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## **REPORT**

### **LONG-TERM IMPROVEMENT TO MCS IN VIETNAM**

**ACTIVITY CODE: EU-22**

**Promote the capacity of Vietnam to comply with the IUU Regulation of the EU**

**Version: (first draft)**

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## ACRONYMS USED

CC	Catch certificate
CMM	Conservation and Management Measure [of WCPC)
CFP	(European Union) Common Fisheries Policy
CPUE	Catch per Unit (of) Effort
DFISH	[MARD] Department of Fisheries
DG MARE	[European Commission] Directorate-general for Maritime and Fisheries
EC	European Commission – (Commission of the European Union)
EU	European Union
EEZ	Exclusive Economic Zone
FAO-UN	Food and Agriculture Organisation [of the United Nations]
FV	Fishing vessel
FFV	Foreign fishing vessel
FMP	Fisheries Management Plan
GoVN	Government of Viet Nam
GT	Gross tons
incl	Including
IMO	International Maritime Organisation
IPOA	International Plan of Action [to combat, deter and eliminate IUU fishing]
IRCS	International Radio Call Sign
IUU	Illegal, Unreported and Unregulated [fishing]
MARD	Ministry of Agriculture and Rural Development (Vietnam)
MCS	Monitoring, Control and Surveillance
MSY	Maximum Sustainable Yield
Mt	Metric tonne
nm	Nautical mile(s) (1 nm = 1.852 km)
NPOA	National Plan of Action [to combat, deter and eliminate IUU fishing]
PSMA	2009 Port State Measures Agreement
RFMO	Regional Fisheries Management Organisation
UNFSA	1995 United Nations Fish Stocks Agreement
VASEP	Vietnam Association of Seafood Exports and Processors
VMS	Vessel Monitoring System
WCPC	Western and Central Pacific Fisheries Commission

## **EXECUTIVE SUMMARY**

The Government of Vietnam tasked the EU-MUTRAP Project with providing Experts to assist with developing the new draft Fisheries Law in line with the DG-MARE recommendations. The draft law (Version 5) did not reflect current thinking on fisheries science and management since the basic tools are all concerned with input controls. A proper legal basis for resource management is needed (and identified by the DG-MARE mission) and with it are needed the technical tools for resource management in terms of output controls translated into law and using the precautionary principle. An amendment to create the legal basis for fisheries management plans was proposed.

A number of issues have been identified with the Catch Certification scheme for the Vietnam capture fishery in relation to the process of validation and endorsement operations. Transshipment vessels must be regulated and licensed; transshipment logbook/reports will be used to ensure the traceability of the fish/seafood sources. Fishing port authorities should, in collaboration with the local Department of Fisheries, implement the procedures for granting Catch Certificate for fish/fish products required for export purposes

The Fisheries Monitoring Centre (FMC) does not appear to operate as an effective surveillance centre and likewise does not appear to be part of an integrated monitoring and control system. There appears to be no real inter-action between the FMC staff and the system with no sign of vessel interrogation and investigation, or identification of vessels by fishing type.

Risk-based assessment should be the basis for a National Inspection Plan. A National Inspection Plan should provide an annual compliance and enforcement programme outlining the identified priority risks areas, the methods proposed to address and monitor those risks and the assets used to achieve compliance to reduce IUU-fishing. The inspection plan should be based on compliance risk assessments for the major Vietnamese export fisheries.

An Action Plan has been proposed with identifications of key steps, actions, fishing fleets and stakeholders involved and devolved responsibilities. The long term objectives of the improvement plan are to ensure that MCS will perform better for fishing fleets in input control (licenses, gear type and gear specifications, fishing grounds/fishing time...) and output control (landing volume, species captured, fish size caught), monitoring of fishing operations (logbook, VMS, catch declaration, Catch statement and certificate) as well as traceability of fish/fish products.

As an essential feature of resource governance, fishery management planning should be introduced, including fish stock assessment outputs as well as input information for fisheries management particularly, “access control”: the number of fishing vessels reliant on fishery resource production. It is recommended that a Fishery Management Plan should be developed for the offshore fishery.

The draft Fisheries Law was amended in line with the advice of the MUTRAP experts.

## **1 INTRODUCTION**

The EU – Vietnam Free Trade Agreement (EVFTA) is currently being negotiated and, it is hoped, will be ratified next year. As part of the agreement, Vietnam has agreed to take action to reduce and eventually eliminate IUU fishing. This is being done to comply with the EVFTA, Chapter 15: Trade and Sustainable Development, Article 8, Section 2 (c)

(Trade and sustainable management of living marine resources and aquaculture products), which states that Vietnam will:

“Cooperate in and actively engage in the fight against illegal unreported and unregulated (IUU) fishing and fishing related activities with comprehensive effective and transparent measures to combat IUU. The Parties shall also facilitate the exchange of information on IUU activities and implement policies and measures to exclude IUU products from trade flows.”

This provides the rationale for the dialogue missions by DG MARE to Vietnam.

Following a Dialogue Mission to Vietnam by DG-MARE (15 -19 May, 2017), a Note was presented to the Government of Viet Nam (GOVN) by DG-MARE in the form of a Follow-up Road Map. The Note outlines those issue which were felt necessary for GOVN to address in order to meet the international criteria for counter-IUU (Illegal, Unreported and Unregulated) fishing and which is a requirement for those countries wishing to export fish and fish products to the European Union.

In order to meet this challenge, GOVN tasked the EU-MUTRAP Project with providing Experts to assist with developing the new draft Fisheries Law in line with the DG-MARE recommendations. The Gap Analysis presented here is part of the response by the Experts. It has been done rather more quickly than was originally intended so that the analysis could be used by the D-Fish officials prior to their meeting with the National Legislature Science, Technology and Environment Committee on 15 August, 2017. The term of Reference for the assignment:

- A comprehensive scope covering the activities of Vietnamese vessels in high seas and the maritime zones under the jurisdiction of third countries, the beneficial owner of fishing operations and the activities conducted by all type of fishing vessels, including supporting and transporting vessels in the definition of fishing vessels.
- The principles of international law regarding the use of best scientific evidence as basis of the conservation and management measures;
- The legal basis for a fully-fledged Monitoring, Control and Surveillance system, including clear requirements and criteria for Vessel Monitoring System (VMS), data reporting (logbook), control of landings and inspections;
- A clear delimitation of competences regarding the competent authorities for the registration and licensing of fishing vessels;
- And a deterrent sanction system with monetary fines and accompanying administrative measures depriving the economic benefit accrued from illegal activities.
- A mapping of the areas within the legal framework that will require the development of implementing regulations and organise a drafting calendar.

The Experts divided their work by the DMI expert concentrating on the legal issues, while the ADMI Expert investigated the catch reporting and control procedures. The findings from these investigations were used as the basis for the ‘Action Plan’ presented in Annex 10.

This report outlines the work of the experts to comply with the mission Terms of Reference (Annex 13).

## 2 BACKGROUND

### 2.1 Fish and seafood production

Viet Nam<sup>1</sup> is a coastal state with a long coastline of over 3 260 km and more than 3 000 islands and islet scattered offshore. There is also a network of about 2 860 rivers and estuaries countrywide and 811 700 ha of freshwater, 635 400 ha brackish water, 125 700 ha of coves and 300 000-400 000 ha of wetland areas, providing the environment to support the fishing industry. The fisheries industry is among the key industries in Viet Nam. It ranks sixth in terms of export value, after mobile phone, computer, textile, footwear and machinery.

Geographically, there are four main fishing areas in Viet Nam: Gulf of Tonkin (shared with China), Central Viet Nam, South-eastern Viet Nam and South-western Viet Nam (part of the Gulf of Thailand). Marine catches are highest in Central and Southern Viet Nam, especially from Khanh Hoa Province to Ca Mau Province. Fishing areas can also be divided into inshore-coastal fishery and offshore fishery. Inshore waters are considered less than 30m deep in the Tonkin Gulf and in the South and less than 50m deep in the Centre.

In 2016<sup>2</sup>, the total Vietnam fishery production was 6.72 million mt of which the marine capture fishery was about 2.9 million mt, while the inland capture fishery varied at around 0.3 million mt. Estimated aquaculture production of the country in the year was more than 3.6 million mt.

However, catching activities in Viet Nam are still small scale and under-developed; the total fishing fleet is about 128 000 boats (2015), of which 20.7% are over 90hp, 30.4% are 20-90hp and 49% are under 20 hp. Most of these are wooden with second-hand truck engines and operated within 3-10 nautical miles of the coast. The 24 000 fishing vessels of above 90 hp are considered as “offshore fleets”, by 2016 the number of fishing vessels were sharply declined to 109 306 units (February 2016).

It should be noted that the mean catch rate (CPUE) of the overall national capture fishery has been rapidly decreasing from 0.39 mt/hp per year (2005) to 0.24 mt/hp per year (2015)<sup>3</sup>.

The Government of Viet Nam’s fisheries development strategy plan envisages the seafood industry is to contribute 30-35% of the agro-forestry-fisheries sector’s GDP and the total fisheries production to reach 6.5 - 7 million tonnes by the end of 2020.

Most of offshore fishing boats in Vietnam focus on tuna and pelagic fish. The three main tuna fishing provinces are Binh Dinh, Phu Yen and Khanh Hoa. Tuna, mainly oceanic tunas (bigeye, yellowfin and skipjack) landings were around 123 000 mt<sup>4</sup> of which approximately 93 600 mt of skipjack tuna, 23 800 mt of yellowfin tuna and 5 700 mt of bigeye tuna in 2016 (WCPFC, 2016).

### 2.2 Seafood exports

Viet Nam currently ranks fourth in the world for seafood exports. The country’s seafood exports have risen from US\$550 million in 1995 to US\$6.13 billion in 2012, an average growth rate of 15.6%. Shrimp and pangasius remain the two major seafood export

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<sup>1</sup> Data from Vietnam Seafood industry, Overseas Market Introduction Service, OMIS Report VNM0496, 2014.

<sup>2</sup> D-Fish statistics

<sup>3</sup> D-Fish statistics

<sup>4</sup> Annual landing data estimates for Vietnam by WCPFC

products, followed by tuna and cephalopods. The percentage of fish exports from aquaculture has increased and is now around 60%.

Total Vietnam export turn over for fishery sector was estimated at more than 7.2 billion USD in 2016<sup>5</sup>. The main products of Vietnam fishery are farmed shrimp, farmed pangasius and; tuna and cephalopods (squid, octopus) come from the wild harvest. In 2016, total Vietnam tuna export turnover was estimated at US\$510 millions (VASEP, 2016), an increase of 12 % from 2015. However the country's value of tuna exports has not been stable in the last few years. In 2012, Vietnam exported tuna to 96 different markets making a total value of US\$569 million. The three main import markets namely the US, EU and Japan represented 70% of the total export value.

Shrimp export value in 2016 was estimated at US\$ 2.7 billions. Farmed production of shrimp was about 650 000 mt, followed by pangasius with a total export value of US\$ 1.5 billions from a production of 1.15 million mt. The pangasius industry is centred on the Lower Mekong Delta with a pangasius farming area estimated at 5 050 ha. Currently, the shrimp farming area covers about 700 000 ha of brackish water, of which 95 000 ha of intensive farming areas and the rest of more than 600 000 ha is extensive farming or semi-extensive farming areas.

The Squid and octopus export value in 2016 was approximately US\$ 439 millions (VASEP 2016).

### **3 LEGAL ANALYSIS and ISSUES**

#### **3.1 Draft Fisheries Law**

##### *3.1.1 Analysis and amendment of draft law*

At the start of this mission, it was found that the programme for delivery had changed considerably because the draft law had been substantially revised with the intent of presenting the revised draft to the Science, Technology and Environment Committee of the National Assembly on 15th August. This change in planning necessitated a more speedy delivery of the amendments to the draft law than had been originally planned. The drafting process was carried out in two stages. Stage 1 was to carry out a gap analysis of the legislation and stage 2 was to draft amendments, based on the identified gaps. The Draft Fisheries Law was primarily analysed for equivalence with the relevant international instruments:

*1982 United Nations Convention of the Law of the Sea (UNCLOS)*

*1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement)*

*1995 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 (UNFSA)*

*2009 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA)*

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<sup>5</sup> VASEP statistics



A number of gaps were identified (See Annex 1, including attached commentary) of these there were two major criticisms. The first was the absence of one notable omission from the policy objectives: the ‘precautionary principle’ first laid out in the *1995 FSA Art.7.5* and which is now incorporated in the best examples of fisheries legislation. This is a serious omission as the precautionary principle underpins the specific management interventions – target reference points limit reference points – which are a feature of modern fisheries legislation. The draft law (Version 5) did not reflect current thinking on fisheries science and management since the basic tools are all concerned with input controls. A proper legal basis for resource management is needed (and identified by the DG-MARE mission) and with it are needed the technical tools for resource management in terms of output controls translated into law and using the precautionary principle. An amendment to create the legal basis for fisheries management plans was proposed.

Another absence was evidentiary clauses. At this stage, it appears that the necessity for these is not well understood in Vietnam. Given the sensitivities in the adjacent sea area, it is essential that any arrests and prosecutions of foreign vessel operating in disputed areas are backed up by evidence to international standards, should such a prosecution or arrest be challenged in an international tribunal.

The amendments (see Annex 2) were drafted in line with current legal practice in fisheries law. Consideration was given to drafting a ‘Lacey Clause’<sup>6</sup> and this was discussed informally but was rejected by the client. Even at this stage, consideration should still be given to introducing a ‘Lacey Clause’ as a precursor to developing regional co-operation in fisheries enforcement.

The draft Law was re-drafted in line with the suggestions made in the Gap Analysis. A new version (Ver. 6) was made and this was discussed at meetings with D-Fish (11-12 September, 2017). Annex 14 is a record of agreed re-drafts to Version 6. A Gap Analysis review of the DG-MARE recommendations was made by the ADMI Expert against Version 6 and the experts then reviewed the Version 6 redrafts (Annex 14); this Gap Analysis is presented in Annex 15. The Expert considers that the revisions to Version 6, if accepted by the National Assembly, would make the draft Fisheries Law meet the requirements of DG-MARE regarding international standards for resource management and the use of scientific advice.

### *3.1.2 Logical structure and content of fisheries legislation*

There is some room for criticism of the draft law as it was presented. The law could perhaps be restructured more logically; it would have benefited if it had been based on a drafting frame to provide the structure to support the parts of the law and to present a logical sequence to the parts of the legislation. A model structure for a fisheries law is suggested below.

The structure of a law should follow the usual legal conventions and the basic logic underlying the drafting of a law should be:

- To state the law
- To state the authority responsible for its administration

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<sup>6</sup> ‘Lacey’ clauses allow for a vessel which has committed an offence in the waters of one state to be arrested in the waters of another state as though the offence had been committed in the waters of that state.

- To state the manner in which the law is to be administered.

Thus the logical structure for new fisheries should follow the format below. The law should:

1. Define the area of applicability [and jurisdiction, if necessary] of the Law
2. State who is responsible for its administration and which is the responsible authority
3. Give the objective(s) and functions of the department.
4. State the powers and obligations of the officers responsible for administering the law.
5. Define the constituent areas of fishery management and control,
6. Give authority to control those areas and define those authorities.
7. State the powers and obligations of the authorities responsible for managing those areas.
8. Authorise the issue of licences and the terms attached to them.
9. Control fishing and enable the preservation of fish stocks.
10. Define the rules for evidence and such presumptions that may be made.
11. Detail penalties following from conviction for an offence.
12. Enable the making of regulations under the Law.

### **3.2 Other legislation**

Following the gap analysis of the Fisheries Law, a number of other pieces of fisheries-related legislation were analysed: the gap analysis is presented in Annex 3, together with a commentary on the individual legislation and articles.

The main issues found were related to establishing designated ports of first landing for IUU inspection and also to provide transshipment facilities. There appears to be some inter-departmental issues over inspection by fisheries inspectors in commercial ports. It is suggested that these could be resolved by means of an agreed protocol between the two departments concerned. The other issue is the proper marking of fishing vessels. Ideally all vessels operating in the outer Vietnam fisheries zone should be marked with their call-signs (FAO marking scheme) or indeed any vessel of 15 metres or more. The reason for this simple: it enables vessels to be readily identified from the air or at a distance at sea, and then called directly, using the call-sign. Call-sign marking enables better identification at sea by surveillance aircraft and ships provided the FAO<sup>7</sup> (or a similar system) system is used.

### **3.3 Penalties**

The DG-MARE mission (May 2017) identified the levels of penalties as needing to deprive ‘the economic benefit accrued from illegal activities’. The relevant legislation is Decree 103/2013<sup>8</sup>. The current and revised range of penalties in Vietnam now appears to lie within the same ranges as those imposed within the EU member states. As can be seen from the table of EU legal penalties (Annex 4, Table 2) compared with the actual penalties imposed by courts in the EU member states is considerably less than DG-MARE would see as being appropriate. In some countries, these penalties can be considerably increased through prosecutions – as can be seen from levels of penalties imposed by UK courts, for example. However with regard to Vietnam, the wide range of

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<sup>7</sup> The standard specifications for the marking and identification of fishing vessels. FAO, Rome, 1989.

<sup>8</sup> Decree 103/2013 Provisions on Sanctioning Administrative Violations in the Operation of Fisheries.

offences and attached penalties, complicated by the options for determining the degree of sanction, makes it unlikely that in reality a penalty would be imposed that would be commensurate with the requirements of the DG-MARE Note of May, 2017. The Decree on Administrative penalties has a very varied logic (Table 1, Annex 4, is an attempt to clarify the penalties in relation to what are identified as serious infringements). There is an attempt to match the size of vessel – in size and engine power – to the penalty but again it is difficult to see a clear logic to the penalties. This could be improved by establishing a clear stepwise progression in determination of offences and the related sanctions.

It is suggested that the Decree on Administrative Penalties is revised to make it simpler. The levels of penalties should be reduced to say, 4 only or possibly 5, if specific IUU sanctions are added. Following the Swedish model, a system could be introduced which multiplied the level of penalty with a raising factor based on the engine size (a more reliable indicator of fishing power than length of vessel), reflecting the greater potential for environmental harm by larger, powered fishing vessels. Repeat offences should have mandatory loss of catch and gear.

One problem is that with fixed financial penalties, revision of the legislation is required every few years to reflect inflation. One solution would be to fix the first level penalty to real wages, as was done in the former Yugoslavia. In the case of Yugoslavia, the first level penalty was 4-8 times the minimal weekly wage, every level after that was raised by a factor of 10. This could be considered as an option. The highest corporate penalty was 200 -300 times the minimal weekly wage.

With regard to IUU offences committed in international waters then loss of gear should be mandatory and the level of corporate penalty (imposed on the vessel owner) should be based on the South Australia<sup>9</sup> model of 5 x the wholesale value of the catch. This model could be used where exporters or processors have culpably exported IUU fish or fish products. The consultant is advised that Vietnam is proposing to impose a penalty of 7 x the catch value which is in line with, and indeed, exceeds, the South Australia model. This proposal would seem to meet the DG MARE requirements.

### **3.4 Ratification of UNFSA and PSMA**

The position of Vietnam in not ratifying the 1995 UNFSA and the 1993 Compliance Agreements weakens its case as an enforcement body for both its national interests in disputed waters and where it may seek to impose RFMO rules on the high seas. In the current disputes in the South China Sea over maritime borders, the position of the coastal states is predicated by the boundaries as determined by international law (UNCLOS). In these circumstances for Vietnam not to either ratify, sign or be a party to the international law instruments which have clarified the weaknesses in UNCLOS, exposes the anomaly of its position.

## **4 CATCH CERTIFICATION**

### **4.1 Catch certification issues**

A number of issues have been identified with the Catch Certification scheme for the Vietnam capture fishery in relation to the process of validation and endorsement

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<sup>9</sup> [South Australia] *Fisheries Management Act 2007* s.74

operations. All procedures for validation and endorsement - granting catch statement, catch certificate etc - are basically paper based with no cross-checking being done of the information provided by either fishers/vessel owners/skippers or fish buyers. In addition, no lists of IUU fishing vessels are available or publicly published.

Some key issues associated with catch certificate scheme of Vietnam capture fishery can be summarized as follows:

- The absence of landing declaration by fishing vessel at the landing site/fishing port
- No designated fishing ports are available
- Port authority may have “report data” of the landing to calculate the “landing fee” or fish passing the port
- Absence of transportation information (from the landing site/fishing port) to storage/warehouse/ processing plants/market place, (only available information is from place of shipping to the importing market)
- Inspection of the catch/landing data for CC purposes is weak, no cross check of data made, e.g. no use of observer program or use landing data collection for validating catch statements
- Very limited use of VMS information for validation purposes
- Poor/unreliable information provided by logbook and low coverage of logbook records/return.

Figure 1 below shows the processes in certifying catches in Vietnam.

#### **4.2 Recommendations for improvement of Catch Certificate scheme**

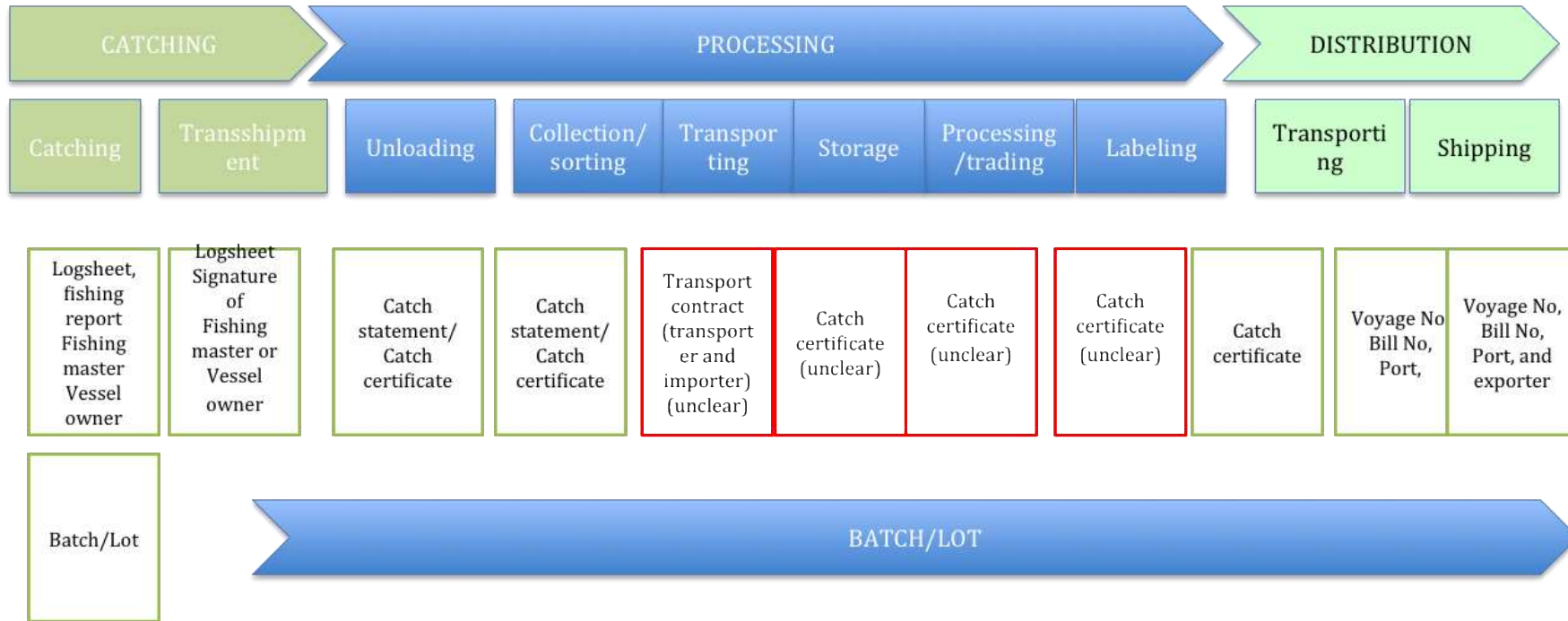
There should be a clear and transparent allocation of competences regarding the competent authorities for validating, inspecting and granting catch certificates must be implemented nationwide. Especially, a list of designated ports that have sufficient facilities and well-trained staff to carry out catch validation and inspections with the ability to access the sources of information on fishing vessel operation and management which should be available either online or on demand. Transshipment vessels must be regulated and licensed; transshipment logbook/reports will be used to ensure the traceability of the fish/seafood sources. Fishing port authorities should, in collaboration with the local Department of Fisheries, implement the procedures for granting Catch Certificate for fish/fish products required for export purposes.

The specific roles should be:

- Fishing port authority:
  - validates information;
  - check legal documents of a fishing vessel including fishing vessel registry number/certificate;
  - crew list,
  - fishing license,
  - food safety certificate,
  - logbook;
  - checks IUU fishing vessel list and
  - grants catch statement.
- Role of local Fisheries department:
  - validates information provided in the catch statements;

- conducts inspection either sample based at the port or accessing databases including VMS log; and
- grants Catch Certificate.

**Figure 1: Flow chart of Catch Certification in Vietnam**



The central and local governments need to develop a roadmap/plan to seek appropriate VMS models and scale up the VMS on board fishing vessels which target fish for export orientation as priority.

Institutional arrangements of the central fisheries inspection (Department of Fisheries Resources Surveillance) and local fisheries inspection (under Provincial Department of Agriculture and Rural Development, Provincial People of Committee) should be reformed as soon as possible or, at least, stabilized in terms of function as well as responsibility, and organised to avoid overlaps in operations and ensure smooth/transparent operations.

In addition, there should be capacity building, awareness raising for relevant stakeholders, particularly promoting partnerships between stakeholders/actors along the seafood supply chain. These partnerships should be emphasised to encourage them in mitigating and preventing IUU fishing operations; this is probably the most feasible mechanism for small scale fisheries.

### **4.3 Code of Practice for Exporters and Processors**

As has been discussed already, the problems with incorrect catch documentation arise with the applications by the exporters. The most probable cause of the problem lies in the lack of serious attention which is given to the correct completion of the paperwork. Given the degree of urgency which is needed to ensure that containers with Vietnamese fish product, action needs to be taken now to encourage exporters to improve the quality of their paperwork. There are two routes to take to improve the situation: the first is to draft legislation to allow for this, together with associated penalties, and the second is to develop a Code of Practice with industry, backed up by performance bonds. The sense of urgency precludes developing legislation so that leaves a Code of Practice as the best option to pursue.

The Code of Practice option needs to be based on a quality standards approach – it is suggested that the ISO 9001 (Quality Management Standard) is applied since this offers a structured, process-driven approach. ISO 9001 was developed to improve quality of management services by identifying its key processes, defining roles and responsibilities, its policies & objectives, and documentation requirements.

- a set of procedures that cover all key processes in a business
- monitoring processes to ensure they are effective
- keeping adequate records
- checking output for defects, with appropriate and corrective action where necessary
- regularly reviewing individual processes and the quality system itself for effectiveness
- Focus on continual improvement

The development of SOPs, and training, should be promoted by VASEP.

### **4.4 Identified risks in export fisheries**

From a superficial evaluation of risk in exports (based on interviews with exporters and processors), there are 2 main sources of risk for IUU fish to enter into the EU via Vietnamese exports. The first is from tunas either caught on ‘blue boats’ or, more probably, caught in external non-compliant waters and exported to Vietnam to make up consignments intended for the European market and the second is from fish species from coastal Vietnamese waters. It is the second source which is the most inherently risky and

the most difficult to control. The two products which would seem to be most risky are squid and surimi because both are exposed to IUU-risk from the weakly governed inshore fisheries i.e. unreported and unregulated. Surimi, in particular offers a means for ‘laundering’ under-size fish and control of raw material entering this route is thus very dependent on processor integrity. The same risk attaches to Vietnamese-produced fish/shrimp feed with its attendant risks for the aquaculture industry: pangasius and shrimp-farming<sup>10</sup>.

## **5 MONITORING CONTROL AND SURVEILLANCE**

### **5.1 MCS Gap Analysis and Comment**

The draft law of Vietnam fishery has incorporated the important measures from the PSMA (2009), UNFSA (1995). These key measures inserted in the draft law include: designated fishing ports (where have sufficient facilities and manpower for monitoring, control and surveillance), VMS, logbook and observer program. Fishing effort will be controlled based on the availability of fisheries resource; the best scientific base will be taken into account when fisheries management plan developed. Transshipment vessels should be better managed under the new draft law as they will be subject to license and control as “fishing vessels”. Both surveillance/inspection at sea and port side inspection will be promoted, with inspections of at least 5% of fishing trips for other fishing fleets and 20% of the number of fishing trips of tuna fleets for catch certificate purpose. The central inspection/patrol vessels will take responsibility for the whole of the national waters; in the coastal zone (about 6 nm shoreward) fisheries co-management regimes will be promoted.

#### *Recommendations:*

- Designated ports should be differentiated from the concept of “register port”. GOVN should provide list of “designated ports” along the coastline of Vietnam.
- Radio Call Sign and IMO number should be included in the draft law for vessels which are registered for fishing on the high seas or RFMO areas.
- VMS must be carefully selected to be appropriate in terms of cost, technology, function and operation/maintenance
- Introduction of electronic traceability, web based database for fishing vessel registration, Catch certificates, VMS to operate and manage information related to IUU fishing vessel operation, fishing vessel management, accessing of the information for validation/cross checking purposes.

The MCS gap analysis for Vietnam capture fishery is presented in 9.

### **5.2 Fisheries Monitoring Centre and Vessel Monitoring System**

There are three Fisheries Monitoring Centre (FMC) Hanoi, Haiphong and one in Ba Ria – Vung Tau. MCS was not strictly within the ambit of the mission and the team did not devote much time to this but a visit was made to the Fisheries Monitoring Centre in Hanoi. It was clear that the Vietnamese VMS is not an effective tool for fisheries control. The Fisheries Monitoring Centre (Hanoi) does not appear to operate as an effective surveillance centre and likewise does not appear to be part of an integrated monitoring

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<sup>10</sup> Although freshwater species and aquaculture products, in the main, are exempted from the IUU Regulation, fish-feed carries the risk of being sourced from IUU-fish. This would have the effect of making such farmed fish becoming identified as being IUU.



and control system. The MOVIMAR system used in Vietnam<sup>11</sup> is useful as an historic record of vessel movements which can be checked against logbook positions but it is not clear that this is done at all. There appears to be no real inter-action between the FMC staff and the system with no sign of vessel interrogation and investigation, or identification of vessels by fishing type.

The THEMIS software (which accompanies the MOVIMAR system) should be capable of interrogation and suspicious vessel identification yet this facility doesn't appear to be accessed by the FMC staff. The oceanic temperature data – and weather information – was mentioned by the staff as being a useful adjunct yet the full capacity of the system<sup>12</sup> (as shown below) is evidently not being used:

1. Visualize active fleet on screen with sophisticated nautical charts (C-MAP)
2. Manage multiple restricted fishing zones and run suspicious behaviour alerts
3. Visualize catch data from e-logbook or ERS
4. Measure fishing effort
5. Detect illegal unreported and unregulated (IUU) fishing
6. Optimize search & rescue operations
7. Display metocean data
8. Additional building blocks may be added to the suite depending on clients' needs

The options show above offer many opportunities for developing the FMC into a proactive user of the VMS. That the system is not being fully utilised is also due to the poor uptake of transponders by the fleet, despite being issued for free. The fact that the FMC staff are all fisheries inspectors with practical experience of fisheries inspection and enforcement ought to mean that intelligent use of the system should bring rewards in more effective MCS planning and activity. But this is not happening; which makes the case for technical intervention to bring the system back to life. Upgrading of the Fisheries Monitoring Centre needs to be the subject of a specific training mission as part of the development of the National Fisheries Inspection Plan, recommended by DG MARE. Revised staffing levels need to be considered as part of an overall improvement of MCS capability

Annex 12 suggests TORs for a consultancy to review the system and upgrade staff capabilities

### **5.3 Risk analysis and an national plan for inspection and control**

DG MARE, in their Note of May 2017, recommended that Vietnam [should]:

“Develop a comprehensive national plan of control and inspection including a strategy of based on clear risk assessment criteria and allocation of resources needed to achieve the established objectives, in line with the template provided by DG MARE after the mission conducted in June 2016.”

Since the start of the present mission, it has been obvious that ‘risk- assessment’ has been overlooked completely – as has been any plan for control and inspection. More particularly, it is the position of DG-MARE that risk-based assessment should be the basis for a National Inspection Plan. This is another area which lies outside the remit of the expert’s TORs but it would be remiss not to make some comments on this important gap in the client’s understanding of the key elements of the DG-MARE note.

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<sup>11</sup> There is also a GPS system - Vertex VX-1700 – this was not evaluated by the experts.

<sup>12</sup> The MOVIMAR system in Vietnam is produced by the CLS Group in France using a satellite tracking facility. The THEMIS software is part of the package. See: <https://fisheries.cls.fr/about-us/cls-group/>

The use of risk-assessment is being used more and more by fisheries control agencies, especially in Europe. This has come about partly in response to reduced budgets and partly because it makes for greater economic efficiency to concentrate resources where most needed. In the best examples<sup>13</sup> of this, the national control agencies are using risk analysis at the strategic, operational and tactical levels by the European national control agencies, examples are shown in Annex 11. This offers a methodology for Vietnam to follow.

A National Inspection Plan (NIP) is also needed. A National Inspection Plan should provide an annual compliance and enforcement programme outlining the identified priority risks areas, the methods proposed to address and monitor those risks and the assets used to achieve compliance to reduce IUU-fishing. The inspection plan should be based on compliance risk assessments for the major Vietnamese export fisheries. The results of this assessment should prioritise targets for risk treatment activities, with identified action to be taken by assets which should be deployed to meet the Plan required outcomes. The plan should:

- **Identify the primary objective for the programme**
- Carry out a **risk analysis**
- Estimate the **human resources available** for inspection.
- Estimate the **technical assets** required
- **Balance** availabilities and needs and to achieve the primary objective.
- Get **approval** for the National Inspection Plan

In outline, an NIP should be comprised of the following elements:

1. Objectives, priorities, procedures and benchmarks
  - Procedures for risk assessment
  - Risk management strategy
2. Implementation
  - Deployment plans and procedures
  - Inspection and surveillance activities
3. National Fisheries Inspection Programme
  - Means of control
  - Human Resources
  - Technical means – MCS Assets
  - Financial means
  - Designated ports
  - Effort control
  - Effort regimes
  - Inspection protocols
  - Guidelines/ Standard Operating Procedures
  - Communication protocols
  - Additional inspection support provided by other services.
  - Specific inspection benchmarks

Development of a NIP is recommended as an outcome of this study and has been included in the TORs under Annex 12.

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<sup>13</sup> Examples provided by Stephen Cederrand, Senior Coordinator of Control Operations, EFCA.

## **5.4 Outline plan for improvement of MCS in Vietnam**

The Plan for improvement of the MCS is stepwise: 6 months, 1 year, 3 years and long term. The idea is to identify the priorities needed to be improved, aiming to gradually arrange and implement enhancement of the MSC system for the capture fishery sector. Identifications of key steps, actions, fishing fleets and stakeholders involved and responsibilities are important actions to ensure the feasibility of the improvements needed. These actions including identification of gaps/issues needed to be addressed such as: which fishing fleets should be given priority to have better MCS; what areas needed to be improved in terms of resource management; legal frameworks; and who has the task of monitoring, evaluating and implementing. The long term objectives of the improvement plan are to ensure that MSC will perform better for fishing fleets in input control (licenses, gear type and gear specifications, fishing grounds/fishing time...) and output control (landing volume, species captured, fish size caught), monitoring of fishing operations (logbook, VMS, catch declaration, Catch statement and certificate) as well as traceability of fish/fish products. The plan also emphasizes the development of feasible mechanisms for traceability, cooperative inspection operations among relevant agencies and adoption of international CMMs to fulfil the requirements of the international conventions/agreements that Vietnam will be an official member.

The detailed plan for improvement of MCS for Vietnam capture fishery industry is presented in Annex 10 – Action Plan.

## **6 RESOURCE MANAGEMENT**

### **6.1 Overview of fish stock management in Vietnam**

Fish stock assessment has been conducted in Vietnam waters since the 1960s. However, this work is not regularly implemented, and the methods of sampling and estimating are not consistent. Stock assessment of the fishery resources is normally carried out by the Research Institute for Marine Fisheries (RIMF) under *ad hoc* projects/programs rather than a long term schedule or regular works. Surveys were performed in the key areas of Vietnamese EEZ including the Gulf of Tonkin, the central waters, the southeast and southwest and the offshore central area (Spratly Islands). The key fishery resources are demersal fish stocks, small pelagics, cephalopods, shrimp spp. (using the swept area method and also acoustic surveys); and also large pelagic fish stocks such as tunas and tuna-like species (estimated using Virtual Population Analysis (VPA)).

The draft law highlighted the importance of fish stock assessment outputs as input information for fisheries management particularly, the “access control” - the number of fishing vessels that are reliant on fishery resource production. To assist this, a regular stock assessment for the whole country every 5 years plus annual landing data collection, under the draft law, will be a firm base for fisheries management purposes.

Recommendations:

- Presently, there are no specific agencies to collect landing data/fisheries dependent data for management of the sector: a Fisheries Statistics Unit should be established.
- Establishment of fisheries statistics system from central to local levels are core actions to ensure the availability of resources needed (budget and human resources) and a national database for landing data management will be helpful for either validating/cross checking or providing reliable data/information for development of fisheries management plan.

- A transparent system of fisheries statistics will also ensure sustainability of the work.

## 6.2 FMPs and governance

The purpose of the DG-MARE ‘yellow card’ is to signal to a state wishing to export seafood products to the EU that its national fisheries are not regarded as meeting international standards of fishery management. It is wrong to assume that IUU fishing is fundamentally concerned with offshore fishing: it is not, it concerns all marine fish products which might be exported to the EU. This is not completely understood in Vietnam at the moment by either the industry or the administration (there are exceptions). The purpose of Regulation 1005/2008 is to apply fundamental fisheries management measures to protect all stocks (which are sources for export products) and this is where Vietnamese response is weakest. What has to be recognised by D-Fish and the Government of Vietnam is that the real issue identified by DG MARE is one of inadequate resource governance and this has to be accepted if the problem is to be properly addressed. Addressing resource governance both inside the Vietnam EEZ and outside it should be seen as an opportunity: an opportunity to achieve a ‘sustainably fished’ label for Vietnamese exported fish and fish products.

Over-capacity in the fishing fleet has been identified by DG MARE as an area in which Vietnam is weak as a coastal state, and the reported decline in CPUE (see Section 2.2) is indicative of this. Action to deal with over-capacity has been proposed in the D-Fish Note of 31/8/2017, referring to Decisions 1445/QD-TTg and 2960/QD-TTg. These are welcome but they are administrative measures, rather than being management interventions, based on a coherent resource management plan. What is needed is a well-structured fisheries management plan (FMP) for the offshore fishery with a long-term horizon (5 years minimum) which aims to both reduce the fleet – and real effort – and thereby increase the overall output of the fishery<sup>14</sup>. It is the reliance on boat numbers as a crude measure which is the most concerning since this effectively takes the ‘eye off the ball’ as regards increases in fleet engine power: the CPUE measure quoted indicates that fleet power has increased.

One key element of the Action Plan must be to ensure that fish products sourced from Vietnam itself are IUU-free, this means that it must be harvested from reliably sustainable resources: This component deals directly with the coastal state concern as evinced by DG-MARE. It is suggested that the FMPs are developed as:

- Export fish only purchased from those fisheries subject to an FMP
- FMP developed as a joint effort with the communities involved
- The eventual aim should be to raise the ‘chain of custody’ to certifying agency standards (e.g. equivalent to MSC certification).

The process of developing an effective FMP which reflects the needs of the industry, the stock and the wider ecosystem is complex and constantly evolving. With each new piece of relevant information (scientific, stakeholder or international best practice) there is the

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<sup>14</sup> One aspect of fisheries in Southeast Asia is the use of the over-fished inshore and nearshore waters as social security fund for the coastal populations. The net result is that thousands are trapped in poverty where the only means of escape is urban drift by the young. Regrettably, artisanal fisheries projects usually only move fishermen from unacceptable poverty to acceptable poverty. Too often, the political imperative to create jobs means that eyes are closed both to working conditions and to achieving biologically and economically sustainable output from the aquatic resources. If jobs need to be made in the fishing then they should be made onshore, where value can be added to products sourced from a well-regulated and productive. It would be better to reduce jobs offshore, and improve boats and working conditions – and thus output.

potential for the FMP to change. The FMP provides a preliminary position, and can provide guidance on how to continue to develop fisheries management in the Vietnamese export fisheries in the future – with the eventual aim of developing FMPs on a stock-basis or for more discrete area FMPs, e.g. FMPs for marine reserves, squid etc.

There is one further element of governance which has not been discussed – because it was not evaluated – and that is the institutional role of D-Fish and MARD. It is the experience of the expert that effective resource governance derives from the effectiveness of the resource administration. There seems to be a problem with integration both across ministries but also within the department. It is suggested that an opportunity has also been created for D-Fish to re-visit its essential purpose and if it is organised to deliver that purpose efficiently.

## **7 ACTION PLAN**

On the basis of these concerns, an Action Plan was devised with a goal of achieving “governance over the Vietnam Fisheries in accordance with international law by 2020.” The Action Plan will focus on four items only:

- Improved catch certification: to ensure that Vietnam-verified certificates are accepted as reliable;
- MCS planning and application: to ensure that Vietnam flag state obligations are observed and enforced to international standards
- Fisheries management planning: to ensure that Vietnam-sourced fish meets coastal state obligations under UNCLOS; and

The plan is set over three years on a step-wise progression: 6 months, 1 year and 3 years.

The short-term objectives are:

- To satisfy DG MARE immediate issues by the end of mid-2018 – with reasonable progress shown by the end of 2017;
- To achieve IUU-compliance for Vietnamese export fish-products by the end of 2018.

The long-term objectives of creating governance are:

- To meet all flag-state obligations for Vietnamese vessels by the end of 2017; and
- To meet all coastal and port state obligations for export fish by the end of 2020; and
- To establish the conditions for long-term sustainability for Vietnamese fisheries to supply the domestic and export markets.

In accordance with the aim of concentrating attention, the Action Plan will focus on four items only:

1. Improved catch certification: to ensure that Vietnamese-verified catch certificates are accepted as reliable;
2. MCS planning and application: to ensure that Vietnamese flag state obligations are observed and enforced to international standards;
3. Fisheries management planning: to ensure that Vietnamese-sourced fish meets coastal state obligations under UNCLOS; and
4. Institutional and policy reform: to create the institutional environment for effective resource-ownership.

The plan is set over three years on a step-wise progression: 6 months, 1 year, 3 years and long-term. This horizon is set both to meet DG MARE prescriptions and to provide what should be a realistic time-frame to realise the Action Plan Goal.

This plan should be seen as a road-map towards achieving the goal. Because it is important that the road towards achieving the goal has defined milestones to measure progress, each element within each plan period has an end-date for accomplishment: the so-called SMART<sup>15</sup> characteristics of effective planning. For this Action Plan to succeed it must be result-driven.

The Action Plan proposal is given in Annex 10.

## **8 CONCLUSIONS and RECOMMENDATIONS**

### **8.1 Conclusions**

- 1) Vietnam has made considerable progress towards complying with the DG-MARE ‘Road Map’ in terms of legislation and administrative Interventions.
- 2) The real meaning of the ‘yellow card’ is not still fully understood in Vietnam (there are exceptions). Meeting the DG-MARE requirements is not a matter of making some administrative and legal changes; it is about effective governance of the fisheries in Vietnam and outside it.
- 3) The Fisheries Law – and ancillary legislation - has been updated to meet international standards for flag, port and coastal states. The final revisions to the Draft Fisheries Law (Version 6), if accepted by the National Assembly, would make the draft Fisheries Law meet international standards for resource management legislation.
- 4) Risk analysis is not understood: effective MCS is now seen as being dependent on a comprehensive National Inspection Plan (NIP), based on risk analyses of key fisheries.
- 5) The catch certification system is ineffective because of administrative weaknesses and a lack of integration both inter- and intra –departmentally.
- 6) The VMS and Fisheries Monitoring Centres are ineffectual and need to be made fit for purpose.
- 7) The position of Vietnam in not ratifying the UNFSA and the PSMA creates an anomaly that weakens its case for enforcing fisheries rules in disputed waters.
- 8) Presently, there are no specific agencies to collect landing data or other fisheries dependent data for management of the sector.

### **8.2 Recommendations**

#### *Action Plan*

- 1) An Action Plan should be implemented to carry out key tasks (MCS, resource management, legislation) to achieve ‘sustainably-sourced’ export seafood status for Vietnam.
- 2) It is suggested that an institutional review of D-Fish is considered as part of the governance process, especially to ensure that there are adequate human resources to support the Action Plan and to examine if other technical resources (universities, institutes) can be used as additional capacity.

#### *Catch certificates*

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<sup>15</sup> Specific, Measurable, Agreed, Realistic and Time bound.

- 3) Electronic traceability for CCs should be instituted with a web-based database for fishing vessel registration, Catch certificates, and integration of VMS data to operate and manage information related to IUU fishing vessel operation, fishing vessel management, accessing of the information for validating/cross checking purpose.
- 4) The establishment of fisheries statistics system at central and local levels is a core function of a fisheries department. The availability of the resources needed (budget and human resources) and a national database for landing data management will be help CC validation, cross checking and provision of reliable data/information for the development of fisheries management plans. A transparent scheme for fisheries statistics should also ensure the sustainability of the work.
- 5) There should be a complete overhaul and improvement of the Catch Certification system. It is proposed that this is done in two ways:
  - a. A Code of Practice should be agreed with industry, incorporating a management quality standards approach (ISO 9001). This should be led by VASEP and policed by the industry.
  - b. D-Fish professional standards should be upgraded so that staff become more focused on improved verification procedures based on a manual of Standard Operating Procedures (SOPs).

*Port state measures*

- 6) ‘Designated port.’ should be differentiated from concept of “register port” and government should provide list of “designated ports” along the coastline of Vietnam, as required in international law (PSMA).

*Flag state measures*

- 7) The satellite VMS system should be reviewed as a matter of urgency and options for future development considered including scrapping the present system. Stakeholder consultation is seen as being an essential part of the review.
- 8) The requirements for large fishing vessels to have their Radio Call Sign and IMO number should be included in a draft law for vessels operating on the high seas.
- 9) The Fisheries Monitoring Centres should be upgraded as part of the development of the National Fisheries Inspection Plan; this will involve training staff but may also include re-assignment.
- 10) A working arrangement between should be established within the D-Fish responsible units as a matter of urgency so that log sheet positions can be verified against VMS data, this should become systematised.
- 11) An international consultant should be recruited to review the VMS and the Fisheries Monitoring Centre and its working procedures, suggest improvements and train staff to become pro-active in monitoring and surveillance.
- 12) A National Inspection Plan should be implemented with a surveillance programme, based on risk-analysis.

*Resource management*

- 13) An FMP for the offshore fishery should be started within 6 months.
- 14) Export fisheries should be subject to fisheries management plans, either as species plans or as area fisheries plans.
- 15) It should be national policy that all Vietnamese export fish are products are sourced from sustainable resources, guaranteed by an independent certification/ratings body backed up by a verifiable chain of custody.

*Legal matters*

- 16) As a matter of urgency Vietnam should rectify its anomalous position with respect to UNCLOS and international fisheries instruments by ratifying the 1995 Fish Stocks Agreement and signing (and ratifying) the 1993 FAO Compliance Agreement and the 2009 Port State Measures Agreement.
- 17) The draft Fisheries Law should be enacted as soon as possible.
- 18) VMS as an entity should be established in primary legislation and should be backed up by detailed rules for the operation of on-board transmitters. These should allow for 'polling', 'off-time' procedures when in port, 'on-time' at sea, procedures for loss of transmission including alternative means of transmitting positions.
- 19) Decree 103/2013 on administrative sanctions for fisheries offences should be amended to make it simpler with 4 -5 levels of penalty, with deterrent penalties and accompanying measures applicable to skippers, beneficial owners and processors deliberately using fish from IUU sources.
- 20) A decree on transshipment rules should be drafted and promulgated. This will need to be backed up by a protocol between MARD and the port authorities agreeing devolved competences and inspection procedures with defined access rules.