

## ADVOCACY NOTE

# STRENGTHENING CAPACITY FOR EFFECTIVE AFRICAN PARTICIPATION IN REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS (RFMOs)

### *Summary*

AU Member States, members of regional fisheries management organizations (RFMOs), have triple roles in their respective organizations, as flag State, port State and coastal State. Strengthening their capacity to effectively participate in these organizations require investing in the following six areas:

- Legal and regulatory framework;
- Institutional organization and infrastructure
- Monitoring, Control and Surveillance (MCS);
- Scientific personnel and infrastructure;
- Participating in high seas fisheries
- Domestication and implementation of key fisheries-related instruments; and

Operationalizing the recently created “Coordinating Unit – African Voice for Fisheries (AVF)” to enable AU MS play cardinal role in their respective RFMOs and increase benefits from their participation in RFMOs.

Some of the international fisheries instruments have provisions not

only to enhance the ability of developing States to conserve and manage straddling fish stocks and highly migratory fish stocks, but also to develop their own fisheries for such stocks, including facilitating access to such fisheries. RFMOs also have an obligation to enhance the capacity of developing States. In support of this The Policy Framework and Reform Strategy for fisheries and aquaculture identified High Seas fisheries as an important policy pillar.

### *Background*

#### **What are Regional Fisheries Management Organizations?**

Regional Fisheries Management Organizations (RFMOs) are intergovernmental fisheries organizations or arrangements that have the authority to establish fisheries conservation and management measures on the high seas or international inland water basins. Regional fisheries management organizations (RFMOs) are central to solving the international fisheries crisis. By bringing together coastal states and fishing nations, RFMOs now manage the majority of the world’s marine



fish resources. There are presently 30 RFMOs worldwide. Twenty-four (24) are in marine waters and six (6) in international inland waters.

### **What regional fisheries management organizations border on the African Continent?**

Thirty African Union Member States (AU-MS) are members of seven RFMOs which area of competence border or are within the African Continent. The RFMOs are: International Commission for the Conservation of Atlantic Tunas (ICCAT) with 20 AU-MS out of 51 total membership; General Fisheries Commission for the Mediterranean (GFCM) 5 AU-MS of 35; Indian Ocean Tuna Commission (IOTC) 13 AU-MS of 32; South Indian Ocean Fisheries Agreement (SIOFA) 2 AU-MS of 9; Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) 2 AU-MS of 25; South East Atlantic Fisheries Organization (SEAFO) 3 AU-MS of 7; and the inland water basin RFMO, the Lake Victoria Fisheries Organization (LVFO) with three Members.

Thirteen AU-MS are members of two or more RFMOs. The ICCAT has the largest number of AU-MS States (20), followed by IOTC with 13. Three AU MS are Cooperating non-contracting Parties to the IOTC, they abide by IOTC regulations, make no financial contributions and have no voting rights.

### **What is the legal and institutional framework for RFMOs?**

The international framework for the global ocean governance is composed of a web of global and regional instruments that oblige States to protect the marine environment, and conserve and sustainably use living resources. The global framework is largely articulated in the United Nations Convention on the Law of the Sea (UNCLOS). While UNCLOS sets out the rights and obligations to conserve and manage resources on the high seas, it is the development of the exclusive economic zone (EEZ) regime that empowers coastal States to gain stronger control over the resources found in the zone. However, UNCLOS has some gaps in conserving and managing fisheries resources on the high seas and of straddling and highly migratory species.

*Binding Instruments:* In order to support the implementation of some of the fisheries provisions of UNCLOS, States adopted 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 (also called the UN Fish Stocks Agreement) in 1995. The UN Fish Stocks Agreement imposes more stringent obligations on coastal and fishing nations with respect to the management of highly migratory fish stocks; for example, the Agreement seeks compatible conservation and management regimes both inside and outside areas of national jurisdiction; and that conservation and management measures should be established on the basis of a precautionary approach and the best scientific information available.

The Fish Stocks Agreement accords a key role to RFMOs as the appropriate medium through which states are to cooperate to achieve and enforce conservation objectives both on the high seas and in areas under national jurisdiction. At the same time, the Agreement emphasizes that states with a 'real interest' in the fisheries concerned are entitled to become members of a relevant RFMO. This important and difficult provision is designed to ensure that, on the one hand, the Agreement cannot be used to protect the position of states currently fishing on the high seas by freezing out potential new participants, while, on the other hand, RFMOs should not be open to all states regardless of the extent of their interest.

Several other fisheries related instruments have been developed to support management of high seas fish stocks, including the Food and Agriculture Organization of the United Nations (FAO) 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the high Seas, FAO Port State Measures Agreement to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) Fishing (PSMA) adopted in 2009, and which came into force in 2016.

The Agreement (PSMA), which is based on the International Plan of Action to prevent, deter,

and eliminate illegal, unreported, and unregulated fishing (IPOA-IUU) and the 2004 Model Scheme on Port State Measures to Combat IUU Fishing, is a milestone in global cooperation as it places under a binding agreement measures that may be undertaken individually by countries acting as port States in areas subject to their full sovereignty. The adoption of such an agreement demonstrates the collective commitment of States to address global issues such as IUU fishing. It is also in recognition of the limitations of flag States in controlling their vessels fishing outside national jurisdiction and the role of port States to supplement flag State measures.

**Ratification of instruments by AU MS:** All AU MS, members of RFMOs have ratified the UN Convention on the Law of the Sea, 11 are Parties to the UN Fish Stocks Agreement, 6 to the Compliance Agreement; and 19 to Port State Measures Agreement, with an additional 3 Signatories.

**Non-Binding Instruments:** In addition, various non-binding instruments have assigned specific responsibilities to RFMOs. The most comprehensive such instrument that has been adopted is the Food and Agriculture Organization (FAO) Code of Conduct for Responsible Fisheries, which is itself made up of a number of separate, but linked, documents, and which continues to evolve through the formulation of international plans of action on specific issues of immediate concern. The importance of the role to be played by RFMOs is emphasized in the International Plan of Action on Illegal, Unreported and Unregulated Fishing (IPOA-IUU). The critical role of flag States in combating IUU fishing was further emphasized through the development of the FAO Voluntary Guidelines for Flag State Performance in 2015.

**Recognition of the special needs of developing countries:** All the instruments as well as several resolutions of the United Nations General Assembly clearly recognize the special requirements of developing States, that includes AU MS, and provide assistance to developing States in order for them to enhance their ability to; develop an adequate legal and regulatory framework; (b) strengthen institutional organization and infrastructure

needed to ensure adequate control of vessels flying their flag; (c) develop, implement and improve practical and effective MCS; (d) build institutional and human resource capacity to process and analyze scientific and other data, and make it available to relevant users, including relevant RFMO/As; and (e) participate in high seas fisheries and effectively participate in RFMOs

All RFMOs are established by an Agreement between the Contracting Parties. They all have Statutes as well as Rules of Procedures. All the RFMOs have updated their constituent documents in line with modern best practices in international fisheries.

### ***What Difficulties or Challenges constraint AU-MS to effectively fulfil their obligations to RFMOs?***

Although the Continent is encircled by six RFMOs, many AU MS are not sufficiently aware of the value of the RFMOs. Many AU MS, Members of RFMOs have insufficient knowledge of tangible benefits deriving from participation in RFMOs, and the contribution of, for example, tuna fisheries to the national economy. In addition, financial and budgetary constraints, limited human resources, governance issues, together with lack of institutional and technical capacity, absence of harmonized positions on common issues, compounded by poor coordination among AU MS of RFMOs limit them to effectively contribute to the work of these bodies and permit their countries derive more economic benefits because of their memberships. Generally, small quotas are allocated to African countries, as quota modalities are mainly based on historical catches starting in years when most African nations had not attained independence.

**Financial and budgetary constraints:** One of the requirements of the members of RFMOs is to contribute to the budget of the organization based on a scheme and scale agreed by the members. The intent of the scheme is to reduce the financial burden on less developed countries, many of whom are AU MS. The challenge is that the budget of some of the RFMOs are large. AU MS sometimes have difficulties meeting their financial obligations, especially for some States that are members of several organizations. The situation is compounded by the fact that in several countries the

resources devoted to fisheries management, science and enforcement are more limited than the challenges demand. Financial and budgetary challenges have prevented many States which would have otherwise like to, from becoming members of RFMOs. In some cases, AU MS have interrupted their membership of RFMOs because of financial constraints.

*Limited human resources:* The demand for human capacity in RFMOs is usually very high as some RFMOs have several Committees and working Parties of scientific, management and administrative nature. Several AU MS do not have the capabilities in diversity of disciplines, number of scientists and consistency in participation to satisfactorily fulfil their commitments to collect, provide and analyse data as well as undertake the required research. These challenges, which are not unique to AU MS delegations, often result to scientific discussions being dominated by a few parties. Some African countries have often submitted unreliable data to RFMOs. Data deficiencies have big negative impact in the stock assessment result and create more uncertainties in the advice given to managers.

*Inadequate governance:* continues to be a key challenge affecting the management of fisheries and the participation of AU MS in RFMOs. This inadequate governance is manifested in insufficient transparency and accountability, incoherent policies, and poor enforcement of agreed management measures. A review of historical decisions taken by ICCAT (for example) about penalties to Parties indicate that most of the countries penalized for non-compliance with adopted regulations came from Africa.

*Other Challenges:* are excess capacity, poor management, the environmental impact on fishing and the pernicious problem of IUU fishing. Addressing these issues is important because international and domestic fisheries are inextricably linked in both the challenges they face and the solutions available to them. For example, overfishing arising from poor domestic fisheries management regimes can migrate into illegal high seas fisheries; preoccupations with international resources allocation for domestic fleets can interfere in international cooperation on high seas fisheries;

high seas illegal fisheries can impact domestic fisheries directly or through price impacts; etc. It is to be noted that one of the primary objectives of UNCLOS is to seek compatible conservation and management regimes both inside and outside areas under national jurisdiction.

### ***How can Capacity of AU MS be strengthened for their effective participation in RFMOs?***

AU MS, members of RFMOs are participating in these organizations as flag States, port States and coastal States. This implies strengthening their capacities in all three areas for them to effectively participate in the work of the RFMOs. Taking into account the challenges the AU MS face, this will require investing in the following seven key areas:

- Legal and regulatory framework;
- Institutional organization and infrastructure
- Monitoring, Control and Surveillance (MCS);
- Scientific personnel and infrastructure;
- Participating in high seas fisheries
- Domestication and implementation of key fisheries-related instruments
- Operationalization of the Coordinating Unit – African Voice for Fisheries (AVF)

### ***Legal and regulatory framework:***

AU MS are urged to update/develop, as appropriate, the legal and regulatory framework needed to fulfil their obligations as flag States, port States and coastal States

As flag States, many AU MS do not have the legal and regulatory framework needed to ensure an adequate control of the fishing vessels flying their flag, which should include a due process for registering a vessel as well as for authorizing it to carry out fishing activities. In several instances national laws and regulations need, to be updated and harmonized with international commitments resulting from both hard and soft law. First of all, due to the different nature of their activities and consequently control requirements, the process to register a merchant ship must be differentiated from the one to register a fishing vessel. In the case of a fishing vessel, the national vessel registry must demand,



as a minimum, the vessel data required by FAO, as well as information on the history of the vessel, particularly in relation to changes of flag and name, and possible past IUU fishing practices. The vessel should not be included in a RFMO list of vessels engaged in IUU fishing and fishing related activities and the effective owner and operator of the vessel must be clearly identified

As Port States, many AU-MS need considerable improvement of their legal and regulatory framework to ensure that inspections carried out on fishing vessels using their ports are legally sound and consistent with national and international law, so that the actions taken in cases of IUU fishing are not judicially questionable.

Finally, as coastal States, some AU-MS, need capacity building, not only in the areas of surveillance of their jurisdictional waters, but also in terms of legal assistance in cases where a vessel has been apprehended and prosecution is consequently required.

### *Institutional organization and infrastructure*

AU MS should strengthen institutional organization and infrastructure needed to ensure adequate control of vessels flying their flag

As flag States, many AU-MS do not have either institutional organization or the required infrastructure to adequately control the fishing vessels flying their flag. It is essential to differentiate registration for fishing vessels from merchant ships. There is a need to have a specific government agency or statutory authority with a clear mandate and accountability for the results of the fisheries management policy and system in place. The body should have adequate infrastructure and capable personnel to control and enforce the applicable fisheries regulations, particularly in relation to monitoring, control and surveillance (MCS) of the activities carried out by the fishing vessels flying their flag.

As a Port State, since the port authorities are generally completely different from the fisheries authorities, it is essential to establish a close interaction and cooperation between these two agencies which, in

many cases, have divergent objectives and interests.

As a coastal State, the control of its own vessels is included in its role as flag States, while the control of its ports is included in its role as port States, so the issue left to be addressed is the control of its EEZ, a task that is generally in the hands of the navy or some other arrangement depending on the State, even if the fisheries department has a monitoring control and surveillance system. Under this context, a better coordination and cooperation between the national fisheries authorities and the navy or the designated agency is also required.

### *Monitoring, Control and Surveillance (MCS)*

AU MS are invited to develop, implement, and improve practical and effective MCS to fulfil obligations as flag State, port State and coastal State; and also have a pool of well-trained Regional Observers to represent the interest of several states.

The use of MCS measures by AU MS to control the vessels flying their flag, although essential for an adequate control of fishing vessels, are commonly very expensive and difficult to implement. Any MCS system needs to include means for immediate contact with the vessel, so that it may be called back to port at any time. All fishing vessels to operate in the high seas need to be equipped with a satellite based, vessel monitoring system (VMS), which, in turn, leads to the necessity of having a Fisheries Monitoring Center, capable of receiving and tracking the signal from all monitored vessels.

One of the best ways to ensure compliance by fishing vessels, however, is by having observers on board, who can not only inspect the fishing operations in a continuous and permanent basis but can also gather valuable scientific information. For logistic and costs reasons, industrial fishing vessels cannot enter the port of each country to drop a national observer and take another during a fishing trip. It is recommended to have a pool of well-trained Regional Observers to represent the interest of several countries.

All fishing activities must be recorded in a fishing log sheet and transmitted to the monitoring center of the flag State electronically. All landing and transshipping operations of the fishing vessel should be monitored, and the data compared to the information available from the fishing log sheets. Very few, AU-MS are prepared to implement such an MCS system, so considerable investments are needed in order to enhance their capacity in this regard, as flag States.

As port States, a significant investment will also be required to train inspectors to perform the inspections required by the FAO Port State Measures Agreement (PSMA), according to its guidelines for the training of inspectors. Funds are envisaged in Part 6 of the PSMA for this purpose.

As a coastal State, the main MCS challenge is to be able to survey their EEZ to prevent and deter IUU fishing by foreign vessels, a task generally in the hands of the navy. This is the most expensive investment required in terms of MCS, since it involves not only patrol vessels, but the whole infrastructure and personnel required by them, with a significant amount of fixed costs.

### *Scientific personnel and infrastructure*

AU MS are urged to build institutional and human resource capacity, particularly in science, to process and analyse scientific and other data, and make it available to relevant users, including relevant RFMOs

As a flag State, all information generated by the MCS system, should be processed, analyzed, and transmitted to the pertinent RFMO. Several AU MS do not have either the facilities for doing so, nor the personnel with the required scientific capabilities. Often, the scientists involved in the process of data gathering and analysis are not given the opportunity to fully participate in the work done by the relevant RFMO, including the stock assessment exercises. Such scientists may be demoralized that they are only good to provide information and data but not to analyze the data they helped to provide, of assessing the stock condition and of providing management advice in equal footing with the scientists from more developed nations.

It is essential to ensure full participation of scientists from all nations that take part in the fishery. Such participation should not be limited to attending meetings but should include adequate investments in capacity building, for the training of these scientists in several aspects of fisheries sciences. In any capacity building initiative, mechanisms to ensure that the personnel chosen to be trained are the ones effectively involved in the fishery management process, as well as to reduce the risk of their subsequent evasion from their original posts should be envisaged.

### *Participation in high seas fisheries*

AU MS are encouraged to participate in high seas fisheries by enhancing their ability to develop their own fisheries for highly migratory fish stocks including access to fisheries, as clearly spelled out in several fisheries-related international instruments.

The commitment and willingness by AU MS to exercise adequate control over fishing vessels flying their flag and over their ports are also dependent on their perception that they too can participate in high seas fisheries. So, the capacity building efforts should not be restricted to improving their MCS and enforcement capabilities, but also to enhance AU MS ability to develop their own fisheries for highly migratory fish stocks, including access to such fisheries, as clearly spelled out in the several fisheries-related international instruments.

That also implies that AU MS continue to insist that RFMOs incorporate in RFMO regimes transparent and equitable mechanisms for the allocation of fishing possibilities. This very important aspect of Part VII of the UN Fish Stocks Agreement and several other legal instruments is often glossed over, with a much greater emphasis being usually placed on the need of capacity building exclusively for making developing States more capable of controlling the vessels flying their flag and controlling their ports.

As coastal States, an increased participation of AU Member States in the high seas fisheries would also have the natural consequence of increasing AU MS

interest and consequent investment in MCS systems for a better surveillance of their EEZ, since most of it is made of oceanic waters where the main fishing activity is the fishing for highly migratory fish stocks, managed by RFMOs.

### *Domesticate and implement key fisheries-related international instruments*

The ratification and eventual incorporation of the key fisheries -related international instruments is essential for AU MS meet their obligations and hence ensure their effective participation in their respective RFMOs. Many AU MS need assistance to effectively undertake this task. For States that are willing but lack the capacity, they should seek donor support. In addition, AU MS should facilitate the exchange of information and experience on the implementation of the instruments.

### *Emphasis on Capacity Building*

Strengthening capacity in the six main areas above will naturally require significant investment of three different natures: a) Material resources (facilities, hardware, and equipment); b) Human resources (training); and c) Financial resources.

Capacity building is not an isolated action, punctual in time. It is a process, and, as such, it has to be approached and developed, in a coherent and integrated manner. Capacity building initiatives regarding human development must take a holistic/ systemic approach.

#### *Human Capacity Development*

“the process by which individuals, groups, organizations, institutions, and societies develop their abilities- both individually and collectively- to set and achieve objectives, perform functions, solve problems and to develop the means and conditions required to enable this process”.

Source: FAO Advisory Committee on Fisheries Research. Report of the first session of the Working Party on Human Capacity Development in Fisheries. Rome, 19-22 April 2004. FAO Fisheries Report No. 745. Rome, FAO. 2004. 26p.

This implies that, besides training in several fields related to MCS, such as maritime legislation and international law, vessel monitoring systems, and fisheries management; capacity building initiatives should also focus on fisheries science, particularly in fish population dynamics and stock assessment, to enhance the participation of scientists from AU MS in the scientific bodies of RFMOs.

The fisheries -related instruments have provisions for assistance to developing countries. For those AU MS who have joined the UN Fish Stocks Agreement, the Part VII fund could be very well used for this purpose. Part 6 of the FAO Port State Measures Agreement has similar provision. Nevertheless, the RFMOs are the ones who have the obligation to participate in capacity building efforts in favor of AU MS specially in relation to training in data collection and analysis, and to facilitate the scientific participation of scientists from developing States in scientific meetings, in a meaningful manner.

### *Operationalization of the Coordinating Unit – African Voice for Fisheries (AVF)*

A Consultative Workshop of Experts in March 2017, at Mombasa, Kenya recommended the establishment of the Coordinating Unit “African Voice for Fisheries (AVF) as a mechanism to harmonize, coordinate and support a common position of African Union Member States in the RFMOs. The functions of AVF include to: increase and consolidate African position and a voice in RFMOs; promote African Policies, notably the Policy Framework and Reform Strategy for Fisheries and Aquaculture in Africa (PFRS); develop and prioritize Plan of Action (POA) programs to facilitate the participation of AU-MS in RFMOs; prepare background documents on issues relevant to particular RFMOs as well as common discussion points for AU-MS in preparation to RFMO meetings; Collect and disseminate relevant RFMOs information to AU-MS; monitor activities in various RFMOs; etc.

In view of the cardinal role AVF can play in improving the capacity of AU MS to effectively participate in their respective RFMOs, its operationalization should be given high priority.

## Conclusion

Many of the challenges that hinder AU MS to effectively participate in RFMOs are foreseen in the UN Fish Stocks Agreement, which provides general guidance as to the forms of assistance that are to be given to developing countries and the objectives of that assistance. Other instruments such as the PSMA also foresees the need for capacity building and funds for such purposes are envisaged. AU MS should collectively request assistance from such funds bearing in mind that such assistance is often given only to those that make formal request.

## Further Reading:

1. Report of the consultative Meeting to establish mechanism for the establishment of common position and voice and to provide support to AU Member States in the implementation of regional fisheries management organizations (RFMOs) recommendations
2. United Nations Convention on the Law of the Sea, 1982
3. **FAO, 1993.** Agreement to promote compliance with international conservation and management measures by vessels on the high seas.
4. 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
5. **FAO, 2009.** Port States Measures Agreement to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) Fishing,
6. **FAO, 1995.** Code of Conduct for Responsible Fisheries
7. International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing (IPOA-IUU)
8. The Policy Framework and Reform Strategy for Fisheries and Aquaculture in Africa (PFRS), endorsed by the Summit of Head of States and Government of the African Union, in June 2014.

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