

DRAFT

South Pacific Ocean Regional Fisheries Management Agreement

The Contracting Parties,

Committed to ensuring the long-term conservation and sustainable use of all living resources in the South Pacific Ocean, and to safeguarding the environment and marine ecosystems in which the resources occur;

Recalling the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, 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 of 4 December 1995 and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 24 November 1993 and taking into account the Code of Conduct for Responsible Fisheries adopted by the 28th Session of the Conference of the Food and Agriculture Organisation of the United Nations on 31 October 1995

Recognising that under the above Agreements States have a duty to co-operate with each other in the conservation and management of living resources in the areas of the high seas and, as appropriate, to co-operate to establish subregional or regional fisheries organisations or arrangements with a view to taking the measures necessary for the conservation of such resources;

Taking into consideration that in accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 and general principles of international law, coastal States have waters under national jurisdiction within which they exercise their sovereign rights for the purpose of exploring, exploiting, conserving and managing fishery resources and conserving living marine resources upon which fishing has an impact;

Recognising economic and geographical considerations and the special requirements of developing States, in particular the least-developed among them, and small island developing States and their coastal communities, for equitable benefit from fishery resources;

Noting the call from the Review Conference on 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 for regional fisheries management organisations and arrangements to undertake performance reviews, and to cooperate in developing and applying best practice guidelines;

Determined to cooperate effectively to eliminate illegal, unreported and unregulated fishing and the adverse impact that it has on the state of the world fishery resources and the ecosystems on which they are dependent;

Conscious of the need to avoid adverse impacts of fishing on the marine environment, preserve biodiversity, maintain the integrity of marine ecosystems and minimize the risk of long-term or irreversible effects of fishing;

Aware that effective conservation and management measures require the application of the precautionary approach, an ecosystem approach and the best scientific advice available;

Convinced that the long-term conservation and sustainable use of all living resources in the South Pacific Ocean and the safeguarding of the environment and marine ecosystems on which those resources depend may best be achieved by the conclusion of an international agreement for that purpose;

Have agreed as follows:

Article 1 DEFINITIONS

- (a) '1982 Convention' means the United Nations Convention on the Law of the Sea 10 December 1982;
- (b) '1995 Agreement' means 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 of 4 December 1995;
- (c) 'Area' means the area to which this Agreement applies in accordance with article 3;
- (d) 'Code of Conduct' means the Code of Conduct for Responsible Fisheries adopted by the 28th session of the Conference of the Food and Agriculture Organisation of the United Nations (FAO) on 31 October 1995;
- (e) 'Fishery resources' means the resources of fish, molluscs, crustaceans and other sedentary species within the Area, but excluding:
 - (i) sedentary species subject to the fishery jurisdiction of coastal States pursuant to article 77(4) of the 1982 Convention; and
 - (ii) highly migratory species listed in Annex -1 of the 1982 Convention;
- (f) 'Fishing' means:
 - (i) the actual or attempted searching for, catching, taking or harvesting of fishery resources;
 - (ii) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fishery resources for any purpose including scientific research;
 - (iii) placing, searching for or recovering any aggregating device for fishery resources or associated equipment including radio beacons;
 - (iv) any operation at sea in support of, or in preparation for, any activity described in this definition, including transshipment;

- (v) the use of any other vessel, vehicle, aircraft or hovercraft, in relation to any activity described in this definition except for emergencies involving the health or safety of crew members or the safety of a vessel;
- (g) 'fishing vessel' means any vessel used or intended for fishing, including support ships, carrier vessels and any other vessel directly engaged in fishing operations;
- (h) 'regional economic integration organisation' means a regional economic integration organisation to which its member States have transferred competence over matters covered by this Agreement, including the authority to make decisions binding on its member States in respect of those matters;
- (i) 'target fishery' means any fishery resource in the Area that is the object of fishing at the time of entry into force of this Agreement or is subsequently opened for such fishing by a decision of the Meeting of Parties pursuant to article 10 of this Agreement.

Article 2 OBJECTIVES

The objectives of this Agreement are: to ensure the long-term conservation and sustainable use of fishery resources in the Area through the implementation of effective conservation and management measures and responsible fishing practices; to avoid adverse impacts on the marine environment and its ecosystems in the Area through fishing; and to promote the protection of the marine habitats in the Area on which fishery resources are reliant.

Article 3 AREA OF APPLICATION

1. This Agreement applies to the Area ...

[see paragraph 4 of *Report of the First International Meeting on the Establishment of the proposed SPRFMO, February 14-17, 2006*, which records that "the meeting discussed an indicative outline of high seas area for the proposed RFMO (refer Annex II of SP/01/Inf3rev1) as follows:

- the western boundary of the proposed South Pacific regional fisheries management organisation should abut the eastern boundary of the proposed convention area to be established under the Southern Indian Ocean Fisheries Agreement;
- the southern boundary of the proposed South Pacific regional fisheries management organisation should abut the northern boundary of the convention area of the Commission for the Conservation of the Antarctic Living Marine Resources (CCAMLR);
- the eastern boundary of the proposed South Pacific regional fisheries management organisation should abut the outer limit of the maritime jurisdictions of South American states;

- the northern boundary of the proposed South Pacific regional fisheries management organisation should not be delineated until the meeting had discussed fishery resources to be managed, the regulation of high seas enclaves within the proposed area and had received further scientific and technical information”]

2. Where for the purpose of this Agreement it is necessary to determine the position on the surface of the earth of a point, line or area, that position shall be determined by reference to the International Terrestrial Reference System maintained by the International Earth Rotation Service, which for most practical purposes is equivalent to the World Geodetic System 1984 (WGS84).

3. Nothing in this Agreement shall constitute recognition of the claims or positions of any of the Contracting Parties to this Agreement concerning the legal status and extent of waters and zones claimed by any such Contracting Parties.

Article 4

CONSERVATION AND MANAGEMENT PRINCIPLES

In giving effect to the duty to cooperate in accordance with the 1982 Convention and international law, the Contracting Parties shall apply, in particular, the following principles:

- (a) conservation and management of fishery resources shall be conducted in a transparent, accountable and inclusive manner, and in accordance with international best practice;
- (b) fishing shall be commensurate with the sustainable use of fishery resources and the general duty to protect and preserve the marine environment;
- (c) full and accurate data describing fishing shall be collected, reported and shared in a timely and appropriate manner;
- (d) decisions shall be based on the best scientific information available;
- (e) the precautionary approach as described in the 1995 Agreement and the Code of Conduct shall be applied widely to the conservation and management of fishery resources in order to protect those resources and preserve the marine environment on which they are reliant, and in particular the Contracting Parties shall:
 - (i) be more cautious when information is uncertain, unreliable or inadequate;
 - (ii) not use the absence of adequate scientific information as a reason for postponing or failing to take conservation and management measures;
 - (iii) take account of best international practices regarding the application of the precautionary approach, including Annex II of the 1995 Agreement and the Code of Conduct;
- (f) conservation and management measures established for the Area shall take into account the conservation and management measures adopted and applied in respect of the same fishery resources by coastal States within areas under

national jurisdiction and ensure that the measures established for the Area do not undermine the effectiveness of the coastal state measures;

- (g) biodiversity in the marine environment shall be protected, taking into account the benefits of an ecosystem approach to fisheries management;
- (h) the interests of developing States shall be taken into account, consistent with the 1995 Agreement.

Article 5 THE MEETING OF PARTIES

1. The Contracting Parties shall meet periodically to consider matters relating to the implementation of this Agreement and to take all relevant decisions. The first Meeting of Parties shall take place no later than 12 months following the entry into force of the Agreement.
2. The ordinary Meeting of Parties shall, unless the Meeting otherwise decides, take place at least once a year. The Contracting Parties may hold extraordinary meetings when required. They may also, by consensus, agree on techniques for taking and recording decisions intersessionally.
3. Subject to article 13, paragraph 5 of this Agreement, the Meeting of Parties shall, by consensus, adopt and amend its own rules of procedure and those of its subsidiary bodies.
4. The Contracting Parties, at their first meeting, shall consider the adoption of a budget to fund the conduct of the Meeting of Parties and the exercise of its functions and shall also consider the adoption of accompanying financial regulations. Decisions on the budget for the conduct of the Meeting of Parties and its subsidiary bodies and the exercise of its functions, together with the accompanying financial regulations, shall be taken by consensus.

Article 6 FUNCTIONS OF THE MEETING OF PARTIES

1. The Meeting of Parties shall:
 - (a) adopt conservation and management measures in accordance with article 7 of this Agreement;
 - (b) develop, approve and monitor responsible fisheries management plans for target fisheries which shall include management objectives for target fisheries, and, where appropriate, associated or dependent species;
 - (c) develop data collection, verification and dissemination programmes to support fishery conservation and management, including the management of target fisheries and the assessment of the impact of fishing on associated or dependent species, and on the marine environment;
 - (d) prioritise co-operation and data exchange with relevant organisations and coastal States to ensure conservation and management measures adopted in

respect of the Area are compatible with those adopted in respect of areas adjacent to the Area, including areas under national jurisdiction;

- (f) promote the development, recognition and use of selective, environmentally safe and cost-effective fishing gear and techniques and such other related activities, including activities connected with, inter alia, transfer of technology and training;
 - (g) promote the conduct of scientific research and the development of appropriate technologies in support of fishery conservation and management;
 - (h) develop and implement effective monitoring, control, surveillance and enforcement processes, including:
 - (i) a vessel monitoring system;
 - (ii) procedures to permit access by observers to flag vessels of Contracting Parties operating in the Area;
 - (iii) procedures to strengthen enforcement actions by flag States and port States;
 - (iv) mechanisms for co-operation with market States, including mechanisms to exchange and verify data in a timely manner;
 - (i) take full account of the recommendations and advice from the subsidiary bodies established by the Meeting of Parties;
 - (j) monitor the effectiveness of conservation and management measures it has adopted in meeting the objectives of this Agreement;
 - (k) consider and approve the proposed budget to fund the conduct of the Meeting of Parties and its subsidiary bodies, the exercise of the functions of the Meeting of Parties and of its subsidiary bodies;
 - (l) adopt its rules of procedure and financial regulations and such other internal administrative arrangements as may be necessary to carry out its functions; and
 - (m) take any decisions necessary for achieving the objectives of this Agreement.
2. In carrying out the functions in paragraph 1, the Meeting of Parties shall apply the conservation and management principles in article 4 of this Agreement.

Article 7

CONSERVATION AND MANAGEMENT MEASURES

1. The Meeting of Parties shall adopt conservation and management measures for target fisheries, new target fisheries, and for associated or dependent species.
2. The conservation and management measures shall include measures to:
 - (a) ensure the long-term sustainability of fishery resources and to promote the objective of their responsible utilisation, taking into account inter alia: the biological unity and other biological characteristics of the target fishery; uncertainties relating to the size and productivity of the target fisheries; biological reference points, the condition of the target fishery in relation to such

biological reference points, levels and distributions of fishing mortality; and the impact of fishing on non-target and associated or dependent species, as well as existing and predicted oceanic, environmental and socio-economic conditions;

- (b) prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort for target fisheries, and consequent by-catch of non-target species, do not exceed those commensurate with the sustainable use of fishery resources;
- (c) determine specific biological reference points above which the sustainability of a target fishery is ensured, consistent with article 6 of the 1995 Agreement, and to ensure that when such specific biological reference points are approached, further measures are taken to ensure they are not be exceeded;
- (d) ensure that in the event specific biological reference points are exceeded, Contracting Parties, without delay, take action to restore the target fishery to a level above those reference points within a reasonable period of time;
- (e) minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species and impacts on associated or dependent species, in particular threatened species, through measures including the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;
- (f) regulate high seas transshipment;
- (g) allow for the precautionary and gradual development of new target fisheries as provided for in article 10 of this Agreement;

and shall include any other measures necessary to give effect to this Agreement.

3. In addition, the Meeting of Parties shall adopt measures to be applied on an emergency basis where fishing presents a serious threat to the sustainability of fishery resources or when a natural phenomenon has a significant adverse impact on the status of fishery resources to ensure that fishing does not exacerbate such threat or adverse impact.

Article 8

ESTABLISHMENT OF TOTAL ALLOWABLE CATCH OR TOTAL ALLOWABLE FISHING EFFORT OF TARGET FISHERIES

1. In addition to the measures adopted under article 7, the Meeting of Parties shall determine a total allowable catch or total allowable fishing effort for all existing target fisheries within one year of the entry into force of this Agreement. In determining the total allowable catch or total allowable fishing effort for each target fishery, the Meeting of Parties shall take into account all of the following factors:

- (a) the objectives and conservation and management principles in articles 2 and 4 of this Agreement;
- (b) the conservation and management measures adopted by the Meeting of Parties under article 7 of this Agreement;

- (c) the advice and recommendations of the Scientific Committee;
 - (d) the status and stage of development of the target fishery,
 - (e) fishing patterns of the target fishery, and catch of associated or dependent species;
 - (f) the interdependence of fishery resources, including by-catch of associated or dependent species;
 - (g) the fisheries management objectives, approved by the Meeting of Parties, for target fisheries;
 - (h) regions and sub-regions of the Area identified on the basis of the geographical and biological characteristics of the target fishery, including the areas and periods in which fishing may occur;
 - (i) the interests of States in whose areas of national jurisdiction fishery resources of the target fisheries also occur;
 - (j) the fishing gear and technology which may be used in respect of different target fisheries;
 - (k) relevant biological factors limiting the nature of fishery resources that may be harvested;
 - (l) relevant environmental factors which may have an effect upon fishery resources of the target fishery and associated or dependent species;
 - (m) relevant conservation and management measures adopted by other intergovernmental organisations.
2. The Meeting of Parties shall regularly review the total allowable catch or total allowable fishing effort for target fisheries.

ARTICLE 9

ALLOCATION OF TOTAL ALLOWABLE CATCH OR TOTAL ALLOWABLE FISHING EFFORT OF TARGET FISHERIES

1. The Meeting of Parties shall allocate the total allowable catch or total allowable fishing effort of a target fishery by consensus. In determining the allocation of the total allowable catch or total allowable fishing effort, the Meeting of Parties shall take into account:
- (a) compliance with the conservation and management measures under this Agreement, and with those of other regional fisheries management organisations;
 - (b) demonstrated capacity and willingness to effectively exercise flag State control over flag vessels;
 - (c) contribution to the conservation and management of fishery resources in the Area, including the provision of accurate data, the conduct of research and steps taken to establish cooperative mechanisms for effective monitoring, control, surveillance and enforcement;
 - (d) fishing patterns and practices;

- (e) the interests of States in whose areas of national jurisdiction fishery resources also occur;
- (f) the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources;
- (g) contribution to the responsible development of new target fisheries.

2. The Meeting of Parties shall regularly review the allocation of the total allowable catch or total allowable fishing effort for target fisheries, taking into account the matters listed in paragraph 1 of this article and the interests of acceding Parties.

Article 10

DEVELOPMENT OF NEW TARGET FISHERIES

1. A fishery resource that is not a target fishery at the time of the entry into force of this Agreement shall be opened as a target fishery only when the Meeting of Parties has adopted preliminary conservation and management measures in respect of that fishery resource, and any associated or dependent species.
2. Such preliminary conservation and management measures, which may include requirements regarding notification, the establishment of a development plan, specification of fishing gear, the presence of observers, the collection of data, and the conduct of research, shall be consistent with the objectives and conservation and management principles contained in articles 2 and 4 of this Agreement. The measures shall ensure that the new target fishery is developed on a precautionary and gradual basis until sufficient information is acquired to enable the Meeting of Parties to adopt the full range of conservation and management measures specified in articles 7 and 8 of this Agreement.
3. The Meeting of Parties may, from time to time, adopt in advance the preliminary conservation and management measures that are to apply in respect of some or all new target fisheries.

Article 11

MARINE ENVIRONMENT

1. The Meeting of Parties shall adopt conservation and management measures for the protection of habitats in the Area on which target fisheries, and associated or dependent species, are reliant. Such measures may include:
 - (a) spatial closures within the Area;
 - (b) temporal closures of target fisheries;
 - (c) the regulation of fishing methods and gear-types used, including the prohibition of certain gear types that may have an impact on associated or dependent species and/or vulnerable or unique habitats or ecosystems;
 - (d) measures to mitigate the effects of lost or abandoned fishing gear on vulnerable marine ecosystems;

- (e) measures to reduce pollution from fishing vessels operating in the Area, and the effects of any such pollution;
- (f) Information exchange and co-ordination with relevant organisations, including organisations with responsibility for land-based sources of pollution and vessel-source pollution.

2. The Meeting of Parties, in adopting the conservation and management measures referred to in paragraph 1 of this article, shall take full account of advice from the Scientific Committee and other relevant sources of information, including in particular, information from other regional organisations.

Article 12 SUBSIDIARY BODIES

1. The Meeting of Parties shall establish a Scientific Committee, a Compliance Committee and such other subsidiary bodies, including sub-regional or fishery resource specific management units, as may be required. Any such subsidiary body, additional to the Scientific Committee and Compliance Committee, may be established on a permanent or temporary basis.
2. In establishing subsidiary bodies, additional to the Scientific Committee and the Compliance Committee, the Meeting of Parties shall provide specific terms of reference and methods of work as may be required, provided always that such specific terms of reference are fully consistent with the objectives and conservation and management principles in articles 2 and 4 of this Agreement and with the 1982 Convention and the 1995 Agreement.
3. All subsidiary bodies shall report, advise and make recommendations to the Meeting of Parties.
4. Subject to article 13, paragraph 5 of this Agreement, all subsidiary bodies shall operate under the rules of procedure of the Meeting of Parties unless otherwise decided by the Meeting of Parties.

Article 13 SCIENTIFIC COMMITTEE

1. The Scientific Committee shall meet at least once a year unless otherwise decided by the Meeting of Parties.
2. The functions of the Scientific Committee shall be:
 - (a) to plan, conduct and review such scientific assessments of fishery resources in the Area and the impact of fishing on the marine environment in the Area as may be required by the Meeting of Parties; and
 - (b) to encourage and promote cooperation in scientific research in order to improve knowledge of the state of fishery resources in the Area.

3. In carrying out its functions, the Scientific Committee shall take into consideration the work of other subsidiary bodies established by the Meeting of Parties, the work of other fisheries management organisations and the work of other relevant technical and scientific bodies.

4. The Scientific Committee may seek external expert advice as required on such terms as may be agreed by the Meeting of Parties.

5. The rules of procedure for the conduct of the meetings of the Scientific Committee and the exercise of its functions shall include procedures for the presentation of minority reports.

Article 14 COMPLIANCE COMMITTEE

1. The Compliance Committee shall meet at least once a year unless otherwise decided by the Meeting of Parties.

2. The functions of the Compliance Committee shall be:

(a) to provide advice to the Meeting of Parties on the implementation of, and compliance with, conservation and management measures under this Agreement; and

(b) to provide such other advice relating to compliance with and enforcement of this Agreement as may be required by the Meeting of Parties.

3. In carrying out its functions, the Compliance Committee shall take into consideration the work of other subsidiary bodies established by the Meeting of Parties, the work of other fisheries management organisations and the work of other relevant technical and scientific bodies.

4. The Compliance Committee may seek external expert advice as required on such terms as may be agreed by the Meeting of Parties.

Article 15 SECRETARIAT

The Meeting of Parties shall decide on arrangements for the carrying out of secretariat services, or the establishment of a Secretariat, to perform the following functions:

(a) implementing and coordinating the administrative provisions of this Agreement, including the compilation and distribution of the official report of the Meeting of Parties;

(b) maintaining a record of the proceedings of the Meeting of Parties and its subsidiary bodies, as well as an archive of any other official documents pertaining to the implementation of this Agreement; and

(c) any other function that the Meeting of Parties may decide.

Article 16

DECISION-MAKING

1. As a general rule, decisions by the Meeting of Parties shall be by consensus. For the purposes of this article, "consensus" means the absence of any formal objection made at the time the decision was taken.
2. Except where this Agreement expressly provides that a decision shall be made by consensus, if all efforts to reach a decision by consensus have been exhausted, decisions by voting on questions of procedure shall be taken by a majority of those present and voting. Decisions on questions of substance shall be taken by a three fourths majority of those present and voting provided that in no circumstances shall a proposal be defeated by two or fewer votes. When the issue arises as to whether a question is one of substance or not, that question shall be treated as one of substance unless otherwise decided by the Meeting of Parties by consensus or by the majority required for decisions on questions of substance.
3. When, in relation to cases covered in paragraph 2, it appears to the Chair that all efforts to reach a decision by consensus have been exhausted, the Chair shall fix a time during the Meeting of Parties for taking the decision by vote. At the request of any representative, the Meeting of Parties may, by a majority of those present and voting, defer the taking of a decision until such time during the same Meeting of Parties as the Meeting may decide. At that time, the Meeting of Parties shall take a vote on the deferred question. This rule may be applied only once to any question.
4. Where this Agreement expressly provides that a decision on a proposal shall be taken by consensus and the Chair determines that there would be objection to such proposal, the Meeting of Parties may appoint a conciliator for the purpose of reconciling the differences in order to achieve consensus on the matter.
5. Where under article 12, paragraph 1 the Meeting of Parties has decided to establish a sub-regional management unit or a fishery resource specific management unit for the purpose of developing and recommending conservation and management measures, including the establishment of a total allowable catch or total allowable fishing effort, in relation to a particular sub-region or fishery resource, the decisions of the Meeting of Parties on such conservation and management measures shall be based on any recommendations of that particular unit. Such recommendations shall be consistent with the objectives and conservation and management principles in articles 2 and 4 of this Agreement and with any measures of general application adopted by the Meeting of Parties. If the Meeting of Parties, in accordance with the rules in this Agreement for decision-making on matters of substance, does not accept the recommendation of the relevant unit on any matter, it shall return the matter to the unit for further consideration. The unit shall reconsider the matter in the light of the views expressed by the Meeting of Parties.
6. Subject to paragraphs 7 and 8, a decision of the Meeting of Parties shall become binding 60 days after the date of its adoption.

7. A Contracting Party which has voted against a decision or which was absent during the Meeting at which the decision was made may, within 30 days of the adoption of the decision by the Meeting of Parties, seek a review of the decision by a review panel constituted in accordance with the procedures set out in Annex.....to this Agreement on the grounds that:

- (a) the decision is inconsistent with the provisions of this Agreement, the 1995 Agreement or the 1982 Convention; or,
- (b) the decision unjustifiably discriminates in form or in fact against the Contracting Party concerned.

8. Pending the findings and recommendations of the review panel and any action decided upon by the Meeting of Parties, no Contracting Party shall be required to give effect to the decision in question.

9. If the review panel finds that the decision of the Meeting of Parties need not be modified, amended or revoked, the decision shall become binding 30 days from the date of communication by the Chair of the findings and recommendations of the review panel.

10. If the review panel recommends to the Meeting of Parties that the decision be modified, amended or revoked, the Meeting of Parties shall, at its next meeting, modify or amend or revoke the decision, provided that, if so requested by a majority of Contracting Parties, a special Meeting of Parties shall be convened within 60 days of the communication of the findings and recommendations of the review panel.

11. Nothing in this article is to be read as preventing the Meeting of Parties from agreeing on techniques for taking and recording decisions outside the period of an actual Meeting of Parties.

Article 17 TRANSPARENCY

1. The Contracting Parties shall promote transparency in decision making processes and other activities carried out under this Agreement.

2. The Meeting of Parties shall publish its conservation and management measures which are in force, and shall maintain public records of its conservation and management measures in force in the Area.

3. The Meeting of Parties shall promote transparency in the implementation of this Convention through the public dissemination of pertinent non-confidential information and, as appropriate, facilitating consultations with, and the effective participation of, non-governmental organisations, representatives of the fishing industry, particularly the fishing fleet, and other interested bodies and individuals.

4. Representatives of non-Parties, relevant intergovernmental organisations and non-governmental organisations, including environmental organisations with recognised experience in matters pertaining to the Meeting of Parties and the fishing industry of any Contracting Party operating in the Area, shall be afforded the

opportunity to take part in the Meetings of the Parties and of its subsidiary bodies, as observers or otherwise as appropriate, in accordance with the rules of procedure adopted by the Meeting of Parties. Such representatives shall have timely access to relevant information, in accordance with the rules of procedure of the Meeting of Parties.

Article 18 DATA EXCHANGE

1. To improve the exchange of data between fishing, port and market States, with a view to improving the conservation and management of fishery resources and to eliminating or reducing illegal, unreported and unregulated fishing and its negative impact on those resources, the Meeting of Parties shall develop procedures for:

- (a) the collection, verification and submission of data by Contracting Parties;
- (b) the compilation and management of accurate and complete data to ensure the best advice is available;
- (c) the security and dissemination of data while maintaining confidentiality where appropriate;
- (d) the exchange of data between Member States, other regional fisheries management organisations, and other relevant organisations concerning vessels engaged in illegal, unreported and unregulated fishing, including the beneficial ownership of such vessels, with a view to consolidating such information into a centralised format for dissemination as appropriate;
- (e) the facilitation of co-ordinated documentation and data-sharing between regional fisheries management organisations, including procedures to exchange data on vessel registers, catch documentation schemes where applicable, and analysis of trade flows.

2. The Meeting of Parties shall ensure that data are publicly available concerning the number of vessels operating in the Area, the status of fishery resources managed under this Agreement, fishery resource assessments, research programmes in the Area, and cooperative initiatives with regional organisations.

3. The Meeting of Parties shall, within two years of entry into force of this Agreement, develop a catch documentation scheme in respect of target fisheries.

Article 19 CONTRACTING PARTY DUTIES

1. Each Contracting Party shall, in respect of its activities within the Area:
- (a) promptly implement this Agreement and any conservation and management measures adopted by the Meeting of Parties;
 - (b) take appropriate actions in order to ensure the effectiveness of the conservation and management measures adopted by the Meeting of Parties;
 - (c) contribute to efforts to eliminate illegal, unreported and unregulated fishing;

(d) collect and exchange scientific, technical and statistical data with respect to fishery resources in the Area and ensure that:

- (i) data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements set forth in the conservation and management measures adopted by the Meeting of Parties;
- (ii) appropriate steps are taken to verify the accuracy of such data;
- (iii) such statistical, biological and other data and information as the Meeting of Parties may decide are provided annually.

2. Each Contracting Party shall report to the Meeting of Parties on an annual basis indicating how it has implemented the conservation and management measures and compliance procedures adopted by the Meeting of Parties, including in respect of its flag vessels, ports, markets, industries and nationals operating on vessels engaged in fishing in the Area.

3. Each Contracting Party which is also a coastal State shall report on the conservation and management measures it has taken for straddling stocks occurring in waters under its jurisdiction adjacent to the Area.

4. Each Contracting Party shall at the request of any other Contracting Party, and when provided with the relevant information, investigate any alleged violation by its nationals, or fishing vessels owned or operated by its nationals, of the provisions of this Agreement or any conservation and management measure adopted by the Meeting of Parties. A reply, including details of any action taken or proposed to be taken in relation to the alleged violation, shall be provided to all Contracting Parties as soon as practicable and in any case within two (2) months of such request. Reports on the progress of the investigation shall be provided to the Meeting of Parties at appropriate regular intervals, as well as a final report on the outcome when the investigation is completed.

5. Without prejudice to the primacy of the responsibility of the flag State, each Contracting Party shall take action, or cooperate, to ensure that its nationals, fishing vessels owned or operated by its nationals fishing in the Area and its industries comply with the provisions of this Agreement and with the conservation and management measures adopted by the Meeting of Parties.

6. Each Contracting Party shall fulfil in good faith the obligations assumed under this Agreement and shall exercise the rights recognized in this Agreement in a manner which would not constitute an abuse of right.

Article 20

FLAG STATE DUTIES

1. Each Contracting Party shall take such measures as may be necessary to ensure that:

- (a) fishing vessels flying its flag operating in the Area comply with the provisions of this Agreement and the conservation and management measures adopted

by the Meeting of Parties and that such vessels do not engage in any activity which undermines the effectiveness of such measures;

- (b) fishing vessels flying its flag do not conduct unauthorized fishing within waters under national jurisdiction adjacent to the Area;
- (c) it develops and implements a satellite vessel monitoring system for fishing vessels flying its flag and fishing in the Area in accordance with requirements adopted by the Meeting of Parties;
- (d) it investigates immediately and reports fully on actions taken in response to alleged violations by vessels flying its flag of conservation and management measures adopted by the Meeting of Parties;
- (e) penalties applicable for violations by vessels flying its flag are of an appropriate severity, taking into account the value of the catch and the imperative of preventing violations of this Agreement;
- (f) vessels flying its flag land fishery resources caught in the Area only at ports which comply with best international standards in respect of port State measures, and in accordance with guidance to be developed by the Meeting of Parties.

2. No Contracting Party shall allow any fishing vessel entitled to fly its flag to be used for fishing in the Area unless it has been authorised to do so by the appropriate authority or authorities of that Contracting Party. A vessel may not be authorised to fish in the Area if it has engaged in illegal, unreported and unregulated fishing in the Area following the entry into force of this Agreement, or has been prohibited from fishing in adjacent areas that are under the management of another regional fisheries management organisation.

3. Each Contracting Party shall:

- (a) authorize the use of vessels flying its flag for fishing in waters beyond national jurisdiction only where it is able to exercise effectively its responsibilities in respect of such vessels under this Agreement and in accordance with international law;
- (b) maintain a register of fishing vessels entitled to fly its flag and authorized to fish for fishery resources, and ensure that, for all such vessels, such information as may be specified by the Meeting of Parties including vessel position, catch of target fishery, and non-target species, catch landed, catch transhipped, fishing effort and other relevant fisheries data are entered in that register. Contracting Parties shall exchange this information in accordance with such procedures as may be agreed by the Meeting of Parties;
- (c) ensure that vessels found to have been engaged in illegal, unreported and unregulated fishing cannot be entered in the register of vessels entitled to fly its flag and authorised to engage in fishing in the Area;
- (d) in conformity with conservation and management measures adopted by the Meeting of Parties, make available to each annual Meeting of Parties a report on its fishing in the Area;
- (e) collect and share in a timely manner, complete and accurate data describing fishing by vessels flying its flag operating in the Area, in particular on vessel

position, retained catch, discarded catch and fishing effort, where appropriate maintaining confidentiality of data as they relate to the application of relevant national legislation;

- (f) adopt procedures to permit access by observers from other Contracting Parties to carry out functions as agreed by the Meeting of Parties;
- (g) at the request of any other Contracting Party, and when provided with the relevant information, investigate any alleged violation by fishing vessels flying its flag of the provisions of this Agreement or any conservation and management measure adopted by the Meeting of Parties. A reply, including details of any action taken or proposed to be taken in relation to such alleged violation, shall be provided to all Contracting Parties as soon as practicable and in any case within two (2) months of such request. Reports on the progress of the investigation shall be provided to the Meeting of Parties at appropriate regular intervals, as well as a final report on the outcome when the investigation is completed; and
- (h) make information available on the beneficial ownership of vessels flying its flag where the information would facilitate the investigation of an alleged violation of a conservation and management measure adopted by the Meeting of Parties.

Article 21

PORT STATE DUTIES

1. Measures taken by a port State Contracting Party in accordance with this Agreement shall take full account of the right and the duty of a port State to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures. When taking such measures, a port State Contracting Party shall not discriminate in form or in fact against the fishing vessels of any State.
2. Each port State Contracting Party shall:
 - (a) in accordance with the conservation and management measures adopted by the Meeting of Parties, *inter alia*, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals;
 - (b) not permit landings, transshipment, or supply services in relation to fishing vessels that have engaged in fishing in the Area unless they are satisfied that fish on board the vessel have been caught in a manner consistent with the conservation and management measures adopted by the Meeting of Parties;
 - (c) provide assistance to flag State Contracting Parties, as reasonably practical and in accordance with its national law and international law, when a fishing vessel is voluntarily in its ports or at its offshore terminals and the flag State of the vessel requests it to provide assistance in ensuring compliance with the provisions of this Agreement and with the conservation and management measures adopted by the Meeting of Parties; and

- (d) implement best international standards in respect of port State measures in accordance with guidance to be developed by the Meeting of Parties.

3. In the event that a port State Contracting Party considers that a vessel of another Contracting Party making use of its ports or offshore terminals has violated a provision of this Agreement or a conservation and management measure adopted by the Meeting of Parties, it shall draw this to the attention of the flag State concerned and of the Meeting of Parties. The port State Contracting Party shall provide the flag State and the Meeting of Parties with full documentation on the matter, including any record of inspection. In addition, the flag State Contracting Party shall transmit to the Meeting of Parties details of actions it has taken on the matter.

4. Nothing in this article affects the exercise by Contracting Parties of their sovereignty over ports in their territory in accordance with international law.

Article 22

COMPLIANCE AND ENFORCEMENT

1. The Meeting of Parties shall establish appropriate cooperative mechanisms for effective monitoring, control and surveillance of fishing in the Area and for the verification of compliance with its conservation and management measures.

2. The Meeting of Parties shall adopt procedures for:

- (a) the authorisation of vessels to fish, the marking of vessels and fishing gear, the recording of fishing activities, and the reporting of vessel movements and activities by a satellite vessel monitoring system;
- (b) an inspection programme, both at sea and in port, including procedures for boarding and inspection of vessels, and procedures for notification of inspection vessels and aircraft that may participate in the programme;
- (c) an observer programme based on common standards for the conduct of observation, including, inter alia, arrangements for the placing of observers by a Contracting Party on vessels flying the flag of another Contracting Party with the consent of that Party; an appropriate level of coverage for different sizes and types of fishing vessels and fishery research vessels; and requirements for reporting by observers of information regarding apparent violations of conservation and management measures, taking into account the need to ensure the safety of observers; and
- (d) procedures for the follow-up of infringements detected, including standards of investigation, reporting procedures, notification of proceedings and sanctions, and other enforcement actions.

3. The Meeting of Parties, or a Contracting Party, may draw the attention of all Contracting Parties to any activity, which in the opinion of the Meeting of Parties or the Contracting Party, undermines the implementation by another Contracting Party of its obligations under this Agreement or the compliance of that other Contracting Party with its obligations under this Agreement.

4. The Meeting of Parties may adopt procedures to be applied to a Contracting Party that is found to be non-compliant with the terms of this Agreement. Such procedures should include a range of responses, including cooperative capacity-building initiatives and trade-related actions that are consistent with international law.

5. The Meeting of Parties may adopt procedures to ensure that any vessel that has engaged in illegal, unreported and unregulated fishing in the Area, or adjacent areas, is prohibited from enjoying any benefits in the fishery.

6. If, within two years of the entry into force of this Agreement, the Meeting of Parties has not adopted procedures as outlined in paragraph 2 above, it shall, at the request of any Contracting Party, apply the procedures for boarding and inspection as stipulated in articles 21 and 22 of the 1995 Agreement, in order to strengthen the effective discharge by Contracting Parties of their obligations under this Agreement and where applicable, under the 1995 Agreement. A special Meeting of Parties may be convened for this purpose.

Article 23

ANNUAL REPORT OF THE MEETING OF PARTIES

1. The Meeting of Parties shall publish an annual report, which shall include details of decisions taken by the Meeting of Parties to achieve the objectives of this Agreement including the establishment of fisheries management plans and actions taken by Contracting Parties to implement the plans. The report shall also provide information on actions taken by the Meeting of Parties in response to any recommendations from the General Assembly of the United Nations or the Food and Agriculture Organisation of the United Nations.

2. Copies of the report shall be provided to the Secretary-General of the United Nations and the Director-General of the Food and Agriculture Organisation of the United Nations.

Article 24

REVIEW OF CONSERVATION AND MANAGEMENT MEASURES

1. The Meeting of Parties shall organise regular reviews of the effectiveness of its conservation and management measures in meeting the objectives of this Agreement. Such reviews shall be undertaken at least every three years.

2. The Meeting of Parties shall determine the terms of reference and methodology of such reviews which shall be carried out in accordance with international best practice and shall include participation by a person or persons of recognised competence who is independent of the Meeting of Parties.

3. The Meeting of Parties shall take account of the recommendations arising from any such review, including through the appropriate amendment of its conservation and management measures and the mechanisms for their implementation.

Article 25
COOPERATION WITH OTHER ORGANISATIONS

1. The Contracting Parties recognise that other regional fisheries management organisations and other relevant intergovernmental organisations have competency in relation to areas adjacent to the Area or in respect of living resources not covered by this Agreement and have objectives that are consistent with, and supportive of, the objectives of this Agreement.
2. The Meeting of Parties shall take account of the conservation and management measures adopted by such organisations and endeavour to ensure that its own decisions are compatible with, and supportive of, such conservation and management measures.
3. The Meeting of Parties shall seek to make suitable arrangements for consultation, cooperation and collaboration with such other organisations. In particular it shall seek to develop with such other organisations, a comprehensive cooperative information system relating to the ownership, control and movement of fishing vessels operating in the Area and adjacent areas with the aim of reducing and eventually eliminating illegal, unregulated and unreported fishing.

Article 26
NON-PARTIES WHO FISH IN THE AREA

1. Contracting Parties shall exchange information with respect to the activities of fishing vessels flying the flags of States which are non-Contracting Parties to this Agreement which are engaged in fishing in the Area. They shall take measures consistent with this Agreement and international law to deter activities of such vessels which undermine the effectiveness of conservation and management measures applicable in the Area.
2. Taking account of articles 116 to 119 of the 1982 Convention, the Meeting of Parties may draw the attention of any State or fishing entity which is a non-Contracting Party to this Agreement to any activity which in the opinion of the Meeting of Parties affects the implementation of the objective of this Agreement.
3. Contracting Parties shall, individually or jointly, request non-Contracting Parties to this Agreement whose vessels fish in the Area to cooperate fully in the implementation of conservation and management measures adopted by the Meeting of Parties with a view to ensuring that such measures are applied to all fishing in the Area. Such cooperating non-Contracting Parties to this Agreement shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with, and their record of compliance with, conservation and management measures in respect of fishery resources in the Area.

Article 27 FISHING ENTITIES

1. After the entry into force of this Agreement any fishing entity whose vessels have fished or intend to fish for fishery resources in the Area may, by a written instrument delivered to the Chairperson of the Meeting of Parties, in accordance with such procedures as may be established by the Meeting of Parties, express its firm commitment to be bound by the terms of this Agreement. Such commitment shall become effective thirty (30) days from the date of receipt of the instrument. Any such fishing entity may withdraw such commitment by written notification addressed to the Chairperson of the Meeting of Parties. Notice of withdrawal shall become effective ninety (90) days from the date of its receipt by the Chairperson of the Meeting of Parties.

2. A fishing entity which has expressed its commitment to be bound by the terms of this Agreement may participate in the Meeting of Parties and its subsidiary bodies, and partake in decision making, in accordance with the Rules of Procedure adopted by the Meeting of Parties. Articles 1 to 27, article 29.2 and article 30 apply, *mutatis mutandis*, to such a fishing entity.

Article 28 RELATION TO OTHER AGREEMENTS

Nothing in this Agreement shall prejudice the rights and obligations of States under the 1982 Convention or the 1995 Agreement.

Article 29 INTERPRETATION AND SETTLEMENT OF DISPUTES

1. Contracting Parties shall use their best endeavours to resolve their disputes by amicable means. At the request of any Contracting Party a dispute may be submitted for binding decision in accordance with the procedures for the settlement of disputes provided in Section II of Part XV of the 1982 Convention or, where the dispute concerns one or more straddling stocks, the procedures set out in Part VIII of the 1995 Agreement. The relevant part of the 1982 Convention and the 1995 Agreement shall apply whether or not the parties to the dispute are also parties to either of these instruments.

2. If a dispute involves a fishing entity which has expressed its commitment to be bound by the terms of this Agreement and cannot be settled by amicable means, the dispute shall, at the request of any party to the dispute, be submitted to final and binding arbitration in accordance with the relevant rules of the Permanent Court of Arbitration.

Article 30 AMENDMENTS

1. Any Contracting Party may propose an amendment to this Agreement by providing to the Depositary the text of a proposed amendment at least sixty (60) days in advance of a Meeting of Parties. The Depositary shall circulate a copy of this text to all other Contracting Parties promptly.
2. Amendments to this Agreement shall be adopted by consensus of all Contracting Parties.
3. Amendments to this Agreement shall enter into force ninety (90) days after all Contracting Parties which held this status at the time the amendments were adopted have deposited their instruments of ratification, acceptance, or approval of such amendments with the Depositary.

Article 31 SIGNATURE, RATIFICATION, ACCEPTANCE AND APPROVAL

1. This Agreement shall be open for signature by:
 - (a) States and regional economic integration organisation participating in the International Consultations on the Establishment of the proposed South Pacific Regional Fisheries Management Organisation; and
 - (b) any other State having jurisdiction over waters adjacent to the Area;and shall remain open for signature for twelve (12) months from the date on which it is opened for signature.
2. This Agreement is subject to ratification, acceptance or approval by the signatories.
3. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

Article 32 ACCESSION

1. This Agreement shall be open for accession, after its closure for signature, by any State or regional economic integration organisation referred to in paragraph 1 of article 31 and by any other State or regional economic integration organisation interested in the fishery resources in the Area.
2. Instruments of accession shall be deposited with the Depositary.

Article 32

ENTRY INTO FORCE

1. This Agreement shall enter into force thirty (30) days from the date of receipt by the Depositary of the fourth instrument of ratification, accession, acceptance or approval, at least two of which have been deposited by coastal States adjacent to the Area.
2. For each signatory which ratifies, accepts or approves this Agreement after its entry into force, this Agreement shall enter into force for that signatory thirty (30) days after the deposit of its instrument of ratification, acceptance or approval.
3. For each State or regional economic integration organisation which accedes to this Agreement after its entry into force, this Agreement shall enter into force for that State or regional economic integration organisation thirty (30) days after the deposit of its instrument of accession.

Article 33

THE DEPOSITARY

1. [X] shall be the Depositary of this Agreement and of any amendments thereto. The Depositary shall transmit certified copies of this Agreement to all signatories and shall register this Agreement with the Secretary-General of the United Nations pursuant to article 102 of the Charter of the United Nations.
2. The Depositary shall inform all signatories of and Contracting Parties to this Agreement of signatures and of instruments of ratification, accession, acceptance or approval deposited under article 31 and of the date of entry into force of the Agreement.

Article 34

WITHDRAWAL

Any Contracting Party may withdraw from this Agreement at any time after the expiration of two years from the date upon which the Agreement entered into force with respect to that Contracting Party, by giving written notice of such withdrawal to the Depositary who shall immediately inform all the Contracting Parties of such withdrawal. Notice of withdrawal shall become effective ninety (90) days from the date of its receipt by the Depositary.

Article 35

TERMINATION

This Agreement shall be automatically terminated if and when, as the result of withdrawals, the number of Contracting Parties drops below three.

Article 36
RESERVATIONS

No reservations or exceptions may be made to this Convention.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, having been duly authorized by their respective Governments, have signed this Agreement.

DONE at (place) on this -- day of (month), (year).