



# PARLIAMENT

OF THE REPUBLIC OF SOUTH AFRICA

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Select Committee on Land and Mineral Resources

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**DAFF Briefing Session:**  
**International Instruments**

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**4 November 2014**

### 1. BACKGROUND TO THE INTERNATIONAL INSTRUMENTS:

#### 1.1 Illegal, Unreported and Unregulated fishing and its associated impacts:

##### **Definitions:**

- Illegal fishing: Illegal fishing takes place where vessels operate in violation of the laws of a fishery – either within the territorial waters of a sovereign country or, if on the high seas, under the jurisdiction of a regional fisheries management organisation (RFMO).
- Unreported fishing occurs legally, but catches are unreported or misreported to the relevant national authority or RFMO.
- Unregulated fishing generally refers to fishing by vessels without nationality, or vessels flying the flag of a country not party to the RFMO governing that fishing area or species on the high seas.

Africa, and in particular, sub-Saharan Africa, is home to the fastest-growing and simultaneously most food-insecure populations in the world. Developed Nations fishing in the Exclusive Economic Zone (EEZ) of African countries disrupt artisanal fishing communities, illegally catching an estimated \$1 billion a year worth of fish and invertebrates per year.<sup>1</sup> Along the West Coast of Africa, it is estimated that up to 40 percent of fish catches are illegal,<sup>2</sup> while figures suggest<sup>3</sup> that illegal fishing by European Union (EU) vessels in Somali waters annually removes fish with a monetary value 5 times greater than the value of EU aid to the country. A single commercial trawler can catch the equivalent of the annual fishing effort of 56 traditional wooden fishing vessels in one day<sup>4</sup>. Typically, fish caught in African waters by international fishing fleets end up in markets outside Africa, causing a loss of revenue, reduced food security and serious bio-diversity impacts.<sup>5</sup>

##### **1.1.1 Social, Economic and Humanitarian Impacts of IUU Fishing**

The vessel operations and catches landed in African coastal waters typically do not contribute any of the direct and indirect benefits<sup>6</sup> of their activity to the country's economy; and often result in clashes with local artisanal fishermen when exploiting coastal resources. This conflict between artisanal fishers and IUU vessels from foreign countries have been presented by some authors<sup>7</sup> as one of the initial causative factors for piracy developing along the Somali coastline, and warnings have been raised about a similar situation developing along the coast of West

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<sup>1</sup> Canning (2012).

<sup>2</sup> Fishwise.org (2014).

<sup>3</sup> Chanda (2011).

<sup>4</sup> Ibid.

<sup>5</sup> Fishwise.org (2014).

<sup>6</sup> Landing fees, license fees and taxes and levies paid by legally operating fishing companies

<sup>7</sup> Ploch et al. (2011).

Africa.<sup>8</sup> The income generation potential<sup>9</sup> of fishing activity is often greater than the commercial value of the fish caught, as the largest economic gain from fishing activity is likely to come from port services and processing revenue.<sup>10</sup> Without port and processing income, the only recourse left to African countries is to charge foreign fleets legally fishing in their waters a license fee. In the Indian Ocean Tuna Fishery investigated by the IOC-MCS project<sup>11</sup>, license fees amounted to 3% of the income derived in the tuna fishing sector.<sup>12</sup>

### 1.2 HIGH SEAS FISHERY MANAGEMENT

The management of High Seas<sup>13</sup> fishery resources is a major challenge for a number of reasons. Law enforcement and biodiversity management is costly and expensive due to the logistics involved. A number of international treaties and agreements, such as the 1982 'Convention' means the United Nations Convention on the Law of the Sea (UNCLOS) of 10 December 1982, the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December and an agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (December 1995) are examples of attempts to ensure that High Seas fishery resources is managed responsibly. Obviously, not all nations with a fishery capacity are signatories of all such management agreements, making the implementations of High Seas fishery management agreements costly and difficult.

Further challenges with regards to moving towards more sustainable exploitation of high sea and regional fishing stocks is the current lack of biodiversity management agreements for large parts of the high seas, a lack of success in implementing many regional fishery management efforts and a slow transition towards effective market control<sup>14</sup> methods. While a large percentage of the ocean is theoretically governed by some form of Regional Fisheries Management Organisation<sup>15</sup> (RFMO), very few of these operate on biodiversity conservation principles, resulting

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<sup>8</sup> Canning (2012).

<sup>9</sup> MRAG (2005).

<sup>10</sup> SADC (2008).

<sup>11</sup> SADC (2008).

<sup>12</sup> This also indicates how the improvement in capacity of a country, elevating it from licensing to operating capacity can increase the GDP contribution of fishing to the country.

<sup>13</sup> Each country with a coastline is entitled to lay claim to an Exclusive Economic Zones (EEZ) adjacent to the country, determined either through an investigation of the continental shelf position or a pre-designated (Usually 200 nautical miles) distance from shore. All oceans falling outside any EEZ is governed by international treaties, and referred to as "High Seas".

<sup>14</sup> Trade restrictions are designed to limit the possibility of IUU fish entering the market place, through the use of documentation that only legally-caught fish is able to obtain.

<sup>15</sup> There are two types of RFMO: some only manage highly migratory fish stocks, like tuna (tuna RFMOs) and some manage stocks of fish other than tuna (non-tuna RFMOs). Most RFMOs have the power to set catch and fishing effort limits, technical measures, and control obligations. Regional Fisheries Organisations (RFOs) have a purely advisory role with no management mandate.

in the fact that less than 1 percent of the High Seas<sup>16</sup> are protected by biodiversity level management agreements.<sup>17</sup> At present there are 20 RFMOs, which cover the majority of the world's waters. Their role is to guarantee the management, conservation and sustainable exploitation of the living marine species covered by their Conventions.<sup>18</sup> The restrictions imposed by RFMOs are also considered to be less effective than what the fully operational PSMA will be.<sup>19</sup> Key to improving sustainable fishing along the coast of Africa is to press for the review of all RFMO operating within the continent's waters in order to examine the effectiveness of current management measures. These reviews are being performed elsewhere,<sup>20</sup> particularly with regards to compliance monitoring mechanisms in use to combat illegal fishing activity.

## 2. INTERNATIONAL INSTRUMENTS TO BE TABLED BEFORE THE COMMITTEE

Apart from the Port States Measures Agreement, two RFMO instruments will be introduced into the committee by the Department. One is related to the establishment of an Indian Ocean Tuna Commission (IOTC) and the other is related to South Africa signing the Convention for the Conservation of Southern Bluefin Tuna (CCSBT). The objectives of the two agreements are listed as follows:

- IOTC: The Commission shall promote cooperation among its Members with a view to ensuring, through appropriate management, the conservation and optimum utilization of stocks covered by this Agreement and encouraging sustainable development of fisheries based on such stocks.
- CCSBT: The objective of this Convention is to ensure, through appropriate management, the conservation and optimum utilisation of southern bluefin tuna.

The Indian Ocean area supplies over 20 percent of the world's tuna catches, making it the second-largest tuna fishery zone after the Pacific Ocean.<sup>21</sup> South Africa has taken some time in signing the Instrument, although the country has been a co-operating non-member since 2005. The IOTC is an intergovernmental organization that was established under Article XIV of the FAO constitution. The IOTC agreement was concluded in 1993 and entered into force in 1998.<sup>22</sup> The Commission is a multi-species management organization, committed to the management of the following fish species:

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<sup>16</sup> That part of the open ocean that is not under the direct management of any one nation, typically falling outside any nations 200 nautical mile EEZ claim. Roughly 64 percent of the earth's ocean falls within this zone.

<sup>17</sup> Greenpeace (2013).

<sup>18</sup> European Commission (2012).

<sup>19</sup> Carey (Undated).

<sup>20</sup> NOAA (2013).

<sup>21</sup> Panjarat (2008).

<sup>22</sup> Ibid.

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- Albacore tuna (*Thunnus alalunga*)
- Bigeye tuna (*Thunnus obesus*)
- Skipjack (*Katsuwonus pelamis*)
- Yellowfin tuna (*Thunnus albacares*)
- Southern bluefin tuna (*Thunnus maccoyii*)
- Swordfish (*Xiphias gladius*)
- Striped marlin (*Tetrapturus audax*)
- Black marlin (*Makaira indica*)
- Indo-Pacific sailfish (*Istiophorus platypterus*)
- Indo-Pacific blue marlin (*Makaira mazara*)
- Bullet tuna (*Auxis rochei*)
- Longtail tuna (*Thunnus tonggol*)
- Kawakawa (*Euthynnus affinis*)
- Frigate tuna (*Auxis thazard*)
- Indo-Pacific king mackerel (*Scomberomorus guttatus*)
- Narrow barred Spanish mackerel (*Scomberomorus commersoni*)

The IOTC is mandated to manage tuna and tuna-like species in the Indian Ocean and adjacent seas with the goal of conservation and optimum utilization of the stocks for long term sustainability.<sup>23</sup> In 2013, the Commission expanded its mandate by including non-tuna species such as cetaceans (dolphins and whales) and sharks in the Commission's management measures.<sup>24</sup>

At present, South Africa is a co-operating Non-member of the CCSBT and received a moderate allocation of the total annual fishing quota for the species. Upon signing the agreement, the country's allocation is set to rise significantly, from 40 to 150 tons in 2015.<sup>25</sup> Southern Bluefin tuna is a valuable but also ecologically important species with a history of over-exploitation. The Commission was established to develop and implement conservative fishery management practices for the species with the aim of re-building spawner biomass for the species, which is known to reproduce only in one area along its entire distribution.<sup>26</sup> The CCSBT developed a fishery management plan that now sets the TAC<sup>27</sup> based on the outcome of the MP, which includes in its activities stringent monitoring of stocks in order to evaluate the impact of current fishing levels. In adopting the MP, the CCSBT follows a precautionary approach to increase the likelihood of the spawning stock rebuilding in the short term and to provide industry with more

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<sup>23</sup> Panjarat (2008).

<sup>24</sup> <http://www.panda.org/?208591/Good-news-for-sharks-at-Indian-Ocean-Tuna-Commission-meeting>.

<sup>25</sup> CCSBT (Undated).

<sup>26</sup> Ibid.

<sup>27</sup> Total Allowable Catch. A fishery management method where the total annual catch levels are strictly controlled in order to prevent over-fishing.

stability in the TAC.<sup>28</sup> The goal of the management plan (as a first step) is to rebuild the spawning biomass<sup>29</sup> to 20 percent of the pre-fisheries level.<sup>30</sup>

The Agreement on Port State Measures (PSMA) to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing<sup>31</sup> was approved by the FAO Conference at its Thirty-sixth Session under paragraph 1 of Article XIV of the FAO Constitution, through Resolution No 12/2009 (22 November 2009).<sup>32</sup> The PSMA were seen as a cost-effective and efficient means to curb and combat illegal, unreported and unregulated fishing.<sup>33</sup> What exactly does these measures introduce? In short, all distant fleet fishing vessels have to dock at a port somewhere, and the PSMA is designed to make this, and the landing of illegally caught fish harder through the following actions of signatory countries:<sup>34</sup>

- Foreign fishing vessels may only enter designated ports of these countries;
- Docked fishing vessels must allow inspections following set procedures;
- Any vessels associated with or suspected of IUU fishing activity will be barred from entering ports;
- Countries will share intelligence regarding IUU activity and catches when these are discovered.

South Africa is in the process of ratifying this agreement, but of all the other African nations with port infrastructure, only Benin, Gabon, Ghana, Kenya, Mozambique, Sierra Leone have signed the agreement. This agreement has become crucial in combating illegal fishing activities since Flag States<sup>35</sup> typically fail to effectively control fishing operations carried out by vessels flying their flag. In order to attempt to manage the activity of these poorly regulated vessels, Port State Measures (PSM) was proposed. The concept behind the PSMA is simple. Illegal fishing operators offload their catches in ports known for a lack of monitoring capacity, or where lax control measures are in place. In theory, when all ports are committed to the PSMA, it will be far more difficult for illegally caught fish to be offloaded anywhere.<sup>36</sup> These measures are requirements established or interventions undertaken by port states where fishing vessels dock to offload catches or re-supply the vessel. All foreign fishing vessels must comply with or be subjected to these measures as a condition of port entry.<sup>37</sup>

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<sup>28</sup> CCSBT (undated).

<sup>29</sup> The total number of individuals within the population that has reached reproductive age/size.

<sup>30</sup> CCSBT (Undated).

<sup>31</sup> For a summary of the agreement, see Briley (2013).

<sup>32</sup> Doulman and Swan (2012). These States are often branded as "irresponsible States" for allowing dubious fishing activity to take place while their national flag is displayed by the fishing vessel.

<sup>33</sup> Doulman and Swan (2012).

<sup>34</sup> Fishwise.org (2014).

<sup>35</sup> All fishing vessels must be registered in a country, and display that countries' flag on the vessel, hence the term "flag state".

<sup>36</sup> Briley (2013).

<sup>37</sup> FAO (undated).

### 3. THE NEED FOR REGIONAL CO-OPERATION IN AFRICA IN ORDER TO IMPROVE THE MONITORING AND REGULATORY CAPACITY.

It is recognised that effective control of fisheries resources at national and regional level is required to combat IUU fishing. Even in regions with Commissions and fishery management plans in place, the vast nature of High Seas area under the jurisdiction of RFMOs creates management challenges. As an example, IUU fishing is a major problem for the Indian Ocean Tuna Commission (IOTC), reporting that over 70,000 tons of unreported catch are illegally caught by "rogue" vessels or countries.<sup>38</sup> In terms of IUU fishing within country borders, international research<sup>39</sup> clearly indicated that the level of governance in a country, coupled with its MCS capacity has a direct bearing on the amount of IUU fishing that it is likely to experience. While monitoring, control and surveillance (MCS) capacity is steadily improving in the SADC region, hardware challenges (insufficient numbers of airplanes and patrol vessels) and maintenance costs are still hampering the effective patrolling of SADC country EEZ's.<sup>40</sup> In other parts of Africa, MCS capacity is relatively weak,<sup>41</sup> allowing transgressing Nations to operate with little concern.

However, even for countries such as South Africa and Namibia, with a long history of good MCS capacity, IUU fishing remains a problem. Infringements such as violating closed seasons or closed areas, gear infringements, misreporting catches and exceeding by catch allowances occur and it is difficult to determine the full extent of illegal activity. During 2004, the illegal harvesting of 200 000 tons of pelagic fish was uncovered and it is believed<sup>42</sup> that this extent of over-fishing is not an isolated occurrence. In both countries, there appear to a focus on high value species and activity is greatest in the offshore regions. Tuna and shark is also targeted in SADC waters by smaller long line vessels. These vessels tranship at sea, often to deep freeze factory ships that do not have to call into port, making compliance monitoring difficult. Many of the small long line vessels are not registered with regulatory bodies, and these unregistered vessels typically do not meet the standards set by regulatory bodies. Vessel markings on these vessels are typically inadequate or are altered prior to port entry, making monitoring difficult.<sup>43</sup>

While some of the European contingent of IUU vessels operational along the African coast is typically missing from SADC waters, the controlling interests of illegally operating vessels are most often based in China, Korea, Spain, Russia and Indonesia. Most of these vessels are flagged in China, Korea, Indonesia and Taiwan or fly the flags of convenient states such as North Korea, Tonga, Equatorial

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<sup>38</sup> FAO (2001).

<sup>39</sup> Hughes (2011).

<sup>40</sup> Davies (undated).

<sup>41</sup> Canning (2012).

<sup>42</sup> Feike (2006).

<sup>43</sup> Ibid.

Guinea or Cambodia. A large number of vessels present in SADC ports were licensed, even though unlicensed vessels were also allowed to be based in coastal state ports. Problems experienced with licensed vessels include poor record keeping (typical of Indonesian and Taiwanese flagged vessels in waters off Angola, Mauritius, Madagascar, Tanzania, Mozambique and Tanzania) and poor compliance with regulations. The degree of compliance was often related to the number of at-sea and port inspections taking place, again underlining the link between governance, MCS capacity and the degree of IUU fishing occurring in a region.<sup>44</sup>

#### 4. THE CHALLENGE OF INEFFICIENCIES IN INTERNATIONAL FISHERY MANAGEMENT AND REGULATIONS

It is acknowledged by the United Nations (UN), European Union (EU) and the United Nations Food and Agriculture Organisation (FAO) that developing countries lack the capacity to curtail IUU Fishing without regional co-ordination of efforts and international support in extending monitoring and regulatory capacity.<sup>45</sup> The behaviour of a number of countries in Europe and Asia clearly exploit the situation. At present, Distant Water Fleets (DWF) are responsible for the bulk of IUU transgressions in African Nations' EEZ. Around 60 per cent of fish consumed in the EU originate from outside of the EU.<sup>46</sup> It is clear that no amount of regulatory effort from developing countries will succeed if developed countries do not play their part in actively regulating their fishing fleets, ports and markets. The Port State Measures is one key control mechanism that could contribute significantly to controlling distant fleet fishing activity. That having been said, the reality is that

**While these three International Instruments are being introduced into the Committee by the Department of Agriculture, Forestry and Fisheries, it is important to realise that a number of government departments and entities, such as the Department of Defence (navy), Transnet (port access and control) and the Department of Environmental Affairs (custodians of marine conservation), will have to play a co-ordinated role in effectively implementing these instruments.**

most International processes and regulations put into place to attempt to limit the impact of IUU activity are actively circumvented by transgressing countries,<sup>47</sup> creating a climate where the desire to comply with international regulations<sup>48</sup> and sustainable exploitation of marine resources by much of the world is nullified by the actions of a handful of Nations exploiting loopholes or failing to honour their treaty obligations.<sup>49</sup> A further challenge persists in that although the EU has 21 Fishery Partnership Agreements, these only govern the activity of about 50 per cent of its

<sup>44</sup> Ibid.

<sup>45</sup> Ploch *et al.* (2011).

<sup>46</sup> Sanga and Fernandes (2006).

<sup>47</sup> Combating illegal, unreported and unregulated fishing (undated).

<sup>48</sup> FAO (undated).

<sup>49</sup> Treaty to eliminate illegal fishing penned (undated).

external fleet, resulting in only 3 per cent of fish captured for European markets in ACP countries being governed by ACP agreements.<sup>50</sup>

### 5. CONCLUDING REMARKS

The three international agreements that will be introduced to the Committee are highly relevant to South Africa. South African ports have in the past seen the confiscation of illegally caught pelagic fish species,<sup>51</sup> while our vast EEZ, including Southern Ocean Islands, is an easy target for illegal fishing vessels targeting extremely valuable species such as Patagonian toothfish. South Africa has actively sought to cooperate with the international community in a manner which benefits the people of South Africa, the African continent and countries of the global South. In the Draft White Paper on South Africa's Foreign Policy there is some discussion of the natural resources of the African continent. The Agreement on Port State Measures (PSMA) to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing was approved by the FAO Conference at its Thirty-sixth Session. This agreement has become crucial in combating illegal fishing activities since Flag States typically fail to effectively control fishing operations carried out by vessels flying their flag. Illegal fishing operators offload their catches in ports known for a lack of monitoring capacity, or where lax control measures are in place. According to the Food and Agriculture Organization (FAO), the implementation of mandatory UVI use in fishing vessels is an essential prerequisite to establish a successful Global Record of Fishing Vessels, Refrigerated Transport Vessels, and Supply Vessels. Parliament can play a role in encouraging the South African government to closely monitor these activities and consider international instruments aimed at effectively managing fisheries on the African continent to ensure that these resources are not exploited illegally.<sup>52</sup>

In October 2013, the Plenary Assembly of the Southern African Development Community-Parliamentary Forum (SADC-PF) unanimously adopted the Southern Africa Resource Barometer. The Barometer is a set of clear principles for measuring transparency, accountability and equity in the exploitation of the region's vast natural resources – principles that will empower parliaments and parliamentarians to play a more constructive role in the oversight of the extractive sector. On issues relating to the oceans of the globe, South Africa has consistently committed itself to respect for the tenets of international law. South Africa has participated in various multilateral engagements with the intention of ensuring that the interests of developing countries are given attention and on issues directly affecting developing countries, South Africa has articulated its commitment in the Strategic Plans of the Department of International Relations and Cooperation.<sup>53</sup>

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<sup>50</sup> Rivalsi (undated).

<sup>51</sup> Feike (2006).

<sup>52</sup> Madlala and Jooste (2014).

<sup>53</sup> Ibid.

Please note that, since this is a briefing session without any opportunity or requirement to change the contents of the instrument, guiding questions will not be supplied with this brief as is the practice with normal briefing sessions.

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