateral regional and multilateral mechanisms, recognising the critical role of cooperation in facilitating enhanced information-flow, intelligence development and -sharing regarding the investigation and prosecution of fisheries crimes, especially with regard to use of UNODC, INTERPOL and WCO databases.
8. States are encouraged to conduct comprehensive reviews of national legislation to ensure all potential fisheries crimes are adequately criminalised with penalties commensurate with the seriousness of the crimes, including penalties of four or more years' imprisonment and equivalent administrative penalties where possible. In particular, States should adopt US Lacey Act type legislation.
9. There is a clear need to build capacity and transfer technical skills in the criminal justice sector and law enforcement arena to address fisheries crime along the entire supply and value chains, including bringing together coastguard and port enforcement agencies with 'traditional' land based enforcement bodies, via comprehensive training and mentorship for all relevant agencies facilitated by appropriate agencies such as UNODC and INTERPOL.
10. States are urged to pursue fisheries crime as a critical emerging oceans issue for discussion in appropriate international fora.

Examples of fisheries crimes throughout the entire fisheries supply and value chains

Bribery and corruption
Customs offences
Arms trafficking
Document forgeries, including falsification of permits, licences, catch documentation, etc.
Drugs trafficking Fraud
Human rights violations, especially crew conditions tantamount to slavery, kidnapping or human trafficking
Illegal fishing/ violation of flag state and/or coastal state fisheries laws and regulations
Insurance fraud and related offences
Migrant smuggling
Misrepresentation
Mislabelling
Money laundering
Murder and greivous bodily harm
Obstruction of justice
Offences under international marine/environmental law (eg the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL) and its annexes)
Organised crime and racketeering
Tax violations
Theft
Violation of corporation law
Violation of hygiene and food safety standards
Violation of international labour law standards
Violation of vessel safety laws and regulations (crew and vessel)
Violation of navigation laws
Violations of merchant shipping laws
