



Research Questions with a view to establishing Independent Monitoring of Fisheries Law Enforcement and Governance (FiLEG)

Introduction

REM is an organisation specialised in the independent monitoring of law enforcement of natural resource extraction with considerable experience in the forest sector, investigating illegal operations of the private sector and also governance problems on the part of different state actors. REM is currently investigating the potential contribution the tools that have been developed to date could make to the fisheries sector, tuna fisheries in particular. With this in mind we present below a brief overview of REM, its methods of working and some questions that should help us to identify potential partners, project frameworks and their potential to contribute to resolution of law enforcement and governance problems in the fisheries sector.

About REM

Founded in 2003 by experts with over 15 years of monitoring experience, REM provides concrete and long-term solutions to ensure that natural resources support sustainable development. Our vision is that accountable governments ensure the sustainable and equitable management of natural resources for the benefit of society as a whole. REM is not a lobbying organisation and has no political agenda, but we are pro-active in researching and presenting the issues of governance and transparency during project implementation, and in contributing to concrete improvements in government and private sector practices. We recognise that good governance enables citizens to share more equitably in natural resource use whilst protecting those which they prefer to leave off-limits, and that across the board compliance ensures a level playing ground for competing commercial interests. REM is based in Cambridge in the UK and has offices and on-going projects in Cameroon and the Republic of Congo. Both of these initiatives aim to ensure that commitments made by governments through the EU's Forest Law Enforcement, Governance, and Trade (FLEGT) agreements are translated into action. For more information see www.rem.org.uk

About Independent Monitoring

Independent monitoring is a systematic audit-style approach that promotes good governance of state-owned natural resources and compliance with resource-extraction laws, treaties, and contracts through tailored recommendations. REM operates via formal contractual arrangements with the recipient government and donors. Activities include field operations to identify and investigate cases of illegal activity, these should trigger official action, and follow-up and reporting their progress through administrative and judicial systems helps ensure action. REM's approach is unique in that it monitors on-the ground governance issues and provides objective, site-specific and actionable recommendations for long-term policy and law enforcement improvements. Formal contractual arrangements with the recipient governments, endorsed by the donor community, provide leverage and ensure REM access to necessary information at ministry level as well as providing mechanisms to increase government accountability. To see that these recommendations are translated into action, REM collaborates with national and international organisations specializing in civil society governance monitoring and capacity building. The reports of the independent Monitor are usually made public subject to strict publications protocols.

Good governance has 8 major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimised, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. (OECD, 2001)

Research Questions

- 1) What are perceived to be the major problems of law enforcement/governance in the tuna fishery in the Western and Central Pacific fishery?
 - a. Weak and or contradictory laws for the stocks in question (Tuna species)?
 - b. Lack of enforcement of existing legal instruments (at the national or international level)?
- 2) In either case above is this due to a lack of capacity within national and regional institutions or a lack of political will to pass new laws or apply existing ones?
- 3) Where institutional arrangements exist to carry out investigations into alleged non-application of rules and procedures required of national administrations and are these arrangements functional?
- 4) Do the administrative and legal systems (functioning judiciary) required to conclude cases support successful prosecutions?
- 5) Is the situation as perceived above stable or dynamic – are there existing programs within any institutions already working either nationally or regionally that may bring change to the situation?
- 6) Do you think an Independent Monitor, given a suitable mandate, could increase transparency on questions of governance, law enforcement and the follow up of legal cases (e.g. verifying actual payment of fines and whether the levels of fines are dissuasive) in the tuna fisheries? If yes which institution(s) would be best placed to receive the reports from the IM and ensure positive reaction to its findings?³
- 7) If yes, what areas would you like to see covered by a TOR for an independent monitor or which governance problems areas would you like to see receive more attention?

Regional Tuna Fishery Context - legal and governance arrangements

The FFA and the SPC are already engaged in, *inter alia*, significant capacity building for the realisation of a sustainable fishery for tuna that contributes more to the GDPs of countries in the region. This capacity building takes many forms, including specific workshops for augmenting the capacity of the national law enforcement services². The legal framework for this work is provided by the WCPFC, which itself complements the national legislation governing the fisheries in question. The WCPFC has a Technical and Compliance Committee that serves the purpose of oversight at a detailed level where cases of IUU fishing are brought to its attention. REM, not having resources to access the high seas could not undertake monitoring of fisheries activities directly, what interests us more is the possibility to investigate, receive information directly from individuals within the industry, government departments, civil society and elsewhere to address governance issues surrounding the administration of the fishery and the follow up of cases within national legal systems where appropriate. We understand that while IUU fishing is a problem and requires serious attention and effort, much larger problems, in terms of lost revenue and resource management, are thought to exist in the strict application of existing rules. For e.g. misregistration/licensing of vessels, monitoring operations at ports working with national officials

² For example see: <http://www.ffa.int/node/249> ³ Bear in mind here that the Monitor itself has no power to force action itself, but acts as the catalyst for change by increasing transparency.